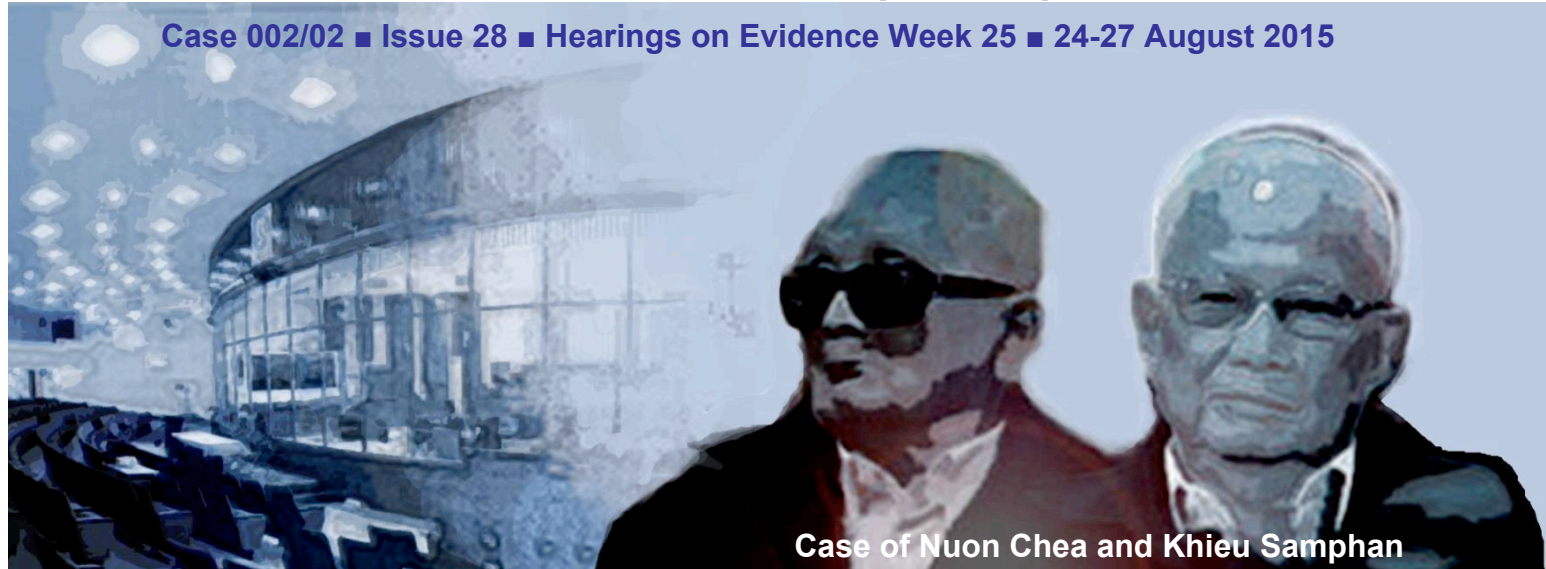


KRT TRIAL MONITOR

Case 002/02 ■ Issue 28 ■ Hearings on Evidence Week 25 ■ 24-27 August 2015



Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center)

*I have indeed nothing but professional contempt
for the International Judges of this Tribunal.*

- Defense Counsel Victor Koppe

I. OVERVIEW

This week marked the final week of testimony in relation to Trapeang Thma Dam (**TTD**), the last crime site included in the trial segment on worksites in Case 002/02. Following the testimonies of a witness and a Civil Party, the Chamber commenced the key documentary hearings for the segment on the three worksites covered in the case, the First January Dam (**1JD**), Kampong Chhnang Airport Construction (**KCA**) and TTD. Witness Chhuy Huy testified about his experiences at TTD, including the treatment of sick workers, his arranged marriage by “Angkar” in a group wedding ceremony, and an arrest and possible execution. Civil Party Nhip Horl also described his experiences as a mobile unit chief at TTD, and he recalled worksite meetings and a visit of a foreign delegation. On Wednesday the 26th of August, the OCP began its presentation on key documents related to the 1JD, but proceedings abruptly ended after legal objections to the presentation of written records of interviews (**WRIs**) as key documents led to the Defense Teams’ spontaneous withdrawal from the courtroom. The following morning, the Parties extensively discussed the events of the day before, including statements from Nuon Chea and Khieu Samphan in support of their counsels’ walkout. This report summarizes the two testimonies, as well as the brief portion of the OCP’s key documents presentation, and it analyzes the legal and procedural issues in relation to the Defense walkout.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

This week, the Trial Chamber heard the testimonies of Witness Chhuy Huy and Civil Party Nhip Horl, the final two persons to testify in relation to their experiences at the TTD worksite in the second trial segment of Case 002/02. They each testified for one day.

