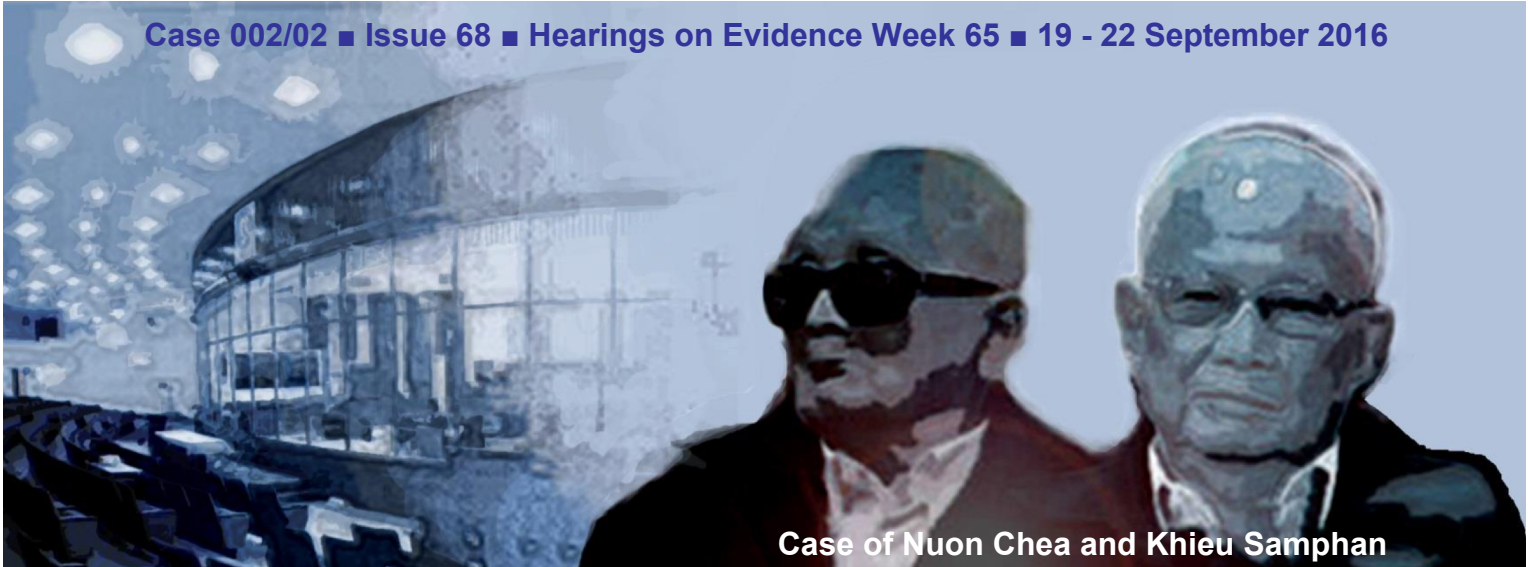


KRT TRIAL MONITOR

Case 002/02 ■ Issue 68 ■ Hearings on Evidence Week 65 ■ 19 - 22 September 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)

*“There were those who refused to get married,
but in the end they had to get married.
There was no escape from it.”*

- Civil Party Sa Lay Hieng

I. OVERVIEW

This week the Trial Chamber heard from two Civil Parties on the regulation of marriage and two witnesses on internal purges. On Monday this week, Ms. Sa Lay Hieng testified via video-link from Pailin Province about her experience refusing two marriage proposals and agreeing out of fear to a third proposal during Democratic Kampuchea (DK). On Tuesday morning, the testimony of Civil Party Ms Mom Vun who began her testimony last week concluded with questions from the Defense teams. On Tuesday afternoon, proceedings shifted back to the purge segment, with Witness Mr. Sem Am providing evidence about purges within Division 310, including the arrests of Oeun and North Zone Secretary Koy Thuon. Finally this week the Chamber heard from 2-TCW-1036, who testified under a protective pseudonym, about his work for Northwest Zone Secretary Ruos Nhim and his subsequent arrest in 1977. Parties also debated a number of legal issues this week including the scope of Case 002/02 and the use of torture-tainted evidence. At the end of the week the Chamber adjourned until Tuesday 4 October to mark the annual Cambodian holiday of Pchum Ben.

II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

Two Civil Parties and two witnesses testified this week over the course of four days. The first two women, both Civil Parties, testified about their marriages during the DK regime. A further two male witnesses testified to their knowledge of purges in the North and East Zones.

A. Summary of Testimony by Sa Lay Hieng

Sa Lay Hieng, from Kantuot Village, Kantuot Province, Chitborei District, Kratie Province, testified this week about her experience being married to a man during DK who was later arrested.¹ Despite not knowing her husband prior to the marriage, his arrest and her subsequent mistreatment caused her much suffering.

1. Background

Ms. Sa Lay Hieng told the Chamber that she had joined the Revolution in 1971 at the age of 17.² She said that at that time there was “no proper organization” among the Khmer Rouge (KR). She was convinced to join their movement by people who came to her village and spoke about the need to liberate the country. Initially she did not have a specific position, she was just a member, assigned to encourage youth in her village to work communally. Just before the liberation of Phnom Penh she and her family lived separated. After 17 April 1975, she was assigned to assist with agricultural tasks, particularly rice production, and was in charge of spreading propaganda and reporting to the upper echelon; the “District Ladies Committee.” She remained in Sector 505; Kratie autonomous sector in DK’s Northeast Zone.³

2. Regulation of Marriage

A large part of the Civil Party’s testimony centered on her marriage in 1976, when she was aged around 25. Sa Lay Hieng explained that her marriage was arranged by Sector Chief Yi and Comrade Kuon of the Sector 505 Committee who she said had conveyed the instruction via the Commune Committee. Those working at commune or district level had their marriages organized by the sector, while civilians had their marriage organized by the commune. She remembered hearing about a policy to increase the population that required matching people in sets of 5 or 15 couples at each event, adding that she herself had attended such ceremonies in her village. She recalled that couples were asked if they agreed to the match and then were married. The parents of both sides were also asked, but Angkar made the ultimate decision. Sa Lay Hieng refused two marriage proposals, and tried to refuse marriage to a third man, however became afraid after her superiors called her “stubborn.” She eventually agreed to the match, explaining: “There were those who refused to get married, but in the end they had to get married. There was no escape from it.” It was approximately one month after she agreed to marry that the ceremony took place.

