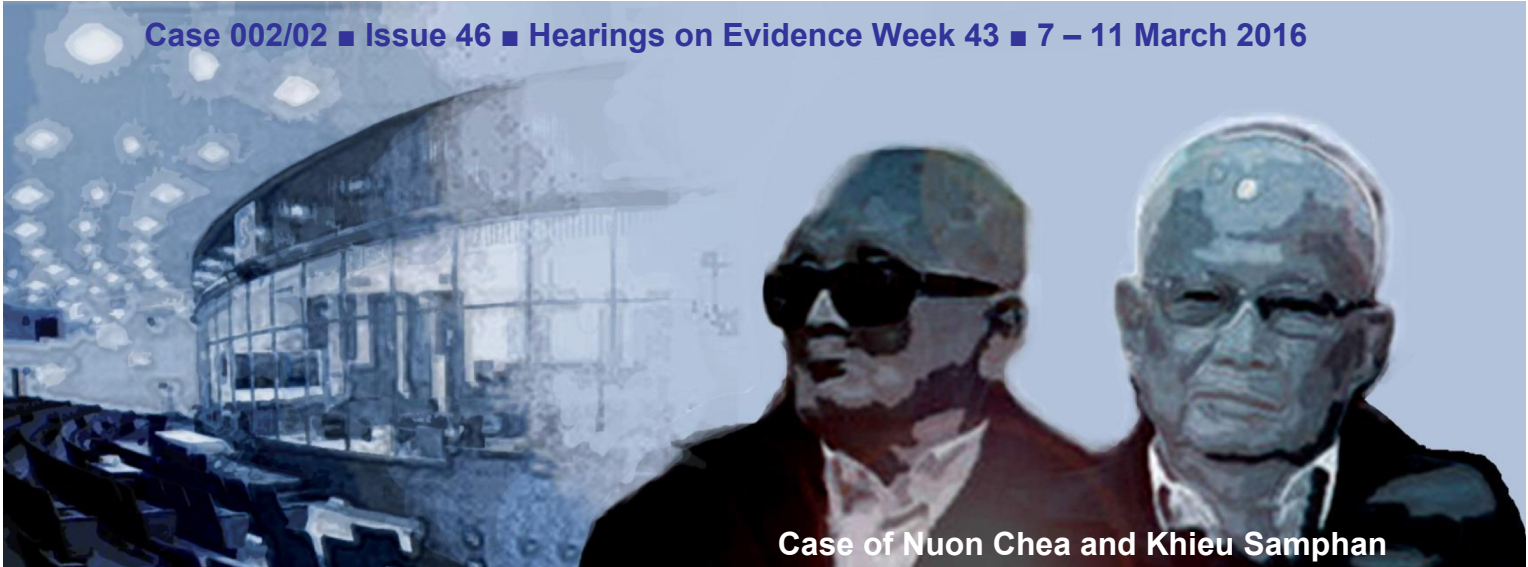


KRT TRIAL MONITOR

Case 002/02 ■ Issue 46 ■ Hearings on Evidence Week 43 ■ 7 – 11 March 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)

*“Of course it was beyond difficult but what could we do?
If we were to speak Cham we were taken away and killed.
So we tried to force ourselves to speak Khmer
language for communication.”*

- Witness Van Mat

I. OVERVIEW

This week the Trial Chamber heard from the final two witnesses in the segment on the treatment of the Cham and continued with a new segment on security centers and internal purges that began last week. On Monday Witness Ms. Moeung Chandy, who testified last week, answered questions from the Defense on her detention at Au Kanseng Security Center. After a one-day adjournment for International Women’s Day, on Wednesday the Chamber heard the testimony of Van Mat on the treatment of the Cham. Van Mat is an ethnic Cham man who currently works as a bodyguard for Prime Minister Hun Sen and provided testimony about the armed resistance that took place in 1978. Witnesses who appeared on Thursday and Friday, namely Chan Tauy and Net Savath, testified on the Phnom Kraol Security Center in Koh Nhek District, Monduliri Province. Chan Tauy said he was detained there for one month in 1977 and described the poor conditions he experienced. He also testified about his knowledge of purges in the East Zone. Net Savath testified that he was detained at Phnom Kraol at the same time as Chan Tauy and corroborated much of the testimony Mr. Chan had given the previous day. He also spoke about purges of Northeast Zone cadres, particularly Ney Saran who was married to the Witness’s sister. The issue of torture tainted evidence was again raised this week, as well as submissions to admit new documents ahead of the appearance of a new Expert on the treatment of the ethnic Cham, 2-TCE-88, who will appear on 14 March 2016 and whose name was inadvertently revealed during proceedings this week.

II. SUMMARY OF WITNESS TESTIMONY

This week the Trial Chamber heard from four witnesses; three on the new segment on security centers and internal purges and one on the treatment of the Cham. First Moeung Chandy finished her testimony on Au Kanseng Security Center on Monday, then Van Mat appeared to testify on the treatment of the Cham. The last two witnesses of the week; Chan Tauy and Net

Savath, testified on the Phnom Kraol Security Center in Monduliri Province, where they were detained together in 1977.