A. Summary of Testimony by Witness Chhuy Huy

Witness Chhuy Huy testified about his experiences at the TTD. He gave information about working and living conditions, the treatment of sick workers, wedding ceremonies that were held

during his time at the Dam, as well as one occasion when he witnessed an arrest.¹ He could not recall the precise date he arrived at the TTD, but he first testified that he had been a monk at Nam Tau pagoda for two years prior to the arrival of Khmer Rouge, when he had to leave the monkhood and his pagoda was burned down.²

1. Working and Living Conditions at the Trapeang Thma Dam Worksite

The Witness stated that, at the TTD worksite, he was assigned to be chief of a squad with 55 members. He explained that work started at 6:00 or 7:00AM and normally ended at 5:00PM, with a four-hour break midday. When the work plan required, laborers also had to work during the evening and sometimes at night. The work quota for every person in his unit was digging two cubic meters of soil per day. The Witness explained that battalion chief Chhoung held overall responsibility for the verification of work quotas. Unit and squad chiefs, like Chhuy Huy himself, monitored the workers to meet the quota. The Witness also testified that, “once in every two or three years,” assemblies were held, during which workers from all units had to welcome the attending leaders. On these days, workers could rest from their assignments.

Chhuy Huy testified that between five and 20 people out of a 100-person unit fell sick regularly, but he did not witness any deaths due to illness. He also explained that sick people were only given porridge to eat instead of rice. He further stated that, about once a month, there was a shortage of food, which led to a reduction of rice given to the workers. The Witness also testified that, on one occasion, he was accused of having an imaginary illness and subsequently was sent to work in another unit under different assignment. He explained that even though he was actually sick, he dared not refuse the order.

The Witness also described one occasion when he saw the arrest of a person who had previously worked in the aviation unit at the TTD. He said he tried to follow the arresting soldier and detainee but could not see anything because the events occurred at nighttime, in the dark. He explained that he heard a gunshot and concluded that the person had been shot to death.

2. Marriages at Trapeang Thma Dam Worksite

The Witness also testified that, during his time at the TTD, two group marriage ceremonies, each with 20 to 30 couples, took place. He said that he witnessed both ceremonies very briefly and that, besides the people who got married, some of Ta Val’s subordinates were present. Chhuy Huy further testified that he himself was married during the DK regime at his home village, together with three or four other couples. He and his wife from the DK-era are still married today.

3. Witness’s Demeanor and Credibility

Throughout his appearance, the Witness was calm and polite, and he told the Parties and the Chamber if he did not understand questions. However, Chhuy Huy had some difficulties with his memory, as he repeatedly claimed that he could not remember certain people or details of events. For example, he first said that he had been chief of a squad, but later that he had been a company chief. On various occasions, the Witness could only recall information he had given during his OCIJ interview after it was read out to him. The Witness also insisted that the OCIJ interviewed him only once, while Co-lawyer for Khieu Samphan Arthur Vercken referred to records from at least two interviews. Eventually during his examination, Chhuy Huy explained he had recovered recently from a serious illness that diminished his memory.

B. Summary of Testimony by Civil Party Nhip Horl

Civil Party Nhip Horl testified on Tuesday about his life as a farmer and his experience as a mobile unit chief at the TTD, where he began working in June 1977.³ In his statement of

suffering, the Civil Party described his current psychological ailments, which stem from the hardship and severe loneliness he experienced under the DK regime.

1. Civil Party's Background and Experiences Prior to Trapeang Thma Dam Worksite

63-year-old Civil Party Nhip Horl worked as a farmer in Preah Net Preah District, Battambang Province prior to 17 April 1975. On the day the Khmer Rouge overthrew the Lon Nol regime, he was transferred to another village because of "aerial bombs by American fighters" approaching the village. The Civil Party then moved to Trapeang Thma village, where no accommodations were provided for the villagers. He volunteered to harvest rice in a mobile unit stationed at Salaa Kraham in Serei Saophoan District. He was required to carry rice sacks onto trains at the instruction of Angkar. During this assignment, he contracted a disease and vomited blood, yet he was required to work day and night without receiving any medication. After he fainted, he was taken to a hospital for treatment, but no one was made aware of the Civil Party's health condition, as "family members did not even know where their relatives were living, so we did not have any means to communicate." Ten days after his recovery, he was transferred to uproot rice seedlings, before his next transfer to Trapeang Thma Dam.

