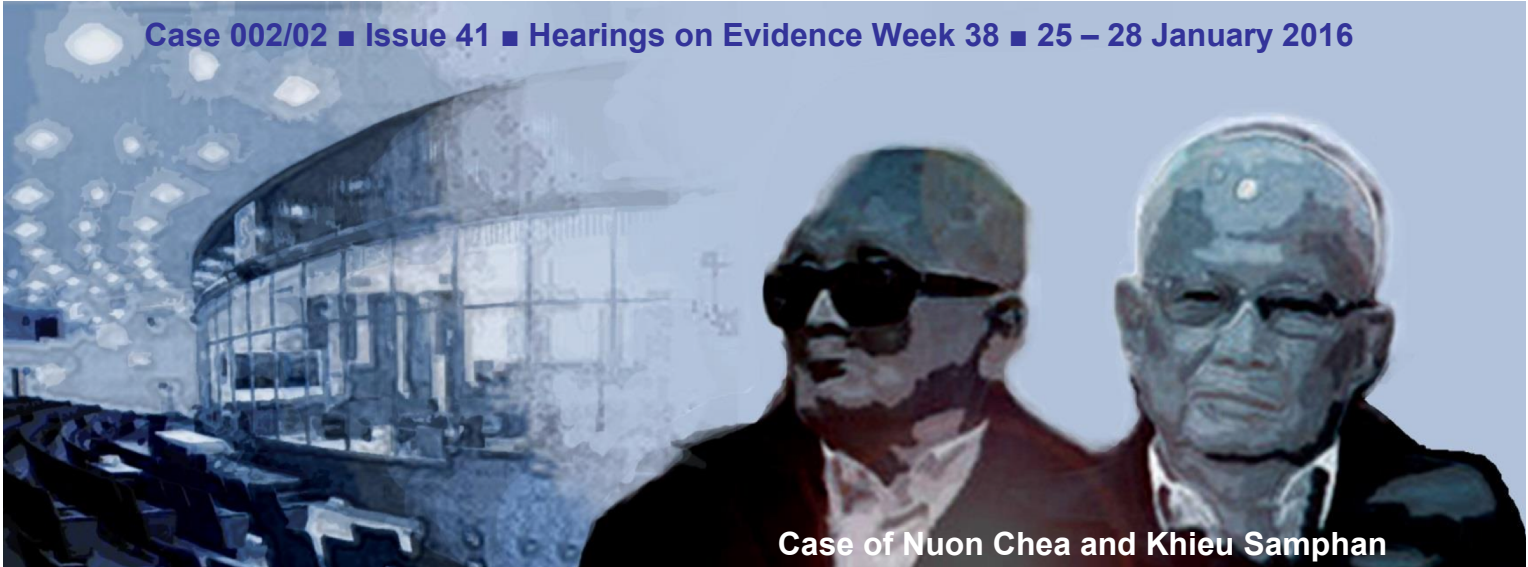


KRT TRIAL MONITOR

Case 002/02 ■ Issue 41 ■ Hearings on Evidence Week 38 ■ 25 – 28 January 2016



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)

*“The child was not arrested since the child was the offspring
of Cambodian mother. If the mother was ethnically Vietnamese,
the child would be taken away as well...”*

I was trying to conceal the information about my child.”

- Civil Party Doung Oeun

I. OVERVIEW

This week the Trial Chamber heard from one Civil Party and two witnesses over the course of four days, with a fourth witness testifying for only a short time due to health issues. Civil Party Doung Oeun testified on the treatment of the Vietnamese in Pochen Dam Village, and more specifically that of her husband Chuy. The two witnesses to complete their testimony in full this week; Prum Sarat and San Lorn, were both requested by the Nuon Chea Defense Team. Prum Sarat, from Kampot Province, testified about his involvement in the fall of Phnom Penh on 17 April 1975, and his subsequent positions as a member of the naval Division 164 in the armed forces of Democratic Kampuchea (**DK**). Witness En Yoeun then appeared for 20 minutes on Wednesday afternoon, however was unable to return to the Chamber the following day as her health was poor. She will return to finish her testimony when her health has improved. Instead, reserve witness San Lorn took the stand on Thursday and testified about his role as a messenger for Ta Mok’s daughter Yeay Khom in the Tram Kak cooperative and his involvement in the transportation of approximately 9,000 ethnic Vietnamese people. The Chamber began proceedings late on Tuesday morning due to Khieu Samphan’s high blood pressure. After he received medical attention, hearings were able to resume in the second session of the day. The recurring issue of the use of evidence obtained through torture was raised again this week, a summary of which, including an overview of the recently published Trial Chamber decision on the matter will be analyzed below.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

Three individuals managed to complete their testimony before the Trial Chamber this week. Civil Party Doung Oeun began the week testifying about the treatment of her Vietnamese husband in her village of Pochen Dam. The following two witnesses to testify in full were both requested by Nuon Chea. Both Prum Sarat and San Lorn testified about the treatment of the Vietnamese, however San Lorn also spoke in some depth about the Tram Kak cooperatives.

En Yoeun, who became ill before she could properly begin her testimony, will reappear at a later date when her health permits.

