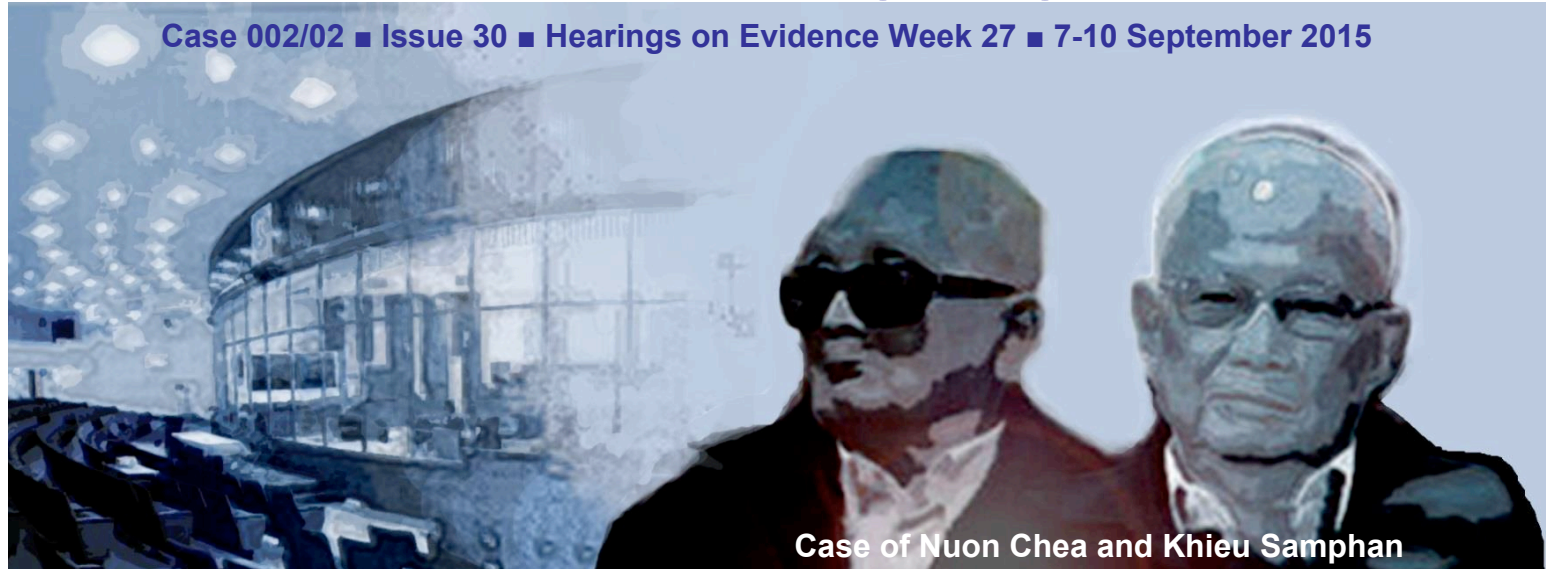


# KRT TRIAL MONITOR

Case 002/02 ■ Issue 30 ■ Hearings on Evidence Week 27 ■ 7-10 September 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)

*We were not allowed to speak Cham language absolutely.  
Only Khmer language was allowed to speak at that time...  
If they happened to hear us speaking Cham language,  
we would be taken away and killed.*

- Witness Ith Sen

## I. OVERVIEW

From 7 to 10 September 2015, the Trial Chamber commenced a new segment of the proceedings in Case 002/02 with testimony from two witnesses and a Civil Party. This next segment of trial, which covers the treatment of targeted groups and begins with the treatment of the Cham, relates to charges of genocide and the crimes against humanity of extermination, imprisonment, murder, torture, and persecution on political and religious grounds.<sup>1</sup> Witnesses Ith Sen and Seng Khuy, as well as Civil Party Sos Ponyamin, testified about the curtailment of Cham language, clothing, and religious practice, and they provided information about the security centers across present-day Kampong Cham Province where they witnessed the detention and execution of large numbers of Chams. Before any testimony this week, however, Counsel for Khieu Samphan, Anta Guissé, replied to the OCP and Civil Parties' documentary presentations from the previous week.<sup>2</sup> Summaries of her response, as well as the three testimonies this week, are included in the following report.

## II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

Witness Ith Sen and Civil Party Sos Ponyamin testified from Monday to Wednesday about the experiences of Chams living in Krouch Chhmar District, the Cham rebellions at Koh Phal and Svay Khleang in 1975, and the subsequent persecution of the minority in 1977 and 1978. Witness Seng Khuy, a Khmer man who lived near Cham villages in Kang Meas District, then testified about his observations there and his role in transporting a group of Chams to a security center at Au Trakuon pagoda.

