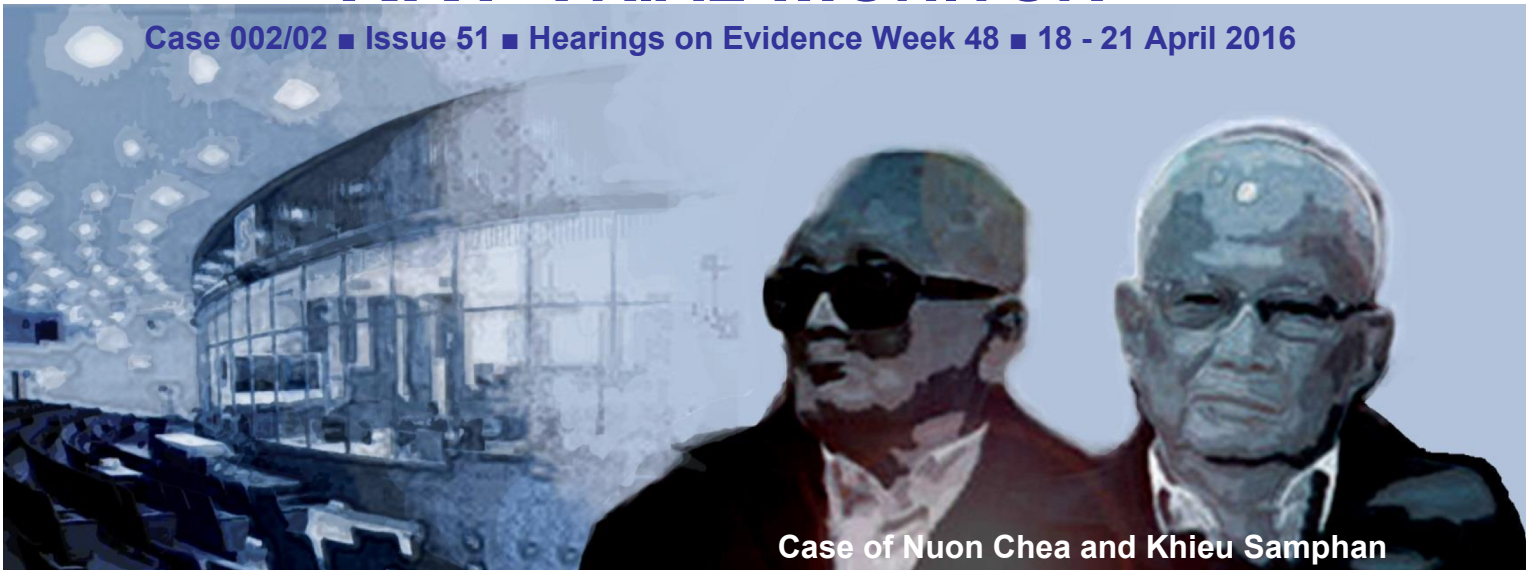


# KRT TRIAL MONITOR

Case 002/02 ■ Issue 51 ■ Hearings on Evidence Week 48 ■ 18 - 21 April 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)

*“They said they didn’t want anyone to remain.  
So when they dig the grass, they dig out the root as well.  
That is what they said.”*

- Witness Toy Teng

## I. OVERVIEW

After a one week recess to mark Khmer New Year, the Trial Chamber reconvened this week to hear testimony on S-21 Security Center for the first time in Case 002/02.<sup>1</sup> S-21, also known as Tuol Sleng, was the main crime site in Case 001, the trial of Kaing Guek Eav *alias* Duch, who was the prison’s chairman during the Democratic Kampuchea (**DK**) regime and whom the Trial Chamber found guilty of crimes against humanity and grave breaches of the 1949 Geneva Conventions on 26 July 2010.<sup>2</sup> First to testify this week was Civil Party Chum Mey, who testified to being one of only seven people to survive detention at Tuol Sleng. Chum Mey spoke in depth about the suffering he endured at the Security Center and in the years since. Next, Witness Nhém Em testified to working as a photographer at S-21 while he was a teenager. He described meeting and photographing a number of important members of the Communist Party of Kampuchea (**CPK**) and travelling around the country to photograph dams and worksites. The third person to testify this week was Toy Teng, a former guard at Choeng Ek, an execution site 15 kilometers outside of Phnom Penh.<sup>3</sup> Toy Teng testified under protective measures which altered his physical appearance and voice.<sup>4</sup> This week, the Trial Chamber addressed a number of legal and procedural issues, including the use of confessions during questioning and a possible conflict of interest facing Khieu Samphan’s national counsel, Kong Sam Onn.

## II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

The Trial Chamber heard from two witnesses and one Civil Party this week as it began the trial segment on S-21 Security Center in Phnom Penh. First, Civil Party Chum Mey testified about his experience being detained and tortured at S-21 in late 1978. His testimony was followed by that of Witness Nhém En, who worked as a photographer at the Security Center. Witness Toy Teng closed the week with testimony on his work as a guard and executioner at Choeng Ek.

## **A. Summary of Testimony by Civil Party Chum Mey**

Civil Party Chum Mey, also known as Chum Manh, appeared in Court on Monday and Tuesday this week to testify about S-21.<sup>5</sup> The Civil Party previously testified in Case 001 in 2009 and currently works at the Tuol Sleng Genocide Museum.<sup>6</sup> Due to the amount of time that has passed since the events in question, it was difficult for the Parties to ascertain how much of Chum Mey's testimony was based on knowledge he obtained after 1979. His testimony mainly focused on his arrest and time spent at S-21, and concluded with his statement of suffering.