A. Summary of Testimony by Civil Party Doung Oeun¹

75-year-old Doung Oeun, from Pochen Dam Village, Svay Antor Commune, Prey Veng District, Prey Veng Province, testified before the Trial Chamber on Monday 25 January 2015 about the treatment of the ethnic Vietnamese in her village and the disappearance of her husband Chuy, a former soldier in the Vietnamese army. Her testimony complemented earlier testimony of her cousin Lach Kry, and also Theng Phal, both of whom lived in Pochen Dam like the Civil Party throughout the DK regime.² On a few occasions she cited her advanced age as a reason for gaps in her memory.

1. Civil Party's Background and Family

Doung Oeun testified that she was born in Pochen Dam Village and remained living there throughout the DK regime. She said she married a man named Tep Yun, alias Chuy, during the Lon Nol regime and together they had one daughter, named Kim Va, who was born in 1970. She also had a son named Mang from a previous marriage that ended in divorce. The Civil Party said that her husband was originally Vietnamese, spoke Vietnamese fluently and could only speak Khmer with an obvious accent. He had moved to Pochen Dam to be with her during the Lon Nol regime and began working as a petty merchant, selling livestock including chicken and ducks. Although both Defense Teams confronted the Civil Party with her prior statement in which she said that her husband also sold opium, she denied this had been the case. Defense Counsel for Nuon Chea, Victor Koppe, also confronted the Civil Party with a statement of her younger sister in which she said that Chuy smuggled "medicine" into Cambodia from Vietnam, however again the Civil Party stated that she had no idea about this, repeating that "he sold livestock, he did not sell other things." The Civil Party also testified that her husband had been a soldier in Vietnam before he came to Cambodia, however she claimed not to know any details about this, including the location he had been based or who he was fighting for.³

2. Arrival of Khmer Rouge Cadres in Pochen Dam Village

In her testimony, the Civil Party was adamant that KR forces didn't arrive in her village until 1977. This contradicts previous testimony given by Theng Phal and Lach Kry, both of whom testified that the KR arrived Pochen Dam Village in either 1972 or 1973, however even when confronted with this discrepancy the Civil Party maintained that her answer was correct. When asked by international Assistant Prosecutor Joseph Andrew Boyle, Doung Oeun could recall cadres named Horn, Seng and Chhaem. She stated that Chhaem had been the Commune Chief, Seng the Chief of Militia and Horn a militiaman. When Victor Koppe questioned the Civil Party, she recalled there had been heavy shelling at times along the border with Vietnam after the KR arrived in her village, although she could not remember when exactly. She testified that the shelling caused her to flee her village with her family members, and that this had happened relatively often, forcing her to flee to a nearby village for one or two days before returning home.

The Civil Party testified that, after the KR arrived in their commune, she and her husband began calling their daughter by the name Ka Mien, rather than Kim Va, to mask her Vietnamese background. When asked further, Doung Oeun stated "I was afraid that she would be taken away to be smashed, so I used a new name for her." She testified that she had heard of KR forces ordering Vietnamese people to return to Vietnam. She told the Chamber that this was why she had urged her husband to flee to Vietnam after the arrival of the KR in their village, however said that he had refused to go without her and her child, saying that he would rather die in Cambodia than go back to Vietnam.

3. Arrest of Civil Party's Husband

Doung Oeun testified that during the Lon Nol regime, her husband lived happily in Pochen Dam, and there were no conflicts between himself and other villagers, either based on his ethnicity or otherwise. After the arrival of the KR forces, the Civil Party was assigned to work in a rice field while her husband was given the task of producing fertilizer. The Civil Party testified that, sometime during the rice harvest, approximately one month after the KR took control of Pochen Dam in 1977, her husband was arrested and taken away. Although she didn't see this event in person, she testified that her mother witnessed it and later told her what had happened. Doung Oeun said she was told her husband was taken away to an unknown location to cut *rumpeak*, a vine used for weaving baskets, and that no one had said when he would return. Although she did not know for sure that he had been killed, the Civil Party said that she believed he would never return, as no one who went to cut *rumpeak* vine ever came back to their village. She also testified that her son, Mang, was arrested, taken away and killed after the arrest of her husband, because he had started a fire by accident. Again, she had no evidence that her son had been killed, but after the incident she never saw him again.

4. Treatment of Vietnamese People and Arrests

In addition to the disappearance of her husband, Doung Oeun was also able to testify about the disappearance of others with Vietnamese backgrounds from Pochen Dam Village. She testified that, although she did not recall any steps being taken to single out or identify those with Vietnamese ethnicity in her village after the arrival of KR cadres, all three individuals that she knew of with Vietnamese backgrounds disappeared during the regime. She did not recall any mistreatment or discrimination against the Vietnamese prior to their disappearance. The Civil Party testified that the ethnic Vietnamese wife of fellow villager Lach Ni, as well as their five or six children were taken away and never seen again.⁴ She also stated that a man named Ngang, who was ethnically Vietnamese, was taken away on the premise of cutting *rumpeak* vine, although his Khmer wife was allowed to remain in the village. Doung Oeun clarified that Ngang was taken away first, then Lach Ni's family and finally her husband.

Although the Civil Party had no direct knowledge of what had become of any of these individuals who were taken away during the regime, she said that not one of them had ever returned to the village. Furthermore, she claimed to know that it was KR policy that if the mother was Cambodian and the father Vietnamese, their children would not be arrested, however if the mother was Vietnamese, any children would be taken away with her. Despite repeating this policy several times, Doung Oeun admitted that she had never heard anyone announce this officially, it was simply common knowledge.

