

KRT TRIAL MONITOR

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Case of Nuon Chea and Khieu Samphan

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(previously known as the UC Berkeley War Crimes Studies Center)

“The 60 couples all wept and when we stood together we wiped our tears and stopped weeping. None of them volunteered to get married. How could it happen that 60 couples had to marry at one point?”

- Civil Party Mom Vun

I. OVERVIEW

This week the Trial Chamber heard from one expert and one Civil Party on the regulation of marriage and heard one new witness on S-21 Security Center. First, Ms. Kasumi Nakagawa testified as an expert over the course of two days on the regulation of marriage and sexual and gender-based violence in Cambodia before, during and after the Democratic Kampuchea (**DK**) period.¹ On Wednesday, the Trial Chamber returned to the segment on security centers and internal purges and heard testimony of Witness Nim Oem, called by the Nuon Chea Defense. Nim Oem worked as the chief of the photography unit at S-21 and was able to explain the procedure that existed for photographing prisoners. Finally, Civil Party Mom Vun testified about her experience of being gang-raped prior to an arranged marriage which she was then forced to consummate at gun point. Objections were made this week related to new disclosures of documents from Cases 003 and 004, as well as the proposal by the Trial Chamber to call a new witness in the upcoming segment on the nature of armed conflict.

II. SUMMARY OF EXPERT, WITNESS AND CIVIL PARTY TESTIMONY

One expert witness, one fact witness and one Civil Party testified before the Trial Chamber this week. Expert Kasumi Nakagawa, a Japanese academic who has conducted research on Cambodia since the early 1990s, testified on Monday and Tuesday about the regulation of marriage during DK, followed by Witness Nim Oem, the former chief of photography at S-21. Civil Party Mom Vun was last to testify this week and spoke about her marriage during DK, particularly about being forced at gunpoint to consummate this marriage.

A. Summary of Testimony by Kasumi Nakagawa

Ms. Kasumi Nakagawa is a gender expert who has been studying Cambodian history for approximately 25 years; first in her home country of Japan and later in Cambodia, where she currently resides and works as a teacher at Paññāsāstra University of Cambodia (**PUC**).² Ms.

Nakagawa is the sixth expert to testify in Case 002/02 so far and the first of two proposed experts to testify on the regulation of marriage.

1. Academic Background

Kasumi Nakagawa has been studying Cambodian society since 1991.³ She first came to Cambodia as a tourist in 1995, and then again in 1997 to work at the Japanese Embassy in Phnom Penh, where she remained employed until March 1999. She is able to speak and read in Khmer but is not fluent in Khmer written language. The first study she undertook on the DK regime was in 2006 while she was working as a project manager at the Cambodian non-government organization (NGO) the Cambodian Defenders Project (CDP). In July 2007 while at CDP she published a paper titled *Gender-Based Violence During the Khmer Rouge Regime: Stories of Survivors of DK 1975-1979*. Ms. Nakagawa published a second edition of this paper in 2008 with research assistance from approximately 200 of her PUC students.⁴ In 2014 Ms. Nakagawa studied the experience of minorities during DK and produced a book *Gender-Based Violence Against Sexual Minorities During the Khmer Rouge Regime*⁵ and from 2014 to 2015 she researched pregnancy during DK for her paper called *Motherhood at War*. Presently she is studying childhood during the Khmer Rouge period.⁶

2. Research Methodology

The Expert was asked in detail about her research methods, particularly those used to produce the two editions of her study *Gender-Based Violence During the Khmer Rouge Regime*.⁷ Ms. Nakagawa explained that her research began out of a curiosity to learn more about the regime, particularly to “find the story and voices of women and men who experienced sexual violence.” To this end, she focused on first-hand accounts of those who had experienced sexual violence during the regime, rather than looking at policy documents or conducting a literature review. Ms. Nakagawa explained that the study was survey-based and her methodology was “strict.” She said she first trained 10 volunteers who then helped her conduct a baseline study, then each of the 10 trained others in their own provinces, ultimately leading to 50 trained volunteers.⁸ This group collected stories from 1,500 people: 300 each from 5 different provinces, mostly women. All data was sent back to CDP, where Ms. Nakagawa reviewed the interviews and identified 100 people she would meet in person for more in depth interviews.⁹

The Defense asked many questions related to Ms. Nakagawa’s research methodology. The Expert denied that the Open Society Justice Initiative, who had funded her original research, had outlined the scope or goal of her research, saying she had exercised autonomy and had a very clear idea of what she wanted to do with the project. The Nuon Chea Defense also asked about a report produced by Bridget Toy-Cronin, an intern at CDP, who used Ms. Nakagawa’s research to produce her own report, which included discussions about reparations at the ECCC. Since some of the victims mentioned in the study are now Civil Parties at the ECCC, represented by CDP, Counsel Chen asked whether one of the goals of this report had been to identify possible Civil Parties to testify before the Tribunal on sexual violence. In response, Ms. Nakagawa responded that this would have been impossible because at the time of researching that report she had not believed the ECCC would ever be established.¹⁰ The Expert conceded that the first and second studies she conducted may have been “biased” as they were shaped in such a way as to reach only people who had experienced sexual violence rather than the population as a whole, however her third study on pregnancy during DK, *Motherhood at War*, had contained no such bias.¹¹

3. Marriages in Cambodia Prior to DK

The Expert testified first to her knowledge about “traditional” marriages in Cambodia.¹² She described the traditional marriage system as one in which parents chose partners for their children, explaining that children expected their parents to make most of the important

decisions in their lives, including both marriage and education. Prior to DK, marriages were generally considered as a union of two families, rather than two individuals. While sons were sometimes able to exercise some level of agency in initiating a marriage, the Expert said that “in regard to the woman’s decision making power, there was almost zero.”¹³ Similar to during DK, parents usually matched their child with a child of a similar background.¹⁴ Generally children agreed to marry whomever their parents chose for them, and once both sets of parents had agreed on the match a large ceremony would be arranged, usually held over three days. The ceremony would involve blessings from Buddhist monks, family members and the wider community would be invited. Village chiefs were invited to the ceremony and would authorize the match, although they had no say over who married whom.¹⁵ Asked by Defense Counsel Liv Sovanna whether the traditional Khmer wedding ceremony was “wasteful,” the Expert responded that, while she personally would find the amount of money spent on these weddings a “waste,” this was not so for Cambodians, who viewed the day as very special.

Although she admitted that she had spoken with many women for whom, even during the Sihanouk period, their wedding day was the first time they met their husbands, these women did not see this as “unfortunate marriage” and were happy to accept the choice of their parents.¹⁶ Consummation of marriage was never discussed openly due to societal taboos around sexuality, however parents could enquire about the possibility of having grandchildren as a means of addressing this topic. The Expert said from her interviews it seemed normal that a couple would not have sex for several months after their wedding as they were “shy” and needed time to get to know each other. Ms. Nakagawa testified that divorce was rare during the pre-DK period as it was deemed acceptable for men to seek mistresses within a marriage, and woman generally viewed divorce as a source of “shame” for their family.¹⁷

4. Regulation of Marriage During DK

After discussing “traditional marriages” the Expert then compared these to marriages during DK, which she described as “completely different.” She stressed that the major difference was the lack of parental and familial involvement at all stages of the marriage process. Throughout her testimony the Expert differentiated between what she called “authorized” and “forced” marriage, both of which differed from “traditional marriage” but led to different degrees of harm.