### **1. Chum Mey's Background and Experience of the Evacuation of Phnom Penh**

Chum Mey told the Court that, prior to 17 April 1975, he worked as a mechanic in Phnom Penh. The Civil Party testified that he and his family were evacuated from the capital on 17 April and walked about 33 kilometers to Prey Kdam. He said that it was raining when they arrived at Prey Kdam and his baby boy had a fever. As they had no access to medical care, his child died, and they buried him along the road as they continued onward. He also stated that, during the evacuation, he saw Khmer Rouge (KR) cadres shoot three people. After a period of 30 days outside the capital, Chum Mey was asked to return to Phnom Penh, where he was assigned to repair boats and ferries. After three or four months, he was transferred to a sewing unit known as K-9 near the city's Orussei Market, where he worked until his arrest.<sup>7</sup>

### **2. Arrest and Arrival at S-21 Security Center**

The Civil Party said that in late 1978, he was told he would be sent to Vietnam to repair vehicles, however he was instead sent for detention at Tuol Sleng.<sup>8</sup> He was unable to inform his pregnant wife or children that he had been arrested, and when he asked cadres to take care of his family, he was kicked and verbally insulted. Chum Mey said that a member of his sewing unit, Lin, took him and two others from his unit to Tuol Sleng; none of them knew at the time that they were being arrested. He told the Court that, upon arrival at Tuol Sleng, the three of them were handcuffed and blindfolded. He said he was dragged by the ear across the road, and kicked to the ground, then taken into a small room where he was stripped down to his shorts and photographed. He said he was detained in Room 022 for the entirety of his stay at S-21. When he first arrived in the room he was shackled at the ankles before his blindfold and handcuffs were removed.

### **3. Detention Conditions, Interrogations, and Torture at S-21**

Chum Mey described his cell as being very dark and small, approximately 1.5 meters by 2 meters in size and big enough only for one prisoner. He said that he was given a small container in which he was to relieve himself, but if he spilled any liquid outside the container, he was forced to lick the floor clean. The Civil Party said he was told he had to be quiet and could not talk to prisoners in adjacent cells. During his four months of detention, he said he was only allowed to wash once, when guards brought a water container to his cell and ordered him to strip his clothes. He said that at S-21 he "was regarded as an animal...[he] had no freedom."

Chum Mey told the Court he was interrogated daily for 12 days and nights, during which time he was given little water and fed only one ladle of watery gruel twice daily. He said that interrogations took place in Cell 4 on a floor above his detention cell. Chum Mey said he was beaten and repeatedly asked how many people in his network were members of the CIA and KGB. He said he was electrocuted twice, and as a result of the electrocution, he now has problems with his eyesight. He explained that his little finger was broken during a beating and also that his toenail was removed as part of his torture. He told the Chamber that he did not know why he was arrested or whether he had been implicated by anyone else, but that, after 12 days of beatings, he "confessed" to crimes he had never committed and gave false names of

alleged spies to his interrogators. He told the Court: "I said to myself that I would like to apologize in case the names that I fabricated belonged to any existing people." He said that, after he confessed, the interrogators told him he should have confessed earlier to avoid the beatings he had received.

#### **4. Life at S-21 after 'Confession' until 7 January 1979**

After Chum Mey confessed, interrogations and beatings stopped and he was moved to Building C within the S-21 compound. He was shackled by the hands to nine other detainees. There were approximately 40 detainees in his room. He said he was given long sleeves to wear, and that he was provided with water and a better quality of gruel than he had been given before. Conditions remained harsh, and he said detainees slept on the floor without sleeping mats or mosquito nets; were still required to relieve themselves in small bullet cases distributed by guards. He later was tasked to work as a repairman after a staff member, Suos Thy, asked if anyone knew how to fix machines. The Civil Party said he was the only one at the time who knew how to repair machinery, so he was given the task of fixing sewing machines and typewriters, to the west of the building in which he was detained.<sup>9</sup> Chum Mey described the arrival of Vietnamese troops at Tuol Sleng on 7 January 1979, saying guards had heard bombing in the east and moved all 18 remaining prisoners at gunpoint to a big hall. Ultimately, only seven survived. He said he believed he survived only because of his skills as a repairman.

#### **5. Sightings of Khieu Samphan and Nuon Chea**

The Civil Party told the Court he saw both Accused at different times during the regime. He said that Khieu Samphan visited the K-9 sewing unit at Orusse in Phnom Penh. He said that although he did not realize it was Khieu Samphan at the time, a cook in the unit told him that it was Khieu Samphan. Chum Mey also told the Court that he saw Nuon Chea at a meeting he attended at Russei Keo, while he was still working at K-9, although he could not recall the exact date. He said Nuon Chea addressed the meeting and asked anyone with a connection to the previous regime to raise their hand in order to be forgiven by *Angkar*. When Counsel for Nuon Chea asked the Civil Party why he had not mentioned this event previously in Case 001 or in his prior written records of interviews, Chum Mey said that his memory of the event was jogged by the Prosecution's questioning.

#### **6. Defense examination of Civil Party**

During examination of the Civil Party, Defense Counsel for Nuon Chea, Victor Koppe, put a number of questions to Chum Mey seeking to test the veracity of his testimony. In particular, Counsel Koppe asked the Civil Party to explain why no one had ever found a photograph of him at S-21. Chum Mey said he was definitely photographed, but that many photographs were destroyed or burned at the end of the DK regime. Chum Mey was also asked why he was not interviewed for the 1981 East German documentary, *Die Angkar*. The Civil Party said he did not know why he had not been interviewed but did point out that he was in a photograph featured in the documentary. Only four of the seven survivors of S-21 were interviewed for the film. Counsel Koppe also asked why fellow survivor Ung Pech, whom Chum Mey had previously identified as a good friend of his, had not mentioned Chum Mey during his testimony about survivors of S-21 at the Vietnam-backed People's Revolutionary Tribunal in 1979. The Defense for Nuon Chea also asked the Civil Party about people from K-9 who may have been arrested at the same time as him, asking why Chum Mey had never seen them if they were all apparently detained at the same time at S-21. It later became evident that the names and dates of arrest cited by Defense Counsel may have contained errors (see Section III.C.). Counsel Koppe concluded his questioning by explicitly asking the Civil Party: "Were you really an S-21 prisoner?" The OCP objected forcefully to this question, however Chum Mey responded calmly by confirming he had told the truth and asserting that the fingerprints on his "confession" could be used to prove the truth of his story.