5. Civil Party Statement of Suffering and Questions to the Accused

After concluding her testimony on the facts, Doung Oeun then made a statement of suffering. She described the great pain she felt at losing her husband during the DK regime. She stated that during that time she was mistreated and forced to do hard labor including digging earth, building dykes and transplanting seedlings in rice fields without any breaks. The physical toll this took on her body has had a long-lasting effect, as has the mental anguish she suffered from the loss of her husband. She stated "when I think about it, it is really clear in front of me."

B. Summary of Testimony by Witness Prum Sarat

66-year-old Witness Prum Sarat, originally from Prey Chheuteal Village, Angkor Chey Commune, Angkor Chey District, Kampot Province and now living in Battambang Province, began his testimony on Monday afternoon and continued over the following two days.⁵ Prum Sarat testified about his involvement in the KR revolutionary and naval forces and his knowledge of command and communications structures. He was also part of the liberation of

Phnom Penh and was able to testify about the treatment of the Vietnamese and former Lon Nol soldiers during the DK regime.

1. Witness's Position in Divisions 3 and 164.

Prum Sarat testified to joining the revolution on 6 September 1970, initially serving in Kampot Province. When Kampot became part of the Southwest Zone in approximately 1974, the Witness joined Division 3, which he confirmed was under the command of Meas Muth.⁶ Prum Sarat confirmed that he participated in the take-over of Phnom Penh on 17 April 1975 in his role as a company chief, with 100 people under his command.⁷ He did not elaborate on his particular role in the take over other than to say that he was “engaged in the attack to the east of Thmat Porng called Mong Choen.” He testified that immediately after 17 April he received instructions from the upper echelon to lead his company to Kampong Som (also known as Sihanoukville) where he arrived five days later on 22 April after travelling on foot with his company. The Witness testified that, while in Kampong Som, in either June 1975 or June 1976, Division 3 was reorganized within the Central Zone, and became known as Division 164. He told the Chamber that Division 164 consisted of between 7,000 to 9,000 members, both combatants and non-combatants, and that some 700 of them came from the East Zone.

As part of the reshuffle, Prum Sarat became commander of Company 2, Battalion 44, Regiment 140, Division 164.⁸ He testified that Regiment 140 contained 1,400 men and he personally had 110 men under his supervision as Company Commander. Regiment 140 was equipped with 10 combat and 10 patrol vessels, a tanker and a minesweeper. After some time Prum Sarat was promoted to command Vessel 1710, a defensive vessel with a crew of 38 men, tasked with patrolling DK territorial waters. He said that the promotion reflected his advanced technical skills. Prum Sarat testified to being a member of the Communist Party of Kampuchea (CPK) during the DK regime. He added that, as a Commander, he attended at least two study sessions with Son Sen in 1976 at Olympic Stadium in Phnom Penh, one of which featured a speech by Pol Pot. He also told the Chamber that he had monthly access to CPK magazine *Revolutionary Flag* and also regularly listened to daily radio broadcasts and as a result was well versed in party policies.

2. Activities while a Member of Division 164

As a Company Commander within Division 164, Prum Sarat was responsible for the technical training of his subordinates. He said that this took place at Ouchheuteal Port over a period of six months in 1976. As part of this training, soldiers learned how to operate the newly arrived Chinese vessels and added that Chinese specialists were also brought in for the sessions. In addition to training, as part of Division 164 soldiers had to patrol around the islands both day and night-time, a duty which he had to fulfill personally approximately one night per week. He recalled that the vessel under his supervision was a Chinese defensive vessel only used for patrols and that it stayed mainly between Koh Puolowai and Koh Tang. Later, from 1976 to 1978 the patrols extended to include Koh Tmeh, Koh Seh, near Koh Trai.⁹ Prum Sarat told the Chamber that the ocean in this region was considered a “hot battlefield” in 1975 and therefore radio broadcasts repeatedly called on soldiers to be vigilant at all times. The Witness was questioned about communications structures, stating that Headquarters in Ouchheuteal Port and Koh Rong Samloem would send instructions via radio or telegram to the boats. He explained that orders given by the upper echelon had to be obeyed without question, although he was quick to confirm that he was not personally involved in any hostilities or arrests.

3. Treatment of the Vietnamese

Prum Sarat stated that the Vietnamese were seen as the “hereditary enemy” of Cambodia a long time before the KR forces took over the region. However, he could nonetheless recall that during the DK era he learned from different sources, including a speech held by Khieu

Samphan and study sessions, that the Vietnamese were now considered as “enemy number one.” Prum Sarat stated that the policies regarding the treatment of Thai and Vietnamese boats that his crew came across in DK territorial waters differed. He testified that he was informed Thai encroachments were to be solved “diplomatically,” meaning their ships were sent to headquarters for the upper echelon to manage, whereas Vietnamese crews could face more immediate and serious consequences, such as being arrested or having their boats sunk. Prum Sarat testified that there was no distinction between the treatment of civilian and military vessels which violated territorial boundaries. Under examination by Senior Assistant Prosecutor Vincent de Wilde d’Estmael, the Witness also testified that although he was not involved in such actions, he once witnessed a group of Vietnamese people detained on Old Poulowai Island. He also recalled that information about other arrests of Vietnamese spies and soldiers was spread via radio broadcasts, which sometimes included broadcasts of their “confessions.”¹⁰