A. Summary of Testimony by Witness Moeung Chandy

Ms. Moeung Chandy was the first witness to appear before the Chamber this week to conclude her testimony on Au Kanseng Security Center.¹ The Witness testified last week immediately after her ex-husband Mr. Phan Thol who had been detained with her at Au Kanseng in 1977 and 1978.²

1. Detention and Fellow Detainees

Moeung Chandy repeated that after she arrived at Au Kanseng Security Center she was immediately detained. She said she was pregnant when she arrived at the Security Center, and gave birth after a few months. She also said that it took some months after the birth of her child for her to be “trusted” by cadres to work in the kitchen or outside the compound picking vegetables. In addition to these tasks she said that sometimes, particularly shortly after she gave birth, she was made to carry heavy logs to be used in construction. Other women were given tasks like cutting wood or “picking grass.” She said while picking vegetables outside the center she never saw any other villagers or any jackfruit plantation.³ She recalled hearing Ta Auy talking to other security guards while he ate at the kitchen hall; saying he consumed human gallbladders, however she said she did not see or hear of anyone hanging gall bladders in the kitchen hall, as her ex-husband Phan Thol had previously testified.

The Witness clarified her previous statements about the use of torture at the facility. She said that one of the other women detained with her had believed their husband had been tortured and electrocuted during his interrogation based on the way he looked after he left the interrogation room. She said that “[N]ormally people who were healthy could walk very steadily but we could assume that some people may have been tortured, beaten because we noticed that they could not walk very steadily.”⁴ She said women were interrogated first and their husbands later, and reiterated what Phan Thol had already told the Chamber; that men were treated more harshly than women

2. Jarai People and the B-52 Crater

She said the Jarai who arrived at Au Kanseng were tied together with a long string, and remained tied together until they were “trusted”. She later qualified this statement, adding that she worked during the day so was not sure if were tied all day. Moeung Chandy was confident that this group were Jarai, despite not speaking to them directly, because she could recognize their language after having lived in Ratanakiri for some time. She said the Jarai were not detained for long in her building before they disappeared, and that when they had been in her building, they slept on the other side of the room to her. She said that besides the Jarai women, no Khmer women ever disappeared from the Security Center. The Witness described the distinctive clothing that the group wore; of different colors and types to that worn by Khmer people. She recalled they had one set of clothes per person but did not have backpacks, contrary to her ex-husband’s assertion last week.⁵

Moeung Chandy was questioned in detail by Defense Counsel for Khieu Samphan about the exact location and size of the B-52 crater she had spoken about previously, where she claimed to have seen and smelled decomposing bodies. She said that while she was assigned to pick sweet potato she first noticed the crater, saying it was deep and uncovered.⁶ When she noticed it the second time it was filled in with dirt, making a hill. She said her work was not particularly close to the pit but she could see it from the location at which she picked vegetables. She said the pit was near a forest of large trees, but could not specify whether this was a plantation or a natural copse.

3. Witness Demeanor and Credibility

Similar to last week, the Witness's brief testimony this week was consistent with that provided by her husband Phan Thol and with her previous statements. She appeared to be frank and open during questioning, an observation that was demonstrated by her acknowledgement of her own limitation in estimating distances during questioning by Defense Counsel Kong Sam Onn. At one stage, she apologized that she could not provide more specific estimates, saying "I find it difficult to estimate the distance, as I said. I'm not sure how accurate my estimate is... My concern at the time was that if I wake up in the morning I would be alive."

B. Summary of Testimony of Witness Van Mat

Mr. Van Mat, born Saleh Asmat and sometimes known as Mat Touch, was the second witness to testify this week.⁷ He is an ethnic Cham man who is currently employed as a bodyguard for Cambodian Prime Minister Hun Sen. His testimony covered his experience of mistreatment and discrimination as a member of the Cham population in Kampong Cham, where he escaped a mass killing and launched an armed resistance against KR soldiers.

1. Witness's Background and Positions held during DK

Before the DK period, Witness Van Mat lived in Chumnik Village, Chumnik Commune, Krouch Chhmar District, Kampong Cham Province, a village situated close to the Mekong River, about about 10 kilometers from Koh Phal and 20 kilometers from Svay Khleang.⁸ The Witness said that after the Cham rebellions in Koh Phal and Svay Khleang in late 1975, about half of the Cham population of Chumnik was sent to Kampong Thom, however he was not. Instead he was sent to work on the Kanda Dam at Boeung Krachab, 100 kilometers from his home village. He said that after working there for three months he returned to Chumnik Village to work in a mobile brigade in which Cham and Khmer people worked together, although the unit chief was ethnically Khmer.

2. Treatment of Cham in Chumnik Village

Mr. Van Mat testified about the treatment of Cham in Chumnik village during the DK period, stating that conditions began to deteriorate from 1976 onward. The Witness testified that there were more than 10,000 ethnic Cham people in his village prior to DK, and said they mingled happily with an equivalent number of Khmer people. He testified that after the KR came to control the region, all Muslim religious leaders such as *Hajji*, *Tuon* and *Hakim* were captured and killed, and religious education was prohibited.⁹ He recalled that immediately after the fall of Phnom Penh on 17 April 1975, the Cham population in Chumnik was prohibited from practicing their religion and speaking the Cham language and were forced to eat pork. Women were made to cut their hair short and remove traditional headscarves. Copies of the Muslim holy were collected and burned, while Mosques were converted into stables and used to keep cows. The Witness testified that Cham people were arrested in Chumnik even before the rebellions in Koh Phal and Svay Khleang in late 1975. He said that Cham people were often accused of having connections to the CIA, particularly intellectuals and religious leaders, and were then arrested and sent to a security center located in Ksach Praches in Krouch Chhmar District. He said that the order to arrest these people came from upper *Angkar* to security. While Van Mat could not say with certainty what had happened to the people who were arrested, he did say that he never saw them return to Chumnik.