## **7. Civil Party Statement of Suffering and Questions to the Accused**

Throughout his appearance in Court, Chum Mey appeared eager to give his statement of suffering, attempting on several occasions to bring it up, prior to the opportunity provided at the end of his examination.<sup>10</sup> When given the chance, the Civil Party provided a detailed account of his experience during DK, particularly his suffering as a result of the loss of his child and the S-21 interrogations. He asked Nuon Chea whether he knew about the existence of Tuol Sleng during DK, and whether he had been in communication with Duch during the regime. He also asked for confirmation that Nuon Chea had attended a meeting at Borei Keila, during which the former leader allegedly promised to pardon members of the former regime if they confessed. The Civil Party asked Khieu Samphan whether he had visited the unit at Orussei and why. The President explained that the Accused maintained their right to silence and would not respond to the Civil Party's questions. The Defense did not respond to the Civil Party's statement.

### **B. Summary of Testimony by Witness Nhém En**

Witness Nhém En testified this week about his role as a photographer at S-21 Security Center in Phnom Penh from mid-1976 to January 1979.<sup>11</sup> His testimony mainly focused on the treatment of prisoners at S-21, including his photographs, as well as his visits to various dam work-sites with high-ranking CPK cadres.<sup>12</sup> Witness Nhém En was called by the Defense Team for Nuon Chea.

#### **1. Witness' Background and Training as a Photographer**

Witness Nhém En testified he was born on 9 September 1961 in Trapeang Meas Village, Trapeang Ngoel Commune, Kampong Leng District, Kampong Chhnang Province.<sup>13</sup> He stated that, at 11 years old, he joined the United Front of Kampuchea to fight against the Lon Nol regime. The Witness declared that he had been stationed at Kampong Leng battlefield and that he and approximately 30 other children had been armed with rifles. He stated that they were tasked with transporting food and ammunition and performing dances and singing revolutionary songs. Nhém En said that he later delivered messages, some signed by Pol Pot, to Ta Khmao Hospital. He claimed that, in 1976, senior leaders Son Sen, Uncle Nath and Uncle Phin selected him to undergo six months of photography training in Shanghai, China.<sup>14</sup> Upon his return to Phnom Penh in June of that year, he was stationed at S-21 and assigned to take photographs to document the prison and prisoners there.

#### **2. Travels to the Zones and Dam Sites with DK Leaders to take Photos**

Although mainly stationed at S-21, the Witness said that on occasion he had accompanied zone leaders as well as foreign delegations on their visits to various dam worksites in DK. The Witness recalled having visited Trapeang Thma Dam (**TTD**) worksite, Trapeang Pui worksite, and the First January Dam site (**FJD**). He remembered having gone to TTD three times: once in December 1976; once on inauguration day alongside Northwest Zone Secretary Ruos Nhim, Im Chaem,<sup>15</sup> Uncle Nath, and Son Sen; and, once to film Heng Sunhuor on a visit from China. When asked about the working conditions at the dam, he explained that they seemed good, although he did qualify this by saying it was possible that the cooperative had put on an act for the benefit of visitors. He told the Trial Chamber that he had visited the FJD work site alongside Pol Pot, Ieng Sary, and Chen Yonggui, the visiting Chinese vice premier and minister of agriculture. He added that he had once accompanied Pol Pot to Chap Mountain in the Northwest Zone and said he had shown Yugoslav journalists around Kampong Cham. The Witness declared that he had used the occasions to take pictures of the important zone leaders, for example of Ruos Nhim, Sao Phim and Ta Nath.<sup>16</sup>

He testified that he had accompanied Pol Pot, Ta Mok, Ieng Sary, Son Sen and Nuon Chea on

other trips including dams in the West and Northwest Zones, Kampong Pui Reservoir in Battambang Province and a second dam in Sector 31 close to Phnom Kuk in Kampong Chhnang. The Witness explained that the pictures taken at the dam sites and worksites were used by the regime to promote its achievements. Nhém En stated that he had shot several films at various worksites, including the FJD, TTD, and the 30 September Dam. He explained that he had to be careful about the angle used when filming as they had been instructed to portray *Angkar* in a positive light. Nhém En testified that he had rarely seen or taken pictures of Khieu Samphan during DK, saying that he “was busy taking photos of important people” instead.

### **3. Work as Photographer at S-21**

The Witness stated that after his return from China in either June or July 1976, Son Sen assigned him to work as a photographer at S-21.<sup>17</sup> He claimed that, while working at the security center, he received his orders from Son Sen, Ta Nath, and Duch. While Duch had only given him orders in regard to tasks at S-21, Son Sen and Ta Nath sent him to take pictures in the provinces. He explained that there had been six photographers in total at Tuol Sleng and that the field trips to the provinces had been divided up between them. Nhém testified that photographers were assigned into groups at S-21. He had been in charge of photographers named Ry and Som. His main tasks included photographing prisoners as well as drawing up maps of the Northeast Zone. He told the Trial Chamber that, in 1977, many prisoners arrived at S-21, and the photographers had been so busy photographing them that they did not even have time to eat.

At S-21, Nhém En explained, the staff had to follow a strict schedule. Breakfast was served at 6:30AM, and staff received a two-hour lunch break from 11:00AM to 1:00PM. The photographers were assigned an office with a telephone. Whenever new prisoners arrived, Duch would call them on this phone to instruct them to take pictures. The photos were then developed in a house located approximately 200 meters from the compound. The Witness could not recall the street name or house number, but he told Counsel Koppe that he could take him to the house if necessary. Asked about the negatives of the pictures taken at S-21, Nhém En explained that the photographers had kept their own film rolls and that the owner of the house in which his negatives had been developed had later told him that a lot of negatives had been destroyed after the arrival of Vietnamese forces in Phnom Penh.

### **4. Organization of S-21**

Nhém En was able to provide a lot of detailed information on S-21. Regarding the administrative structure of S-21, the Witness stated that there had been more than 10 organizational groups, including the interrogation unit, archival unit, typing unit, photography unit, guards, and security. The archival group, he stated, had been subdivided into several sections, including one that made up prisoner lists. Nhém En told the Trial Chamber that approximately 50% of the staff at S-21 had come from Division 703. He said that Nuon and Pang were in charge of delivering messages from S-21 to Pol Pot and Son Sen and vice versa. Messages signed in red signaled that the prisoners named in the letter should be killed. Sometimes instructions on how to kill the prisoners were included.