4. Identification and purges of ‘bad elements’ and ‘internal enemies’

In addition to the Vietnamese, the Witness recalled other groups being identified as “bad elements” by KR cadres. Prum Sarat differentiated between internal and external enemies, explaining that the two enemies were equally as important. He said that everyone had to work as hard as possible to be in line with socialist ideals set by the party, claiming that anyone who could not achieve this would be considered a traitor or “enemy on the inside.” The Witness said that anyone who refused to follow orders or implement instructions would be sent to headquarters for reeducation, as every potential “internal enemy” had to be purged. He himself had orders to refer bad elements to headquarters, however he claimed never to have done this. Prum Sarat testified that biographies were collected from everyone in his company, including himself, and documented everything; ranging from personal background, combat achievements and the financial situation of one’s family.

5. Treatment of Former Lon Nol Soldiers

The Witness testified that after KR forces took control of Phnom Penh on 17 April 1975, there were no retaliatory killings of soldiers of the former Lon Nol regime. He said that white flags were raised by the Khmer Republic forces, and after this signal of surrender no KR soldier was to harm them. He was specifically asked about an event that occurred when his unit was moving from Phnom Penh to Kampong Som immediately after the fall of Phnom Penh. He said his unit became aware that some defeated Lon Nol soldiers were nearby, led by Norodom Chantaraingsey.¹¹ Prum Sarat said that, when they encountered the defeated soldiers, his company did not harm them and even allowed them to rest with his own troops. However, the Witness did testify to hearing about killings of former soldiers later on. Under examination by the Prosecution, the Witness detailed that some of his unit saw the bodies of two soldiers who were killed as “an example” when they were on their way to Kampong Som.¹² Prum Sarat claimed, however that his unit never received any orders to execute Lon Nol soldiers and that he did not hear about such orders handed out to other divisions.

6. Witness Demeanor and Credibility

During his testimony, Witness Prum Sarat was largely attentive. He seemed to have no problem following proceedings and answering the questions put to him, particularly about dates and technical issues. As he claimed not to have directly received any orders concerning the treatment of Lon Nol soldiers or Vietnamese specifically, the majority of his testimony relied on what he had heard from others. At times the Witness’s personal views about the presence of ethnic Vietnamese people in Cambodia were expressed very strongly. When questioned about the treatment of the Vietnamese, the Witness became agitated and talked about the ongoing attempt by the “*Yvon*” to swallow Cambodia, at which point the President advised the witness to avoid “personal opinions.”

C. Summary of Testimony by Witness En Yoeun

In the last session of 27 January, the Chamber began the testimony of Witness En Yoeun from Chupleung Village, Kampong Trach Commune, Romeas Haek District, Svay Rieng Province.¹³ Due to health issues the Witness was unable to proceed with her testimony on 28 January and will be rescheduled to appear when her health improves.

D. Summary of Witness San Lorn

Replacing En Yoeun, the Trial Chamber heard the testimony of 73-year-old Witness San Lorn, alias Samounh or Ah Mounh, who was born in Pra Keap Village, Tram Kak District, Tram Kak Commune, Takeo Province.¹⁴ Over four sessions, the Witness testified about his role in the DK regime, specifically his involvement in the mass transportation of approximately 9,000 Vietnamese people. He further provided insight into the treatment of Lon Nol soldiers and the command structures at Tram Kak cooperative, under Ta Mok and Yeay Khom.¹⁵

1. Witness's Position and Command Structures at Tram Kak Cooperative

San Lorn testified that, prior to the DK regime, he was the chief of Pra Keap Village. The Witness began his testimony by recounting his relationship to Ta Mok, who was his brother-in-law and a senior figure in the KR regime. He then outlined his role during the DK regime as a messenger for Yeay Khom; the Chief of Tram Kak District, wife of Meas Muth and daughter of Ta Mok. He testified that, after Yeay Khom was replaced by Pech Chim, he continued in his role as messenger.¹⁶ The Witness recounted that during his time working at the district office, he saw Ta Mok regularly, and also recalled Sector Secretary Soam and later his replacement Ta Tith, visited the office.¹⁷ San Lorn testified to the existence of regular meetings held in Tram Kak District between Ta Mok, Ta Tith and Pech Chim. The Witness testified that despite working at a district level he received orders from both the district and other offices. When speaking of the orders being handed down from Ta Mok to the district Chief he testified that the messenger Touch would deliver these orders to the District Secretary.

2. Treatment of the Vietnamese and their Transportation to Tram Kak

Under questioning from Victor Koppe, the Witness claimed to have no knowledge of the treatment of ethnic Vietnamese people either before or during the DK period. He did however recall hearing accounts of Vietnamese troops entering the Southwest Zone of Cambodia. San Lorn later testified that it was KR policy to gather up Vietnamese people in 1975, and recalled seeing "a huge number" deported, however his only knowledge that these people had ended up in Vietnam came from hearsay. This confusion took up a large part of the Witness's testimony. Despite now knowing of ill treatment of the Vietnamese, he testified to being directly involved with the transportation and subsequent deportation of approximately 9,000 ethnic Vietnamese people to Nhaeng Nhang Village in Tram Kak District over the course of 4 days in 1975.¹⁸ He stated that he was ordered to drive a truck that could transport between 50-60 people at a time and made trips to collect people from various communes including Ang Ta Soam, Popel, Leay Bour, Kus, Nheang Nhang and Srae Nonorng. The Witness recalled that it was the responsibility of the respective Commune Chiefs to gather people for him to collect, and stated that these people carried with them personal effects and were not tied up or restrained. He stated the people were told they were being returned to Vietnam and did not resist. San Lorn testified that once he had brought the people to Tram Kak that the District Militia Chief was there to receive them, and that he did not know what happened to the afterwards. San Lorn testified that he was acting under orders from the district committee of which Yeay Khom was the Chief of at that time, but it was a man named Phy, from the education office who had issued these orders to him.