2. Experiences at Trapeang Thma Dam Worksite

The Civil Party testified about his assignment in a 100-person unit near the First Bridge at TTD, where he worked for six months. Each person in his unit was given a hoe and a basket to complete a daily quota, which was initially three cubic meters of earth. If this quota was reached within the day, then it was increased to up to five cubic meters. Workers woke up at 4:00AM or 5:00AM and found a signpost that listed their daily quota upon arrival at the worksite. After the workday ended at 5:00PM, unit chiefs measured the quotas before reporting to those overseeing construction. During periods with heavier assignments, workers had to wake up at 3:00AM and did not have a lunch break. Instead, they ate lunch in the pits they dug. After construction of the First Bridge, Nhip Horl was assigned to a rice field during dry season.

The Civil Party participated in meetings and witnessed a foreign visitor's arrival to TTD. During meetings, chiefs convened work plans that were received from the upper echelon. The Civil Party was also educated in meetings, which promoted compliance and prohibited laziness. In regard to the foreign guests, the Civil Party was required to stand in a long line with other youth, who were ordered to extend their hands out toward the guests when they arrived. He did not see who the guest was, as he "dared not glimpse at their face." The Civil Party did not witness any punishments, arrests, or disappearances, but he recalled that the workers were "fearful of the discipline of Angkar." The Civil Party believes that he suffers from Post-Traumatic Stress Disorder (PTSD) because of the exhaustion and anguish caused by his experiences at TTD.

3. Civil Party Statement of Suffering

Nhip Horl expressed that he was lucky to survive the Khmer Rouge regime but endured hardships that still affect him, such as losing his relatives and freedoms. While sick, he suffered without medicine, and relatives could not care for him, as such relationships were prohibited. As a result, he was extremely lonely and is still weak today. The Civil Party wanted to ask the former leaders of DK if they were "aware of the hardship endured by their people." He also inquired who "Angkar" was during his time at TTD, as he only heard of its instructions and directions but did not know its identity.

III. LEGAL AND PROCEDURAL ISSUES

Documentary hearings concerning the second segment of Case 002/02 were set to begin on Wednesday, to allow Parties to present "key documents" on the First January Dam worksite, the Kampong Chhnang Airport construction site and the Trapeang Thma Dam worksite.

International Senior Assistant Prosecutor Vincent de Wilde d'Estmael began the OCP's presentation with several documents in relation to the 1JD, including the importance of irrigation for DK's agricultural revolution and records of visits by leaders and foreigners at the worksite. However, the presentation faced numerous objections, and proceedings were abruptly halted when the Defense Teams staged a walkout over the OCP's presentation of WRIs as key documents. Rather than continuing with the hearings the next day, the Chamber held a hearing to allow Parties to explain their behavior and the legal reasoning for the walkout.

A. Key Documents Presented by the OCP

The OCP began the presentation by showing two short videos, in which one could observe great numbers of people involved in building dams by manual labor under the DK regime. The Prosecutor asserted that adolescents were present in the first clip, but he did not provide any timestamp for an image corroborating this allegation. The second clip noted Nuon Chea's visit to one such dam, however, the Prosecutor clarified that these dams were not necessarily the 1JD; rather, they were visual depictions of other dams in DK's irrigation system.

The OCP referred to excerpts of Elizabeth Becker's book, *When the War was Over: Cambodia and the Khmer Rouge Revolution* as well as a FBIS report,⁴ that gave information on the location of the 1JD, and the commencement of its construction in 1977. The OCIJ site identification report noted that, after its construction was completed, the Dam irrigated between 10,000 and 30,000 hectares of land.⁵ The Prosecutor referenced an article written by François Ponchaud, who argued that the establishment of proper irrigation systems – through the building of dams like the 1JD – was crucial to DK's plans for agrarian revolution. To undergird this argument, the OCP quoted relevant declarations from Khmer Rouge leaders, such as "If we can have rice, we can have everything," or, "The rice fields make people masters of nature, of the country, masters of rainy and dry season."

The Prosecutor especially emphasized excerpts of Becker's book in order to demonstrate the consequences of DK's conception that the political conscience of the workers was more important than experience in engineering and technical skills. As a result, Becker wrote, canals were not built properly in the first place, and thus, the 1JD broke during the rainy season of 1978, which caused a major flood in upstream areas.

The OCP presented several documents further relating to visits to the site by Khmer Rouge leaders, including Pol Pot, Nuon Chea, Vorn Vet, Ke Pauk and Ao An. Ponchaud's article and two FBIS reports were presented to show that other foreigners, specifically a Yugoslav delegation and Chinese Vice Premier Chen Yonggui, had visited the 1JD.