Sa Lay Hieng testified that even though her parents lived far away, the Commune Committee invited them to the ceremony. Her new husband’s parents were also present. Her husband’s name was Soeng Chauy, *alias* Chhay and he was in charge of repairing bridges in the sector for the Ministry of Public Works. She and her husband were the only couple to be married that day, and after they said their vows there was a party attended by many people from the village and commune level, but not sector level because they were busy at the battlefield. Cake was served and cows and pigs were slaughtered for the guests. Overall, the Civil Party described the wedding as similar to those that took place prior to the DK regime. Sa Lay Hieng said that sometimes during the DK regime couples married for love, or after their parents had matched them in childhood if it was approved of by the local chiefs. The couple spent two nights together after their wedding before Chhay was sent back to his unit. She and her husband did not consummate their marriage, as they had previously “agreed with each other” not to. Although Sa Lay Hieng said she had not been monitored on her wedding night, she confirmed that couples that did not get along were monitored and sometimes taken away for reeducation, however it was unclear how she knew this.⁴ She told the Court that some people committed suicide by taking poison or drowning because they had been forced to get married, although she had only heard about this from others. About one year after her marriage she became pregnant and gave birth to a baby who died shortly after the regime fell.

3. Arrest of Husband and Relocation to Samrong Worksite

In 1978, Sa Lay Hieng’s husband was accused of being a traitor and arrested. At the time she was told he was being sent for a study session but when he had not returned for 15 days she tried to get information from a young boy who had worked with her husband. The boy told her that he had been arrested. She was surprised on learning this because her husband had no connection to the military and simply repaired bridges. However later she heard that he was

accused of colluding with the Vietnamese and sabotaging bridges: “that was the pretext to arrest him.” After she found out about his death she was “speechless,” explaining that even though she did not love him, it was still difficult to lose him because they had “lived together and ... provided warmth for each other.” Her husband’s arrest came only two months after she had delivered their baby and Sa Lay Hieng subsequently became sick with a fever and developed malaria. She said she had to hide her tears for fear that the KR would accuse her of being a traitor.

The Civil Party testified that shortly after the arrest of her husband, in around mid-1978, she too was accused of being linked to a traitor. She explained that this was the norm at the time, that when a family member was accused of something, the rest of the family would be similarly accused. She lost her position as a member of the party and became a normal citizen, was monitored and sent to a worksite for “wives of those accused of treason” in Samrong Village, Srae Neong Commune, Snuol District, Kratie Province. The worksite was situated on a small hill, which now houses a pagoda. Sa Lay Hieng said that 30 women, young and old, lived there, but they were not allowed to talk or move freely, their food was limited and they had to work every day. She had to share one tin of rice each day with four other women. She lived in Samrong for about five to six months before the area began to be bombed and she was relocated to Ou Russei.

4. Treatment of the Vietnamese

In addition to her testimony about her marriage, the Civil Party also spoke briefly about her knowledge of the treatment of ethnic Vietnamese population during DK. She said that many ethnic Vietnamese in her region were sent back to Vietnam in trucks prior to 1975; something she witnessed herself. She said only those who were “half-blooded” were allowed to stay in Cambodia. Say Lay Hieng also testified about the experience of her uncle, who had married an ethnic-Vietnamese woman. Her uncle lived in Kralob Village, Senmonorom Commune, about 30 kilometers from her, and had two children: Sa Kim Ny and Sa Kim Na. Sa Lay Hieng said that the whole family disappeared in 1977 due to a policy whereby “people who were connected to the Vietnamese network were all taken away.” She said that to her knowledge, this policy was initiated at local level on the instructions of the district that all “half-blood Vietnamese had to be smashed otherwise when Vietnamese made entry (sic.) they would collude with the Vietnamese side.”⁵ She recalled that a census was conducted of people with Vietnamese backgrounds, which sometimes included even those who had one sole Vietnamese grandparent. She also claimed that the targeting of those with Vietnamese backgrounds escalated during the regime, explaining: “When the Vietnamese intensified their attacks, the ethnic Vietnamese in Cambodia were smashed.” Sa Lay Hieng never herself witnessed any executions of Vietnamese people, although she claimed that her aunt was sent to Koh Sraka Security Center in Kratie District.⁶

5. Statement of Suffering and Questions to the Accused

At the end of her testimony, Civil Party Sa Lay Hieng gave a statement of suffering to the Chamber. She said she had “suffered beyond description” during the regime and lost a total of 37 family members and relatives. She also described her pain at being married to a man against her will, who was later arrested for being a traitor leading to more suffering for her. She told the Chamber that she had no rights and was given no time to rest. She could provide no support to her newborn child and as a result the baby was constantly sick, finally succumbing to malaria in 1979. She concluded her statement by saying she hoped the Chamber would find justice for her and her family members as soon as possible. She asked no questions of the Accused and no Party responded to her statement.