3. Meeting in the Central Zone

Van Mat testified about purges of East Zone cadres carried out by the Central Zone. He recalled forces from the Central Zone arriving in his village to locate particular East Zone cadres

who were accused of betraying *Angkar*, and particularly of having “Khmer bodies with Vietnamese minds.” The Witness said he was aware of this policy because he had overheard a meeting of commune and district chiefs hosted by Ke Pauk, Central Zone Chief, in 1978.¹⁰ Although he was only a messenger and thus not invited to the meeting, the Witness testified that he had been asked by the Chumnik Commune Secretary to drive Commune Chief Hun to where the meeting would take place in Kampong Thmar, because Hun could not drive a motorbike. While waiting outside the meeting hall, the Witness was able to hear Ke Pauk’s voice on a loudspeaker, recalling:

I heard from the loudspeaker that the new chiefs assigned to the East Zone needed to implement the policy of *Angkar* regarding the smashing of the Cham and some of them answered that they had implemented 50% of the policy, some said they had implemented 80% of the policy. Because *Angkar* gave the instruction to smash 100% of the Cham and the targeted group that needed to be smashed needed to be the ones who betrayed the *Angkar* regardless of their ethnicity whether Cham or Khmer. So the people who were accused of betraying *Angkar* were collected and smashed.¹¹

After returning from the meeting, the Witness was warned by his Commune Chief not to spread the information he had heard to anyone else. However, Van Mat testified that he told his friend in the mobile brigade and some other people in his village about the “abnormal situation” that Cham groups were facing advised them to flee into the forest for their own safety.

4. Evacuation of Chumnik and Subsequent Armed Resistance

Van Mat testified that it was shortly after this meeting that the KR gathered about 400 to 500 Cham people including women and children and walked them one kilometer from Chumnik to Svay Damnak Village, located on the riverbank. He said that there were orders from *Angkar* to evacuate the Cham of Chumnik Village, and thus people were told to get on four to five motorboats at Svay Damnak. Van Mat estimated that about 30% of the Cham population would have remained in Chumnik after this evacuation. He said there were two or three rounds of such evacuation before he was told to evacuate himself. He said that when the boats reached Steung Treng at night, KR cadres holding AK-17 rifles tied the evacuees by hand with ropes.

When asked whether anyone had refused to be evacuated, Van Mat said those who had were beheaded and thrown in the river. However when it came time for he himself to be tied and walked ashore, he and some friends jumped into the river and escaped. KR cadres shot at the group but he managed to survive by hanging onto floating corpses in the river until he could reach the bank. He said not everyone survived the escape attempt, particularly those whose hands had already been tied. Van Mat testified that after escaping in the night, he went back to his village at Chumnik and convinced people from his mobile unit to escape with him to the forest in order to avoid of being killed. He testified that while in the forest he convinced the group that it was necessary to rebel against the KR in order to stop further killing of Cham people. He recalled that at first they had no weapons, but later they managed to collect nine weapons and they began attacks against KR soldiers. He testified that his group shot at and managed to sink some boats containing villagers they believed were being taken to their deaths by the KR. Van Mat stated that this armed resistance group ended operations when Vietnamese troops arrived and liberated the area from the KR.

5. Position as a Bodyguard of Hun Sen and Knowledge of High-ranking Politicians

The Witness testified that he became a bodyguard for the Cambodian Prime Minister after 1979, and did not meet him prior to the arrival of the Vietnamese on 7 January of that year, although he recalled hearing that Pol Pot had accused Hun Sen of betraying *Angkar*. When

asked about his qualifications for being a bodyguard, the Witness said “I have done good deeds and I am willing to give protection and security to him.” International Defense Counsel for Nuon Chea, Victor Koppe, spent a large amount of time questioning the Witness about his knowledge of former KR cadres and current high-ranking politicians connected to his current employer, Prime Minister Hun Sen. In particular Counsel Koppe asked Van Mat about whether he knew the individuals Kun Kim, Heng Samrin, Chea Sim, Sao Phim, Ouk Bunchhoeun and Mat Ly. Van Mat said he had heard of Kun Kim, Heng Samrin and Mat Ly, however did not know what their roles had been during the DK regime. He also denied any knowledge of his employer’s actions during the regime and claimed not to know current Cambodian People’s Party senator Ouk Bunchhoeun. During Case 002/01 and 002/02 Mr. Koppe has made a number of requests to call Prime Minister Hun Sen, Ouk Bunchhoeun, Chea Sim and Heng Samrin, all of which have been denied.¹²

6. Witness Demeanor and Credibility

Throughout his testimony, Van Mat appeared to have no problems following proceedings and providing clear answers. He was inconsistent about whether the Cham or only East Zone cadres were identified as targets in the meeting he overheard in Kampong Thmar, although this could be because of his advancing age and/or the amount of time that has passed between the events in question. Some of his responses to Counsel Koppe’s questioning his knowledge of high profile former KR cadres now serving in the government seemed implausible considering his current employment.

C. Summary of Testimony of Witness Chan Tauy

56-year-old Witness Chan Tauy, from Peam Chi Meat Village, Peam Chi Meat Commune, Koh Nhek District, Monduliri Province, began and concluded his evidence on Thursday.¹³ Chan Tauy testified in relation to the Phnom Kraol Security Center. He spoke of purges of Sector 105 Cadres and his time working as a messenger. He also spoke of his arrest and his time in detention in Phnom Kraol.