a) Authorized Marriage

Ms. Nakagawa made it clear during her testimony that she did not believe that everyone who was married during DK was forced to marry. Some people, she said, would choose to marry because of the improved living conditions awarded to married couples.¹⁸ She also said that women in particular sometimes chose to marry in order to avoid being married to handicapped soldiers; a practice many feared. Thus, those classified by the Expert as experiencing “authorized” marriages were those who who requested marriage him or herself.

b) Forced Marriage

On the other hand, Ms. Nakagawa defined “forced marriage” as a situation in which “a person did not want to marry, but was instructed or forced by the Khmer Rouge.”¹⁹ She said that she defined a marriage as “forced” regardless of whether it was the man, woman, or both parties who did not want the marriage; although added that in her experience it was most often the woman who was against the match. In “forced” marriages, couples would not know the identity of their partner until the ceremony, although usually this had been arranged beforehand by cadre who matched people based on their backgrounds. Explicit threats for those who refused were rare, however a climate of “extreme fear” meant that refusal was often not an option: “They were terrified. Scared all the time. It would have been impossible to raise their voices and say no.”²⁰ Ms. Nakagawa clarified that the ability to refuse a marriage differed based on the location, the year or even the personality of the village chief. Asked about the long-term

impact of forced marriage, the Expert said that studies have shown domestic violence rates are higher in such families, although did not cite which studies. Of the 1,500 people originally surveyed for her report, only 10 gave first-hand evidence of having been through a forced marriage.²¹

c) Marriage Ceremonies during DK

Both “authorized” and “forced” marriage ceremonies during DK followed a similar pattern, although there were some differences. Rather than a traditional ceremony, the event more closely resembled a meeting at which at least two or three couples would be married. By late 1977 or early 1978, the Expert believed mass weddings were usually only organized for “forced” marriages. The largest ceremony she had heard of was for 300 couples, but most often there were fewer than 50. The wedding was very short. Oaths would be made, sometimes by all couples and sometimes by one couple representing the group. There were no Buddhist elements in the ceremonies and parents were rarely present.²² She said the presence of special food or drink, music or dancing was rare but occasionally took place. Another difference between marriage ceremonies for forced and authorized marriages was that couples undergoing “forced” ceremonies were often only informed up to 24 hours beforehand, whereas those who had asked to marry had more notice.

d) Forced Consummation and Rape

Ms. Nakagawa testified in depth about the expectation of couples to consummate the marriage and what this meant for both men and women during DK. First, Ms. Nakagawa explained the normal practice on a DK wedding night: cadres would provide newlyweds with a small hut in which they would stay for between one and seven nights, after which the couple would be separated and sent away to work. She was not aware of whether the couples from “authorized” marriages received explicit instructions to consummate their unions, but testified that those whose marriages were “forced” usually did. She heard from both men and women who were scared to consummate their marriage but did so out of fear. While she stated that some men had been violent toward their wives on their wedding night, she stressed that she did not believe this was widespread and that it was not possible to generalize systematic abuse from the evidence she had.²³ Regarding monitoring by militiamen, the Expert said she several interviewees had reported this occurring, however she could not speak to how common the practice was,²⁴ adding that this may not have been a formalized policy or have existed everywhere in DK.²⁵

When questioned by the Civil Party lawyers, the Expert expanded on the importance of female virginity in Cambodian society. She explained that part of the “duty” of being a daughter was not only to remain a virgin until her parents arranged her marriage, but to avoid all contact with men in order to prevent rumors about promiscuity. The value placed on virginity created an additional feeling of loss for many women who lost their virginity during a “forced” marriage. The Expert also testified about the use of rape as a punishment for women who refused marriage. Women she interviewed had told of being raped for refusing to marry. In one case a woman had witnessed the rape of another woman as a warning about refusal. Going further, Ms. Nakagawa explicitly described the very system of forced marriages as “legalized rape,” explaining that, since couples had no choice but to have sex once married, this could be considered rape. She described this rape as an inhuman act against both men and women, stressing the psychological harm caused to men by forcing them to rape their wives.

e) Pregnancy During DK

Ms. Nakagawa testified that “[I]n principle... all women did not want to get pregnant during the Khmer Rouge time” regardless of whether they had been previously married, chosen to marry or been forced. Due to the harsh living conditions, becoming pregnant would commonly lead to

greater suffering for both men and women but particularly women. The psychological burden of carrying the unwanted child of an unwanted husband was “hugely traumatic” for women, and men also suffered through the knowledge that they had created a child they did not want. Added to this was the chance that their infant would not survive the regime due to malnutrition and disease. Ms. Nakagawa noted that although abortion was a taboo topic in Cambodia, many women she interviewed said they had wanted to abort their baby on learning they were pregnant during DK. Pregnant women were not afforded any special treatment during DK and their husbands were not allowed time off work to care for them. After giving birth, mothers were unable to care for their children as women were sent back to work shortly after childbirth.

f) Prevalence of Forced Marriage and Existence of a Centralized Policy

The Expert testified that, based on her research, she believed forced marriages occurred in all provinces during DK.²⁶ While noting that the particularities of marriages may have varied across the country, “the Khmer Rouge had the absolute right to authorize the marriage” nationwide. Despite this she noted several geographical and temporal variations to circumstances of marriage that she had heard: for example, she said that in Kampong Cham people were married at an older age. When asked directly whether she believed there had been a centralized policy around forced marriage, the Expert replied: “I think there was a policy from the top level to organize mass weddings, but I do not have enough evidence to say that there was a policy at the top level.”

g) Couples’ Lives Together after Marriage

The majority of the people interviewed by Ms. Nakagawa chose to stay together after the DK regime ended. When asked why couples had chosen to remain together, the majority of women told her that they grew to like their husbands after the regime as he became more capable of fulfilling stereotypical gender roles such as bringing home food and acting as the “provider and protector”. Furthermore, some couples chose to remain together in recognition of their shared past. Nevertheless, most women she spoke with regretted not having had a “proper wedding.”²⁷

5. Defense Questions Around Role of Women in Cambodia

The Defense Teams raised a number of points aiming to demonstrate that the treatment of women during the DK period was not dramatically different from the way they were treated before or after the regime.

a) Traditional Right of Daughter to Choose her Husband

A significant amount of the Nuon Chea Defense Team’s questioning focused on comparing the status of women during DK with their situation before and after the KR period. National Defense Counsel Liv Sovanna asked whether there had not also been couples married in ceremonies arranged by their parents prior to DK who had had unhappy marriages, and about which the woman had had little choice. The Expert agreed this was the case, but pointed out that daughters generally agreed to these matches because they trusted their parents: a trust that was absent in their relationship with *Angkar*.²⁸ She described women prior to the DK period as too “oppressed to even think about sexuality or love.” Counsel Liv Sovanna asked whether the act of a parent arranging their daughter’s marriage was a violation of her rights. Ms. Nakagawa responded that daughters trusted their parents to make the best decision on their behalf, and therefore consent was given to the arrangement; consent which was lacking during DK.

b) Sixth Revolutionary Principle

Counsel Liv Sovanna asked the Expert about the Sixth Revolutionary Principle of DK, particularly the part which states that a husband and wife can marry only if both parties agree and if they gain approval from the community. Kasumi Nakagawa responded that she believed in the eyes of the KR, this principle was implemented during DK, as during the marriage ceremony couples pledged allegiance to each other in front of other members of the community. However, the idea of collective agreement was misleading because people were too afraid at the time to disagree with anything. When asked about the CPK's position on rape, which is also referred to in the Sixth Revolutionary Principle, Kasumi Nakagawa agreed that there was a "strict policy" prohibiting rape that "everybody knew about". Despite this, she said although the policy appeared to protect women, it "was also used to attack women," through the legalization of rape within forced marriage. However, the Expert conceded that rape outside of forced marriages would have been considered a violation of the Sixth Revolutionary Principle.