3. Treatment of former Lon Nol soldiers

San Lorn consistently testified that he could not recall any instances of mistreatment of officials of the former Lon Nol regime. This being said, he also denied any knowledge of direct instructions not to harm this group. The Witness was directly asked by Victor Koppe about a meeting that allegedly took place in Takeo town in which either Ta Mok or Ta Saom gave instructions about what should be done with regard to Lon Nol officials, however the Witness testified to having no knowledge of this event. Later the Witness was questioned on this by Assistant Prosecutor Dale Lysak, who presented him with documents containing other witnesses' testimony on the targeting of Lon Nol soldiers, however the Witness consistently denied any knowledge about this, stating "I was not aware of this matter. I did not know anything about that." The Witness did however recall that, while he held the position of Village Chief, Lon Nol soldiers came to seek supplies, in particular food supplies.

4. Witness Demeanor and Credibility

Monitors noted frequent contradictions in this Witness's testimony. When questioned about inconsistencies between his testimony and his OCIJ interview, the Witness explained that it took him a while to recall the events. The key inconsistency in San Lorn's testimony was the frequent repetition of contradictions surrounding his involvement in the mass deportation of the Vietnamese. Initially stating 'I was not involved in this deportation' the Witness then answered 'yes that's correct' when asked directly if he was involved. Further the Witness struggled to recall who was responsible for giving the majority of these orders, and was often confused as to whether Yeay Khom or Pech Chim was the District Chief at the time of certain events. At one point the Witness cited his "young age" at the time of the DK regime as a reason for his inconsistent answers, however based on his current age of 73, the Witness would have been approximately 30-years-old at the time.

III. LEGAL AND PROCEDURAL ISSUES

This week the recurring issue of torture-tainted evidence was again raised in the Chamber and the OCP was ultimately prevented from using a document that the Chamber saw as originating from torture. The Defense Team for Nuon Chea was also prevented from using a document this week, this time for procedural reasons, as the Defense Team had neglected to submit the document into evidence according to proper procedure.

A. Use of statements of 2-TCW-1009

On Monday the Trial Chamber issued an oral ruling on the international Co-Prosecutor's motion requesting to hear Witness 2-TCW-1010 on the treatment of the ethnic Vietnamese during the DK period and to admit two of this Witness's statements into evidence. Although the request to hear 2-TCW-1010 had already been rejected by the Chamber, it was yet to rule on admitting the statements.¹⁹ The international Co-Prosecutors notified the Chamber via email that they may wish to use the two statements during the examination of Witness 2-TCW-1009 and thus requested a ruling. In response, the President noted that no Party objected to the request to admit the statements into evidence and thus granted the request pursuant to Internal Rule 87(4), adding that written reasons would follow. International Defense Counsel for Khieu Samphan rose to say that their Defense Team was opposed to the request of both the appearance of the Witness and the use of their statements. The President however responded that despite the objection, the Chamber had already decided the two statements would be admitted into evidence.

B. Use of a Document Not Tendered into Evidence

On Tuesday afternoon, international Lead Co-Lawyer for Civil Parties, Marie Guiraud,

interjected during Victor Koppe's examination of Witness Prum Sarat to observe that he was using a document that was not yet tendered into evidence subject to Internal Rule 87(4). Mr. Koppe responded that he was not sure why this was a concern to the Civil Parties, but that it was possible his team had neglected to check that the document was indeed admitted into evidence. This led to an exchange between all Parties about the proper procedures of admitting new documents. It became clear that the document in question, a DC-Cam interview of Nal Nam, had been placed on the interface without first being approved via an Internal Rule 87(4) request. After this was pointed out to him, Mr. Koppe made an oral request to admit the document.

Prosecutor Vincent de Wilde voiced the opinion that a certain degree of respect is necessary between Parties and the Bench in order to uphold the principles of adversarial hearings, adding "we endeavor each time to check that all documents we want to use are documents we have submitted before the chamber and have been ruled upon." Marie Guiraud agreed with the Prosecution, saying that it was a question of courtesy, "otherwise what is the point of an adversarial debate?" Defense Counsel for Khieu Samphan, Anta Guissé noted that she had no objections to the use of this document as it was in the context of a "cross-examination based on exculpatory evidence," and also repeated a common position of hers that the Defense Teams do not have the adequate resources to prepare for their arguments. After a brief deliberation, the Trial Chamber rejected the request by the Nuon Chea to use the document on the grounds that correct procedures must be followed. Victor Koppe questioned the validity of the ruling, however Judge Fenz firmly responded that a request to have these documents admitted at such short notice and without an explanation of the grounds was unreasonable.