1. Witness’s Background and Role as a Messenger

The Witness testified that he was a teenager studying and living in Koh Nhek District with his parents when the war began. He said that after 17 April 1975 he worked as a messenger for Sanra, the Deputy Chief of Koh Nhek District in Monduliri Province, at the time known as Sector 105. Chan Tauy went on to say that he could not remember how long he served in that position, but described his duties as including washing clothes, cooking and delivering messages and letters to the Sector Office in Phnom Kraol, or Kraol Mountain. The Witness explained that this role was non-combative, and that although he was armed, at no time did he engage in armed conflict.

2. Purge of Sector 105 Cadres and Witness’s Arrest

Chan Tauy also explained that Ta Ham was the Sector Chief, and that Kham Phoun was the Peoples Representative in Sector 105. He stated that he had heard a rumor from the messengers of Kham Phoun and Ta Ham that in about October 1977, Ta Ham and Kham Phoun had gone to Phnom Penh, exchanged gunfire, and killed each other. He described the sector as falling into chaos after their deaths. Asked to elaborate on the chaos that ensued after their deaths, he explained that those in the network of Ta Ham arrested anyone with links to Kham Phoun. He said that Ta Ham’s network was led by Ham’s relative Ta Sarun. The Witness stated that he himself was arrested because he worked as the messenger for Sanra, who was a nephew of Kham Phoun. He also said that his wife was a distant relative of Kham Phoun. He gave evidence that after he was arrested he was detained on the first floor of a two story building that he identified as the sector office. He said he was detained for one month, and

then assigned to a worksite.

3. Conditions of Detention at Phnom Kraol

Chan Tauy testified that the men and women detained in the sector office were tied up, men separate from women, but said children were kept untied. The Witness estimated that there were more than 80 detainees on the first floor where he was detained. He described the conditions as “bad,” saying there was no hygiene to speak of and insufficient food. He described being fed once a day, either in the morning or afternoon, and that they had only a small bowl of rice and pumpkin soup. He said that he was not allowed to bathe for the month he was detained, and that they were provided water to drink once a day, from a bucket.

Chan Tauy testified that he did not observe any detainees suffering from diarrhea or dysentery, but did say he saw people suffering from skin diseases, and added that no one received medicine. He described sleeping on the ground with no mats and said there being lice in the building. Chan Tauy said that although conditions were poor, he did not observe any deaths during his detention and that although he was called a traitor, he was not interrogated during his time of detention.

4. Treatment of Vietnamese and Lon Nol soldiers

When asked, the Witness gave evidence that he did not see any Vietnamese people in his district between 1975 to 1978, stating that there was “a very strict policy” that all Vietnamese were singled out, taken away and killed. He also said that there was a similar policy in place targeting former Lon Nol soldiers and officials accused of being spies, regardless of their ethnicity. He claimed that his father-in-law had been “arrested and taken away to be killed” because he was accused of being a former Lon Nol soldier, although the Witness had not witnessed any execution and so could not say with certainty that his father in law had been killed for his association with the prior regime.

5. Witness Demeanor and Credibility

During his testimony, Chan Tauy appeared to follow proceedings well, occasionally asking for a question to be repeated when he had trouble hearing. When minor inconsistencies between his testimony and previous statements arose, he responded that he occasionally had trouble with his memory. The most notable of his inconsistencies was his in-court denial that he had been interrogated at Au Kanseng, despite a previous statement made to the OCIJ in 2008 to the contrary. When asked about the reason for the inconsistency, the Witness stated that he did not know that his interview was being recorded at the time. At the end of the day during questioning from the Defense teams, Mr. Chan Tauy seemed to become tired and irritable at what he perceived to be repetitive questions, and claimed to forget some information, adding that “I myself am not much interested in the trial.”

D. Summary of Testimony of Witness Net Savath

On 11 March 2016 the Trial Chamber heard the testimony of 74 year old Witness Net Savath who was originally named Net Tha.¹⁴ He was born in Bak Village, Nam Dao Commune, Kheng Kok District, Savannakhet Province, Laos and moved to Mondulkiri Province when he was 11 years old. where he also lived during the Khmer Rouge Regime. He gave evidence before the Trial Chamber on the Phnom Kraol Security Center.

1. Witness’s Background and Ethnic Minorities in Mondulkiri prior to DK

Witness Net Savath testified that there were more than 10,000 people living in Mondulkiri Province prior to the DK regime, and that he as a Laotian lived there among other ethnic

minorities without any problems. He listed minorities in Mondulkiri as including mainly Tumpoun, Jarai and Laotian, saying that they probably constituted about six to seven percent of the total population. Although Khmer was the main language spoken, he said that Pnong was the second most popularly spoken language, followed by Laotian and Jarai. He testified that the KR took control of Mondulkiri Province in 1970.

2. Position as Messenger and Joining the CPK

The Witness testified to joining the revolutionary movement in 1967 or 1968, persuaded by Kham Phoun and Ta Ham in Peam Chi Meat Village. He said he became a member of the Communist Party of Kampuchea (**CPK**) in 1970, inducted by the same two men. Prior to becoming a CPK member, Net Savath served as a messenger and escorted KR leaders from Toeng Pong Mountain to Koh Khleang River. He said that he used to escort Khuon, alias Touch, who later became Secretary of the North Zone, and also Khieu Ponnary, Pol Pot's wife; Tiev Ol and Noun Chea from Tonle to Kampong. He said that he accompanied Nuon Chea when he went to the north along with 20 other soldiers, however he described this as "not a large trip." By 1970 Net Savath was no longer a messenger, as after he became a member of the CPK he was assigned to be a member of the economic section.