c) Current Position of Women in Cambodian Society

The Nuon Chea Defense asked the Expert whether she believed that women in Cambodia today could make decisions about their marriages freely and independently. While noting a "dramatic cultural change" in terms of gender equality, she conceded that traditional values remain strong and parents continue to arrange marriages for their children; particularly their daughters. Change has happened mostly in Phnom Penh, where she estimated about half of women choose their own spouse, however in rural areas she estimated that as many as 90% do not.²⁹ She confirmed that traditional taboos surrounding sex and sexuality still exist, although said this is changing as internet connectivity grows in Cambodia. The Nuon Chea Defense asked specifically about *Chbab Srey*, a set of "rules" or "instructions" on how to behave as a woman in Cambodia, pointing out that the DK period was not unique in placing restrictions on women. *Chbab Srey* was officially taught in Cambodian schools until recently and unofficially it remains an important source of education for young girls, who are taught to be "submissive, soft, nice, kind, helpful with housework." The Expert described these rules as a form of "oppression."

6. Witness Demeanor and Credibility

The Expert was measured in her responses to questions and frequently declined to generalize or speak to matters outside her realm of expertise. When questions touched on topics she was unsure of she politely declined to respond. Ms. Nakagawa was frank when she lacked statistics to support her findings, repeatedly explaining that her research had intended to share victims' stories, not gather statistics. When confronted with excerpts from her previous works, the Expert did not always recall details, but was consistently upfront with the Chamber. On one occasion she apologized to the Chamber and explained that since the research was done 10 years ago it was difficult for her to remember precise details about every person she interviewed. Overall Ms. Nakagawa was an engaged, thoughtful Witness and did not become defensive when her methods were questioned.

B. Summary of Testimony by Witness Nim Oem

After concluding the testimony of Kasumi Nakagawa, the Trial Chamber returned to the previous segment on internal purges and security centers to hear testimony of Mr. Nim Oem, *alias* Oem Kimsrieng; former chief of the photography unit at S-21 Security Center.³⁰

1. Training and Work as Photographer at S-21

Before April 1975, Nim Oem was a member of Division 703, led by Ta Nat, the first Chairman of S-21. Nim Oem was selected along with five other people to be trained as photographers. Three of the six people who were literate were sent to train in China and the other three, including Nim Oem, were kept at S-21. The Witness told the Court that he worked as a

photographer at S-21 between 1975 and the regime's end in 1979, and was required to take photographs of prisoners on arrival and develop films. He recalled that he had photographed the elderly, Vietnamese and other foreign prisoners at the prison, but never children.³¹ On rare occasions, after prisoners died at the S-21 he was asked to take their photograph.³² He also took photographs of Vietnamese military prisoners, although he believed they were military prisoners only because they wore uniforms. Nim Oem estimated that he and his colleagues took about 4-5,000 photographs of prisoners; based on the number of rolls of film he remembered having at his workplace.

The Witness told the Chamber that prisoners would be brought in around ten times per month, but that the frequency varied: sometimes he would photograph people two or three days in a row, sometimes only once a week. It could take between a few minutes to several hours to photograph incoming prisoner groups. If a group was small he would send Srun Song and Khan Nit to take their photographs, but if it was a bigger group he would accompany them.³³ Nim Oem recalled that at some stage during his time at S-21, people came to make a film of Vietnamese prisoners, adding that those who made the film were later imprisoned.³⁴

2. Questions Regarding Inconsistencies with Testimony of Witness Nhem En

During Nim Oem's testimony, Parties confronted him with several extracts from the previous testimony of Witness Nhem En, who testified before the Trial Chamber in April 2016.³⁵ Nhem En had testified to being a "chief" in the photography unit and told the Court that he had been sent to study in China. However, in court this week Nim Oem disputed Nhem En's claims to have been the chief, explaining that he was only a "child" when he worked there. The Witness recalled that when Nhem En arrived at S-21 he had no knowledge of photography and "could not even put film in the camera." The Witness added that although he had been in charge of training Nhem En in photography, he had been careful not to train him too well for fear that he would be able to take over his position.

3. Procedure for Photographing Prisoners

Nim Oem said that when prisoners arrived at S-21, Suos Thy would call him on a landline and ask him to come and photograph them.³⁶ Photographs were taken of people standing against the wall, and after they had been developed they were then sent to Suos Thy. As a precaution, the Witness numbered the photos, but said there was no official numbering system and members of his team would use their own system. The number did not show the date but rather identified for the photographer how many photographs had been taken on the day. In order to preserve film, rolls were kept in the camera until they were finished; so one roll could theoretically contain photographs from several days shooting. Nim Oem said that the names of prisoners were not usually written on the backs of negatives or photographs, but rather were written on a separate piece of wood that was stored with the negatives.³⁷

4. Taking Photographs at Prey Sar

When photographs or negatives were damaged, the Witness explained that he would be sent to retake the photograph. He estimated that this happened around two or three times a year and occurred mainly in relation to prisoners who had been sent from S-21 to Prey Sar. When this happened, the Witness would ask permission from Duch to "go to the rice fields" and would then travel there by bicycle, where Huy Srae would assist him to locate the prisoner he needed to photograph.³⁸ The Witness was able to recognize the person he needed to re-photograph because of the numbering system on the film roll. He noted that most of those sent to Prey Sar were not "important" prisoners, although added sometimes after further investigation people would be sent back to S-21 from Prey Sar if it was discovered they had committed any wrong doings, at which point he would photograph them on entry as normal. Previously, Him Huy testified that prisoners brought to S-21 but destined for Prey Sar would not be photographed at

all as they were unloaded from trucks outside the S-21 premises, however Nim Oem was unable to confirm or deny this statement.³⁹

5. Sexual Violence at S-21

Nim Oem was briefly confronted with the content of his Written Record of Interview (**WRI**) in which he mentioned the rape of a prisoner at S-21. He confirmed that he knew a prisoner had been raped by a medic and that the medic was later on imprisoned and executed. He testified that the prisoner was French, but he did not know what had happened to her.

6. Witness Demeanor and Credibility

The Witness was cooperative when answering questions and his memory appeared good considering the amount of time that has elapsed since the events in question. When confronted with parts of Nhem En's testimony, the Witness became dismissive and rejected outright many of the claims made by Nhem En, saying that he had been too young to have known that which he claimed to know. The Witness' response to contradictions between his testimony and that of Witness Nhem En suggested some level of personal history between the two men. During questioning by Counsel for Nuon Chea, the Witness told the Court that he had served a 10-year prison sentence for manslaughter from 1996 to 2006, although it became clear that this was unrelated to the events in question.⁴⁰

C. Summary of Testimony by Mom Vun

Finally this week Civil Party Ms. Mom Vun, originally from Siem Reap, testified about the regulation of marriage during DK.⁴¹ She will conclude her testimony next week, at which time she will be given the opportunity to give a statement of suffering and ask questions to the Accused.