C. Use of Torture-Tainted Evidence

On Wednesday morning, international Senior Assistant Prosecutor Vincent de Wilde d'Estmael attempted to use a quotation from a Radio Phnom Penh broadcast of the "confession" of Vu Tih Ngo, a navy commander arrested on 3 January 1978. Anta Guissé was quick to object to the use of this document on the grounds that it constituted torture-tainted evidence, referring in her objection to the recent Supreme Court Chamber (**SCC**) Decision on exactly this matter.²⁰ The Senior Assistant Prosecutor argued that he did not intend to use the content of the broadcast, rather he only sought to use the broadcast to prove that such broadcasts existed and were used by the KR as anti-Vietnamese propaganda. The use of evidence obtained by torture has been a recurring legal issue in both segments of Case 002. After hearing the objection, the Prosecutor attempted to use part of the broadcast that preceded the taped "confessions," however the document was dismissed in its entirety by the President.

Since the events of this week, the Trial Chamber has now published a Decision on Evidence Obtained Through Torture, intending to complement the recent SCC decision.²¹ The Trial Chamber noted that the SCC decision was limited to an assessment of the specific evidence that had been put forward for use in the July 2015 Appeal Hearings, and so did not provide a general standard for the use of torture-tainted evidence. Both the OCP and Nuon Chea Defense have at times sought to use evidence obtained through the use of torture, and thus the Trial Chamber wished to resolve the issue once and for all. The OCP has argued that a decision on the use of torture-tainted evidence should be postponed until after the judgment in Case 002/01, however the Bench disagreed with this idea.²² In its decision, the Trial Chamber summarized the submissions from the OCP, LCLCPs and the Defense Teams, all of whom have different positions on the use of evidence obtained through torture. All Parties agree that Article 38 of the Cambodian Constitution, Article 321 of the Cambodian Code of Criminal Procedure, and the Convention Against Torture (**CAT**) prohibit the use of documents obtained through torture to speak to the facts contained therein. Article 15 of the CAT is known as the 'exclusionary rule' and states that:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in

any proceedings, except against a person accused of torture as evidence that the statement was made.

All Parties argue that using biographical information found in statements produced in security centers falls within Article 15 of the CAT and may therefore be permitted to establish certain facts. Nuon Chea argues that the exclusionary rule only applies to the use of torture-tainted evidence by State authorities against individuals, and submits that exculpatory evidence should be admitted.

The Bench found that the plain language of Article 15 suggested the provision was to be interpreted narrowly, and that the ultimate aim of the CAT, namely to remove the incentive for a State to use torture, should be recalled. The Chamber found that “reading directly from a torture-tainted statement in court, regardless of the intent of doing so, leads to the impression that it is being used to establish the truth of the statement,” and thus goes against the spirit of the CAT. The Trial Chamber also found that evidence obtained through torture was inherently unreliable as to the truth of its contents, however could be used in court to establish proof of a policy of torture and speak of the motives of CPK leaders. The Decision ultimately found that the exclusionary rule contained in Article 15 of the CAT is binding on all Parties, but the exclusion does not extend to evidence obtained through means other than torture, that is cruel, inhuman or degrading conduct, nor does it extend to evidence *derived* from torture. Judge Fenz issued a dissenting opinion that “the exception to the exclusionary rule of Article 15 of the CAT permits the use of torture-tainted evidence against a person accused of torture for purposes other than providing the truth of the matter” and will publish reasons later.

IV. TRIAL MANAGEMENT

The Trial Chamber heard one Civil Party and two Witnesses over the courses of four days this week with one scheduled witness, Man Yoeun, absent due to health issues. The two witnesses were requested by Nuon Chea’s Defense Team. Court began late on Tuesday morning due to Khieu Samphan’s high blood pressure.

A. Attendance

Nuon Chea continued to waive his right to be present in the courtroom and observed proceedings from the holding cell all week, while Khieu Samphan was present in the courtroom during all sessions, after proceedings were delayed for one session on Tuesday morning so that his blood pressure could return to normal.

Judge Attendance: National Judge You Ottara was absent on 25 and 26 January 2016 for personal reasons, and national reserve Judge Thou Mony replaced him on those days. All other judges were present in the courtroom as usual this week.

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

Parties: All Parties were present in the courtroom throughout the week, with the exception of Khieu Samphan’s national Defense Counsel, Kong Sam Onn, who was absent on 25 January 2016 for personal reasons.

DATE	MORNING	AFTERNOON
Monday 25/01/2016	<ul style="list-style-type: none">▪ Approximately 200 students from Bak Tuk High School, Phnom Penh▪ 40 foreign observers	<ul style="list-style-type: none">▪ Seven public observers

Tuesday 26/01/2016	<ul style="list-style-type: none"> ▪ Approximately 200 students from Bak Tuk High School, Phnom Penh ▪ Ten foreign observers 	<ul style="list-style-type: none"> ▪ Three foreign observers
Wednesday 27/01/2016	<ul style="list-style-type: none"> ▪ Approximately 175 villagers from Kampong Trolach District, Kampong Chhnang Province ▪ One foreign observer 	<ul style="list-style-type: none"> ▪ No public attendance
Thursday 28/01/2016	<ul style="list-style-type: none"> ▪ 88 villagers and 48 Cham people from Kampot Province ▪ Nine Buddhist monks ▪ 15 foreign observers from Star Kampuchea, Phnom Penh 	<ul style="list-style-type: none"> ▪ No public attendance

B. Time Management

Despite some complications, the Trial Chamber managed to successfully conclude the testimonies of one Civil Party and two witnesses over the course of four days this week. Adjustments had to be made to scheduling both due to health reasons and to maintain equal participation among Parties. Firstly, the health of Khieu Samphan, delayed proceedings in the morning of 26 January. The Chamber did not begin sitting until the second session, when the Court Duty Doctor could confirm that the Accused's blood pressure had returned to normal. Health issues also meant that, on Thursday, Witness En Yoeun was not able to continue the testimony that she had begun the day before. Despite this, the Chamber was able to arrange for the reserve witness San Lorn to replace her at short notice.