### A. Summary of Testimony by Witness Ith Sen

Ith Sen, originally from Ampil village in Krouch Chhmar District, Kampong Cham Province

(present-day Tbong Khmum Province), He was living in Ampil village when the Khmer Rouge took control in 1973. His testimony focused on the treatment of the Cham under the Khmer Rouge, the 1975 rebellion at Koh Phal, and the security center at Trea village.<sup>3</sup>

### **1. Treatment of the Cham Following the Arrival of the Khmer Rouge**

Ith Sen testified that the Khmer Rouge arrived in Ampil village, Krouch Chhmar District in 1973. He stated that, at the time, more Cham people were living in the village and its adjacent communities than Khmer people. When the Khmer Rouge took control, Cham people were not allowed to practice their prayer, women were forced to cut their hair short, traditional clothing was banned, and all people were forced to speak the Khmer language rather than Cham. As the Witness explained, "The situation was strict at that time. Whoever continued practicing Islam would be arrested...Qur'ans had been collected and burned. They were collected from houses and burned." Ith Sen recalled that pork was served at the communal dining halls where the Cham villagers were forced to take their meals. Defense Counsel asked the Witness if Mat Ly, an ethnic Cham who had joined the Revolution, was involved in implementing such orders curtailing Cham practices, but Ith Sen replied that Mat Ly never talked about "the closure of the Islamic religion."<sup>4</sup> Rather, the Witness explained that orders came from "the upper Angkar above" through the village chief and the group work chief. He confirmed that Krouch Chhmar District fell within Sector 21, in the East Zone. Counsel also asked the Witness about alleged Cham insurrectionary networks; Ith Sen largely denied any knowledge of the claims, and the Chamber intervened or sustained OCP objections to the line of questioning.<sup>5</sup>

### **2. Cham Rebellion at Koh Phal**

The Witness was not at Koh Phal – an island in the Mekong River – during the Cham rebellion against the Khmer Rouge, but he recalled hearing about it from his brother-in-law and others who were present there. He stated that the uprising took place at the end of Ramadan in 1975, after the Khmer Rouge had banned fasting for the religious month.<sup>6</sup> He recalled that the villagers of Ampil and nearby Soy village were not allowed to cross to Koh Phal during the subsequent suppression of the rebellion. He testified that the Khmer Rouge used artillery during the fight even though the Cham rebels were relying on knives and swords.<sup>7</sup> Most Muslim men were killed, leaving only women in the aftermath, and after the rebellion finished, all Chams in the area were evacuated after the rebellion.

### **3. Movement of Cham People After the Koh Phal Rebellion**

Ith Sen testified that Cham families were evacuated to other provinces like Pursat, Battambang, and Kratie, following the failed 1975 uprising. He and his family were initially moved across the Mekong, to Stung Trang District, Kampong Cham Province. After 20 days there, they were moved back to Krouch Chhmar District because there was not enough space in Kratie, Battambang, and other places for their group. They did not return to Ampil or Soy, however, but were made to mix with Khmer families in a Khmer village, Praek Ahchy. For three years, they resided there, and the Witness recalled that Islamic worship and Cham language were banned. Chams were forced to eat pork that had been secretly mixed into the food served at communal dining halls. In 1978, following a confrontation between rebellious East Zone forces and arriving Southwest Zone cadres, Ith Sen's family was moved back to Ampil, where some of his siblings still remained. Although Seng, the Southwest Zone cadre now overseeing the village,<sup>8</sup> declared, "The peace prevailed," he told the Witness there was no longer enough space in Ampil village and sent the Witness and a total group of 40 families from Ampil and Soy to Trea village. Only later did he realize that all Cham returning to Soy and Ampil from elsewhere were considered "newcomers" and had been listed for arrest and transfer to Trea. When Defense Counsel Koppe asked why his older sister was not sent to Trea, Ith Sen explained that she had remained in Ampil village when he and the rest of his family had been evacuated to Praek Ahchy; for that reason, he was "considered the 'new' Cham when [he]

moved from Praek Ahchy," even though Ampil was his native village.

#### **4. Events at Trea Village and the Witness' Escape from Execution**

The Witness testified that he and the other Cham families walked to Trea village with their possessions in oxcarts, but that, upon arrival to the village, they saw many soldiers and realized the Cham people brought there "were all destined to be killed." "By that time," he explained, "We reached the point of no return." Men, unmarried adult women, and women along with young children were separated into three different groups, and Ith Sen was separated from his wife and toddler. He never saw them again. He testified that he was kicked repeatedly and beaten with rubber sandals while soldiers "shouted that these people were Muslims." The Witness was placed in one of 20 houses in the village under guard of armed Khmer Rouge soldiers who beat the Cham more if they claimed they were Khmer. Ith Sen stated he could see other Cham in the neighboring detention houses, and he "knew they were collected from Cham villages." The Witness testified that he could see the executions of prisoners at the nearby riverbank through a crack in the wall. He said he watched as group after group of blindfolded Cham prisoners were taken out of houses and led in single-file lines to the riverbank, where they were tied to a motorboat that then dragged them into the river. The rope was then cut, and they were left to drown. Ith Sen testified that the boat repeated this method of killing throughout the day, from morning until the evening. He explained, "I was crying. I was weeping. I was thinking that my fate would be in the same way." When soldiers came to tie up the men in his house that evening, the Witness was able to untie himself and flee the house through a loose floorboard. He claimed he was able to sneak away because it was very dark outside and raining heavily. After escaping, the Witness came across a pile of clothes belonging to the executed detainees. He explained that he found his own canteen amongst the clothing, and that he filled it with water to use as a flotation device as he swam approximately five kilometers across the river to hide with his cousin, who was still living in nearby Praek Ahchy. His testimony closed with a confirmation that he never again saw any of the Cham people who were also detained at Trea village.