B. Defense Team Refusal To Participate in Key Document Hearing on 26 August 2015

Not long after the Prosecution began its presentation, Counsel for Khieu Samphan, Arthur Vercken, objected to the OCP's plan to include a number of specific pieces of documentary evidence in its presentation on the grounds that the admissibility of these documents had not yet been determined, and the Chamber's previously articulated approach to documentary presentations clearly distinguished between hearings on admissibility and hearings like the one today, which were meant to be reserved for the presentation of key documents already in evidence.⁶ In particular, Mr. Vercken objected to the Prosecution reading excerpts of 18 WRIs that originated not from the Case 002 investigation, but rather from the currently ongoing Case 003 and 004 investigations. Counsel argued that the OCP sought to present these new documents as inculpatory evidence, but that only exculpatory evidence or additional testimonies that come from witnesses before they appear in court should be admitted from the ongoing investigations of other cases. The President heard these arguments but nonetheless allowed the OCP to commence its presentation.

When the Prosecutor reached the point in his presentation where he began to present WRIs,

the Defense Teams objected again. Counsel for Nuon Chea, Victor Koppe, objected to the use of WRIs as “key documents,” but the President overruled him. The ruling appeared to be a blanket ruling in support of the use of WRIs, but the President made a point of saying that his ruling applied “particularly concerning the written records of interview of witnesses who have passed away already. The Chamber allows Parties to present such written records of interviews as long as the parties can prove that the witness in the written records of those interviews passed away.” Deputy Co-Prosecutor William Smith immediately asked for clarification of this ruling, asking that the OCP be allowed to present WRIs “whether or not the person is dead or alive,” arguing that the ruling would otherwise “change the nature of our presentation quite markedly.” The Judges deliberated, and the President confirmed that the Court would allow the Prosecution to present WRIs from ongoing investigations, whether the witness was dead or alive.

The Prosecution resumed its presentation but was interrupted once again when Mr. Smith began to read excerpts from the WRI of Ieng Cham. Mr. Koppe commented that this person was not dead. Judge Claudia Fenz reminded the Defense that the President’s ruling extended to the use of all WRIs, including witnesses who are still alive. This prompted Counsel Koppe to announce, “We officially withdraw from our document presentation because this is a farce.” As the Co-Prosecutors continued with the presentation, Mr. Vercken stated that the hearing “resembles more final statements than anything else,” and also withdrew from the proceedings. His national counterpart, Kong Sam Onn, explained that, because he works “as a team” with his co-Counsel, he decided to leave the courtroom as well. The departure of the Defense Teams brought the day’s proceedings to a halt, as the President concluded that the Chamber could not proceed when “the two Defense Teams have boycotted the proceedings,” leaving the Accused without representation. Proceedings were adjourned on Wednesday morning.

C. Debate on Defense’s Refusal to Participate in Key Document Hearing

On Thursday, one day after the walkout, Nuon Chea and Khieu Samphan’s Defense Counsel returned to the courtroom to respond to the Chamber’s request for them to explain the legal reasoning behind the incident. Notably, both Nuon Chea and Khieu Samphan appeared to make personal statements in support of their Counsel.

1. Statements by Nuon Chea and His Counsel

Nuon Chea explained that, although this incident was not planned ahead, he fully supported his counsels’ withdrawal the day before, complaining that the Chamber’s unclear ruling was “the straw that broke the camel’s back.”⁷ The Accused argued that WRIs should only be admitted into evidence if the respective witnesses were called to appear for cross-examination. The Accused noted he had instructed his counsel not to walk out on the day’s proceedings if WRIs were allowed, but to decline to present their own “key documents” presentation in protest, if the decision of the previous day were not reversed. At the request of Prosecutor William Smith, Mr. Koppe further clarified, “We’re not here to boycott this hearing, as you called it yesterday.”

Following his client’s statement, Counsel Koppe rose to address the reasons for the walkout in greater detail. He initially requested that the Chamber grant him 30 minutes without interruption to present his reasoning. The Court consented, but with the warning that it reserved the right to intervene and curtail the presentation if Counsel deviated too far from topic. Mr. Koppe began by focusing his preliminary grounds for dissatisfaction on the Trial Chamber’s severance of Case 002. He cited the Supreme Court Chamber’s February 2013 suggestion that the Trial Chamber consider the possibility of a second panel of judges to oversee Case 002/02, to avoid any bias as a result of the preceding verdict in Case 002/01.⁸ He noted that the Trial Chamber instead decided to proceed with Case 002/02 itself, even after its 7 August 2014 Judgment, in which the Judges found the Co-Accused guilty and sentenced them to life in prison. As Mr. Koppe continued to link his perception of the Trial Chamber’s bias with the OCP’s presentation

of WRIs, he was interrupted and asked to focus more specifically on the walkout rather than Case 002's procedural history.