B. Summary of Testimony by Mom Vun

This week, following the already-scheduled video-link testimony of Sa Lay Hieng, Civil Party Ms. Mom Vun concluded her testimony from last Friday, answering questions from the Defense Teams and giving a statement of suffering.⁷

1. Responses to Defense Questions about Discrepancies

The Nuon Chea Defense Team sought clarification from Mom Vun over perceived discrepancies between her prior and in-court statements. Counsel Liv Sovanna tried to clarify how many of the Civil Party's children and other relatives had passed away during the DK regime, asking why she had not included the death of her parents, husband or children in her previous statements. Mom Vun tried to clarify that two of her children had died during the KR regime and four had died after 1979.⁸ Nuon Chea's Counsel also confronted the Civil Party with an apparent contradiction between her in court statement that her mother died in late 1975, with a previous statement mentioning her mother being alive in 1977. Mom Vun explained that the woman she referred to in the statement in 1977 was an older woman who she referred to as "mother" but not her biological mother.⁹ She could not explain why a previous statement attributed to her said her first husband Tan Hoeng was still alive in 1977 when she consistently had testified in court this week and last that he was arrested in 1975.¹⁰ Counsel Doreen Chen asked the Civil Party to explain why she had omitted to include her children, parents and husband on a list of people she loved who had died during the DK regime in her original Civil Party Application. In response, Mom Vun said that she was illiterate and had a low level of education, which may have led her not to include their names on the form.¹¹ National Civil Party lawyer Pich Ang objected to the method of questioning adopted by the Nuon Chea Defense Counsels, saying the questions were "not really appropriate" and were "placing blame on the Civil Party," adding that her low level of education may explain any discrepancies. Doreen Chen responded that the questions asked had been "perfectly within the bounds of questions that can be asked before this Chamber" and was confident in the Civil Party's ability to respond despite her low level of education.

2. Statement of Suffering and Questions to the Accused

At the end of her testimony, Mom Vun gave a brief statement of suffering, telling the court of the pain she continues to suffer as a result of what happened to her during the DK regime. She spoke of being made to mix chemicals to make fertilizer, which she was then forced to eat. On another occasion when she refused to enter leech-infested water she was pushed in with a long stick, scarring her back for life. Speaking about her experience of rape and the forced consummation, the Civil Party told the Court of the shame that had prevented her from speaking out earlier. She said, "shame... I bear all the pain and suffering in my heard." She concluded her statement by asking the Accused how they could ever compensate her, or the Cambodian people, who had lost so much during the regime. Defense Counsel did not question the Civil Party on her statement.

C. Summary of Testimony by Witness Sem Am

The third person to testify this week was Sem Am, *alias* Prum Ieb,¹² who testified on purges in DK's North Zone.¹³ Sem Am was requested by the Nuon Chea Team and was questioned about his knowledge of the arrests of North Zone Secretary Koy Thuon, his deputy Oeun and others in Division 310.

1. Background & Positions in Division 310

Sem Am was born on 18 June 1955 in Krabao Village, Doung Commune, Stuong District, Kampong Thom Province. He is currently a farmer and village chief of Krabao, and will be

running for reelection at the commune elections next year.¹⁴ Sem Am testified to joining the revolution in 1973 in Battalion 502, Division 1 that later became Regiment 13, Division 310 after 1975. He worked as a messenger of the regiment under regiment commander Hoem Hun. The commander of Division 310 was Ta Oeun and the military chief of General Staff was Koy Thuon. Some units of Division 310 were stationed at Wat Phnom near Psar Thmei¹⁵ and Calmette Hospital. Additional units of Division 310 were stationed at Chrang Chamres, Anglong Krangan, and Chroy Changvar. Sem Am was stationed at Chroy Changvar, at Seng Thai's house and was in charge of economic affairs and delivering rice to soldiers. In 1977 the Witness's regiment was sent to Trapeang Plong, Tboung Khmum Province¹⁶ on the Vietnamese border. There he was in charge of radio operations, reporting the situation from the front battlefield to the rear, as well as conducting surveillance of the Vietnamese troops. At this time, he was associated with the artillery unit, under the direction of the division, not the regiment.

2. Arrest of Division 310 Commander Ta Oeun

Counsel Koppe referred to the Witness's knowledge of the arrest of Division 310 Commander Oeun as "the most important reason you are here today." Sem Am said Oeun was called to a meeting at the Chinese Embassy where he was supposed to "receive guests" but after this he disappeared. He could not recall the date this occurred, saying he had been "so terrified" at the time, however Counsel Koppe provided documents indicating Oeun had entered S-21 on 17 or 18 February 1977. Sem Am heard later that when Oeun arrived at the Embassy with his couriers, they were surrounded, held at gunpoint and then taken away. After some time, his messenger returned and said that Oeun had likely been arrested because he had been gone for a long time. The Witness later heard that Oeun had been arrested for "betraying the Party," and planning to attack the government. He said he knew this because he had seen uniforms and weapons stockpiled at a Regiment 13 storage facility opposite the DK Ministry of Propaganda while he was there to deliver something.¹⁷ Sem Am only saw the uniforms being arranged, but "later on," after Oeun had been arrested, he associated the uniforms with their arrest for being traitors. He was clear that he did not know about any "traitorous plot" at the time he saw the uniforms.