3. Position in the Economics Office

The Witness testified that he worked in the economics office, also known as Office 21 or K-21, from 1970 to 1976. As a member of economic section, the Witness stated that he was assigned to purchase unhusked rice, corn and look after cattle. He continued that Ta Kham Phoun was the Chairman of the office at that time, and he was also the Sector Committee Chief, with overall responsibility for the economy of the Sector. The Witness said that at the economics office he worked with two other individuals; Ta Son Thorn and Ta Chun. He said that while they all worked within the Ministry of Economics, they were not part of the Sector Committee. He said that in 1976 he was assigned to work in the economics unit of the sector hospital, located in the same part of Koh Nhek District as Office 21. He said that the hospital, also known as K-17, was supervised by Ta Ham and was located about one kilometer from Phnom Kraol.

4. Witness's Arrest

Witness Net Savath said that in 1977 he was arrested with his wife, children, nieces, nephews, and other relatives. He could not recall the month of their arrest, but said it was after Kham Phoun and Ta Ham went to Phnom Penh and "killed each other." Just as with the previous witness Chan Tauly, he did not have first-hand knowledge of this event but had heard about it from others. Regardless, he said his family was arrested and detained for one month at Phnom Kraol (K-17) sometime in 1977. He stated that his family was told they were being arrested because of their links to Kham Phoun and Son Thorn, who both were accused of betraying the regime and allegedly had links to the Vietnamese.¹⁵ The Witness did not know of any betrayal that could have warranted their arrest, although he did ask "[H]ow could we have relations with the Vietnamese at that time since we did not see them at the location?" He and his family were detained for one month at Phnom Kraol Detention Center and were later released and assigned to worksites where they stayed for about two years before the Vietnamese arrived.

5. Witness's Detention at Phnom Kraol (K-17)

The Witness testified that he was detained in Phnom Kraol Detention Center with approximately 60-80 other people, including men, women and children. He said most of the detainees belonged to ethnic minorities. In K-17 detainees were tied up and kept in the corner of the building. He himself was brought there along with his superior from the hospital economics unit, named Bolay who was detained for two weeks then taken away.¹⁶ Net Savath was able to

describe the building at Phnom Kraol in detail because he had previously been taken there as part of his work for Ta Ham prior to his arrest. He described the building he was detained in as a two-story building with a concrete or tiled floor, wooden walls, and a roof made of corrugated iron. He testified that prisoners were mostly detained on the ground floor although some were kept on the first floor. According to him, all detainees had their hands tied behind the backs and their ankles were also tied. As well as being tied they were tied together in rows. He said he remained tied up for the entire month, although he was not shackled. He was unable to provide much detail about who was detained upstairs in his building, however said that on his prior visit with Ta Ham he had seen Ta San, the Division Chief detained there and shackled by one ankle. He said he knew that people were detained upstairs while he was below because he could hear sounds of them moving, however he never saw them during the month he was detained there.

6. Arrest of Ney Saran and Witness's Sister

The Witness testified that his younger sister Net Thma married former Northeast Zone Secretary Ney Saran, alias Ya, in a ceremony organized by *Angkar* in 1968 in the forest. He said that the wedding ceremony was the first time he had met Ney Saran. After their marriage, the Witness stated he had seen Ney Saran only three times: once in Phnom Penh and once in Kratie and once in Koh Nhek. Although unable to provide much first-hand evidence of purges, the Witness testified that he had heard Koy Thoeun was arrested in 1976 and Ney Saran in 1977. He said that after the arrest of her husband, Net Thma sent the Witness a letter at Koh Nhek telling him that she wanted to come and live in Mondulkiri because she was afraid for her life. The Witness said he was worried about his sister so he forwarded the letter to Ta Ham, but Ta Ham did nothing in response. He said he never saw his sister or her two children again.

7. Witness Demeanor and Credibility

Throughout his testimony, Net Savath gave precise and clear responses and seemed careful to distinguish between events he had witnessed himself and events he had heard about from others. This was exemplified when he was asked questions about his sister, who he had not heard from since 1975, but nonetheless declined to say that she had passed away during the DK regime. There were a few minor translation errors during Net Savath's testimony which may have contributed to any inconsistencies in his in-court statements. When the Witness was unable to recall information he apologized for his poor memory and appeared to give frank responses to questioning by all Parties.¹⁷

III. LEGAL AND PROCEDURAL ISSUES

The legal and procedural issues this week focused on procedural issues concerning the upcoming appearance of Expert Witness 2-TCE-88, and legal issues around the use of potentially torture-tainted evidence. This issue of evidence obtained through torture has been raised in the Trial Chamber frequently throughout the course of Case 002/02 and the Trial Chamber issued a ruling on this on 5 February 2016, however this has not prevented Parties, largely the Defense for Nuon Chea, from attempting to use such documents.

A. Defense Requests to Admit Documents for Testimony of Expert 2-TCE-88

1. Original Arguments

On Monday 7 March the Trial Chamber heard oral submissions from Parties on requests from each Defense Team to admit further documents ahead of the appearance of Expert Witness 2-TCE-88.¹⁸ The Defense Team for Khieu Samphan requested the admission of six documents while the Nuon Chea Defense requested 17, each under Internal Rule 87(4). The OCP agreed to the admission of all but two documents requested by the Defense Teams; both documents requested by Nuon Chea. The first document (E387.1.14), an article by William Schabas, was

opposed because it opined whether or not a genocide took place in Cambodia, and the second document objected to (E387.1.16) was a 2008 New York Times article written by the Expert concerning the independence of the Cambodian judges appointed to the ECCC. Regarding the first document, the OCP reminded the Chamber that their position was that documents should not be admitted related to the legal definition of genocide, or whether a genocide took place in Cambodia, as these are matters for the Bench to decide, not an Expert. Mr. Koppe responded to the OCP statement, saying his team agreed that it was not for the Expert to comment on whether genocide had taken place during the DK regime, however documents relating to genocide were particularly relevant to this Expert Witness as he has made the study of genocide his life's work.