1. Personal Background and Loss of Family Members

Prior to 17 April 1975, Mom Vun lived in Sangke Meanchey Village, Kampong Kdei Commune, Chikraeng District, Siem Reap Province. She testified to being around 28 years old at this time, and was already married to her husband Ta Ham, who was 33.⁴² The couple had eight children together, although three died prior to the start of the regime.⁴³ At this time she worked in the rice fields. She said KR forces entered her village sometime in 1975, while the Civil Party was living with her parents. Her father was accused of being the commune chief, sent for "re-education," and never returned.⁴⁴ Mom Vun's siblings were "accused of joining the enemy" and taken away to be killed. Her mother died of sickness "as a result of the disappearance of her husband and children." Her husband was accused of being a former Lon Nol soldier, sent for "re-education" and never returned.⁴⁵

2. Second Marriage and Experience of Rape

A few months after the disappearance of her first husband, Mom Vun was told by her unit chief Sie that she would have to remarry. At first she refused, believing her first husband would return, however Sie insisted.⁴⁶ Mom Vun testified that, two days before the wedding, in the early evening a group of around five comrades threatened her with a gun, forced her to take off her clothes then raped her one by one. After the assault she was so injured she could hardly walk. She said she had been too ashamed to mention both the rape and the forced marriage earlier, not even to her family or relatives.

Two days after the rape, Mom Vun married again. She told the Court that her first marriage was traditional, with a clergyman, music, lots of food, family, relatives and friends and. However, her second marriage was different. It took place in late 1975 and she was married in

a ceremony with 60 other couples in a ceremony held at a worksite in in Baek Khlok.⁴⁷ She did not meet her future husband beforehand. The Civil Party described the day, saying she did not receive any special clothes or shoes and there was no music or performance. There was a chicken at the ceremony that was eaten later by the cadres, while everyone else ate soup. The man she had to marry was named Oem Thoen, who did not like her because she already had eight children. District Committee Comrade Rom, also known as Thorn, chose her husband and was present at the ceremony, along with Sorn, Sie and their bodyguards. The couples stood in 4 rows of 15, and she and her husband were the sixth couple to marry. She said the majority of couples were “base people” with only three couples of “new people,” and no one gave their consent to marry the partner that had been chosen for them.⁴⁸ Two couples were taken away from the ceremony because they refused to get married, and she did not know what happened to them. At the wedding cadres announced that couples had to love one another, stay together, work hard for the revolution and produce more children for *Angkar*. Her family was not at her ceremony, which Mom Vun described as “not a proper marriage,” nor were they informed of the match.

3. Forced Consummation of Second Marriage

The Civil Party testified in detail about the night of her marriage. She said that the wedding ceremony came to an end at around 3:00PM after which they went to a house. She said after she and her husband went inside, militiamen came inside the hut and told them they had to take off their clothes and have sex. MOM Vun said the militiamen had lights and shone it on them, then “they took my husband’s penis to insert to my vagina. It was so disgusting. I had no choice.” After the couple couple had consummated their marriage; the militiamen moved on to the next house and did the same thing to the people there. She said the same occurred the next night, but by the third night the men saw that she and her husband were “getting along” so they left. She recalled the militia men were armed and aged 16 or 17 years old but she did not know their faces. When asked how the memory of her wedding night made her feel, she said since that day she has “felt humiliated, I felt pain, I wanted to protest but I did not dare because I was afraid I would be killed.”

4. Pregnancy During DK

Mom Vun became pregnant during DK and gave birth to two sets of twins: in 1976 and in 1977, although one child passed away during the regime. Mom Vun continued living with her husband after the regime, having a third set of twins in 1982. The couple divorced in 1984.⁴⁹ The Civil Party explained that during her pregnancies in the DK regime she did not receive any special medical care or extra rations and was still expected to work. She said that she spent one and a half months with her babies after childbirth but after that she had no breast milk to feed her child and had to return to work. She was assigned to grind rice, which was considered an “easy task,” but added that if she did not reach her quota of one basket of rice per person she would “get in trouble.” She said she was told during the regime that her children were “the children of *Angkar*” and that she should have more to support the regime.

5. Execution of Vietnamese Woman Named Din

Mom Vun was asked about a young girl named Din who was of ethnic Vietnamese origin. The Civil Party remembered Din, who worked as a cook in the village. Mom Vun explained that one day cadres asked if there were any Vietnamese people living in that village, and Din was subsequently taken to Kampong Kdei Pagoda. The Civil Party explained that at this time she herself was working in a team carrying earth from Kampong Kdei so she was nearby the pagoda. One day she heard a woman who she presumed was Din screaming while being raped, and later she was told by KR cadres that they had cut open her back, removed her gallbladder and put it into rice wine to drink. She clarified that she had only heard this story and did not see this with her own eyes. She said at the time “all the ethnic Vietnamese were taken

to be killed, only the Chinese were spared.” There were no Cham people in her area.

6. Meeting at Kulen Mountain with Senior CPK Leaders

In addition to her testimony on her marriage, Mom Vun also told the Court about a ceremony held at Kulen Mountain in 1976 at which the two Accused were present. Mom Vun testified that people from mobile units, from the district and children attended the meeting, which lasted from the morning until around 2:00PM. She said she had been called to attend in order to sing a revolutionary song *The Red Sun Song*, and recalled being excited because she heard the late King Norodom Sihanouk would be present. She said during the meeting it was announced that Noun Chea, Ieng Sary and Khieu Samphan were present, and she remembered Nuon Chea giving a speech about the production of rice and the need to help the revolutionary army and be vigilant against enemies of the revolution. She said he was the only speaker that day. After her performance she was warned by a person called Chan Eng that the other singers had all been “taken away” and so she hid in a horse cart and then fled back to her worksite.

III. LEGAL AND PROCEDURAL ISSUES

This week Parties held two animated debates over a legal issue that has plagued Case 002/02: the admission of new evidence from ongoing investigations.⁵⁰ A disclosure of nine documents by the OCP made the day prior to the appearance of Expert Witness Kasumi Nakagawa was objected to by the Defense Teams, and the Trial Chamber’s proposal to call a new Witness in the segment on the nature of armed conflict was similarly criticized for being “last minute.”

A. OCP Disclosure of New Documents Related to Expert Witness

On Tuesday morning immediately prior to the appearance of Kasumi Nakagawa, Defense Teams responded to a request made by the OCP late the previous afternoon to admit nine documents from Cases 003 and 004 into evidence; six of which relate to the regulation of marriage.⁵¹ The Nuon Chea Defense argued that the request was in breach of the OCP’s obligation to disclose potentially exculpatory material as early as possible, given some of the documents dated from as early as November 2013.⁵² Counsel Chen asked why the OCP was disclosing these documents the day before the Expert on the regulation of marriage was appearing, effectively precluding the Defense from using the documents during their examination. Ms. Chen advised that her team may wish to recall the Expert should the documents be admitted and their contents prove relevant. International Counsel for Khieu Samphan agreed with the comments made by her Defense colleague and Civil Party lawyers made no observations.

Prosecutor William Smith responded on behalf of the OCP, arguing that the disclosure was in line with their obligation to disclose all exculpatory material uncovered in Cases 003 and 004.⁵³ He reminded the Chamber that it was inevitable that these kinds of issues would arise when a trial and investigation run in parallel, but argued that the material did not “impact significantly [the Expert’s] testimony”. Judge Fenz criticized the timing of the request, pointing out that it generally takes 48 hours between a disclosure request and the ability to allow parties access to the documents. The Prosecutor explained that the timing was “coincidental” and the request had not been prioritized as the OCP was preparing Rule 87(4) applications to be submitted before the final deadline of 1 September.⁵⁴

B. Objections to New Witness on Nature of Armed Conflict

On Thursday the Chamber asked for oral submissions on the proposal to call an additional witness, 2-TCW-1065, on the nature of armed conflict, which they had raised via email on 13 September. The OCP agreed with the proposal, saying the person was “significant” and could speak not only to the nature of armed conflict but also purges in the East Zone. The LCLCP

had no comments. The Defense Teams each vehemently objected to the calling of this new witness.