Counsel Koppe asked the Witness repeatedly about a document he claimed to have read in his previous DC-Cam statement, which outlined a plan for the United States to provide military assistance to the North Zone within 24 hours.¹⁸ In court this week however, the Witness said he never saw this document himself, only heard about it from Ta Oeun's messenger. Counsel Koppe requested the audio file of the Witness's 2005 DC-Cam statement be played in court so that the Witness could hear his prior testimony, however the Witness did not alter his story and maintained that he never saw the document himself. Sem Am was unable to provide any information about alleged United States connections with Koy Thuon or Oeun, or any more details about the coup that the two men were accused of planning. Again he referred to a conversation he had with Oeun's messenger, in which the messenger spoke about a plan to collude with the Vietnamese and organize a coup, however he conceded the conversation was more like "chit chat."

The Witness said he believed Oeun was arrested shortly after Koy Thuon, but did not know anything further about the arrest of Koy Thuon, and was unable to confirm that Koy Thuon had been kept in a house near Wat Phnom after his arrest, although the Witness had likely been stationed nearby at the time.

3. Purge of Division 310 Cadres and East Zone troops

After the arrest of Ta Oeun, the Witness was sent to Kob Srov and Boeung Brayab to farm rice. He said that while stationed there he saw a lot of people disappearing, "easily more than 500 soldiers," although he did not know where they were taken. He said arrests would take place every ten to fourteen days, and that the wives and children of those Division 310 cadres who

had been arrested were sent to a place in Chrang Chamres. He did not know what happened to them.

The Witness also knew a little of purges in the East Zone from his time based at Trapeang Plong on the border with Vietnam. He recalled seeing three members of the East Zone taken away in a truck and said he believed there was a “special unit for purging” that was in charge of this. He did not know who had been in charge of this unit but believed it was someone who was also in charge of divisions and battalions in the Southwest Zone. He personally saw three men killed with car axes and was told that they were East Zone soldiers from sector level, however he noted that they were wearing civilian clothes when they were executed.

4. Arrest of Regiment 13 Commander Hoem Hun

Sem Am worked as a messenger for his Regiment Commander, Hoem Hun, prior to 17 April 1975. Hoem Hun was also deputy Division Commander under Ta Oeun. Hun’s office was based at Wat Phnom, in front of the Office of Propaganda. After Hun married he moved to Chroy Changvar and the Witness no longer worked with him or saw him often. Although Dale Lysak presented the Witness with a list of S-21 prisoners indicating that Hun had entered S-21 in January 1977, Sem Am said he had been told by Yum, Hun’s messenger, that Hun had committed suicide by driving his motorbike into a parked vehicle near Kilometer 6 and was buried in Russei Keo. The Witness explained that at the time the situation was “chaotic” and many people were being arrested, surmising that many people were terrified of being arrested and took their own lives as a result. He said Hun died about one month after Oeun disappeared.¹⁹ Later, Sem Am heard a tape of Hun’s “confession” played at a meeting. The Witness heard the sound of shackles and the confession itself. In addition to this, those present at the meeting were told: “North Zoners did not have any freedom and only Southwest Zone cadres had rights and freedom.” The Witness said that attendees were then told that their parents had all died and they should go back to the field and work.

5. Radio Announcements

Sem Am testified that in 1977 he was sent to Trapeang Plong on the Vietnamese border and put in charge of radio communications. He said usually he would listen to reports about the number of casualties and the supplies required. He said he was never in contact with Vietnamese troops, but sometimes he overheard them speaking on the radio. In his DC-Cam statement he had said he sometimes “turned on the radio to communicate with the Vietnamese Heng Samrin and Hun Sen’s groups,” however in court this week he denied knowing anything about these two men. Sometimes he heard Vietnamese voices on the radio, arguing with some Khmer speakers, however the Witness did not speak Vietnamese so did not know what they were saying. One day he heard in Khmer someone announce that resistance should end and that everyone’s parents had already been killed, and that “we should join together to take part in a coup d’etat over Pol Pot”. He said he heard these appeals about four or five months after he moved to Trapeang Plong, perhaps mid-August or early September 1978.²⁰ Later Sem Am also testified to hearing interviews with Vietnamese prisoners broadcast on the radio.²¹

6. Execution of Lon Nol Soldiers

On 17 April 1975 Sem Am entered Phnom Penh and stood guard at Wat Phnom, before he was sent to Chres in the afternoon to guard near the Office of Propaganda. He said fighting became quiet in the afternoon and Lon Nol Soldiers who were hiding in concrete houses, were throwing grenades and firing at KR soldiers. He witnessed between four and ten injured soldiers taken from the Russei Hospital and pushed off the Chroy Changvar Bridge into the river, although he did not remember who pushed them. It was not clear how he identified them as soldiers as they were wearing civilian clothes at the time, although he did say the group had been under guard at the Russei hospital. These events took place immediately after the KR took control of

Phnom Penh, as they were “cleansing the city” and all Parties were still armed. About ten days after 17 April, he and other soldiers turned off the water and electricity supply for Phnom Penh, forcing the “long-haired” Lon Nol out of hiding. Sem Am testified to seeing first-hand three “long-haired” Lon Nol soldiers taken by a deputy company chief named Comrade Rom to the riverside and shot dead near the Royal Palace. He said he knew they were Lon Nol soldiers because others told him so. Sem An also said that Comrade Rom received his orders from Regiment Commander Hoem Hun, although he did not say how he knew this.

7. Witness Demeanor and Credibility

Sem Am provided clear, consistent answers in Court however these regularly contradicted his prior statement to DC-Cam, particularly concerning major parts of the Nuon Chea Defense argument.²² Although he said he had read and reviewed his prior DC-Cam statement and found it to be consistent with his memory, discrepancies remained, however this could be due to the amount of time that has passed since the events in question, and also since he gave the statement to the NGO. Nonetheless, Sem Am appeared to be able to recall dates, places and names quite well and was cooperative with questioning.