Counsel responded with overt irritation to objections from the other Parties and interruptions from the Judges pressing him to focus his remarks to the immediate legal reasons for the walkout. The President reiterated that the Chamber had discretion to interrupt whenever the Parties went beyond relevant issues in order to ensure the hearing proceeded expeditiously. Mr. Koppe replied, "Mr. President, it is indeed true that it is your prerogative to shut me up; it is my prerogative not to say a word anymore." International Judge Jean-Marc Lavergne noted Counsel Koppe's reasons for "frustrations" with prior decisions did not provide specific legal grounds for refusal to participate in the hearing. Mr. Koppe remained silent for a while and responded bluntly to Judge Lavergne: "I was giving you my reasons. You don't want to listen...Judge Lavergne, I don't really care what you think. You either give me the time to express my reason or you don't." Prosecutor Smith criticized Counsel, as "his conduct is offensive to a judge," and he requested the Chamber warn him, in accordance with Internal Rule 38 of the ECCC.⁹ Mr. Koppe responded sharply:

I would like to read to you what I actually had written down as my last words, because I knew or predicted that this might be coming. What I wrote down or what I wanted to say is: the walking out yesterday from Court, indeed without any legal justification, in a common law court might have been considered as contempt of court. But we are not in a common law court, but if we were, and if I were charged with contempt of court, I would happily plead guilty. I have indeed nothing but professional contempt for the International Judges of this Tribunal.

The Prosecutor again asked the Judges to warn the Defense Counsel.

2. Statements by Khieu Samphan and His Counsel

Khieu Samphan also made a statement in which he underlined his support for his Defense Team's withdrawal from the proceedings, and he clarified that he conferred with his Team before they left the courtroom. He agreed that the Chamber was biased and similarly characterized the events of the day before as "the straw that broke the camel's back." He explained that the incident occurred as a result of his lack in trust in the Trial Chamber "to find justice for [him]," as the Chamber had already sentenced him to life imprisonment.

Defense Counsel Vercken then explained that his first reason for withdrawal stemmed from his concerns over the Trial Chamber's impartiality. He declared, "Judges, it's not possible for you to rule fairly in a case like this." He also disputed the OCP's presentation of WRIs disclosed from the investigations in Cases 003 and 004, arguing that the Trial Chamber had previously cited Internal Rule 53(4) in asking the OCP to disclose only exculpatory evidence, not inculpatory evidence, from the other investigations.¹⁰ Mr. Vercken referred to written submissions filed on 24 August, which provided the Defense's legal interpretation of the Chamber's past decisions on disclosures.¹¹ (The Co-Prosecutors have since responded to this submission with their own interpretation).¹² Mr. Vercken argued that the OCP's presentation of WRIs as key documents "is not normal, it is not acceptable, it is not fair. And that is why the last straw broke the camel's back." Counsel Kong Sam Onn criticized the Trial Chamber for providing unclear definitions of what constitutes a "key document," and the difference between WRIs of deceased witnesses as opposed to those of living ones.

3. OCP Responses to the Defense Statements

Prosecutor William Smith argued that Mr. Koppe was not providing "concise and useful" reasoning, noting that Mr. Koppe's reference to past procedural arguments were unnecessary and already known to the public. Mr. Smith also noted that Khieu Samphan's Defense Team

failed to provide any legal grounds for their walkout beyond its frustration with the Chamber's decision to allow WRIs. The Prosecutor argued that international practice permits the use of written witness statements as "corroborative evidence." He also pointed out that perhaps Khieu Samphan's Defense was not aware that 20 disclosed WRIs had already been admitted, after both Defense Teams failed to object to the OCP's Rule 87(4) admissibility request in July 2015. Mr. Smith further noted that, during the documentary hearings for the last trial segment on Tram Kak Cooperatives, Nuon Chea's team presented WRIs without any objections. Mr. Smith also responded that the OCP is obligated to disclose any evidence that affects the reliability of witness statements, and that it was difficult for the OCP to determine what affects reliability for all the Parties and the Judges, so it was better to err on the side of caution and disclose more documents. In relation to claims of judicial bias, Mr. Smith advised Counsel for Khieu Samphan to abide by the rules and decisions of the Court until the appropriate time to appeal any matters they choose then.