First, the Khieu Samphan Defense Team reminded the court several times that evidentiary hearings were nearing their end. Counsel Guissé added that 2-TCW-1065 had initially been discovered when three WRIs were disclosed on 22 March 2016 under the OCP's obligation to disclose anything potentially exculpatory. On review, neither Defense Team had seen fit to call this witness to testify, nor had the Trial Chamber seen fit to include 2-TCW-1065 on the list that was prepared in June 2016. Counsel Guissé admonished the Chamber for the late inclusion, adding that it was "not normal" in other international courts and was indicative of a "true problem of lack of judicial security in this trial". She quoted a prior decision of the Trial Chamber's in which she wrote: "In any case, as the Chamber approaches the close of evidence in Case 002/02, there must come a point when the Parties can rely on the evidentiary record that has been established through the investigation and trials in this case."⁵⁵ Finally, Counsel argued that should this Witness be admitted, they would need more time to prepare their questioning and access to the audiotapes of their prior statements.

The Nuon Chea Defense Team also argued strongly that the Trial Chamber's proposal to call this Witness was inappropriate, although for different reasons to their colleagues. Counsel Koppe argued that 2-TCW-1065 was "small fry" compared with Witnesses his team had proposed, including Heng Samrin, Prime Minister Hun Sen, Ouk Bunchhoeun, Pol Saroeun and Pen Sovann.⁵⁶ 2-TCW-1065, as the nephew of Sao Phim and chairman of a regiment hospital, would not, he argued, be able to provide the same level of evidence as those other Witnesses he had mentioned. In support of his argument, Counsel Koppe cited the dissenting opinion in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé* at the International Criminal Court, that "the complete absence of evidence from those who were really at the center of things at the time inevitably creates the impression that essential information was missing from the record. Conclusions reached on the basis of such incomplete evidence are inherently fragile and uncertain and cannot suffice for proof beyond reasonable doubt."⁵⁷ In conclusion, he said his team did not mind whether this Witness was called or not, but that the really important factor was that the witnesses the Defense team had proposed be called.

Assistant Prosecutor Dale Lysak expressed his surprise at the strength of the "incredible" arguments made by the Defense. He said that, contrary to Counsel Koppe's position, this Witness was very "significant" and that he had been in the East Zone on 25 May 1978 and promoted when many leading cadres were purged.⁵⁸ In response to the Khieu Samphan Team's objection, he said it was "remarkable" to him that they would object to hearing a new witness in the Trial, which was supposed to be a "search for the truth." He said it was the nature of an investigative Trial Chamber that new evidence be uncovered throughout the trial and that the addition of one new witnesses should not be too heard to prepare for. He told the Bench: "Your Honors have a duty not to box yourselves into an investigation that was conducted years ago, but to take advantage where new significant witnesses come up."

IV. TRIAL MANAGEMENT

This week the Trial Chamber concluded testimonies of Expert Witness Kasumi Nakagawa in relation to the regulation of marriage and Witness Nim Oem related to segment on S-21 Security Center, and also heard the partial testimony of Civil Party Mom Vun regarding the regulation of marriage over the course of four days.

A. Attendance

This week Noun Chea continued to waive his right to be present in the courtroom and observed proceedings through video link from the holding cell due to his poor health, while Khieu Samphan was present in the courtroom throughout the week.

Judge Attendance: On Thursday acting President Ya Sokhan announced that President Nil Nonn's health condition had improved and said he should be able to return to the Trial Chamber when he has had time to review the testimony he has missed. He continued to be absent throughout the week and Ya Sokhan continued to act as President, with national reserve Judge Thou Mony replacing Judge Ya Sokhan. All other Judges were present as normal.

Parties: Mr. Liv Sovanna, national Defense Lawyer for Nuon Chea, was absent on Thursday morning and Mr. Pich Ang, national Lead Co-Lawyer for Civil Party, was also absent on Friday, due to personal reasons. However, their international colleagues were in the courtroom to represent their clients.

Attendance by the public:

DATE	MORNING	AFTERNOON
Tuesday 13/09/2016	<ul style="list-style-type: none"> ▪ 135 villagers including monks from Chbar Morn City, Kampong Speu Province ▪ Nine foreign observers ▪ Six Civil Parties 	<ul style="list-style-type: none"> ▪ 123 villagers from Chbar Morn City, Kampong Speu Province ▪ Two foreign observers ▪ Seven Civil Parties
Wednesday 14/09/2016	<ul style="list-style-type: none"> ▪ 189 villagers from Phnom Kravanh District, Pursat Province ▪ Eight foreign observers ▪ Eight Civil Parties 	<ul style="list-style-type: none"> ▪ Two foreign observers ▪ Seven Civil Parties
Thursday 15/09/2016	<ul style="list-style-type: none"> ▪ Approximately 100 villagers from Memot District, Tboung Khmum Province ▪ 1 foreign observer ▪ 10 Civil Parties 	<ul style="list-style-type: none"> ▪ Approximately 100 villagers from Memot District, Tboung Khmum Province ▪ 16 foreign observers ▪ Six Civil Parties
Friday 16/09/2016	<ul style="list-style-type: none"> ▪ 85 students including five monks and three lecturers from Royal University of Laws and Economics, Phnom Penh ▪ Eight Civil Parties 	<ul style="list-style-type: none"> ▪ Approximately 200 villagers from Pursat City, Pursat Province ▪ Nine Civil Parties

B. Time Management

The Trial Chamber held four days of proceedings from Tuesday to Friday this week, hearing one Expert, one Witness and part of one Civil Party's testimony. The Trial Chamber also took some time this week hearing oral arguments from Parties over the OCP's request for admissibility of documents and legal issues including summoning additional in the upcoming segment on the nature of armed conflict. On Tuesday the Trial Chamber granted LCLCP Marie Guiraud an additional 10 to 15 minutes to conclude her line of questioning the following morning. Next Monday the Chamber has scheduled a video-link testimony a Civil Party, 2-TCCP-251, and therefore the Chamber announced it would postpone hearing the remaining testimony of Civil Party Mom Vun until after the testimony of 2-TCCP-251, rather than reschedule the video link.

C. Courtroom Etiquette

There was a moment of tension on Thursday 15 between international Judge Claudia Fenz and Mr. Victor Koppe, Defense Lawyer for Nuon Chea after the President rejected his request

that extra time to question Witness Nim Oem. Explained in more detail by Judge Fenz as being mainly the result of issues with time allocation, Counsel Koppe replied “That is utter nonsense and you know it Judge Fenz.” Immediately, Judge Fenz told Counsel to “watch [his] language,” but Counsel Koppe argued heatedly, saying “I certainly will not.”⁵⁹ Other than this outburst Parties generally conducted themselves politely throughout the week.