#### **5. Witness Demeanor and Credibility**

Ith Sen's gave largely coherent and consistent testimony, and he usually provided further details to his prior statements rather than contradicting them. He also gave consistent numerical facts when he could, but he demurred on topics he felt he did not know about. Although there were several minor inconsistencies regarding his escape from Trea village and his observations of executions there,<sup>9</sup> he did not contradict himself significantly, even under the examination by the Defense Teams.

#### **B. Summary of Testimony by Civil Party Sos Ponyamin**

The Trial Chamber turned next to the testimony of Civil Party Sos Ponyamin, currently an *hakim* in Svay Khleang village, Krouch Chhmar District.<sup>10</sup> Over the course of two days, he described the conditions Cham people endured under the Khmer Rouge, gave information on his role in a revolt in his village in 1975, and described his experiences after evacuation to Dambae District.<sup>11</sup> His testimony was rather animated. Although he repeatedly expressed his discontent with questions he felt were repetitive, the President required him to respond.

##### **1. Experiences in Svay Khleang Commune Under the Khmer Rouge until 1975**

Sos Ponyamin testified that 1,242 Cham families lived in Svay Khleang Commune in 1970, prior to its "liberation" by the Khmer Rouge.<sup>12</sup> The Civil Party explained that the Khmer Rouge arrived in Svay Khleang in late 1973 and immediately installed a new administrative structure that divided it into seven villages, which they named "Villages 1 to 7." The Civil Party resided in Village 5, where only Cham people lived. The Civil Party said that, after the fall of the regime in

1979, he returned to live in his birth village. He further elaborated that, by that time, only about 160-190 Cham families still lived in villages 5, 6 and 7.<sup>13</sup>

The Khmer Rouge also appointed Kao, a highly respected Cham, as village chief, but Kao was later arrested and killed. As the only Khmer Rouge cadre in this area from 1973 to 1975, he had to implement all orders coming from above.<sup>14</sup> One year later, in 1974, the Khmer Rouge arrested all *hakim*, religious leaders, and Islamic teachers, and closed the two mosques of Svay Khleang. The Civil Party stated that, from that period on, people were arrested almost every day. He did not know who arrested them or why, but he never saw them again and therefore concluded these people had been taken away to be killed. In 1975, the regime imposed further restrictions on the Chams' practice of Islam. They were forced to eat pork and were prohibited from fasting, and Cham women had to cut their hair. Anyone who failed to follow the orders was considered "an enemy of Angkar." Sos Ponyamin testified that the village or cooperative chiefs relayed such instructions at obligatory meetings.

## **2. Revolt in Svay Khleang in October 1975**

The Civil Party described the revolt of the Cham in his village on 10 October 1975, preceded by a Cham revolt in Trea village and followed by another one in Koh Phal. Sos Ponyamin explained that the generally miserable conditions placed upon the Cham people caused the rebellion. However, the ultimate reason for the rebellion was that he and six other young Cham men discovered a list of 80 Cham people set for arrest as a consequence of a trick used by the Khmer Rouge. Even though they had been banned from any form of religious practice, the community had been told they could celebrate the closing festival for the end of Ramadan. Not knowing they were under surveillance, the people who had attended the celebrations were those listed for arrest as "infiltrated enemies." Together with the six others, the Civil Party initiated the revolt the night before the arrests were set to take place. Sos Ponyamin testified that Villages 5 and 6 merged to fight together, armed with only two rifles, swords, and knives. He estimated 500 people died during the subsequent fighting, which lasted at least one night and day before soldiers of Battalion 55 fully suppressed the revolt. After his subsequent arrest and detention for 29 days, the Civil Party was relocated.

## **3. Experiences in Dambae District**

After the rebellion, the Civil Party and 20 other families were relocated to Dambae District, where he stayed for about two years. Sos Ponyamin stated that they were transferred there in boats at night, and that some of the younger children died during the trip. While they had been considered "base people" in Svay Khleang, they were called and treated like "new people" in Dambae. The Civil Party explained that, as a consequence of overwork and insufficient food, only seven of the 20 families survived. He also stated that he came across dead bodies and grave pits while he was guarding buffalo. He testified that the situation grew worse after the arrival of Central Zone cadres in 1978 as more people were arrested or disappeared following the purges of the East Zone leadership.

## **4. Statement of Suffering and Questions to the Accused**

During his statement of suffering, Sos Ponyamin described how he, like other Cham people, suffered under the mistreatment of the Khmer Rouge, and he explained that some of his family members were drowned. He testified that he was unable to express the pain he had suffered during the DK period, when all religions were prohibited. He noted that even monks were defrocked, although Buddhism had been the national religion of Cambodia before the Khmer Rouge took power. With this in mind, he urged the Court and the United Nations to "stop the regime from controlling the country once again." The Civil Party turned to the Co-Accused to ask the purpose of the DK regime, their reasons for abolishing religion and for persecuting the Cham people.



### **C. Summary of Testimony by Witness Seng Khuy**

Seng Khuy, a 61-year-old who is presently chief of Angkor Ban Commune, Kang Meas District, Kampong Cham Province, was the final person to testify this week.<sup>15</sup> The Witness, ethnically Khmer, testified about the Cham who lived in Angkor Ban Commune before the arrival of the Khmer Rouge, as well as their arrest and removal to Au Trakuon pagoda.