Nhém En stated that prisoners arrived at Tuol Sleng in vehicles “camouflaged with a hospital cross,” saying that in total about 20 such vehicles had belonged to S-21. He recalled that there had been American jeeps as well as Land Rovers. Upon their arrival, prisoners were taken inside the Tuol Sleng compound before their blindfolds were removed. Nhém En testified that the photography unit was notified of incoming prisoners by telephone. Photographers were not allowed to talk to prisoners, some of whom had clearly been beaten prior to arriving for their photographs. Nhém En testified that photographs were either taken at one of two locations, one inside and one outside the compound. Throughout his testimony, Nhém En appeared to be

very proud of himself and his “achievements”, declaring, “At the time, I was hard-working and well-prepared...*Angkar* liked people who were well-prepared...I am proud of myself.”

Nhém En testified that the photography unit leader, Ta Srieng, wrote the names and dates of people photographed on the backs of the pictures. Once the pictures had been developed,, they were sent to Suos Thy, who was in charge of recording incoming and outgoing prisoners. Photographs of important people were sent to Duch. Later on, Nhém En stated, the numbering procedure was changed to encompass the name of the prisoner, the time of arrival, as well as the prisoner number for that day. On some days, he noted, the numbers would run into the hundreds.

## **5. Treatment of Prisoners at S-21 and Purges**

Nhém En told the Trial Chamber that many prisoners at Tuol Sleng died due to heavy beating and torture. Once the prisoners had been photographed, they were taken away and either tortured or killed. Nhém En added that some high-ranking prisoners had their throats slashed, but he confirmed that he had never witnessed an execution himself. Dead bodies were also photographed by Sri, who was later executed. The pictures taken by Sri were forwarded to Son Sen and Pol Pot as proof that executions were carried out. Asked if the prisoners at S-21 had received any medical attention, Nhém replied that Poa had been employed as a medic at S-21 until he was later executed. He treated any prisoners who survived the beatings of guards. The S-21 staff, he said, sought treatment at P-98 hospital on Monivong Boulevard. Nhém En testified that Vietnamese soldiers captured at the border were sent to S-21, with some still in their uniforms. Asked about children at S-21, Nhém En stated that although some were photographed, many were killed immediately, particularly infants. Nhém En told the Court that some S-21 “confessions” were broadcast on the radio, in particular those of Vietnamese soldiers.

In regard to the purges, Nhém En explained that *Angkar* had planned to eliminate CIA, KGB and “*Youn*” agents.<sup>18</sup> He stated that the KR used documents from Ta Khmao psychiatric hospital to identify former Lon Nol soldiers to be purged. The Witness testified that mass arrests took place in 1977 and that these people were sent to S-21. Most of the people arrested, he said, had been soldiers from the Northwest and East Zones. Purged cadres were replaced by cadres from the Southwest Zone or by members of Division 703, which was under the control of Ta Mok, Nuon Chea, and Pol Pot. Asked about the total number of executions at S-21, the Witness disputed the number 5,000 cited by Victor Koppe, saying he believed the number was much higher.

## **6. Liberation of S-21**

Nhém En told the Trial Chamber that the Vietnamese arrived in Phnom Penh on 7 January 1979 and prison staff abandoned S-21 on the same day. He told the Chamber that he and Duch had been among the last people to leave S-21, stating that they fled past the Chinese Embassy through Tuol Tom Pong to Chamkar Doung. Asked if he had been able to take anything with him, Nhém En explained that the situation at the time was chaotic and they had left everything behind, although he had been able to bury some cameras to keep them safe. He testified that he retrieved some of these cameras in 1990 from nearby the Tuol Sleng museum. The Witness did not recall anyone taking the time to destroy any evidence before fleeing S-21.<sup>19</sup>

## **7. Witness Demeanor and Credibility**

The Witness seemed eager to tell his story and often gave information beyond what was asked of him, leading the President numerous times to remind him to limit his responses to the questions asked. He had brought his own documents to the Court, including examples of his

photographs from the DK period, and he repeatedly offered to bring more items to the Court, including his collection of 400 DK-era cameras. When Defense Counsel for Khieu Samphan confronted the Witness with information that he had initially asked for monetary compensation in order to appear before the Court, Nhém En admitted that he was hoping his appearance would help promote his book and the museum he plans to open in Siem Reap. The Witness gave a number of inconsistent statements regarding his age, his father's profession, and his family's economic status, but he could not explain the discrepancies when confronted with them.<sup>20</sup>

### **C. Summary of Testimony by Witness Toy Teng**

The final Witness to appear this week did so under protective measures due to the sensitivity of his role under the DK regime. Although held in public session, Toy Teng's face and voice were distorted during his testimony and details about his family and address were kept private.<sup>21</sup> During the DK regime, Toy Teng worked as a guard at Choeng Ek, and he testified to carrying out executions there occasionally. He will conclude his testimony next week.

#### **1. Witness Background**

Toy Teng testified that, prior to 17 April 1975, he had worked in Praek Samroang at Kbal Thnal, and then after the Khmer Rouge took control of Phnom Penh, he had worked in Battalion 31 of Division 12. He said his division commander was Nat, and he recalled that a man named Pin was also part of the leadership, but he stressed that he himself had been "simply a combatant" and did not know much more about the Division's command structures. The OCP confronted the Witness with testimony identifying him as the group chief of guards at the special prison at S-21, however, the Witness rejected this claim, asserting that he was only in a position of power when assigned to Choeng Ek.