D. Translation and Technical Issues

This week, proceedings were delayed by a number of mistranslations and technical malfunctions. There were several brief discussions in order to clarify translated words from one language to another language.⁶⁰ On Thursday, hearings were interrupted for the first half hour of the day as attempts were made to fix a technical glitch with the French language channel due. The Audio Visual Unit was able to fix the problem after a number of checks, and other than this, proceedings ran smoothly for the rest of the week.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Tuesday 13/09/2016	9:06	10:16-10:36	11:31-13:28	14:37-14:59	16:00	4 hours 15 minutes
Wednesday 14/09/2016	9:07	10:08-10:27	11:34-13:29	14:38-14:57	16:03	4 hours 23 minutes
Thursday 15/09/2016	8:59	10:27-10:49	11:34-13:29	14:35-14:54	16:01	4 hours 26 minutes
Friday 16/09/2016	9:01	10:16-10:34	11:28-13:28	14:40-14:59	16:01	4 hours 23 minutes
Average number of hours in session				4 hours and 21 minutes		
Total number of hours this week				17 hours and 27 minutes		
Total number of hours, day, weeks at trial				870 hours and 35 minutes		
230 TRIAL DAYS OVER 67 WEEKS						

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



Unless specified otherwise,

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

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eav alias “Duch” (CaseNo.001/18-07-2007-ECCC)</i>
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (CaseNo.002/19-09-2007-ECCC)</i>
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
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 Expert Witnesses are sought to provide insight and clarification on specific issues of a technical nature deemed necessary to the proceedings. (see Internal Rule 31(1)). An expert is appointed through a judicial order specifying their exact assignment (see Internal Rule 31(3)). The Chamber has decided that the role of Expert Witnesses is to enlighten the Chamber on specific issues of a technical nature, requiring special knowledge in a specific field. Experts are entitled to provide their opinions and may give speculative answers insofar as they are informed by the Expert’s broader knowledge about a topic (see Trial Chamber, “Decision on Assignment of Experts” (5 July 2012), E215, [hereinafter **DECISION ON EXPERTS**]). However, this Decision also provides that “Expert Witnesses may not express opinions on ultimate issues of fact, as only the Chamber is competent to make a judicial determination on the issues in the case.” The July 2012 Decision relied on international jurisprudence (for one example, see Trial Chamber, *Prosecutor v. Karemera*, Decision on Joseph Nzirorera’s motion to limit the scope of testimony of expert witnesses Alison Des Forges and Andrew Guichaoua (21 August 2007), ICTR-98-44-T, para. 3). Previous Witnesses who appeared as Experts were Mr. Henri LOCARD, Mr. Alexander HINTON, Mr. YSA Osman, Ms. Elizabeth BECKER, Mr. Richard DUDMAN. For summaries of their prior expert testimony please see: CASE 002/02 KRT TRIAL MONITOR, Issue 61, Hearings on Evidence week 58 (1-4 August 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 60, Hearings on Evidence week 57 (26-29 July 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 48, Hearings on Evidence week 45 (21-24 March 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 47, Hearings on Evidence week 44 (14-17 March 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 43, Hearings on Evidence week 40 (9 – 10 February 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 15, Hearings on Evidence week 12 (30 March – 3 April 2015) CASE 002/02 KRT TRIAL MONITOR, Issue 8, Hearings on Evidence week 5 (9 – 12 February 2015).

² Expert Witness Kasumi NAKAGAWA (2-TCE-82) was questioned in the following order: acting president YA Sokhan; international deputy co-prosecutor William SMITH; international lead co-lawyer for Civil Parties Marie GUIRAUD; international judge Jean-Marc LAVERGNE; international judge Claudia FENZ; national counsel for Nuon Chea, LIV Sovanna; international counsel for Nuon Chea, Doreen CHEN; international co-lawyer for Nuon Chea, Victor KOPPE; national co-counsel for Khieu Samphan, Kong Sam ONN; international co-lawyer for Khieu Samphan, Anta GUISSÉ.

³ Ms. Nakagawa completed a Bachelor's Degree in 1995 focusing on how Pol Pot took power, from an international relations point of view. At this time, as there were no Japanese scholars focusing on this topic that she was aware of, her research was based on books by Westerners. She completed a Masters degree in International Public Policy at Osaka University in 2000 during which time she studied Japanese foreign policy toward Cambodia, particularly in terms of culture

⁴ This was published as *Gender-Based Violence During the Khmer Rouge Regime: Stories of Survivors in Democratic Kampuchea 1975-1979, second edition*, in December 2008. The Expert clarified that she used the same underlying body of work to inform both publications, largely interviews with victims of sexual assault and forced marriage.

⁵ Published in English in 2015 by the Cambodian Defenders Project.

⁶ The President also asked questions about the CDP report seemingly produced by the Expert with Bridget TOY-CRONIN entitled *I Want to Tell You: Stories of Sexual Violence during Democratic Kampuchea (1975-1979)* and published by the Cambodian Defenders Project, however Ms. Nakagawa clarified that she had had no personal engagement in this project. While the work was written by Ms. Toy-Cronin, a Harvard law student and intern at CDP at the time, it was based on the research previously conducted by Ms. Nakagawa.

⁷ On 31 August 2016 the Nuon Chea Defense Team requested to admit two documents (namely the Curriculum Vitae of the Expert and *Expert Report on the Phenomenon of 'forced marriage' in the Context of the Conflict in Sierra Leone, and, More Specifically, in the Context of the Trials against the RUF and AFRC Accused Only*, Zainab H. Bangura and Christiana T. Solomon, May 2005, contained as an annex to SCSL, Case SCSL-2004-16-T, Prosecution Filing of Expert Report Pursuant to Rule 94(bis) and Decision on Prosecution Request for Leave to Call Additional Expert Witness, 8 Aug 2005) pursuant to Internal Rule 87(4) and also made a request pursuant to Internal Rule 93 that Ms. Nakagawa provide Parties with recordings of the interviews on which she based the two editions of her book *Gender-Based Violence During the Khmer Rouge Regime: Stories of Democratic Kampuchea 1975-1979: see Nuon Chea Defense Team, "Nuon Chea's Rule 87(4) and Rule 93 Requests Related to 2-TCE-82 (Nakagawa Kasumi)"* (31 August 2016) E431/3. Oral responses were heard on 5 September 2016 and are summarised in our report: CASE 002/02 KRT TRIAL MONITOR, Issue 66, Hearings on Evidence week 63 (5-8 September 2016), pp. 4-5.

⁸ The volunteers were referred to as "sentinels" throughout her testimony and Ms. Nakagawa expressed her utmost confidence in their work. She said the sentinels were trained to collect first-hand evidence, not hearsay.

⁹ To conduct this second round of interviews she went with one other research and a translator to each province; she met around 50 people herself and the other researcher met the others. The recorded interviews were first transcribed into Khmer by a third party and then translated by a professional translator. It was the English translations Ms. Nakagawa used as the basis of her study.

¹⁰ Ms Nakagawa also said that after leaving CDP she destroyed all of her records of the people she interviewed, making it impossible for her or anyone else to use them at a later time for any purpose.

¹¹ She had a slightly different methodology for *Motherhood at War*, interviewing 500 people initially, and then a further 200 later who were interviewed in more detail.

¹² Ms. Nakagawa defined "traditional" marriage for these purposes as that which she defined as those which existed during the Sihanouk era, as she had not conducted any study into marriages during the French colonial or Japanese occupation periods

¹³ The Expert said that in cases where a girl's parents had passed away prior to her marriage, an older relative would make the decision for her, reiterating that "the girl did not have any decision-making power."

¹⁴ The Expert testified that during DK usually base people were matched together and new people with each other, which is similar to prior to the regime when people of similar social status were matched. The difference being that the social status of the DK regime was imposed by Angkar. Defense Counsel Liv Sovanna asked whether this could not result in some couples prior to DK effectively being banned from marrying a partner seen as inappropriate by their parents, to which the Expert responded that it was likely the woman would choose not to marry such a man because she prioritised her duty to her parents.