2. Arguments over the Admission of Stasi Documents

On Thursday Parties presented arguments over a previous submission by the Nuon Chea Team to admit documents ahead of 2-TCE-88's imminent appearance. The Chamber had delayed its decision awaiting translation. Counsel Koppe argued that, *kurz biographie* (short biographies) of CPK members obtained by the East German Security Service (*Stasi*) from Vietnamese intelligence in 1978 and 1979 provide important and relevant information in ascertaining the truth about CPK leaders who were accused of resisting Pol Pot's faction, and includes references to people who played important roles in Sector 21 and the East Zone, including those of Heng Samrin, Ouk Bunchhoeun, and a redacted name which the Nuon Chea Defense argued was Mat Ly. In response to questions from the Bench on the relevance of the documents for the examination of the Expert Witness, Counsel Koppe clarified that they wish to use them with the Expert, because they relate to people who were high ranking in the East Zone and Sector 21 where most of the Cham were living during the DK regime.

The Defense for Khieu Samphan agreed that the document should be admitted because the Trial Chamber had repeatedly admitted documents in the past with the intention of assessing their probative value at a later date. Counsel Guisse also argued that documents establishing context are important for the Trial Chamber to make its judgment. The Co Prosecutors objected to use of the document in the questioning of the Expert Witness, however did see its usefulness more generally. Nicholas Koumjian stated: "I understand the Defense submissions to fit their theory of the CPK being always internally in factions... we think it actually proves the opposite but we do see the relevance." The Chamber told Parties it would issue a decision prior to the hearing of the Expert on Monday of next week.

3. Subsequent Rule 87(4) Request for one More Document to be Admitted in Case 002/02

The inclusion of one final document was discussed on Friday prior to the upcoming appearance of the Expert Witness next week. The Nuon Chea Defense Team made an Internal Rule 87(4) request to admit the WRI of Witness 2-TCW-840, who had originally been scheduled to testify in court on Wednesday 9 March however had been unable to do so due to ill health. As a result, Counsel Koppe explained to the Chamber that it was now necessary to admit this Witness's record of interview as his in-court testimony would not be heard until after the appearance of the Expert and thus the Defense could not use it to question 2-TCE-88. Counsel Koppe drew the Chamber's attention to the value of 2-TCW-840's statement with regard to his experience at Au Kanseng Security Center, saying the witness could potentially shed light on alleged plans by Sao Phim to overthrow Pol Pot and the CPK, attempted assassination attempts against Pol Pot and disloyalty and factionalism within the party. The Prosecution expressed no objection to this request, although Prosecutor Dale Lysak added that they did not place much probative value on this particular Witness's testimony. The Civil Party lawyers and Defense for Khieu Samphan also had no objections and the Bench will rule on the request prior to the appearance of 2-TCE-88 on Monday 14 March.

B. Use of Torture-Tainted Evidence

The issue of torture tainted evidence from “confessions” recorded at S-21 has been dealt with extensively by the Trial Chamber, however it continues to be raised during proceedings.¹⁹ This week the Nuon Chea team was prevented from using evidence obtained through torture, during the questioning of two separate witnesses. First, on Thursday afternoon Counsel Koppe used a DC-Cam statement of Net Savath, in which the witness talks of a plot of Kham Phoun to destroy the CPK. Mr Koppe only cited the document’s ERN number after his questioning concluded, and after having some time to look up the ERN citations, the Prosecution pointed out that one of the statements cited had actually been a written record of the witness reading from an S-21 confession of another individual. Prosecutor Nicholas Koumjian stated that “it is important for the people to understand that this ‘best evidence’ of the plot is from the S-21 killing and torture machine.” Defense Counsel was reprimanded by Judge Lavergne, who stated that he was either using a confession knowingly or he was not aware of the source of his evidence.

On Friday during questioning of Net Savath, Counsel Koppe again seemed reluctant to provide a precise reference for the source of his line of questioning over the same alleged plot of Kham Phoun he had raised the previous day. International Co-Prosecutor Dale Lysak made a point of asking the reference, saying “we want to make sure he isn’t trying to use another S-21 confession like yesterday.” Although this document did not appear to come from a confession, later in the day Counsel Koppe again attempted to use the same DC-Cam statement he had been reprimanded over the previous day (Document E3/7696). Mr. Lysak was quick to object to the use of this document, quoting passages that he said demonstrated that the interviewee was indeed reading from an S-21 confession rather than using his or her own words. Counsel Koppe responded that this was one of “many attempts to sabotage [his] questioning” and attempted to clarify that the parts of the DC-Cam statement which came from confessions were indicated by different formatting. The Prosecution stated that the formatting was insufficiently clear and suggested that the document not be used at all. After deliberating the Bench decided that the document should not be used as it was unclear which parts were original testimony and which were from an S-21 document, however the Defense Team for Nuon Chea again disagreed with the ruling, asking whether this now means all answers given to the Co-Investigating Judges that had ever been prompted by confessions were also now excluded from evidence.²⁰

IV. TRIAL MANAGEMENT

The Trial Chamber heard the testimonies of four witnesses over the course of four days this week. The first witness to appear this week, Moeung Chandy continued his testimony from last week in relation to Au Kanseng Security Center, the second Witness Van Mat testified the treatment of Cham, and another two Witnesses began a new segment of Phnom Kraol Security Center.