#### **2. Witness's Role at S-21**

The Witness testified that Phal assigned him to work at S-21, where his direct supervisor was Him Huy.<sup>22</sup> Toy Teng said that his task was to guard houses outside the compound, about 200 or 300 meters away from S-21. Toy Teng said that he was part of a group of eight men guarding these houses and that he never went inside the S-21 compound. Nonetheless, he claimed to have heard screams coming from near the compound's southern fence, and he stated that he had assumed they were the screams of people being tortured, although he acknowledged never witnessing such acts himself. Toy Teng said that he occasionally saw vehicles arrive transporting prisoners to S-21, estimating this took place once or twice a month. He said he was too far away to see the condition the prisoners were in when they arrived and said that someone from inside the compound came to greet them on arrival. He testified that he also saw prisoners transported out of S-21 although he did not say how often. The Witness said he found out at a political meeting that his uncle and three of his cousins – Taem, from Division 12, and Uk Saroeun and Uk Sovann, both from Hospital P-98 – were all arrested and brought to S-21, although he said he never saw them there.

#### **3. Work and Life at Choeng Ek**

Toy Teng testified that he was not sure who arranged his reassignment to Choeng Ek, but that it was Him Huy who transported him to his new position to guard prisoners there. He confirmed he was the group chief between six and eight guards, and his tasks included digging pits and standing guard. The pits his group dug were three meters by two meters and had a depth of two meters. He estimated that on average the pits could fit 10 to 20 bodies. The Witness said that Him Huy instructed his team to dig two or three pits each; a task which he said took about two days to complete. He said that Him Huy would usually give his team two days notice prior to the arrival of prisoners. Although he said his role involved covering over the pits with dirt

once the executioners “finished working,” Toy Teng said he did not know how many bodies were in each pit. The Witness also described daily life at Choeung Ek. He said he slept in a wooden house, in which prisoners were sometimes briefly kept prior to their execution. Toy Teng recalled a bad smell coming from decomposing bodies in the pits that were not fully covered with dirt. He said that a generator powered electric lighting inside the houses, but that there was no lighting outside.

Toy Teng described the system for the arrival of prisoners at Choeung Ek. He said prisoners usually arrived at approximately 7:00PM and were sent to a wooden house on the premises to wait. He said that only one or two trucks would arrive at once, and that each truck carried about 20 prisoners. Prisoners were handcuffed and blindfolded, guarded by two or three guards from S-21, as well as Him Huy, who came on every trip. Handcuffs were only removed when the prisoners were taken to the pits. Toy Teng said that even though the electric generator was not loud, the sound of killings could barely be heard from his guard post 100 or 200 meters away. The Witness said prisoners were taken away one at a time, led by the same person who had brought them there in trucks. When they arrived at the pits, the prisoners would be asked to sit down at the edge, then they were hit on the back of their necks and killed. The Witness made it clear that he did not know details about the execution process because that was not part of his job. Later, he admitted that he was “involved in very minimal task of that” and was “forced to do that task,” but he insisted he never killed many people. Toy Teng was unable to estimate how many prisoners had been killed at Choeung Ek in total.

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

Toy Teng gave clear responses to questions and asked for clarification if he was unsure about questions put to him. He testified with the assistance of duty counsel, appointed to protect the witness’s privilege against self-incrimination. Considering the Witness’s own admission that he was personally involved in the killings at Choeung Ek, it is plausible that he would seek to give testimony that would minimize his responsibility. The Witness appeared to downplay his role and the power he wielded during DK on two occasions: once when the OCP suggested that he was part of the group chief of guards at the special prison at S-21, and later when he claimed he was not involved in executions at Choeung Ek, but later admitted he may have been “forced” to do a “minimal task”. Aside from this, no notable discrepancies or inconsistencies were apparent during his testimony this week.

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

Multiple legal issues interrupted proceedings this week, particularly a lengthy debate over the accuracy of a list of prisoners from S-21 compiled by the OCIJ for the ongoing investigations in Cases 003 and 004. The issue of torture-tainted evidence reared its head again during the week, and the Trial Chamber also decided how to deal with a potential conflict of interest within the Khieu Samphan Defense team.

#### **A. Questions Outside the Scope of Testimony**

A number of objections were raised this week around testimony that went outside the scope of Case 002/02. On Monday, during the questioning of Civil Party Chum Mey, Counsel for Khieu Samphan objected to a line of questioning on the evacuation of Phnom Penh, a topic which was covered extensively in Case 002/01. The President allowed the line of questioning to continue, although he advised Civil Party lawyer Hong Kimsuon not to spend too much time on questions that were not “important” or “fundamental” to Case 002/02.

Prey Sar, also known as S-24, was also discussed during questioning this week despite this worksite being explicitly excluded from the scope of Case 002/02.<sup>23</sup> Civil Party Chum Mey spoke at length about the worksite, where his wife and children were detained while he was

working at S-21. Witness Nhém En also testified to facts about Prey Sar, particularly about command structures and leadership. The Witness said he had visited Prey Sar on a number of occasions to take photographs of people working there. No objections were made to any of these lines of questioning despite it not being part of the scope of Case 002/02

### **B. Use of Confession Obtained Under Torture During Questioning**

The issue of using evidence obtained under torture has plagued proceedings throughout Case 002/02. This week, the OCP attempted to question Civil Party Chum Mey on the contents of his own “confession” recorded at S-21. Defense for Nuon Chea objected to this on the grounds of the Trial Chamber’s recent ruling on the issue, prohibiting questions about the contents of confessions.<sup>24</sup> Prosecutor Vincent de Wilde d’Estmael explained that he was seeking to ascertain what information had been offered by the Witness himself and what information had been proffered by the interrogator, rather than any attempt to ascertain the truth of the contents as such. After a brief deliberation, the President allowed the question in a reformulated manner, finding, “The last question put by the Co-Prosecutors is based on the content of the confession, but the question is allowed.” Judge Lavergne clarified that even though the question was about the contents of the confession, it was permissible because it was not trying to ascertain the truth of the contents. The next day, Counsel Koppe himself used the contents of Chum Mey’s confession to question the Civil Party, to which Civil Party Lead Co-Lawyer Marie Guiraud objected. The President allowed the question, as he said it was in line with their ruling from Monday, which had allowed the OCP to ask similar questions.