#### **1. Transfer of Cham People Within Angkor Ban Commune**

Seng Khuy testified that, prior to the arrival of the Khmer Rouge, he lived along with other Khmer people in Angkor Ban Village 2, while Cham lived in the adjacent Villages 1 and 3. He recalled that there was very little interaction between the Khmer and Cham populations. Although they shared a road linking the villages in the Commune, they only briefly crossed paths in the mornings as the Khmers went to farm rice and the Chams went to fish. The Witness testified that the Cham practiced Islam and congregated in a large mosque nearby. The Witness noted, however, that, under the Khmer Rouge, the Cham “did not practice their religion because they were afraid.” He testified that the Cham were eventually evacuated to different areas, with a smaller population remaining in Villages 1 and 3.

In late 1976, five to six Cham families from areas outside of the Commune were transferred to the Witness’ village to mix with the ethnically Khmer locals. The Chams were prohibited from wearing traditional dress or speaking their language. The Witness only saw them at communal meals but was not allowed to interact with them. The Chams were placed under the same work conditions as the Khmers in the village, but a few months later the men were transferred elsewhere while their family members remained.

#### **2. Arrests of Remaining Cham Villagers**

Seng Khuy testified that, in 1977, security forces arrested the remaining Cham women and children living in Village 2. Commune forces were led by Run, who the villagers feared because his presence usually foreshadowed arrests. The Witness noted that Run was from Angkor Ban Village 7, and had been a Khmer Rouge soldier before becoming Commune secretary. The Witness confirmed that Run was called a “butcher,” as he was “in charge of killing people.” Although the Witness did not know why the Cham were arrested, he recalled Run declaring, “We will kill all the Cham people, and not spare anyone.” On one night in 1977, the deputy village chief, named On, ordered the Witness and others to transport the Cham on oxcarts to Au Trakuon pagoda more than three kilometers away. The guard stationed at the gate of the pagoda received the Cham and instructed the oxcart drivers to return home. Thereafter, the Witness never saw those Cham people again. After the fall of the DK regime, Seng Khuy attended a District committee meeting where he heard approximately 30,000 people were killed at the pagoda security center. Based on his observations – of local Chams forced to mix with Khmers, Run’s declarations about killing Cham people, and frequent disappearances – the Witness concluded that the Khmer Rouge “wanted to kill the minorities” and “didn’t want any other race living in Cambodia.”

#### **3. Commune and District Leadership**

Seng Khuy explained that Run was a local villager so he could easily identify the local Cham people. Even in his position focused on the Commune’s security, Run held authority over village chiefs like On. The Witness testified that, by 1977, Kan, chief of Kang Meas District had arrived from the Southwest Zone. The Witness testified that Hon, who came with Kan from the Southwest, oversaw security at Wat Au Trakuon. The Witness confirmed that the Chams were only arrested upon the arrival of these individuals in Angkor Ban Commune. The Witness also heard that Tang and Sreng came from the Southwest Zone to join the Sector 41 committee.

#### **4. Witness Demeanor and Credibility**

Throughout his testimony, Seng Khuy gave clear and concise responses to the Parties' questions, confirmed his previous statements, and recalled numerous facts and details regarding his Commune. He also pointed out errors he had noted in his WRI. However, the President had to ask the Witness to refrain from speculating and reminded him that he was "not in a position as an expert," to draw conclusions as to why the Khmer Rouge targeted the Cham.

### **III. LEGAL AND PROCEDURAL ISSUES**

This week's hearings opened with Defense Counsel Anta Guissé's official response to the OCP and Civil Parties' documentary presentations from the week before. Counsel Victor Koppe's line of questioning to Witness Ith Sen, related to the crackdown on the Koh Phal rebellion, also generated numerous OCP objections concerning documentary references. Further detail about these arguments can be found in endnotes 5 to 7 of this report, relating to the above summary of Ith Sen's testimony.

#### **A. Khieu Samphan's Response to the OCP and Civil Parties' Key Documents**

Following the OCP and Civil Parties' presentations of key documents related to three DK worksites last week,<sup>16</sup> Khieu Samphan's Defense Counsel, Anta Guissé, gave her team's response. She opened by highlighting the adversarial nature of the documentary presentations, in order for the Parties to assist the Chamber in assessing the probative value of the evidence. Counsel Guissé, made two more general observations on the presentation of Civil Party statements and written records of interviews (**WRIs**) given the OCP's recent disclosures from Cases 003 and 004. She then provided particular responses to the key documents presented in relation to the worksites at the First January Dam (**1JD**), Kampong Chhnang Airport (**KCA**), and the Trapeang Thma Dam (**TTD**).

##### **1. Arguments Against the Reliance on WRIs and Civil Party Applications**

Counsel Guissé contested the reliability of WRIs and Civil Party applications of witnesses who are not brought before the Chamber for cross-examination. She argued that the notable "gap" between witness testimony before the Chamber and in OCIJ statements demonstrated the limited probative value of the statements of witnesses not appearing in person. Counsel noted examples of such "errors" and "inconsistencies" in the testimonies of Civil Party Chao Lang<sup>17</sup> and Witness Tak Boy<sup>18</sup> during their appearances before the Trial Chamber in the previous weeks. Therefore, Counsel argued, in any case where the Chamber relied on the statements of Civil Parties and WRIs of witnesses who did not come to verify their statements before the Chamber, the Chamber could not rely on such evidence to convict and sentence her client.