4. Civil Party Lead Co-Lawyer's Responses to the Defense Teams

International CPLCL Marie Guiraud also responded, characterizing the Defense Teams' reasoning as arguing that the straw that broke the camel's back was the presentation of WRIs in the documentary hearings. She argued that the Chamber has never excluded reference to WRIs before, and that she herself had previously referred to a WRI in the last documentary hearings without any objection from the Defense Teams. Furthermore, she pointed out that the Civil Parties also felt frustrated with the trial, especially given the recent death of Ieng Thirith, an Accused in Case 002 whose trial was severed and stayed in 2012 due to her dementia. Even though many Civil Parties themselves have died, Ms. Guiraud confirmed that the Civil Parties still wanted to play a part in the hearings, but the trial's continuity depended on the Defense's active participation in the future.

IV. TRIAL MANAGEMENT

This week, the Trial Chamber successfully concluded the testimonies on the segment of the last worksite in Case 002/02 and began the key documentary hearings for the trial's second segment. However, the Chamber faced difficult legal issues regarding the OCP's use of WRIs in the documentary presentation, which ultimately resulted in the Defense Teams' abrupt withdrawal from the hearing and the delay of the documentary hearings until the following week.

A. Attendance

From Monday to Wednesday this week, Nuon Chea waived his right to be present in the courtroom due to his poor health condition. He observed proceedings from the holding cell. In the first session of the Thursday hearing, he appeared briefly in the courtroom to make a comment in support of his Counsel, but, thereafter, he waived his right to be present and returned to the holding cell. Khieu Samphan was present in the courtroom during all sessions throughout the week.

Judge Attendance: All judges were present throughout this week, with the exception of national Judge You Ottara, who was absent on Monday and Tuesday due to a personal commitment. National reserve Judge Thou Mony was appointed to replace him.

Civil Parties Attendance: Approximately ten Civil Parties observed the proceedings each day this week from inside the courtroom.

Parties: All Parties were properly represented in the courtroom throughout this week, with the exception of the brief period after the Defense lawyers walked out of the proceedings in protest on Wednesday morning.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 24/08/2015	<ul style="list-style-type: none"> ▪ Approximately 150 villagers from Phnom Kravanh District, Pursat Province ▪ Two foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 130 villagers from Phnom Kravanh District, Pursat Province ▪ Two foreign observers
Tuesday 25/08/2015	<ul style="list-style-type: none"> ▪ Approximately 130 villagers from Phnom Kravanh District, Pursat Province ▪ 25 American observers from STAR Kampuchea, Phnom Penh 	<ul style="list-style-type: none"> ▪ Approximately 100 villagers from Phnom Kravanh District, Pursat Province
Wednesday 26/08/2015	<ul style="list-style-type: none"> ▪ Approximately 300 villagers from Krakor District, Pursat Province ▪ 50 students from University of Cambodia, Phnom Penh ▪ 50 students from Chenla University, Phnom Penh ▪ Five observers from Bayon Television, Phnom Penh ▪ One foreign observer 	<i>No Proceedings</i>
Thursday 27/08/2015	<ul style="list-style-type: none"> ▪ Approximately 300 villagers from Krakor District, Pursat Province ▪ Ten foreign observers 	<i>No Proceedings</i>

B. Time Management

Due to the Defense walkout on the first day of documentary hearings, the Trial Chamber had to delay the hearings and adjust its schedule for the remainder of the week. Proceedings were adjourned early on both 26 and 27 August. The President also responded to national Civil Party Lead Co-Lawyer Pich Ang that the Chamber would hear the impact statements of Civil Parties the following week, at a date still to be determined. The President announced that proceedings would be adjourned until Tuesday, 1 September, to give the Judges greater time to deliberate on the issues related to the Defense walkout. Nonetheless, this week, the Trial Chamber successfully concluded the testimonies of the last two witnesses in the segment on worksites in Case 002/02, within one day and a half between 24 and 25 August.

C. Courtroom Etiquette

During the examination of Witness Chhuy Huy on 24 August, the President reminded all Parties to put succinct questions to the Witness as his health was unstable. This prompted Nuon Chea's Defense Counsel Victor Koppe to ask for clarification, which caused the President to grow somewhat animated in tone, telling Counsel, "If you ask academic questions and use academic verbosity, he [the Witness] won't understand it." He also warned Prosecutor Travis Farr that day not to use objections to teach other Parties how to ask questions. On 25 August, international CPLCL Marie Guiraud appeared disappointed when her examination of Civil Party Nhip Horl was interrupted by Counsel Koppe's comments. As she attempted to explain her disagreement, the President raised his hand to silence her as he cut off her microphone abruptly.¹³ The Parties grew much more animated in their language and gestures in the following two days as a result of the Defense walkout from the proceedings (see *III.B and C*).