### **C. Questions over Accuracy of S-21 Prisoner List**

On Monday, Counsel Koppe confronted Civil Party Chum Mey with excerpts from a list containing approximately 15,000 names of S-21 prisoners compiled by the OCIJ. He quoted several names and expressed his surprise when Chum Mey denied knowing those persons. Counsel Koppe posited that Chum Mey should be able to identify the names cited as they belonged to people who had worked in the K-9 sewing unit with him and had been arrested and detained at S-21 around the same time as him. When the Chamber reconvened the following day, the Prosecution accused Counsel Koppe of using false evidence in an attempt to discredit Chum Mey. Prosecutor Vincent de Wilde d’Estmael argued that the names cited by the Defense did not in fact correspond to the dates he had quoted, nor had the people named worked in the same unit as Chum Mey. The Civil Party lawyers, who confirmed that the information provided by Mr. Koppe had been false, supported Mr. De Wilde’s claim. Counsel Koppe responded that his information had been based on the documents prepared by the OCIJ and implied that it was possible an unnamed international investigator at the OCIJ who had worked there for the past two years was responsible for an error. After Counsel Koppe acknowledged he was using an abridged version of the OCIJ list that had been compiled by his staff, the Judges sought to determine if human error was at fault. The Bench asked Mr. Koppe to hand over his S-21 prisoner list in order to verify the claims during a break, after which the Chamber announced that the abbreviated list compiled by the Defense team contained errors. Counsel Koppe said he would verify this with his team.

### **D. Counsel Kong Sam Onn’s Potential Conflict of Interest**

On Tuesday, the OCP raised the issue of a potential conflict of interest in relation to Counsel Kong Sam Onn’s previous work as duty counsel for multiple witnesses in Case 001. Four of the witnesses he had assisted are currently scheduled to testify before the Trial Chamber in Case 002/02. The OCP requested that the conflict of interest be acknowledged, and that Khieu Samphan waive his right to appeal the future Judgment on the grounds of this conflict of interest.<sup>25</sup> The Defense for Khieu Samphan argued that they did not believe there was a conflict of interest, however they agreed that only international counsel Anta Guissé would question the witnesses whom Kong Sam Onn had previously represented. They insisted,

however, that because they do not agree there is a conflict of interest, it was not necessary for Khieu Samphan to give either oral or written waiver of his right to appeal the Court’s eventual judgment. Defense for Nuon Chea noted they found the OCP request “remarkable” considering that the OCP had not intervened when the prior defense lawyer for Ieng Thirith was appointed as standby-counsel for Nuon Chea in the SCC appeal hearings in Case 002/01, nor when Civil Party lawyer Lyma Nguyen had examined two Civil Parties whose original statements she had earlier recorded.<sup>26</sup> The Chamber agreed that only international Counsel for Khieu Samphan should question these four Witnesses, however, the Chamber determined that it was not necessary for Khieu Samphan to waive his right to appeal. On 25 April, the Trial Chamber issued a written ruling reaffirming this decision, that no waiver was required from Khieu Samphan, but that Kong Sam Onn remained bound by his obligations of confidentiality and that therefore only Anta Guissé should question the four named witnesses.<sup>27</sup>

**E. Criticism of Defense for Nuon Chea for not Citing Sources**

Counsel Koppe was criticized this week for presenting summarized information about numbers of prisoners at S-21 to Witness Nhém En without providing precise sources for each piece of information he used. Defense Counsel first attempted to rephrase the question in such a way that these references were not required, however Prosecutor Dale Lysak interrupted him again and accused him of trying to lead the witness with unsubstantiated facts. Counsel Koppe expressed his surprise: “I cannot believe the OCP still does not know how many confessions Chandler says there were,” and, “You want me to give ERNs for the evidence you’ve used for the last eight years?!” before again attempting to ask the question. Both the President and Judge Fenz stopped him and told him he should know how the process works. Ultimately, Counsel Koppe withdrew his question, choosing to ask it the next day when he had found the sources for each piece of information he was using.

**IV. TRIAL MANAGEMENT**

During four days of hearings this week, the Trial Chamber concluded the testimony of one Civil Party and one witness, and began hearing a second witness in the late afternoon on Thursday.

**A. Attendance**

Nuon Chea continued to waive his right to be present in the courtroom this week and observed the proceedings from the holding cell due to his poor health. Khieu Samphan was present in the courtroom throughout the week. Duty Counsel Mam Rithea was also present in the courtroom in order to provide legal counsel to Toy Teng on Thursday.

**Judge Attendance:** All Judges of the Bench were present in the courtroom throughout this week, with the exception of international Judge Claudia Fenz, who was absent on Monday, 18 April, for personal reasons. International reserve Judge Martin Karopkin was appointed to replace her for the day.

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

**Attendance by the public:**

DATE	MORNING	AFTERNOON
Monday 18/04/2016	<ul style="list-style-type: none"> <li>▪ 258 students and teachers from different schools in Ksach Kandal District, Kandal Province</li> <li>▪ Seven Civil Parties</li> </ul>	<ul style="list-style-type: none"> <li>▪ 290 students and teachers from different schools in Ksach Kandal District, Kandal Province</li> <li>▪ Seven Civil Parties</li> </ul>

Tuesday 19/04/2016	<ul style="list-style-type: none"> <li>▪ 205 villagers from Ksach Kandal District, Kandal province</li> <li>▪ Three foreign observers</li> <li>▪ Ten Civil Parties</li> </ul>	<ul style="list-style-type: none"> <li>▪ Approximately 100 villagers from Ksach Kandal District, Kandal province</li> <li>▪ Ten Civil Parties</li> </ul>
Wednesday 20/04/2016	<ul style="list-style-type: none"> <li>▪ 183 villagers from Ksach Kandal District, Kandal province</li> <li>▪ 51 monks from Svay Chrum Pagoda, Ksach Kandal District, Kandal Province</li> <li>▪ Nine foreign observers</li> <li>▪ Ten Civil Parties</li> </ul>	<ul style="list-style-type: none"> <li>▪ 58 villagers from Ksach Kandal District, Kandal Province</li> <li>▪ Two foreign observers</li> <li>▪ Ten Civil Parties</li> </ul>
Thursday 21/04/2016	<ul style="list-style-type: none"> <li>▪ 221 students and teachers from different schools in Ksach Kandal District, Kandal Province</li> <li>▪ 12 foreign observers from Star Kampuchea and two other foreign observers</li> <li>▪ Ten Civil Parties</li> </ul>	<ul style="list-style-type: none"> <li>▪ 150 students and four teachers from Tuol Basan Middle School, Ksach Kandal District, Kandal Province</li> <li>▪ One foreign observer</li> <li>▪ Seven Civil Parties</li> </ul>