In addition to health related delays, this week the Trial Chamber also had to manage adjustments to the time allotted for witness examination, which led to some confusion among Parties. During examination of Prum Sarat, Defense Counsel for Nuon Chea requested one additional session to question the Witness. The Trial Chamber allowed this extension on the condition that the same additional time be granted to the OCP. This being the case, during the OCP examination, Vincent de Wilde d'Estmael was interrupted by the President and told he had gone beyond his allotted time. The Prosecutor argued that "we heard your instructions to end at 10:30, I am in the middle of my examination" – the President gave the floor to Judge Lavergne, denying the Civil Party lawyers the time they had expected to be given. Later that afternoon, Mr de Wilde d'Estmael interrupted Defense Counsel for Khieu Samphan to inform her that her time had expired, 'out of concern for equity,' but the Defense Counsel stated that she had carefully calculated her time and had 5 minutes remaining. Scheduled time was also extended on Thursday when the Nuon Chea Defense requested more time to question San Lorn. The President granted a limited amount of extra time to both sides, noting that it would not be a "good image" for the Chamber to request the witness to return for only a few questions the following week.

C. Courtroom Etiquette

Despite several lengthy debates between the Parties on a range of legal and procedural issues, the Parties appeared to generally conduct themselves in a respectful manner this week.²³

D. Translation and Technical Issues

There were a few minor technical issues but none that significantly disrupted proceedings this week. In terms of translation issues, aside from minor errors there were two significant matters of interpretation that were dealt with. Firstly on Wednesday morning the translation unit was

reminded by the President to pay attention to whether the Witness used the term “*youn*” or “Vietnamese” and to remain faithful to this in their translation. This was intended to clarify whether the Witness was using the more derogatory term “*yuon*” or the general adjective of “Vietnamese;” an important distinction, particularly during this segment. Despite the reminder, monitors noticed that throughout the day the two words were still used interchangeably by the translators. The second major issue of interpretation that caused confusion this week was the translation of ‘I’ and ‘we.’ In a document used by the OCP on Wednesday it was discovered the word ‘we’ was used in English, but ‘I’ was used in Khmer. Matters were further confused when the Witness said himself that he had been using the two terms interchangeably in his testimony, and that it did not always refer to a specific group of people.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 25/01/2016	9:03	10:08-10:31	11:31-13:31	14:34-15:04	16:05	4 hours 9 minutes
Tuesday 26/01/2016	9:21	9:22-10:30	11:32-13:31	14:42-15:02	16:02	3 hours 14 minutes
Wednesday 27/01/2016	9:02	10:12-10:30	11:34-13:32	14:38-15:01	16:04	4 hours 23 minutes
Thursday 28/01/2016	9:07	10:15-10:33	11:33-13:32	14:34-14:51	15:58	4 hours 17 minutes
Average number of hours in session				4 hours and 0 minutes		
Total number of hours this week				16 hours and 3 minutes		
Total number of hours, day, weeks at trial				515 hours and 34 minutes		
TRIAL DAYS OVER 38 WEEKS						

*This report was authored by Alexander Benz, Borakmony Chea, Melanie Hyde, Caitlin McCaffrie, Elizabeth Orr, Thi Son, Lina Tay and Penelope Van Tuyl 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”</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (CaseNo.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
DSS	Defense Support Section
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
OCPP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Civil Party DOUNG Oeun (2-TCCP-869) was questioned in the following order: president NIL Nonn; national lead co-lawyer for civil parties, PICH Ang; international assistant prosecutor Andrew BOYLE; national deputy co-prosecutor SONG Chorvoin; international defense counsel for Nuon Chea, Victor KOPPE; international defense counsel for Khieu Samphan, Anta GUISSÉ.

² Civil Party LACH Kry testified on 20-21 January 2015 about the disappearance of his ethnic Vietnamese sister-in-law, Som San. A summary of his testimony can be found in: CASE 002/02 KRT TRIAL MONITOR, Issue 40, Hearings on Evidence week 37 (20-21 January 2016) pp. 1-3. Witness THENG Phal testified on 5 and 6 January 2015 about the fate of the three couples in Pochen Dam who had ethnic Vietnamese members, and a summary of his testimony can be found in CASE 002/02 KRT TRIAL MONITOR, Issue 38, Hearings on Evidence week 35 (5-8 January 2016) pp. 3-4.

³ The Defense for Nuon Chea tried to ascertain which side CHUY had fought for by asking the Civil Party if he had seemed happy when Phnom Penh fell in 1975 however she said he had had no notable reaction either way.