D. Summary of Testimony by Witness 2-TCW-1036

Witness 2-TCW-1036 testified under a protective pseudonym this week on the subject of internal purges.²³ During the DK regime, the Witness served as a soldier in Pailin Province and later on as a bodyguard for Northwest Zone Secretary Ruos Nhim. He testified with the assistance of Duty Counsel.

1. Work for Ruos Nhim

The Witness testified to being selected as a bodyguard and driver for Ruos Nhim in 1976, and served in this capacity until his own arrest in 1977. The Witness worked near Ampel Brahoang, where Ruos Nhim’s base was located and where the Zone Secretary held meetings with his military chiefs. According to the Witness, Ruos Nhim had three bodyguards who were part of his “inner-circle” and four bodyguards who were “on the outside.” The Witness was part of the latter, “outside” group, which meant he was not allowed to attend meetings. In his capacity as bodyguard he testified that his duties were limited to driving Ruos Nhim to distant places, including bases at Svay, Ou Chrov, Sam Lot and Sisophon. The vehicle used in this capacity was always a white jeep. He stated that on these occasions he remained in the vehicle and was not informed of Ruos Nhim’s business.

2. Arrest of Ruos Nhim

When questioned on the location of Ruos Nhim’s arrest, the Witness stated that Ruos Nhim had left Svay, but was unsure of where he was arrested. This contradicted a statement he gave three years ago when he indicated that Ruos Nhim had been arrested by Southwest Zone cadres in 1978 in Sisophon, while attempting to escape to Kampong Cham. In Court, the Witness clarified that he had only heard this information from others and did not witness the arrest himself. He further added that when he was told that Ruos Nhim had been trying to escape to Kampong Cham, he “did not believe the story wholly.”

3. Transporting Ruos Nhim to Phnom Den Mountain

Although at first he denied ever transporting Ruos Nhim to Phnom Den, a place close to the Vietnamese border, after being prompted by his statement to the OCIJ three years ago, the Witness was able to confirm he had indeed travelled there with the former Northwest Zone leader. He said that sometime in the later part of 1977, the Witness travelled to Phnom Den on Ruos Nhim’s orders. The Witness travelled there at night and arrived at dawn, while Ruos

Nhim had gone there earlier in the day. 2-TCW-1036 said he had driven the white jeep and was accompanied by two other “outside” bodyguards, Phy and Sam, escorting a GMC 10-wheel truck. At Phnom Den the group picked up bluish colored uniforms from Vietnam. The Witness stated that he never got out of the car, did not speak to anyone besides Phy and Sam nor did he recognize anyone outside of the vehicle.

4. Arrest of Witness

The Witness then told the Chamber that after Ruos Nhim was arrested, he was also arrested. He said at the time he was questioned about his work for Ruos Nhim, and asked whether he had links to “the *yuon*,” which he denied.²⁴ He was first sent to Battambang city and then to Kokoh Prison in MOUNG RUSSEI. During his detention he was beaten and electrocuted several times but consistently denied any connection to Vietnam.

5. Witness Demeanor and Credibility

The Witness appeared uncomfortable in court and frequently gave short yes or no responses to questions. When asked, he told the court that he felt “nervous,” which could explain the brevity of his answers. On multiple occasions the Witness claimed not to know about topics on which he had previously given statements, only recalling after being confronted with his earlier statements. In these instances he explained that his memory was poor, also occasionally clarifying that he had not in fact witnessed events he had previously described first hand. He testified with the assistance of duty counsel to advise him on his privilege against self-incrimination.²⁵

III. LEGAL AND PROCEDURAL ISSUES

This week the testimony of witnesses and Civil Parties was interrupted a number of times by objections to topics perceived to be outside the scope, the majority of which were permitted. The issue of torture-tainted evidence was again raised this week when Counsel for Nuon Chea attempted to use a document that had been rejected by the Trial Chamber.

A. Nuon Chea Request to Admit Documents and Attempt to Use Rejected Documents

On Monday morning Ya Sokhan issued an oral ruling on behalf of the Bench in response to Nuon Chea’s Rule 87(4) request to admit documents related to Robert Lemkin.²⁶ The Nuon Chea Team sought to admit transcripts of interviews conducted by Robert Lemkin and Thet Sambath with four anonymous witnesses for their film *Enemies of the People*, written notes about these interviews, Robert Lemkin’s Written Record of Interview and an article published in the *Cambodia Daily Weekend* by George Wright entitled *Factions or Fiction?*²⁷ The Chamber admitted into evidence one of the four interviews – that with Witness 2, believed to be Toat Thoeun (2-TCW-829) and found that the WRI of Robert Lemkin was already admitted.²⁸ The rest of the request was denied. Despite this, in court on Wednesday Counsel Victor Koppe attempted to use part of George Wright’s article, in which Robert Lemkin is quoted, to confront Witness 2-TCW-1036. When Judge Fenz pointed out that he was not able to use evidence that had not been admitted, Counsel Koppe responded: “I notice again that you withhold useful information, as usual.”

B. Objections Related to the Scope of Case 002/02

Objections were made throughout the week when Parties raised topics considered to be outside the scope of Case 002/02.²⁹ On Monday international Counsel for Khieu Samphan objected when national Deputy Prosecutor Seng Leang asked questions about Knong Security Center in Samrong Village, Srae Neang Commune, Snuol District, Kratie Province. The

objection was overruled after Seng Leang said he would only ask a few brief questions on the topic. Later that day, international Assistant Prosecutor Dale Lysak asked a series of questions about the treatment of soldiers of the Lon Nol regime in the immediate aftermath of 17 April 1975, which caused the Defense for Nuon Chea to object. First, Counsel Koppe argued that he had previously questioned a former Division 164 member about this very same topic and had been prohibited on the grounds that it was outside the scope of Case 002/02. Later Counsel clarified that it been Pich Ang who had been prevented from asking this line of questioning during the questioning of Meas Voeun on 3 February 2016.³⁰ Counsel Koppe argued that this constituted an inconsistent decision by the Bench, however the line of questioning was allowed.