D. Translation and Technical Issues

Several translation issues occurred throughout this week, most notably in the confusion that ensued after the President issued his ruling on the OCP's use of WRIs in its presentation. Although it was unclear if it was a result of a poorly worded original ruling by the President or a flawed interpretation, he had to clarify his ruling after Prosecutor Smith asked whether the WRIs of living persons would be accepted. Even after the President clarified that they would be, Counsel Koppe did not catch this change in the ruling, so he was stunned when Judge Claudia Fenz noted a possible translation error and restated the President's ruling that all WRIs – of deceased and living witnesses – would be allowed. There was also confusion after the President allocated an additional 50 minutes to the Prosecution on Wednesday morning, but the interpreter translated it as 15 minutes. There were no notable technical issues this week.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 24/08/2015	9:04	10:07–10:30	11:35 - 13:31	14:40 – 14:59	16:05	3 hours and 23 minutes
Tuesday 25/08/2015	9:00	10:15– 10:32	11:30 – 13:30	–	14:16	2 hours and 59 minutes
Wednesday 26/08/2015	9:16	10:11 – 10:36	–	–	11:17	1 hour and 36 minutes
Thursday 27/08/2015	9:18	10:51 – 11:13	–	–	11:45	1 hour and 47 minutes
Average number of hours in session				2 hours and 26 minutes		
Total number of hours this week				9 hours and 45 minutes		
Total number of hours, day, weeks at trial				357 hours and 25 minutes		
95 TRIAL DAYS OVER 28 WEEKS						

*This report was authored by Judith Kaiser, Joy Scott, Daniel Mattes, Lina Tay, Melanie Hyde, and Oudom Vong as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- § the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- § the quotes are based on the personal notes of the trial monitors during the proceedings;
- § the figures in the *Public Attendance* section of the report are only approximations made by trial monitors; and
- § photos are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (CaseNo.001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Witness Mr. Chhuy Huy (2-TCW-915) was questioned in the following order: President NIL Nonn; national senior deputy co-prosecutor SONG Chorvoin; national Civil Party Lead Co-Lawyer PICH Ang; international co-lawyer for Nuon Chea, Victor KOPPE; national counsel for Nuon Chea, LIV Sovanna; international co-lawyer for Khieu Samphan, Arthur VERCKEN; national co-lawyer for Khieu Samphan, KONG Sam Onn.

² It remained unclear if the Lon Nol army or the Khmer Rouge burned down the pagoda. Following this incident, the Witness fled to So Phy village, where he was later assigned to work at the TTD.

³ Civil Party Mr. NHIP Horl (2-TCCP-269) was questioned in the following order: President NIL Nonn; national Civil Party lawyer LOR Chunthy; national Civil Party Lead Co-Lawyer PICH Ang; national deputy co-prosecutor SREA Rattanak; international assistant prosecutor Joseph Andrew BOYLE; Judge Jean-Marc LAVERGNE; international co-lawyer for Nuon Chea, Victor KOPPE; national co-lawyer for Khieu Samphan, KONG Sam Onn.

⁴ FBIS is the abbreviation for the Foreign Broadcast Intelligence Service, a program within the United States Central Intelligence Agency (CIA) monitoring and recording media broadcasts outside the United States since World War Two. Since 2005, it has become part of the “Open Source Center,” also located within the CIA.

⁵ Office of the Co-Investigating Judges, “Site Identification Report: First January Dam Worksite” (23 February 2009), E3/8026.

⁶ Defense Counsel specifically referred to the approach articulated in Trial Chamber, “Scheduling of Objections to Documents Relevant to Case 002/02” (11 December 2014), E327.

⁷ This idiomatic expression in English was used multiple times by the Co-Accused, their Counsel, the other Parties, and the Judges throughout the 27 August 2015 hearing. The original Khmer saying, “*Tik muoy damnak tver aoy hia peng*,” or, “The drop of water that spills the cup,” was translated to the similar French, “*La goutte qui fait déborder le vase*” and to the English version of the saying, “The straw that broke the camel’s back.”

⁸ Supreme Court Chamber, “Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01” (8 February 2013), E163/5/1/13, para. 51. Counsel Koppe referred to and read out the following portion of the SCC ruling: “It must also be considered at this stage that one trial panel alone may be unable to fulfill the ECCC’s obligation to conclude proceedings on the entirety of the charges in the Indictment within a reasonable time. As such, in the event of a renewed severance of Case 002, the Supreme Court Chamber considers that the ECCC should explore the establishment of another panel within the Trial Chamber to support the timely adjudication of the remainder of Case 002. A composition of a second trial panel would safeguard against any potential concerns about actual or appearance of bias of judges from the first trial adjudicating the second trial.” Counsel Koppe added, “The Trial Chamber chose to ignore this advice.”