##### **2. Opposition to OCP Disclosures from Cases 003 and 004 Regarding the TTD**

In relation to the OCP's recent disclosures from Cases 003 and 004, Ms. Guissé complained of a double standard related to evidence coming from the investigations. She highlighted the flow of investigative procedures in Case 002, starting with the OCP's 2008 introductory submission, which opened the investigation, to the 2011 Closing Order, which completed the investigation. Counsel argued that the OCP disclosures of evidence from the investigations in Cases 003 and 004 into Case 002/02 were continuing even after the Closing Order had been finalized in 2011 without any appeal from the OCP. She recalled that, when the Defense had requested "so many times" in Case 002/01 to verify the interviews of the OCIJ investigation, in order to identify differences between WRIs and relevant audio recordings, the Trial Chamber had denied the request with the reasoning that the investigation had already concluded. The Chamber effectively told the Defense, in Counsel's opinion, "There was an investigation, and you should have done your job. It's too late." Counsel asked why the OCP has not been told the same

thing when asking to disclose and admit evidence from other cases under investigation. Although Ms. Guissé acknowledged that her team had not acted fast enough to react to OCP requests for admission of disclosed documents, she denied that her team's lack of written objection signified agreement with the OCP submission.<sup>19</sup> Counsel raised issues both of reliability and fairness regarding the entry of evidence from other investigations. She further complained that the time allotted for the Defense Teams to review the new evidence and prepare their arguments was inadequate. Ms. Guissé voiced her opposition to the most recent OCP disclosure and subsequent OCP request for admission of evidence from Cases 003 and 004, and she argued against the use of those WRIs as key documents if the witnesses or Civil Parties do not appear for cross-examination before the Chamber. She reminded the Chamber that it had already found in the past it could revisit a decision of admitting evidence when that evidence was shown to have weak probative value and should not have been admitted.<sup>20</sup>

### **3. Response to OCP and Civil Parties' Key Documents on the Three Worksites**

Following her arguments against disclosures from Case 003 and 004, Ms. Guissé turned her attention to presenting specific substantive objections to key documents presented by the OCP and Civil Parties' in relation to the worksites at 1JD, KCA and TTD.

Regarding the OCP's key documents on the 1JD, Counsel argued that the OCP quoted incomplete excerpts of François Ponchaud's article, "Kampuchea: a Revolutionary Economy." Counsel sought to provide important context by highlighting further excerpts from the same article regarding the utility of the irrigation system for agricultural production and the growth of strategic crops to produce food for the people. Counsel then reacted to a set of WRIs presented by the OCP by adding elements of the WRIs left out by the OCP. She noted parts of leng Cham and Pech Sokha's statements that the irrigation techniques at the time functioned fundamentally well with the Dam's master plans. She also read out more of Ke Pich Vannak's WRI, in which he discussed leng Thirith's efforts to produce traditional medicine and help to heal sick people. Counsel considered the WRI of Chop Nung unreliable in delineating the 1JD's command structure, as there were not enough contemporaneous documents related to the worksite. Anta Guissé reminded the Chamber that the "Biography of Ke Pauk," relied on by the OCP, was incomplete, missing some pages, and not an original document. She said the document should be given "very low probative value." Regarding the OCP's list of media reports on the 1JD, she noted that Khieu Samphan was never featured as one of the leaders accompanying delegations to the site.

Concerning the KCA, Counsel Guissé argued that the OCP's presentation of documents including Standing Committee and Central Committee meeting minutes and transcripts, as well as notes of correspondence with S-21, demonstrated Khieu Samphan's involvement in a plan to build the military airport but could not implicate Khieu Samphan's willingness in a plan to mistreat workers there. She also pointed out that the pseudonym "Comrade Khieu" written in those military documents referred to Son Sen, chief of the DK General Staff, rather than Khieu Samphan. She highlighted paragraph 318 of the Judgment in Case 002/01, in which the Chamber found that Khieu Samphan never held personal power or responsibility in a military area. As no Party appealed this finding, she noted the finding was therefore considered *res judicata*. She dismissed the presentation of four WRIs as outside the Court's jurisdiction – with crimes related to S-22 outside Case 002's scope or after the fall of the DK regime in January 1979 – or irrelevant to her client's responsibility.

Regarding the TTD, Counsel Guissé read out some additional evidence that showed "all levels dealing with an apparent drought" in Northwest Zone Sector 5. This portion of Counsel's submissions seemed less like an official response to the OCP and Civil Parties' documentary presentations than the Defense's own presentation of key documents on the TTD.

#### IV. TRIAL MANAGEMENT

This week, the Trial Chamber commenced a new segment in Case 002/02, regarding the targeting of the Cham minority, with the testimonies of two witnesses and one Civil Party.

##### A. Attendance

Nuon Chea waived his right to be present in the courtroom and observed the proceedings from the holding cell while Khieu Samphan was present in the courtroom during all sessions throughout this week.

**Judge Attendance:** All Judges were present in the courtroom throughout the week, with the exception of national Judge You Ottara who was absent on 7 September 2015, due to urgent personal matters. National Reserve Judge Thou Mony was appointed to replace him that day.