A. Attendance

Nuon Chea waived 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.

Judge Attendance: All Judges were present in the courtroom through all sessions this week.

Civil Parties Attendance: Approximately ten Civil Parties observed the proceedings from within the courtroom throughout this week.

Parties: Khieu Samphan’s international Defense Counsel Anta Guissé continued to be absent on 7 March after also being absent the previous week for personal reasons. Monitors also noted that Pich Ang, the national Civil Party Lead Co-Lawyer, was absent on the last session

on March 10. Other than this all Parties were present throughout the week.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 07/03/2016	<ul style="list-style-type: none"> Approximately 150 students from Wat Koh High School, Phnom Penh One foreign observer 	<i>No proceedings</i>
Wednesday 09/03/2016	<ul style="list-style-type: none"> Approximately 120 students and four teachers from Prek Leap High School, Phnom Penh Four foreign observers 	<ul style="list-style-type: none"> 26 students from Royal University of Phnom Penh. One foreign observer
Thursday 10/03/2016	<ul style="list-style-type: none"> Approximately 450 students from Bun Rani Hun Sen Wat Phnom High school, Entarak Tevy high School, and Royal University of laws and Economic (RULE), Phnom Penh 	<ul style="list-style-type: none"> Approximately 250 students Phnom Penh Thmey High School, Phnom Penh Twenty-six foreign observers
Friday 11/03/2016	<ul style="list-style-type: none"> Approximately 450 students from Entarak Tevy high School and Prek Leap High School Two foreign observers 	<ul style="list-style-type: none"> Approximately 200 villagers from Tuk Chhu District, Kampot Province Three foreign observers

B. Time Management

On Monday Court adjourned before lunch because the scheduled witness 2-TCW-880 was unavailable due to a “severe health condition” and no reserve witness could be located at short notice. Due to the public holiday for International Women’s Day on 8 March, the Chamber held proceedings on Friday to compensate for the lost day. Overall the Trial Chamber successfully concluded the testimonies of four witnesses over the course of four days.

C. Courtroom Etiquette

All Parties conducted themselves professionally this week and there were no noteworthy breaches of courtroom etiquette.

D. Translation and Technical Issues

KRT Monitors noticed a number of minor translation issues that occurred throughout proceedings this week; including incomplete interpretation and mistranslations from Khmer to English. On Monday during Van Mat’s testimony the Khmer-to-English interpreters failed to provide full translations of entire sentences of witness testimony, and mistranslated several words, including mistaken numbers and people’s names.²¹ On March 11, when international Deputy Prosecutor Dale Lysak asked Witness Net Savath the question “Were they interrogated after you arrived at arrived at office K-17? An interpreter mistakenly translated the word ‘they’ in English to ‘you’ in Khmer. This caused Mr. Lysak to become confused by the Witness’s answer and caused him to repeat his line of questioning.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 07/03/2016	9:01	10:12-10:33	-	-	10:51	1 hours 29 minutes
Wednesday 09/03/2016	9:10	10:07-10:26	11:35-13:29	14:39-14:59	16:09	4 hours 26 minutes
Thursday 10/03/2016	9:01	10:12-10:31	11:38-13:36	14:42-15:00	15:20	3 hours 44 minutes
Friday 11/03/2016	9:03	10:15-10:33	11:37-13:31	14:43-15:05	15:59	4 hours 22 minutes
Average number of hours in session				3 hours and 30 minutes		
Total number of hours this week				14 hours and 1 minutes		
Total number of hours, day, weeks at trial				577 hours and 53 minutes		
158 TRIAL DAYS OVER 46 WEEKS						

*This report was authored by Borakmony Chea, Melanie Hyde, Nicholas Maycock, Caitlin McCaffrie, Lina Tay 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
OCP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Today the Witness MOEUNG Chandy (2-TCW-867) was questioned in the following order: national defense counsel for Nuon Chea, LIV Sovanna; national defense counsel for Khieu Samphan, KONG Sam Onn.

² For a summary of PHAN Thol’s testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 45, Hearings on Evidence Week 42 (29 February – 3 March 2016) pp.6-9.

³ The possible existence of the jackfruit plantation is significant because it was one of few discrepancies between this Witness’s testimony and that provided by her ex-husband PHAN Thol last week. PHAN Thol testified that he had seen pits containing decomposing corpses while he worked in a nearby jackfruit plantation, however in court this week MOEUNG Chandy said she had seen pits which sounded very similar, however recalled no jackfruit plantation.

⁴ It is also possible that the detainees were walking uncomfortably due to their ankles being shackled for long periods of time, as she had testified to already.

⁵ PHAN Thol testified that the Jarai had had backpacks and that he saw these backpacks strewn on the ground by the pit containing decomposing bodies, which is what had led him to believe the Jarai had been executed there.

⁶ It was unclear during MOEUNG Chandy’s testimony whether she was referring to *damlong cherr* – sweet potato, *damlong mi* – cassava or *damlong barang* – potato.