⁹ Internal Rule 38 (Revision 9, January 2015) governs the misconduct of a lawyer. Rule 38(1) allows, “The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer

if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement.”

¹⁰ Trial Chamber Memorandum, “Disclosure of Witness Statements for Witnesses Who May Testify in Case 002” (24 January 2012), E127/4. Because this document is not currently available on the ECCC website, perhaps due to reasons of confidentiality, it is useful to note an excerpt of the document in Paragraph 3 of document E127/5, “International Co-Prosecutor’s Disclosure to Trial Chamber of Case 002 Witness Statements in Cases 003 and 004 in Compliance with Trial Chamber Memorandum E127/4” (2 February 2012). The document cites the Trial Chamber memorandum: “Internal Rule 53(4) imposes a continuing obligation on the Co-Prosecutors to disclose to the Trial Chamber any material in its possession that may suggest the innocence or mitigate the guilt of the Accused or affect the reliability of the evidence. It is in the interests of ascertaining the truth that the Trial Chamber has access to these documents, not least because consideration of the prior statements will assist in evaluating the credibility of these witnesses.” The preceding paragraph of the same document from the International Co-Prosecutor notes, “Under the ECCC Rules and procedural rules established at the international level for similar cases, such statements are required to be disclosed on the basis that they (1) may contain exculpatory material or material that may effect [sic] the credibility of a witness’ testimony and (2) are prior statements of a witness at trial.”

¹¹ In the recent document E363, “Submissions of the Defence for Mr. KHIEU Samphan on the Co-Prosecutors’ Disclosure Obligation” (24 August 2015), Khieu Samphan’s Defense argues that the international Co-Prosecutor has “insidiously distort[ed]” the words of the Chamber’s January 2012 memorandum by claiming the obligation to disclose inculpatory material as well, as long as it is relevant (paras. 6-8).

¹² The Co-Prosecutors have since responded in document E363/1, “Co-Prosecutors’ Response to Khieu Samphan’s Motion Regarding the Co-Prosecutors’ Disclosure Obligations” (7 September 2015), that the Khieu Samphan Defense “fails to recognise the fundamental distinction between the Co-Prosecutors’ duty to disclose evidence flowing from Internal Rule 53(4) and a party’s right to seek admission of new evidence pursuant to Internal Rule 87(4).” The OCP response clarified that it draws its disclosure of inculpatory evidence from the Chamber’s order, “in the interests of ascertaining the truth,” for the OCP to disclose any material that may “affect the reliability of the evidence.” Although the OCP submission recognizes that Internal Rule 53(4) proscribes that the OCP disclose “any material that...may suggest the innocence or mitigate the guilt of the Suspect or the Charged Person or affect the credibility of the prosecution evidence,” the Co-Prosecutors’ response asserts –without clear basis for its determination – that, “It is clear that the Chamber took this [IR 53(4)] into account when drafting its memorandum. In any event, even under the original language of Rule 53(4), any relevant evidence would have the effect of ‘affecting’, i.e. enhancing or diminishing, the credibility of prosecution evidence (paras. 4-6). The OCP appears to stake out a broader interpretation of the Trial Chamber’s original 24 January 2012 memorandum while the Khieu Samphan Defense argues for clearer limitations on disclosures. With the number of disclosed documents growing in increasing numbers as Case 002/02 proceeds, potentially beyond what then-International Co-Prosecutor Andrew Cayley may have envisioned when he made the first disclosure in early 2012, it would be useful, for the Parties and the Public, if the Trial Chamber updated its previous memorandum with a clarified interpretation of the Internal Rules and past practices in relation to documentary disclosures.

¹³ The Trial Chamber asked for written submissions in relation to the role of Civil Parties and the way that Civil Party lawyers and the Lead Co-Lawyers question them. The CPLCLs have since filed relevant written submissions, and the Nuon Chea Defense has filed a response to that submission as well. See Civil Party Lead Co-Lawyers, “Civil party lead co-lawyers’ request for clarification on the scope of in court examination of civil parties” (14 September 2015), E365, and Nuon Chea, “Nuon Chea’s Response to Civil Party Lead Co-Lawyers’ Request for Clarification on the Scope of Examination of Civil Parties” (25 September 2015), E365/1.