On Wednesday the OCP asked questions of Sem Am concerning the arrests of Vietnamese people inside Vietnam, which Counsel for Khieu Samphan argued was outside of the scope of the trial. The objection was overruled on the grounds that some Vietnamese soldiers had been sent to S-21, and both the treatment of the Vietnamese and S-21 Security Center were part of Case 002/02. Further, Judge Lavergne added that some S-21 prisoners had been recorded as being arrested in Vietnam although this may not have in fact been the case. Also during Sem Am's testimony, national LCLCP Pich Ang asked questions related to the treatment of women at Suong Pagoda hospital in what is now Tboung Khmum Province. Counsel for Khieu Samphan objected twice saying that the hospital was outside the scope of Case 002/02, and asked for "someone to tell me where in the Severance Order these facts are mentioned." The President overruled the objection because the events related to the topic of internal purges. Counsel Guissé then proceeded to ask a number of follow up questions on this topic "even if... the evidence I wanted to look at wasn't in the case at the beginning".

Both Defense Counsels objected to questions put to Witness Sem Am about the execution of three East Zone soldiers, arguing that the East Zone purges were only part of the Severance Order as they relate to East Zone cadres ending up at the three listed security centers: Phnom Kraol, Au Kanseng and S-21. Dale Lysak for the OCP argued that the purge in the East Zone was part of the scope in and of itself and the President ultimately overruled the objection.

C. Use of Torture Tainted Evidence

The use of potentially torture-tainted evidence came up again this week. Counsel Koppe's use of interviews by Robert Lemkin and Thet Sambath for their documentary *Enemies of the People* was challenged by the OCP because the two interviewers were "constantly reading confessions to witnesses and then having them repeat the material." This was a particular issue when Mr. Koppe asked Witness 2-TCW-1036 about Hay So, a Vietnamese person mentioned by Toat Thoeun in an interview. Dale Lysak argued that in the full transcript of the interview, Toat Thoeun refers to having seen the name Hay So in the "confession" of Ruos Nhim from S-21, however Counsel Koppe responded that the idea that people mentioned in confessions should not be brought up in court was "absurd." After deliberating briefly, the Bench allowed Counsel to use the text to establish whether the Witness knew Hey So, however said he should not go beyond this.

D. Delay Hearing Civil Party 2-TCCP-1064

On Thursday after the conclusion of testimony from 2-TCW-1036, the Chamber heard a submission from the Nuon Chea Defense requesting that the upcoming Civil Party 2-TCCP-1064 be delayed until after the Pchum Ben recess, as a DC-Cam interview (35 pages in Khmer language) of this individual had recently come to light. Ultimately Judge Fenz ruled that the Civil Party would be heard after the Pchum Ben break when Parties had time to review the DC-Cam statement, which she admitted into evidence.

IV. TRIAL MANAGEMENT

This week the Trial Chamber concluded the testimonies of two Civil Parties; Sa Lay Hieng and Mom Vun in relation to regulation of marriage and two witnesses; Sem Am and 2-TCW-1046 regarding the segment on security centers and internal purges.

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. Duty Counsel Chan Sambo assisted Witness 2-TCW-1036 in the courtroom this week.

Judge Attendance: President Nil Nonn continued to be absent and was replaced by Judge Ya Sokhan, with national reserve Judge Thou Mony replacing Judge Ya Sokhan. All other Judges were present as normal in the courtroom.

Parties: Ms. Marie Guiraud, international Lead Co-Lawyer for Civil Parties, arrived late in the courtroom on Monday morning and Mr. Liv Sovanna, national Defense Lawyer for Nuon Chea, was absent on Thursday, without any reason noted by the Greffier. However, their national counterparts were present to represent their clients. This week international Assistant Prosecutor Nisha Patel appeared in the courtroom for the first time on Monday.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 19/09/2016	<ul style="list-style-type: none">78 villagers from Bakan District, Pursat Province and Morng Reussey District, Battambang Province.One foreign observerEight Civil parties	<ul style="list-style-type: none">No public attendanceFive Civil Parties
Tuesday 20/09/2016	<ul style="list-style-type: none">Approximately 140 villagers from Kampong Tralach District, Kampong Chhnang Province.Eight Civil Parties	<ul style="list-style-type: none">No public attendanceEight Civil Parties
Wednesday 21/09/2016	<ul style="list-style-type: none">Approximately 80 villagers from Sompov Meas District, Pursat Province8 Civil Parties2 foreign observer	<ul style="list-style-type: none">Approximately 80 villagers from Sompov Meas District, Pursat Province7 Civil Parties2 foreign observer
Thursday 22/09/2016	<ul style="list-style-type: none">Approximately 120 villagers from District, Sihanuk Ville Province7 Civil parties6 Foreigners observer	<i>No proceedings</i>

B. Time Management

Over the course of four days this week, the Trial Chamber concluded the testimonies of two Civil Parties in relation to the regulation of marriage and two Witnesses related to separate segment on internal purges. On Monday, internet connection glitches plagued the testimony of

Civil Party Sa Lay Hieng via video link from Pailin Province, with the Chamber granting compensatory time to all Parties for the time lost. On Wednesday and Thursday, the Chamber also granted extra 10 minutes each day to Khieu Samphan Defense Team to conclude their examination of Sem Am and 2-TCW-1036. After deciding to delay hearing 2-TCCP-1064, proceedings ended early on Thursday morning and will resume after the traditional Pchum Ben break on Tuesday 4 October 2016 with the testimony of Expert Witness 2-TCE-81 in relation to regulation of marriage.