## B. Time Management

The Trial Chamber was observed to respond fairly and effectively to Parties requests for additional time this week, extending the time allocations for both sides of the courtroom. On 20 April, the Trial Chamber stopped Counsel Victor Koppe's examination of Witness Nhém En after his team's allocation had run out, but on the following day, the Chamber granted an extra 20 minutes to each of the Defense Teams. Even with time extensions, the Trial Chamber successfully concluded the testimony of one Civil Party and one witness and began the partial examination of a new witness.

## C. Courtroom Etiquette

The President was very active this week in intervening when Parties acted inappropriately. On Tuesday, President Nil Nonn reprimanded CPLCL Marie Guiraud, for standing to raise an argument out of turn, reminding her of the correct procedure. The President also interrupted Witness Nhém En on a number of occasions after the Witness strayed off topic in response to questions. On Thursday, Counsel Koppe sought to introduce a new document into evidence that his team had just found, despite it having been published in the *Phnom Penh Post* in February. Judge Fenz asked why he had not found the document earlier, saying, "Tell your team to Google faster," to which Counsel Koppe appeared to take offense. A number of objections throughout the week led to moments of tension in the courtroom, however all Parties conducted themselves professionally.

## D. Translation and Technical Issues

During the testimony of Witness Nhém En over the course of two and a half days this week, there were numerous errors and incomplete translations from Khmer to English due to the Witness' lengthy responses and rapid manner of speaking.<sup>28</sup> On 21 April, Prosecutor Dale Lysak and Defense Counsel Anta Guissé complained of translation issues, particularly concerning names and dates, while Nhém En was testifying. There were a few minor technical malfunctions this week, but overall proceedings ran smoothly.

## E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 18/04/2016	8:59	10:10-10:32	11:32-13:30	14:47-15:10	16:07	4 hours 25 minutes
Tuesday 19/04/2016	9:00	10:10-10:30	11:33-13:30	14:46-15:10	16:00	4 hours 19 minutes
Wednesday 20/04/2016	9:02	10:10-10:31	11:31-13:33	14:38-14:59	16:04	4 hours 18 minutes
Thursday 21/04/2016	9:00	10:13-10:30	11:46-13:35	14:41-15:00	16:05	4 hours 40 minutes
Average number of hours in session				4 hours and 25 minutes		
Total number of hours this week				17 hours and 42 minutes		
Total number of hours, day, weeks at trial				655 hours and 4 minutes		
178 TRIAL DAYS OVER 51 WEEKS						

\*This report was authored by Lena Harris-Pomeroy, Melanie Hyde, Daniel Mattes, Nicholas Maycock, Caitlin McCaffrie, Lina Tay and Sathapor Thom 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**

Case 001	<i>The Case of Kaing Guek Eav alias “Duch” (CaseNo.001/18-07-2007-ECCC)</i>
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (CaseNo.002/19-09-2007-ECCC)</i>
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
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

<sup>1</sup> For allegations regarding S-21 Security Center, see Case 002 Closing Order, paras. 415-474.

<sup>2</sup> KAING Guek Eav (alias Duch) was found guilty by the Trial Chamber and sentenced to 35 years’ imprisonment on 26 July 2010, see Trial Chamber “Judgment” (26 July 2010), E188. KAING Guek Eav appealed the verdict to the Supreme Court Chamber, which was dismissed. The OCP also appealed the verdict, and on 3 February 2012 the Supreme Court Chamber quashed the decision of the Trial Chamber and increased the Accused’s sentence to life imprisonment, see Supreme Court Chamber, “Appeal Judgment” (3 February 2012), F28.

<sup>3</sup> In Case 001, the Trial Chamber found that Kaing Guek Eav *alias* Duch chose Choeung Ek as the execution and burial site for prisoners who were transported from S-21 and S-24 and summarily executed there, see Trial Chamber “Judgment” (26 July 2010), E188 at paras 184-189.

<sup>4</sup> These protective measures were in line with Internal Rule 29 and also included keeping the Witness’s address and details about his family members confidential, see Extraordinary Chambers in the Courts of Cambodia, “Internal Rules, Rev. 9” (16 January 2015).

<sup>5</sup> Civil Party CHUM Mey (2-TCCP-243) was questioned in the following order: President NIL Nonn; national Civil Party lawyer HONG Kimsuon; international senior assistant prosecutor Vincent DE WILDE D’ESTMAEL; international co-lawyer for Nuon Chea, Victor KOPPE.

<sup>6</sup> CHUM Mey previously testified before the ECCC in Case 001. For a summary of his testimony, which took place on 30 June 2009, see CASE 001 KRT TRIAL MONITOR, Issue 11, week ending 5 July 2009.

<sup>7</sup> Interpreters alternately translated this as both “sewing unit” and “tailoring unit”

<sup>8</sup> Chum Mey provided the Court with two dates for his arrest: 18 September 1978 and 29 October 1978. In his memoir, “Survivor,” and in his testimony before the ECCC’s Trial Chamber in Case 001, Chum Mey testified that his arrival date at S-21 was 28 October 1978, see Trial Chamber, Transcript of Trial Proceedings (30 June 2009), E1/40.1, p. 30, line 2. It is not clear if the discrepancies in the dates were a result of his memory loss, an interpretation error, or a combination of both. Although inconsistent about the exact date, the Civil Party did consistently state he was only in Tuol Sleng for a few months prior to the arrival of the Vietnamese in the capital on 7 January 1979.