¹⁵ Ms. Nakagawa testified that although she believed there had been a law requiring the permission of authorities to marry before DK, she did not believe this was ever enacted and she had not heard any of her interviewees say they needed authorisation for marriage prior to DK. Later, during her questioning, international counsel for Nuon Chea, Doreen CHEN, brought up her own marriage to a French citizen and the documentation she had had to submit in order to have the marriage approved, as an example of contemporary authorities continuing to "authorize" marriages, also pointing out that France may have potentially passed down this law to Cambodia during the colonial period. Judge Lavergne interjected that this was not his understanding of the French Marriage Law and perhaps Counsel's personal set of circumstances were more at issue here. He disputed that in France authorization is required from officials before a couple may marry and ultimately Counsel Chen rephrased her question in a more general way so as to avoid any potential confusion.

¹⁶ Ms. Nakagawa remembered only one story of a woman who had refused a marriage during the Sihanouk regime, on the grounds that she wanted to study medicine to become a doctor, but she said that apart from this everyone she knew agreed to the matches "blindly." She described this blind loyalty of daughters as a form of "duty" they showed to their parents.

¹⁷ She conceded that the reason she had not much data on divorces was that no specific question on divorce was included in the questionnaire and the one story she heard about a divorce was raised spontaneously

¹⁸ The main benefit, according to the Expert, was that married couples were sometimes moved to live in closer proximity to their parents. She explained that single women were assigned to work in mobile units of youth groups,

depending on their age, and would work long hours in “miserable” conditions. If they married they would be removed from these units and sent to a cooperative, in some cases near their parents.

¹⁹ Towards the start of the Expert’s testimony, Counsel Victor Koppe, for the Nuon Chea Team, objected to the use of the term “the Khmer Rouge” as it was not sufficiently specific for legal proceedings. The objection was overruled on the grounds that Counsel could ask the Expert for clarification about what she meant by this term later on.

²⁰ One woman from Siem Reap interviewed by the Expert had been sent to a re-education camp after refusing a marriage.

²¹ Counsel Koppe argued such a low number showed that this study constituted “very anecdotal evidence” of a nation-wide policy on marriage. The Expert responded that while that study may not have confirmed this, other research she has conducted she is confident that there was a pattern.

²² The Expert said she had never explicitly studied what impact the absence of Buddhist monks or other spiritual or religious elements had had on those who married during DK because she does not believe in any religion herself.

²³ In cases where violence was reported Ms. Nakagawa offered the possible explanation that a man may have acted in this way out of fear or frustration at having their masculinity undermined by being forced to marry. The traditional heteronormative concept of masculinity was proffered by the Expert as a source of harm for men who felt emasculated when they, having traditionally been the providers for their family, were unable to fulfil this role.

²⁴ Although she did not agree it was possible to say the monitoring took place throughout DK, she did say she had heard similar stories recounted by both men and women of small children known as “spies” who were sent by cadres to listen through the thin walls of the marital huts.

²⁵ The Expert dismissed the suggestion that in a socially conservative society such as Cambodia, the idea of listening in on a couple at night time would have been uncomfortable. She said it would have been possible if it helped the Khmer Rouge demonstrate they were in control.

²⁶ Kasumi NAKAGAWA’s study focused on 1,500 people from 5 different provinces. She was unable to explain how she came to the conclusion that forced marriages took place in every (all 24 at the time) province in Cambodia when she studied 5 specifically.

²⁷ She noted that the men she spoke to did not show the same level of emotion and “did not have great remorse.”

²⁸ LIV Sovanna asked the Expert whether couples could fall in love prior to marriage before the DK regime. Ms. Nakagawa responded: “the term love is a very difficult term to speak about or identify in Cambodian culture. A woman took it for granted that she would respect her husband. Love is a very complex issue... it did not necessarily come from marriage.”

²⁹ These statistics appeared to be based on anecdotal evidence of people in her class at PUC.

³⁰ Witness NIM En (2-TCW-854) was questioned in the following order: acting president YA Sokhan; international co-lawyer for Nuon Chea, Victor KOPPE; international assistant prosecutor Dale LYSAK; international Civil Party lead co-lawyer Marie GUIRAUD; Judge Jean-Marc LAVERGNE; international co-counsel for Khieu Samphan, Anta GUISSSE.

³¹ Initially, when asked, the Witness said he estimated that although he never personally took photographs of children, about 10% of the total number of photographs he developed were of children, however he later said the number was probably between 5 and 10 photographs. This discrepancy was not resolved.

³² He specifically remembered taking photographs of prisoners who had been beaten to death at the Center.

³³ NIM Oem testified that there were six members of the photography unit: the three who were literate were sent to China for further study and the three who remained were himself, SRUN Song and KKAN Nit (referred to by their first names Song and Nit throughout his testimony). All three of them remained working at S-21 from 1975 until the end of the regime.

³⁴ LACH Mean, a former interrogator at S-21, testified that Vietnamese prisoners were filmed during their “confessions” and these films were later played to staff at S-21 see CASE 002/02 KRT TRIAL MONITOR, Issue 52, Hearings on Evidence week 49 (25-28 April 2016) p. 4. KAING Guek Eav, *alias* Duch, the former head of S-21 also testified that a film was made of Vietnamese prisoners, and that the film was produced by Pol Pot’s nephew Theng, who had studied cinematography in China. However, Duch denied this film was ever shown at S021 and was instead used during a conference held in Jakarta in order to demonstrate the threat posed by Vietnam, see CASE 002/02 KRT TRIAL MONITOR, Issue 57, Hearings on Evidence week 54 (13-16 June 2016), p. 5

³⁵ In court NHEM En claimed to have been in charge of two photographers at S-21: Ry and Som. In an earlier interview to Doug NIVEN and Peter MAGUIRE he claimed his assistants were “Ry, Som, Nit, Song and Srieng.” However when confronted with this in court this week, NIM Oem said this was “cheating.” NHEM En also said he had been personally chosen by Son Sen in either June or July 1976 to be a photographer at S-21 after returning from studying in China. In court this week, NIM Oem denied most of NHEM En’s testimony. see CASE 002/02 KRT TRIAL MONITOR, ISSUE 51, Hearings on Evidence week 48 (18-21 April 2016), pp. 4-7.

³⁶ This procedure corroborates the prior testimony of SUOS Thy, who testified as a Witness in Case 002/02 in June 2016. He was in charge of maintaining lists of incoming and outgoing prisoners at S-21. During his testimony he identified Song and Srieng as chief photographers at S-21. For a summary of his testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 55, Hearings on Evidence week 52 (2-3 June 2016) pp. 1-4 and CASE 002/02 KRT TRIAL MONITOR, Issue 56, Hearings on Evidence week 53 (6-9 June 2016) pp. 1-3.

³⁷ NHEM En testified that Srieng was in charge of writing the name of prisoners on the back of photographs before sending them to SUOS Thy.

³⁸ During his testimony, KAING Guek Eav, *alias* Duch, explained that ‘Huy Srae’ was a nickname meaning ‘Huy of the rice fields’ which is a reference to Prey Sar where he was chief. This nickname was to differentiate Huy Srae from HIM Huy, who was a guard at S-21, see CASE 002/02 KRT TRIAL MONITOR, Issue 57, p. 3.

³⁹ HIM Huy testified as a Witness in Case 002/02 in May 2016. He worked as a guard at S-21 during the DK regime. For a summary of his testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 53, Hearings on Evidence week 50 (2-5 May 2016).

⁴⁰ Counsel also raised a prior conviction of the Witness, who has served 10 years for manslaughter after killing a man with a stick in what appeared to be self-defense. He was tried in the Kandal Provincial Court and served jail time between 1996 and 2006, although this is unrelated to his testimony on S-21.