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

**Parties:** All Parties were properly represented in the courtroom throughout the week.

##### Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 07/09/2015	<ul style="list-style-type: none"><li>• 39 Cham villagers from Khan Russei Keo, Phnom Penh</li><li>• Five foreign observers</li></ul>	<ul style="list-style-type: none"><li>▪ 34 Khmer villagers from Bati District, Takeo Province</li></ul>
Tuesday 08/09/2015	<ul style="list-style-type: none"><li>▪ 60 Cham villagers from Khan Chbar Ampov, Phnom Penh</li></ul>	<ul style="list-style-type: none"><li>▪ 48 Cham villagers from Khan Chbar Ampov, Phnom Penh</li></ul>
Wednesday 09/09/2015	<ul style="list-style-type: none"><li>▪ 148 Cham villagers from Ponhea Leu District, Kandal Province</li><li>▪ 93 Khmer villagers from Bati District, Takeo Province</li><li>▪ Two foreign observers</li></ul>	<ul style="list-style-type: none"><li>▪ 73 Cham villagers from Ta Khmao District, Kandal Province</li></ul>
Thursday 10/09/2015	<ul style="list-style-type: none"><li>▪ 179 Cham villagers from Kampong Tralach District, Kampong Chhnang Province</li><li>▪ 41 villagers from Rolea B'ier District, Kampong Chhnang Province</li></ul>	<i>No proceeding</i>

##### B. Time Management

This week, the Trial Chamber effectively struck a balance between flexibility and strict time allocations in order to hear the complete testimonies of two witnesses and one Civil Party at the outset of a new trial segment. For example, on 9 September, assistant prosecutor Dale Lysak's examination of Civil Party Sos Ponyamin, the President cut him off for going over the time allocation and handed the floor to the Defense Teams to begin. On 8 September, both Defense Teams requested an additional 20 minutes to question Witness Ith Sen after a series of OCP objections. Although the President provided the additional time, he asked all Parties to avoid delivering lengthy speeches in the courtroom. The week's proceedings finished early on



Thursday morning, without a reserve witness available to begin testimony thereafter.

### **C. Courtroom Etiquette**

As already discussed in the summary of Witness Ith Sen's testimony, Defense Counsel Victor Koppe's line of questioning concerning the role of Cambodian Prime Minister Hun Sen in the suppression of the Koh Phal rebellion resulted in vocal disagreement between Counsel and the assistant prosecutor, Dale Lysak. In response, the President intervened to remind Parties to follow guidelines on questioning practices, noting that most of the Parties had worked at the Court "for over seven years" and should understand such practices. The President asked them to adhere to professionalism and to avoid making disparaging comments about one another. Separately, throughout his examination by Defense Teams, Civil Party Sos Ponnyamin appeared irritated and complained of repetitive questioning from Counsel Anta Guissé. On one occasion, he stated, "I was not in position to know everything...You keep asking questions that I already answered." At this point, the President interrupted to remind him the role and obligation of Civil Parties, telling him, "If you don't know, just say you don't know. It is not appropriate to put back questions to the lawyer...This is a court of law, so questions have to be responded precisely."

Another issue raised at the outset of the Civil Party's testimony on 8 September concerned his use of the Khmer word "vea," equivalent to "it" but used both informally and pejoratively to refer to a person. Kong Sam Onn, Counsel for Khieu Samphan, rose to condemn the language when it was first used to refer to the leaders of the DK regime, but after receiving instruction from his lawyer and the President to avoid using the word, the Civil Party explained he was using it informally and casually, without any intention to show contempt for the Co-Accused. The President explained, "You are present in a court of law. You should not use any inappropriate words that may have an impact or might affect other individuals." However, even after admitting his errors and receiving such instructions, the Civil Party continued to use the term throughout his testimony. He stopped himself on one occasion to explain, "I am sorry. I try my best. I have used the word ["vea"] throughout my life. I cannot change it in the matter of one day."

### **D. Translation and Technical Issues**

Due to the difficulties of two Cham witnesses in understanding and speaking Khmer language, the Trial Chamber repeatedly asked the Parties to put brief and succinct questions. Nonetheless, several translation issues occurred throughout the week. Throughout 7 September, interpreters strangely translated Witness Ith Sen's references to the Qur'an, the Islamic holy text, as the "Qur'an Bible." Toward of the end of the 9 September hearing, the President and Defense Counsel Anta Guissé complained that the interpretation failed to capture their discussion of whether to begin her examination of Witness Seng Khuy that day or the next morning. There were no significant technical interruptions this week.

### **E. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 07/09/2015	9:04	10:25 – 10:44	11:40 – 13:32	14:41 – 15:01	16:06	4 hours 31 minutes
Tuesday 08/09/2015	9:02	10:13 – 10:34	11:33 – 13:33	14:43 – 15:02	16:14	4 hours 32 minutes

Wednesday 09/09/2015	9:00	10:20 – 10:33	11:56 – 13:30	14:51 – 15:03	15:57	4 hours 58 minutes
Thursday 10/09/2015	9:01	–	–	–	10:29	1 hour 28 minutes
Average number of hours in session				3 hours and 52 minutes		
Total number of hours this week				15 hours and 29 minutes		
Total number of hours, day, weeks at trial				386 hours and 26 minutes		
102 TRIAL DAYS OVER 30 WEEKS						

\*This report was authored by Judith Kaiser, Daniel Mattes, Joy Scott, Lina Tay, Penelope Van Tuyl, 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 AIJI staff; and
- § photos are courtesy of the ECCC.