⁷ Witness Mr. VAN Mat (2-TCW-893) said his name at birth was Saleh Asmat, however he is now known by the name VAN Mat. It is unclear when he changed his name. He was questioned in the following order: President NIL Nonn; senior assistant prosecutor Travis FARR; Civil Party lawyer CHET Vanly; Judge Jean-Marc LAVERGNE; international defense counsel for Nuon Chea, Victor KOPPE; international defense counsel for Khieu Samphan, Anta GUISSSE; national defense counsel for Khieu Samphan, KONG Sam Onn.

⁸ Koh Phal and Svay Khleang are two villages which experienced anti-KR rebellions in late 1975. Although the Witness did not take part in either rebellion, he said that he could hear “gun shooting” from the direction of Koh Phal during their rebellion. He said that as Svay Khleang was further from his village he did not hear any sounds of fighting during that rebellion.

⁹ *Hakim* is the term for an elder Cham Muslim religious leader, a *“Tuon”* is a teacher of Islam and *“Hajji”* refers to someone who has made the pilgrimage to Mecca.

¹⁰ The Witness originally referred to KE Pauk as POL Pauk and there was some confusion during questioning as to his exact identity. It seemed due to an interpretation error the Witness had appeared to say that KE Pauk and POL Pauk were brothers, however it later became clear that KE Pauk and POL Pauk were aliases for the same individual.

¹¹ Quoted from in-court notes of the KRT Monitors. At the time of publishing this report the official transcript was not available.

¹² On 11 February the Supreme Court Chamber rejected the NUON Chea team's request to reconsider summoning HENG Samrin and Robert LEMKIN as part of the appeal process in Case 002/01. See: Supreme Court Chamber. "Decision on Nuon Chea's request for reconsideration of the decision of 21 October on requests for additional evidence" (11 February 2016) F2/10/3.

¹³ Witness Mr. CHAN Taay (2-TCW-921) was questioned in the following order: President NIL Nonn; national deputy co-prosecutor SENG Leang; international co-prosecutor Nicholas KOUMJIAN; Civil Party lawyer HONG Kimsuon; international defense counsel for Nuon Chea, Victor KOPPE; international defense counsel for Khieu Samphan, Anta GUISSSE. Counsel Koppe raised a question about the age of the Witness, stating that in his previous interview he gave his date of birth as 17 May 1956, while in court today the Witness testified to being 56 this year. The issue was unresolved but did not seem to cause any problems during questioning.

¹⁴ Witness Mr. NET Savath (2-TCW-817) was questioned in the following order: President NIL Nonn; international assistant prosecutor Dale LYSAK; international lead co-lawyer for Civil Parties, Marie GUIRAUD; international defense counsel for Nuon Chea, Victor KOPPE; international defense counsel for Khieu Samphan, Anta GUISSSE.

¹⁵ NET Savath testified that Kham Phoun's wife Lab was the aunt of his own wife.

¹⁶ During the hearings it was unclear whether this name was spelled Bolay or Boly, and at the time of writing the court transcript has not been released.

¹⁷ During questioning by the Defense for Nuon Chea, Counsel Koppe read part of the Witness's DC-Cam statement in which he was asked about a group named FULRO Champa. Although in his DC-Cam statement the Witness claimed to know of this group, in court he denied any knowledge and stated: "I didn't say that. I didn't see any FULRO. Maybe that was wrongly put in the statement." In response to this questioning Counsel Koppe asked whether the Witness was tired, to which he replied in the affirmative and then Counsel Koppe ended his examination.

¹⁸ Both Prosecutor William SMITH and Defense Co-Counsel Victor KOPPE used the man's name rather than TCE-88 in an apparent shift from the ordinary practice to retain anonymity prior to the giving of testimony. The Trial Chamber did not rebuke the Parties for this, so it is possible that permission was sought although nothing could be found on the ECCC record at the time of publication.

¹⁹ In July 2015 the Supreme Court Chamber issued a partial ruling on the use of evidence tainted by torture ahead of the appeal hearings in Case 002/01, see Supreme Court Chamber. "Decision on Objections to Document Lists Full Reasons" (31 December 2015) F26/12, pp. 11-37. Although this gave some indication of the admissibility of evidence likely produced under torture, this decision was restricted in scope and so the Trial Chamber recently released a majority decision on the use of torture-tainted evidence, with a dissenting opinion by Judge Claudia Fenz: see Trial Chamber. "Decision on Evidence Obtained Through Torture" (5 February 2016) E350/8 and Trial Chamber. "Reasons for Partially Dissenting Opinion of Judge Fenz" (11 March 2016) E350/8.1. The issue of torture-tainted evidence has been extensively covered in KRT Monitor's previous reports, for summaries see the Legal and Procedural Issues sections of: CASE 002/02 KRT TRIAL MONITOR, Issue 42, Hearings on Evidence Week 38 (1-3 February 2016) p. 7 and CASE 002/02 KRT TRIAL MONITOR, Issue 41, Hearings on Evidence Week 37 (25-28 January 2016) pp. 8-9.

²⁰ Dale Lysak argued that indeed this had taken place during the testimony of Meas Voeun in Case 001, when the Nuon Chea Defense had objected to the Witness being questioned with a confession of S-21, and the Trial Chamber had sustained this objection.

²¹ Interpreters omitted the sentences: "They never returned as seeing their clothes in pile" and "He was not a Cham. He was a Chinese-Khmer." Incorrect translations from Khmer to English included translating 'five rifles' to '15 rifles,' 'motorboat' to 'boat', the name 'Hun' to 'Oun', and 'Sekong river' to 'northern direction.'