⁴ DOUNG Oeun could not remember the name of LACH Ni's wife when questioned. Previous witnesses have testified that LACH Ni's wife was named Son San, however when questioned DOUNG Oeun did not recognise this name. These witnesses also testified that LACH Ni and his wife had five children together, not six, although this witness was uncertain.

⁵ Witness PRUM Sarat (2-TCW-1009) was questioned in the following order: President NIL Nonn; international defense counsel for Nuon Chea, Victor KOPPE; international senior assistant prosecutor Vincent DE WILDE D'ESTMAEL; Judge Jean-Marc LAVERGNE; international defense counsel for Khieu Samphan, Anta GUISSÉ.

⁶ MEAS Muth was charged as part of Case 003 on 14 December 2015 with the crimes of Genocide, Crimes against Humanity, Grave Breaches of the Geneva Conventions of 1959 and Violations of the 1956 Cambodian Penal Code.

⁷ PRUM Sarat confirmed that Division 3 consisted of three regiments, and each regiment consisted of three battalions, with three companies per battalion and three platoons per company.

⁸ PRUM Sarat stated that within Regiment 140 there were three other battalions: 41, 42 and 43.

⁹ Koh Tral is the Khmer name for the island known as Phu Quoc in Vietnamese.

¹⁰ S-21, or Tuol Sleng, was a Security Center in Phnom Penh under the command of Kaing Guek Eav, alias Duch, who was charged in Case 001 and found guilty of crimes against humanity and grave breaches of the Geneva Conventions of 1949 on 3 February 2012.

¹¹ NORODOM Chantaraignsy was a member of the Cambodian Royal Family who fought in the Khmer Republic army against the Khmer Rouge forces. It is believed that he was killed by Khmer Rouge forces some time after the fall of Phnom Penh on 17 April 1975 but the details are disputed.

¹² The Witness was not questioned on how he knew these deaths were to set an example and did not elaborate.

¹³ Witness EN Yoeun (2-TCW-849) was questioned in the following order: President NIL Nonn; deputy co-prosecutor SREA Rattanak.

¹⁴ Witness SAN Lorn (2-TCW-1007) was questioned in the following order: President NIL Nonn; international defense counsel for Nuon Chea, Victor KOPPE; international assistant prosecutor Dale LYSAK; Judge Jean-Marc LAVERGE; national deputy prosecutor SENG Leang; international defense counsel for Khieu Samphan, Anta GUISSÉ; international defense counsel for Nuon Chea, Victor KOPPE.

¹⁵ TA Mok is the alias of CHHIT Choeun, the man who was Secretary of the Southwest Zone throughout Democratic Kampuchea. YEAY Khom was his daughter. TA Mok was arrested in 1999 and died in custody in 2006, awaiting trial at the ECCC.

¹⁶ PECH Chim has previously testified in both Case 002/01 and Case 002/01 to being Tram Kak District Secretary, see CASE 002/01 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence week 13 (21-24 April 2015) pp. 3-6, and CASE 002/01 KRT TRIAL MONITOR, Issue 66, Hearings on Evidence week 61 (1-4 July 2013) pp. 1-3.

¹⁷ YIM Tith was formally charged on 9 December 2015 with genocide of the Khmer Krom, crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the 1956 Cambodian Penal Code. YIM Tith was married to TA Mok's sister.

¹⁸ The first time the Witness spoke of this transportation he said he was alone in the truck, and later said he was accompanied by someone else. He was also unable to confirm how he knew the figure was 9,000 people, and questions were raised about whether it would be possible to transport that number of people over 4 days using a truck that can carry 50-60 people at one time.

¹⁹ The decision not to hear Witness 2-TCW-1010 was published in Trial Chamber, "Decision on motions to hear additional witnesses on the topic of the treatment of the Vietnamese, with reasons to follow (E380, E381, E382)" (12 January 2016) E380/1.

²⁰ Last month the SCC released a ruling on its reasons for rejecting document lists in the Case 002/01 Appeal Hearings, including an extended analysis of the value of documents obtained via torture. The SCC found that applicable law from both the Constitution of the Kingdom of Cambodia and Cambodian Code of Criminal Procedure contain provisions prohibiting the use of evidence obtained through compulsion, and the ECCC's Internal Rules supports these laws by stating that all evidence may be admitted except where it is "not allowed by law." Furthermore, it noted that Internal Rule 21(3) prohibits the use of any statements or interviews conducted in investigations that included "inducement, physical coercion or threats thereof." For the full decision see: Supreme Court Chamber "Decision on Objections to Document Lists Full Reasons" (31 December 2015) F26/12, pp. 11-37.

²¹ Trial Chamber "Decision on Evidence Obtained Through Torture" (5 February 2016) E350/8.

²² Trial Chamber "Co-Prosecutors' Submission Regarding the Application of the Torture Convention to S-21 Confessions and Other Records Relating to Interrogations of Prisoners" (21 May 2015) E350/1, para. 22.

²³ For example, during the examination of PRUM Sarat by Vincent de Wilde on Wednesday when National Defense Counsel for Khieu Samphan, KONG Sam Onn interrupted Mr DE WILDE D'ESTMAEL's examination on the distinction between the pronouns 'we and I.' Mr. DE WILDE D'ESTMAEL responded that he was "right in the middle of a question" and objected to the "interruption which has nothing to do with my line of questioning."