C. Courtroom Etiquette

This week there were several breaches of tension, mainly between the Nuon Chea Defense and the Trial Chamber judges. There was a moment of tension when Counsel Koppe attempted to use an extract of an article that had been rejected by the Court without providing a reference. When Judge Fenz told Counsel he could not use the document he responded heatedly that “why not? I want to use it anyway.” There was also another occasion of tension between international Judge Jean-Marc Lavergne and Counsel Koppe happened when Judge Lavergne refused Counsel Koppe’s attempt to use documents that had been rejected by the Chamber. Counsel Koppe criticized the Chamber in displeased manner, saying “A highly improper decision if I may be so humble to remark. You are withholding crucial evidence.” On Thursday, when Judge Lavergne was putting questions to Witness 2-TCW-1036, Counsel Koppe accused the Judge of bias after he asked the Witness: “So as a matter of fact everything was perfect during DK? You didn’t experience any problems, had no enemies, and everyone ate their fill?” In response Counsel Koppe interrupted the Judge’s questioning saying “I know it’s very difficult for Judge Lavergne to hide his bias... At least he can make an attempt.”

D. Translation and Technical Issues

This week, the Parties experienced some difficulties translating names in Khmer, leading to some confusion on occasion.³¹ There were also several errors in translation from Khmer to English.³² On Monday this week, issues with the Internet connection during the video link testimony of Civil Party Sa Lay Hieng caused some minor delays. Besides this, proceedings ran smoothly for the rest of the week.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 19/09/2016	9:07	10:09-10:29	11:37-13:28	14:43-15:01	16:16	4 hours 40 minutes
Tuesday 20/09/2016	8:59	10:05-10:29	11:31-13:29	14:31-14:50	16:02	4 hours 22 minutes
Wednesday 21/09/2016	8:59	10:24-10:43	11:29-13:30	14:41-15:01	15:58	4 hours 19 minutes
Thursday 22/09/2016	9:00	10:21-10:47	-	-	11:02	1 hours 36 minutes
Average number of hours in session				3 hours and 44 minutes		
Total number of hours this week				14 hours and 57 minutes		
Total number of hours, day, weeks at trial				885 hours and 32 minutes		

*This report was authored by Michael Chen, Hanna Daych, 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
OCF	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Civil Party SA Lay Hieng (2-TCCP-251) was questioned in the following order: acting president YA Sokhan; Civil Party lawyer TY Srinna; international assistant prosecutor Nisha PATEL; national deputy prosecutor SENG Leang; defense counsel for Nuon Chea, LIV Sovanna; international counsel for Nuon Chea, Doreen CHEN; Judge Jean-Marc LAGERVNE; national co-counsel for Khieu Samphan, KONG Sam Onn; international co-counsel for Khieu Samphan, Anta GUISSSE.

² There was some uncertainty around the Civil Party’s age. During her initial responses to questions from the President, the Civil Party gave her date of birth as 3 June 1950, which would have made her 21 years old in 1971. She later said she was 25 years old in 1976 when she married, contradicting a prior statement in which she said she was 18.

³ The Civil Party believed Sector 505 had been autonomous since 1974, meaning everything was managed independently from the Northeast Zone including food. She said she knew this because the sector committee had told her.

⁴ Later SA Lay Hieng added that it was also because of her position that she was not monitored: “Because I had my position in the cooperative or community, so no one came close to where I stayed [on my wedding night].”

⁵ She said the same measures existed at the sector level, to her knowledge.

⁶ It was unclear whether this was the same aunt married to her ethnic Khmer uncle.

⁷ Civil Party MOM Vun (2-TCCP-283) began her testimony on 16 September 2016 last week. This week she was questioned in the following order: national defense counsel for Nuon Chea, LIV Sovanna; international defense counsel for Nuon Chea, Doreen CHEN. For a summary of her previous testimony see: CASE 002/02 KRT TRIAL MONITOR, Issue 67, Hearings on Evidence Week 64 (13 – 16 September 2016).

⁸ LIV Sovanna confronted the Civil Party with a prior statement in which she said six of her children had died during the DK regime, however she said this was incorrect and repeated that two had died during, and four after the regime. In court on 16 September 2016 last week she said that three had died prior to, two during and one after the regime. Thus the Civil Party consistently said that six of her fourteen children passed away, however there remains some uncertainty about the exact timing of their deaths.

⁹ She explained that she referred to all of the elderly women who looked after children as mothers during the regime.

¹⁰ When asked repeatedly by LIV Sovanna to explain this discrepancy the Civil Party suggested the person writing her original statement had erred, saying “I don’t know what to say” and “I am not responsible for this mistake.”

¹¹ Judge Claudia FENZ pointed out that in another part of the Civil Party Application Mom Vun had said “the Khmer Rouge killed my parents,” but their names were not included on the list.

¹² Sam Am gave his revolutionary alias as Prum Ieb when asked by the President. The name he had given to DC-Cam when he gave them his statement appeared to be Prum Hom.

¹³ Witness SEM Am (2-TCW-1031) was questioned in the following order: acting president YA Sokhan; international co-counsel for Nuon Chea, Victor KOPPE; assistant prosecutor Dale LYSK; national co-lawyer for Civil Parties, PICH Ang; international co-counsel for Khieu Samphan, Anta GUISSSE.