<sup>9</sup> Chum Mey said the building in which he worked as a repairman was a school called Ponhea Yat under the former regime, prior to DK.

<sup>10</sup> When Civil Party lawyer HONG Kimsuon finished his questioning, he attempted to cede the floor to CHUM Mey to give his statement of suffering, seemingly having forgotten that normal procedure dictates the Civil Party give this statement at the end of his examination by all the Parties. The President intervened and explained that there would be time allowed at the conclusion of his testimony for a statement of suffering.

<sup>11</sup> Witness NHÉM En (2-TCW-919) was questioned in the following order: President NIL Nonn; international Judge Claudia FENZ; international co-lawyer for Nuon Chea, Victor KOPPE; international assistant prosecutor Dale LYSAK; national Civil Party lawyer SAM Sokong; international lead co-lawyer for Civil Parties, PICH Ang; international Judge Jean-Marc LAVERGNE; international Judge Claudia FENZ; international co-lawyer for Khieu Samphan, Anta GUISSSE; international co-lawyer for Nuon Chea, Victor KOPPE.

<sup>12</sup> Immediately prior to Nhém En's testimony, the Chamber decided to admit seven of the eight documents requested by the Nuon Chea team for use in questioning the witness. The Chamber also requested a copy of Nhém En's book in order to decide whether it would be admitted as evidence, ultimately ruling that it could be admitted.

<sup>13</sup> There were discrepancies in regard to the Witness' age. Whereas he testified to have been born in 1961, his wife had marked his date of birth as 1959. Throughout the Witness' testimony, there were several instances in which his supposed age did not correspond to the dates cited for certain events occurring at that time. The issue was never resolved conclusively.

<sup>14</sup> According to Duch's testimony, Nhém En was never sent to China. It was Pol Pot's nephew, Teng. Nhém En does not have any evidence to back up his claims besides a notebook filled with photography instructions.

<sup>15</sup> IM Chaem has been charged with crimes against humanity in Case 004/01, which is currently under investigation by the international co-investigative judge of the ECCC. Born in Takeo Province, within the Southwest Zone, she was later involved in the purge of the Northwest Zone, where she became secretary of Preah Net Preah District. She held this position until the fall of the DK regime.

<sup>16</sup> Nhém En claimed he still possessed a photograph of Muol Sambath *alias* Ruos Nhim, secretary of DK's Northwest Zone.

<sup>17</sup> Victor Koppe confronted the Witness with a statement of the former head of the photography unit at S-21, who claimed that Nhém En did not join the photography unit until mid-1978. Duch claimed that Nhém En had never worked at S-21 but had been the son of one of the guards. The Witness disputed this.

<sup>18</sup> "*Youn*" is a historical but oft-used derogatory Khmer term for the Vietnamese.

<sup>19</sup> Nhém En testified to owning a lot of S-21 documents, including photographs taken at the prison as well as the cameras used to take these pictures. The negatives, he said, no longer exist. He explained that he plans on using these materials, as well as further documents, tapes, and Khmer Rouge memorabilia to open up his own museum. Asked how he had come to possess these items, he explained that after the national reintegration in 1997-8, he had started collecting documents. Moreover, after Pol Pot's death, he had visited the former leader's house and taken items with him. The KR military commanders Khoem Mon and Teng, for whom he had worked later on, had supplied him with photographs as well.

<sup>20</sup> In Court, the Witness testified he was born in 1959 but previously gave his birthdate as 9 September 1961, see *supra*. 13. The Witness also characterized his upbringing as poor and said his father had been a poor farmer, however, he later said his father had been a school principal and district chief.

<sup>21</sup> Witness TOY Teng (2-TCW-865) was questioned in the following order: President NIL Nonn; national deputy co-prosecutor SENG Leang; international senior assistant prosecutor Travis FARR.

<sup>22</sup> Mr. HIM Huy testified before the Trial Chamber as a witness in Case 001 on 15, 16 and 20 July 2009. For summaries of his testimony in this case see CASE 001 KRT TRIAL MONITOR, Issue 13, week ending 16 July 2009 and CASE 001 KRT TRIAL MONITOR, Issue 14, week ending 26 July 2009.

<sup>23</sup> Trial Chamber, "Decision on Additional Severance of Case 002 and Scope of Case 002/02" (4 April 2014), E301/9/1.

<sup>24</sup> Trial Chamber, "Decision on Evidence Obtained Through Torture" (5 February 2016), E350/8.

<sup>25</sup> The four witnesses are: 2-TCW-898, 2-TCW-931, 2-TCW-906 and 2-TCW-816. Currently, 2-TCW-898 and 2-TCW-931 are scheduled to testify next week.

<sup>26</sup> International Lead Co-Lawyer for Civil Parties Marie GUIRAUD expressed her shock at this characterization of her team's conduct and said the argument was unacceptable. The debate around Lyma Nguyen's questioning of a Civil Party was covered in our previous report: see CASE 002/02 KRT TRIAL MONITOR, Issue 37, Hearings on Evidence Week 34 (14-16 December 2015), pp. 6-7.

<sup>27</sup> Trial Chamber, "Decision on Co-Prosecutors' Filing regarding National Counsel KONG Sam Onn's Prior Representation of Trial Witnesses" (25 April 2016), E397/1.

<sup>28</sup> KRT Monitors noted a number of mistranslations and simplifications from Khmer to English, for example: 'I was scared after I saw a KR soldier shoot three people in front of me and they told me to leave' to 'I was scared when the KR soldier told us to leave'; '20 people had repaired 67,000 machines' to 'others to repair'; 'the room that Van Nath drew the picture and where they walked 18 prisoners at gunpoint' to 'big hall'; 'Van Nath' to 'one person'; 'I was 18 years old' to 'I was mature enough'; 'two million dollars' to 'a lot of money'; 'Battalion 31' to 'battalion'; '2000 children from Sector 31 and Kandal Province' to '2000 children'; 'Kampong Chhnang was Sector 31, Kandal was Sector 25 and Takeo' to 'Sector 31', 'left outside the courtroom' to "left them at home," etc.