#### Glossary of Terms

Case001	<i>The Case of Kaing Guek Eavalias “Duch” (CaseNo.001/18-07-2007-ECCC)</i>
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (CaseNo.002/19-09-2007-ECCC)</i>
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

<sup>1</sup> For allegations regarding the treatment of the Cham, including the allegations of genocide by killing and crimes against humanity, see the Case 002 Closing Order, paras. 205-207, 211-212, 745-770, 776-789, and 1336-1342.

<sup>2</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 18, Hearings on Evidence Week 15 (4-8 May 2015), p. 7.

<sup>3</sup> Witness Mr. ITH Sen (2-TCW-813) was questioned in the following order: President NIL Nonn; international deputy prosecutor Dale LYSAK; national deputy prosecutor SENG Leang; national Civil Party lawyer TY Srinna; national co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>4</sup> MAT Ly was a cadre in Tbong Khmum District in the East Zone in 1975, but he later joined the Vietnamese-backed resistance against the DK government and helped to support the subsequent Khmer People's Revolutionary Party. Today, he is a member of the National Assembly and a leading member of the Cambodian People's Party; he is one of the most senior Cham figures in Cambodian politics and society today. See Ben Kiernan, "The Survival of Cambodia's Ethnic Minorities," *Cultural Survival Quarterly* 14.3 (Fall 1990), <<http://www.culturalsurvival.org/ourpublications/csq/article/the-survival-cambodias-ethnic-minorities>>.

<sup>5</sup> On 8 September, Victor Koppe asked ITH Sen about OUK Bunchhoeun, presently a senator for the Cambodian People's Party. The Witness stated he neither knew the name nor recognized him as a leader of Sector 21 in 1975. Counsel then asked if the Witness knew anything about "a Cham movement...to create a state within the state, a Cham state," called "FULRO Champa." The Witness denied hearing about anything of "such rebellious nature." Judge Jean-Marc Lavergne then intervened to ask, "I believe the FULRO was something in relation to oppressed races, the United Front of Oppressed Races, is that what you're referring to?" Counsel explained his question was based on document E3/387, a statement of OUK Bunchhoeun, in which the CPP senator explained that this movement "intended to create a state within the state because the Cham Muslims wished to occupy Cambodian territory from the eastern bank of the Mekong river to central Annam to create a state. This was according to their confessions. They had an organization FULRO Champa under the leadership of Sabuon Leskesan in Phnom Penh." Prosecutor Dale Lysak stepped in to observe, "This was not a secret thing going on during the Khmer Rouge, this was an open political organization but it was in the pre-1975 time period, so he should be clear about what time period he is asking about. My understanding is there was FULRO Champa that was part of a political organization related to the Cham, and, later on, that became part of a broader organization related to ethnic minorities called FULRO." Counsel Koppe responded that the Prosecution was giving evidence, and that he instead was "just reading an excerpt from a statement of someone who was in fact, as of July 1975, deputy secretary of Sector 21." The Witness, however, continued to deny knowledge both of OUK Bunchhoeun and such "rebellious Cham movement."

<sup>6</sup> Counsel Victor Koppe asked ITH Sen if he had "ever heard the story that 28 Khmer Rouge cadres were chopped to death by local Cham people" as the reason for the crackdown on the Koh Phal rebellion. Prosecutor Lysak objected that Counsel was leading the Witness "with a completely different account that I think every one of us has read about this incident. If he's seized upon some account on this, he should tell us. The accounts we have on this talk about one person being attacked, not 28." Counsel Koppe claimed the number came from "either [Ben] Kiernan or [François] Ponchaud." The Witness explained he had heard that soldiers were chopped to death in the 1975 uprising, but he was not sure how many.

<sup>7</sup> In a line of questioning on which units took part in the Koh Phal crackdown, Counsel Victor Koppe asked ITH Sen if he had heard of Battalion 55 of the Sector 21 Regiment, and if he knew the name of one of the battalion's commanding officers, Hun Sen, Cambodia's present-day prime minister. The Witness confirmed he recognized the name, but he "did not know at the time where he was stationed. I only knew that he also joined the Resistance in the jungle." When Counsel asked if the Witness was aware of Hun Sen's involvement in the Koh Phal crackdown, the Prosecution asked for Counsel "to provide the basis of his questions rather than just giving theories." After the Chamber agreed with the OCP, Mr. Koppe explained he had founded himself on page 20 of document E347.3, a Human Rights Watch report he claimed was written by Steve Heder on the occasion of Hun Sen's 30<sup>th</sup> anniversary as Cambodia's leader. Mr. Koppe explained the document described the attacks on Svay Khleang and Koh Phal, and that the crackdown was "done by Battalion 55, led by Commanding Officer Hun Sen...in Sector 21." When Judge Jean-Marc Lavergne asked him if he was aware that the document had already been requested for admission by the Khieu Samphan team and rejected by the Trial Chamber in a written ruling, Mr. Koppe feigned ignorance. Prosecutor Lysak asked for "the actual source of this evidence," stating, "I'm pretty sure Steve Heder was not at Koh Phal in 1975...Counsel hasn't put this evidence properly before us, so I'm here in the position of having to search this document. It's entirely improper." Counsel Koppe accused the Court and the other Parties of "a pathetic and shameful attempt to cut the Defense off" and claimed, "What's happening here is an attempt to avoid evidence to incriminate the current government as the perpetrators of the genocides, if there were any. It's perfectly appropriate to find out in 75 and find out whether Ouk Bunchhoeun and Hun Sen were responsible." Mr. Lysak retorted, "No one here is trying to do that. You are perfectly entitled to do that with proper evidentiary means." Judge Fenz sustained the OCP objections and told Counsel, "This is how criminal proceedings work...if you put forward an allegation, you have to cite the basis for this." On 9 September, as Counsel Koppe questioned Civil Party Sos Ponnyamin, he explained that, although the Human Rights Watch report had been rejected by the Chamber, the report referred to Ysa Osman's book, *The Cham Rebellion*, which is on the case file in its entirety. Counsel gave ERN reference numbers for the relevant pages that refer to Battalion 55 as the suppressor of the Cham rebellion. However, Prosecutor Lysak then intervened to clarify that Hun Sen was not the source for Mr. Osman's book; rather, it was a commander identified as Sok Sat. Mr. Lysak asserted that Hun Sen was in charge of a reconnaissance unit and later took another position. Before moving on, Counsel Koppe noted that "Yesterday, the Co-Prosecutor didn't seem to know anything about Battalion 55."