¹⁴ Counsel Koppe asked the Witness which party he would be running for at next year’s commune elections however the Witness was told not to respond by the President, who argued that the question was not relevant and outside the scope of the case.

¹⁵ *Psar Thmei* is also referred to in English as the Central Market.

¹⁶ Tboung Khmum Province was created in 2013. During DK and until 2013 Trapeang Plong was part of Kampong Cham Province.

¹⁷ Sem Am said he was able to see through an ajar door that uniforms and boots were being piled up and tied together. According to Sem Am, the uniforms were different to those worn by the Khmer Rouge: they were camouflage, paratroop uniforms and were accompanied by military boots which were made in the US and previously given to the Lon Nol army. He could not tell if the supplies were new or second-hand. The weapons were made in US, China, Cuba or former USSR

¹⁸ In his DC-Cam statement he said the document was typed and had no signature.

¹⁹ Dale Lysak presented an S-21 list indicating that Ruos Phat, alias Han, had entered S-21 on 25 January 1977, and Oeun had entered also in February 1977. The Witness said that Hoem Han had not been an alias.

²⁰ The Witness gave contradictory responses to this question of timing. He first said the appeals came about half a month before the Vietnamese entered Cambodia on 7 January 1979, but in the same response said it had happened in around mid-August or early September.

²¹ The Vietnamese arrestees were civilians who were brought to Trapeang Plong for one night and then taken away to be “interviewed.” Sem Am said he believed they had been arrested while entering DK to “cut down trees.”

²² Inconsistencies were noted in particular regarding the communication with “Vietnamese Heng Samrin and Hun Sen’s groups” and information regarding a letter promising US assistance within 24 hours.

²³ Witness 2-TCW-1036 was questioned in the following order: acting president YA Sokhan; international co-counsel for Nuon Chea, Victor KOPPE; assistant prosecutor Dale LYSK; Judge Jean-Marc LAVERGNE; international co-counsel for Khieu Samphan, Anta GUISSSE; national co-counsel for Khieu Samphan, KONG Sam Onn. Although his biographical details were initially kept confidential, during questioning, assistant prosecutor Dale LYSK asked the Witness to confirm his date of birth and age.

²⁴ The Khmer term *yuon* is used to describe people from Vietnam or of Vietnamese origin and is sometimes considered derogatory.

²⁵ On Wednesday afternoon Counsel Victor Koppe asked the Witness whether he would prefer to continue his testimony in a closed session, and suggested that this possibility with his duty counsel. Dale Lysak argued that it was not the practice for Counsel to make suggestions about closed sessions, and ultimately proceedings continued in open court.

²⁶ Nuon Chea Defense, “Nuon Chea’s Rule 87(4) Request for Admission into Evidence of Documents by Robert Lemkin (2-TCW-877) and another related Document prior to the Testimony of Witness [REDACTED] (2-TCW-829)

²⁷ George Wright, “Factions or Fiction?” *The Cambodia Daily Weekend* (18 June 2016)

<https://www.cambodiadaily.com/weekend1/factions-or-fiction-114272/>.

²⁸ TOAT Thoeun testified about his close relationship with Northwest Zone Secretary Ruos Nhim at the appeal hearings before the Supreme Court Chamber in July 2015. His testimony undermined a number of the Nuon Chea Defense arguments about factionalism within the CPK. For a summary of his testimony then, see CASE 002/01 APPEALS KRT TRIAL MONITOR, First Set of Appeal Hearings, (2-6 July 2016), pp. 7-9.

²⁹ Trial Chamber, “Decision on Additional Severance of Case 002 and Scope of Case 002/02” (4 April 2014) E301/9/1.

³⁰ Although the OCP had objected to Counsel Koppe’s questions on 2 February around the immediate aftermath of 17 April 1975, he had in fact been permitted to ask the questions, however Civil Party lawyer Lor Chunthy was stopped from asking similar questions on the grounds that the questions were outside the scope. At the time the President told the Civil Party lawyer that: “In fact, your question may be related to the scope of Case 002/01 which was already concluded. Here we are having a different scope in proceedings for 002/02 and this may be a waste of time. Only a limited number of questions were allowed in relation to the scope and as you observed there were several objections from parties on the other side of the Bench in relation to questions which are outside the scope.” See transcripts from proceedings 2 and 3 February 2016 during testimony of Meas Voeun (2-TCW-1008): Trial Chamber. Transcript of Hearing on the Substance in Case 002/02 – 02 February 2016, Trial Day 367, E1/386.1, pp. 50-51 and Trial Chamber. Transcript of Hearing on the Substance in Case 002/02 – 03 February 2016, Trial Day 368, E/387.1, lines 11-18, p. 42.

³¹ For example, on Wednesday, international Judge Jean-Marc Lavergne noted English-to-French interpreter mistakenly translating a name of person, whom Counsel Koppe was talking about, namely from ‘Ruos Nhim’ to ‘Hu

Nhim.’ On Thursday, Parties underwent different translation of individuals named Som and Ham on the same court document between English and French.

³² Monitors noted translation errors from Khmer to English, such as ‘was he arrested...?’ to ‘were you arrested...?’; ‘women and men’ to ‘women’; ‘couple’ to ‘party’; ‘we were relocated to Ou Russei commune at Kratie’ to ‘we were relocated at Kratie’; ‘to perform operation’ to ‘to give interventions’; ‘I was in layer 2 and they were in layer 1’ to ‘like layer 1 and layer 2’; ‘I was electrocuted and became unconscious twice when I was at Kokoh’ to ‘I was asked repeatedly about that line of questioning while I was detained at Kokoh.’