⁴¹ Civil Party MOM Vun (2-TCCP-283) was questioned in the following order: acting president YA Sokhan; Civil Party lawyer CHET Vanly; international Civil Party lead co-lawyer Marie GUIRAUD; senior assistant prosecutor Vincent DE WILDE D'ESTMAEL; national counsel for Nuon Chea, LIV Sovanna.

⁴² There was some uncertainty about the Civil Party's exact age. When asked by the President, she gave her age at 67 years old, however if she was 28 in 1975 then she would be around 69 years old now. Civil Party lawyer CHET Vanly presented MOM Vun with a document indicating her date of birth as 29 April 1942, which would make her 74 this year. When asked to clarify she said she had been told she was born in the year of the tiger and that that made her 67 this year, however the most likely year of the tiger she could have been born in was 1950, making her 66 this year. Thus the Witness's exact age, and her age during the DK regime, ultimately remained unclear, although this is not uncommon in Cambodia.

⁴³ Defense Counsel for Nuon Chea, LIV Sovanna, read a previous statement provided by the Civil Party in which she indicated she had divorced her husband in 1972, however she clarified that the separation had only been brief. She had been angry because her husband had an affair but they reconciled shortly after. It was not clear whether the "divorce" was a legal divorce or a separation.

⁴⁴ The Civil Party clarified that her father had never been a commune chief, and was simply a rice farmer, however he owned so many cows that people jokingly referred to him as "the commune chief of cows."

⁴⁵ MOM Vun testified that her husband had never been a Lon Nol soldier, and had only boasted about this while drunk on one occasion.

⁴⁶ Apparently MOM Vun did not mention this second marriage during her Civil Party Application. When asked by Civil Party lawyer CHET Vanly why she had omitted this, she said that she was "ashamed of it" and only gained the strength to talk about it after attending a forum for women arranged by TPO, the Transcultural Psychosocial Organization. She was not aware of any other women being raped prior to their marriages.

⁴⁷ MOM Vun also recalled attending a different wedding ceremony on another occasion at which time 40 couples were married at the Rohal Prol Worksite.

⁴⁸ When asked by LIV Sovanna, Defense Counsel for Nuon Chea, how she could know that no one consented, the Civil Party responded: "because the 60 couples all wept, and when we tood together we wiped our tears and stopped weeping. None of them volunteered to get married. How could it happen that 60 couples had to marry at one point? Everyone would weep; regardless of if we were virgins or widows, we all wept."

⁴⁹ Based on her in-court statements, three of Mom Vun's original eight children with her first husband died prior to the DK regime. One of her five children died during the DK regime, she then had twins in 1976 and more twins in 1977, (one of whom died) and another set of twins in 1982. She explained that her children who died during the regime passed away due to lack of medicine and food.

⁵⁰ This issue has been raised since the outset of evidentiary hearings in Case 002/02, when the OCP disclosed WRIs from Case 004 on 17 October 2014 (see International Co-Prosecutor, "International Co-Prosecutor's Disclosure of Statements from Case 004" (17 October 2014) E319) and since then the issue has been raised regularly. In October 2015 the Nuon Chea Defense complained of a 'tsunami' of documents entering Case 002/02 from Cases 003 and 004. For relevant summaries on this topic see: see CASE 002/02 KRT TRIAL MONITOR, Issue 9, Hearings on Evidence week 6 (16-19 February 2015), pp. 6-8; see CASE 002/02 KRT TRIAL MONITOR, Issue 11, Hearings on Evidence week 8 (3-5 March 2015), pp. 3-6; CASE 002/02 KRT TRIAL MONITOR, Issue 33, Hearings on Evidence week 30 (5-7 October 2015), p. 5.

⁵¹ Four of the documents relate to surveys produced by Rochelle BRAAF, who produced the CDP report *Sexual Violence Against Ethnic Minorities during the Khmer Rouge Regime* (2014), and another four documents (numbers six to nine in the annex) are witness statements of people who say they were not forcibly married during DK, although the OCP noted that 23 others from the same study were from people who said they were forcibly married. Documents one and three from the annex are statements from proposed witnesses.

⁵² Other documents had been available since November 2014 and October 2015, and all documents appeared to have been authorization for disclosure by the OCIJ on 31 August 2016, two weeks prior. Counsel Chen noted that these dates were based on information contained in the annex to the request, as the Defense is not allowed access to the documents until they are disclosed.

⁵³ Trial Chamber "Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutor's Disclosure Obligations" (22 October 2015) E363/3.

⁵⁴ Counsel for Nuon Chea argued that a few weeks ago the International Co-Prosecutor has said the OCP had cleared the "backlog" in terms of materials to be disclosed and from this the Defense had understood that no documents dated from before August 2016 would be brought into Case 002/02, however she said clearly this had not been the case.

⁵⁵ Trial Chamber, "Decision on International Co-Prosecutor's Request to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4)" (29 June 2016), E319/47/3, para 21, p. 8. In this decision the Trial Chamber admitted some but rejected the majority of the 48 WRIs requested to be admitted by the International Co-Prosecutor, arguing that the request should have been made at an earlier time.

⁵⁶ HENG Samrin is currently the Chairman of the Cambodian National Assembly, and has been requested to testify by the Defense for Nuon Chea a total of 12 times across Case 002 at pre-trial, trial and appeal stage. In Case 002/02 the Nuon Chea Defense Team has sought the appearance of HENG Samrin three times although these have been made confidentially and all rejected. The Nuon Chea Team argues that this Witness is “by far the most important important witness in Case 002/02, and Case 002 generally... in a completely different stratosphere to every other witness” and is Nuon Chea’s only proposed character witness. Nuon Chea has made the possibility of him breaking his silence and responding to questions in court contingent upon the Chamber calling HENG Samrin as a Witness in Case 002/02 see Nuon Chea Defense Team, “Nuon Chea’s Notice of Current Intention to Exercise his Right to Remain Silent in Case 002/02” (1 August 2016) E421/1/2.

⁵⁷ Prosecutor v. Laurent Gbagbo and Charles Blé Goudé, ICC-02/11-01/11-656-Anx, International Criminal Court Pre-Trial Chamber, “Minority Opinion of Judge Christine Van den Wyngaert” (12 June 2014) para 148, p 85.

⁵⁸ Counsel Guissé pointed out that if the OCP had thought this witness was so “significant” they could have proposed to call 2-TCW-1065 themselves”

⁵⁹ Judge Fenz responded that if he still felt he needed extra time to question NIM Oem he could make a written reasoned request that the Bench could consider at a later time. Counsel Koppe had argued that NIM Oem should have been scheduled for longer than one day of testimony due to his position at S-21 during the regime. To support his argument Counsel Koppe argued that guard HIM Huy and administrator SUOS Thy had both been allotted two days for Parties to question them. Dale LYSAK, for the OCP, argued that he did not believe NIM Oem’s testimony was as important as that of the two previous witnesses but would not object to request for extra time if the Bench saw fit. The Bench ultimately ruled the request was untimely, coming at the beginning of the Witness’s testimony, and was impractical to implement due to prior scheduling arrangements.

⁶⁰ For example, on Wednesday 14, Judge Claudia FENZ sought for explanation about the word which had been translated from French into English as ‘denounce’ and Counsel Marie GUIRAUD explained the word originally meant ‘report’ in French. On Thursday 15, Witness NIM Oem felt confused Counsel Koppe’s question when English-to-Khmer interpreter misinterpreted the word ‘living’ in English to ‘leaving’ in Khmer, but Counsel Koppe repeated his question.