<sup>8</sup> ITH Sen later told Defense Counsel for Khieu Samphan, Anta Guissé, that he “heard people saying [Seng] was the Krouch Chhmar District Committee, as he was in charge overall in the entire Krouch Chhmar District.”

<sup>9</sup> There were several inconsistencies in ITH Sen’s testimony regarding his escape from the house. At first, the Witness stated twice that he fled “through the back door.” However, he soon thereafter clarified that he escaped through a loose floorboard. It was also unclear, when the Prosecutor read out the Witness’ prior statement to Ysa Osman in his book, *The Cham Rebellion*, if ITH Sen escaped alone or with a small group of other prisoners. Furthermore, it was unclear if he had witnessed the killings at the riverbank from the inside of the house before his escape, or from bushes nearby after his escape.

<sup>10</sup> *Hakim* is the term for a Cham Muslim religious leader.

<sup>11</sup> Civil Party Mr. SOS Ponyamin (2-TCCP-244) was questioned in the following order: President NIL Nonn; national Civil Party lawyer LOR Chunthy; international Civil Party Lead Co-Lawyer Marie GUIRAUD; national deputy prosecutor SENG Leang; international deputy prosecutor Dale LYSAK; national co-lawyer for Nuon Chea, Victor KOPPE; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>12</sup> This figure was derived from a census made in 1974, when the Khmer Rouge had already taken over the area. SOS Ponyamin was enlisted to assist in this census.

<sup>13</sup> During his testimony, the Civil Party was not clear regarding the exact number of Cham families, but he was consistent in describing fewer than 200 remaining families.

<sup>14</sup> The Civil Party confirmed that some Cham people joined the Revolution following the Lon Nol coup, as Cham people considered themselves part of the Cambodian population and wanted to liberate their country as well. Back then, he explained to Defense Counsel, “They didn’t realize that the regime would become a genocidal regime.”

<sup>15</sup> Witness Mr. SENG Khuy (2-TCW-832) was questioned in the following order: President NIL Nonn; international assistant prosecutor Joseph Andrew BOYLE; national deputy prosecutor SENG Leang; national Civil Party lawyer HONG Kimsuon; international co-lawyer for Khieu Samphan, Anta GUISSÉ; national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>16</sup> CASE 002/02 KRT TRIAL MONITOR, Issue 29, Hearings on Evidence Week 26 (1-3 September 2015), pp. 4-7.

<sup>17</sup> Civil Party CHAO Lang appeared before the Chamber on 1 September 2015 to express her victim impact statement regarding the First January Dam worksite. CASE 002/02 KRT TRIAL MONITOR, Issue 29, Hearings on Evidence Week 26 (1-3 September 2015), pp. 2-3.

<sup>18</sup> Witness TAK Boy testified before the Chamber on 19-20 August 2015 about Trapeang Thma Dam worksite. CASE 002/02 KRT TRIAL MONITOR, Issue 27, Hearings on Evidence Week 24 (17-20 August 2015), pp. 4-5.

<sup>19</sup> Counsel Guissé referred to ICTY jurisprudence in *Martic*, in 19 January 2006, when the ICTY Trial Chamber found: “The Trial Chamber is the guardian and guarantor of the procedure and substantive rights of the Accused...The Trial Chamber considers that questions of admissibility of evidence do not only arise when Parties raise objection...The Trial Chamber has an inherent right and duty to ensure that only evidence which qualified for admission under the rules can be admitted...the Trial Chamber will intervene *ex officio* to exclude from these proceedings which in its opinion ought not to be admitted in evidence.” See *Prosecutor v. Millan Martić*, Trial Chamber Decision Adopting Guidelines on the Standards Governing the Admission of Evidence, ICTY (19 January 2006), <<http://www.icty.org/x/cases/martic/tdec/en/060119.htm>>, para. 11.

<sup>20</sup> Counsel Anta Guissé asked the Chamber to reverse its past decisions to admit evidence requested by the OCP. She offered the recent submission of the Khieu Samphan Defense Team, document E363, as the opportunity for the Trial Chamber to make such a change in its rulings. In 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). 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. For the past memorandum, see Trial Chamber Memorandum, “Disclosure of Witness Statements for Witnesses Who May Testify in Case 002” (24 January 2012), E127/4.