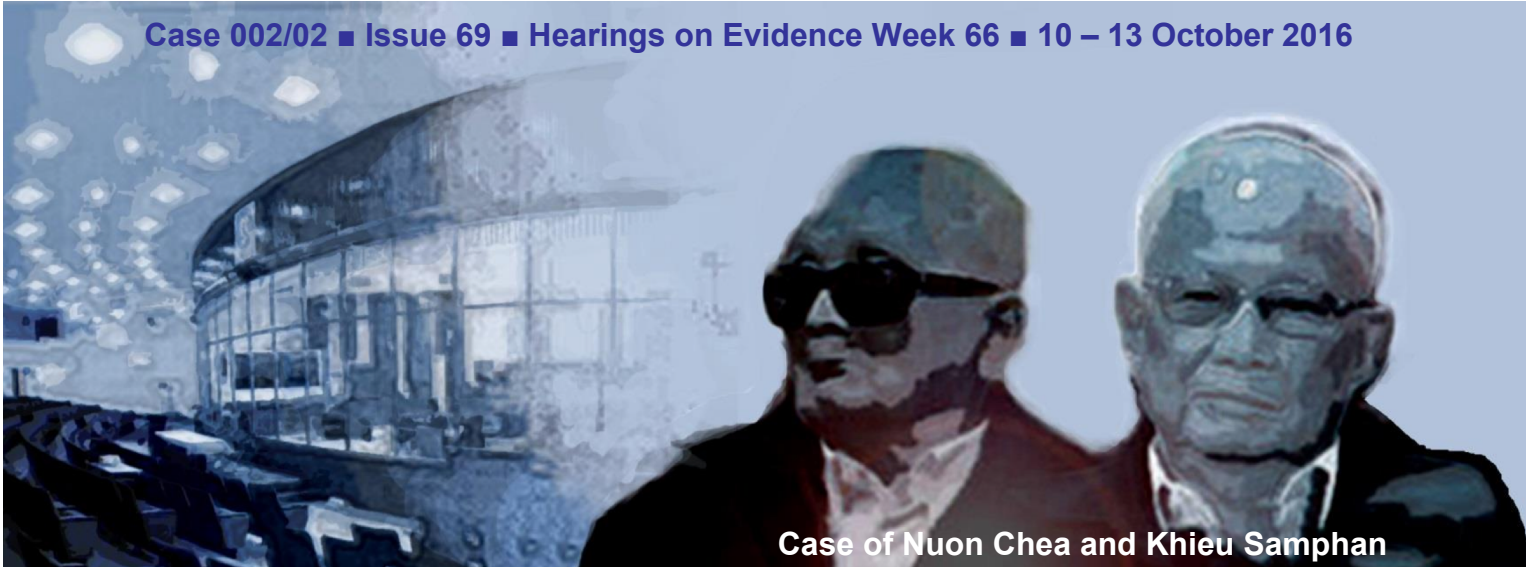


KRT TRIAL MONITOR

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Case of Nuon Chea and Khieu Samphan

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"I have no hesitation in believing that what Civil Party members have put forward as their experiences, I believe they are true.... However, as a trend, were the weddings forced across time and place in DK? My answer is no."

- Expert Witness Dr. Peg LeVine¹

I. OVERVIEW

This week the Trial Chamber resumed proceedings after a one week break to mark the traditional Pchum Ben holiday, and a further week's pause due to flooding in the court compound which made it impossible to hold hearings. From Monday to Wednesday this week, clinical psychologist and medical anthropologist Dr. Peg Levine testified as an expert witness on the regulation of marriage.² The Trial Chamber extended the time allotted to Parties to question the Expert after her testimony sparked an interesting debate in the courtroom around the use of the term "forced" to describe DK marriages. On Wednesday afternoon, Civil Party Ms. Pen Sochan testified about being raped by her husband in Bakan District, Pursat Province, after events she had previously detailed in the documentary *Red Wedding*, produced by Lida Chan and Guillaume Suon. After the conclusion of Pen Sochan's testimony, Witness Cheal Choeun began to testify about purges in the Northwest Zone. The Nuon Chea Defense had initially requested this Witness, but international counsel attempted to withdraw him from the witness list on Monday this week. The Trial Chamber denied the request, and decided to hear his testimony as scheduled. Cheal Choeun will conclude his testimony next week.

II. SUMMARY OF EXPERT, WITNESS AND CIVIL PARTY TESTIMONY

This week the Chamber heard from one expert and one Civil Party on the regulation of marriage and began hearing a new witness on internal purges. Dr. Peg LeVine was the second and final expert to testify on the regulation of marriage. After the expert's testimony concluded, Civil Party Pen Sochan and Witness Cheal Choeun testified on marriage and internal purges respectively.

A. Summary of Testimony by Peg Levine

Dr. Peg LeVine is an Australian-American clinical psychologist, medical anthropologist and trauma specialist.³ She is the author of *Love and Dread in Cambodia: Weddings, Births and*

Ritual Harm Under the Khmer Rouge, published in 2010.⁴ This week she testified over two and a half days, after the Trial Chamber decided to extend the allotted time for her testimony by half a day.

1. Academic Background & Interest in the Topic

Born in 1952 in Victoria, Australia, Dr. Peg LeVine has a Bachelor of Sciences degree, in sociology from Virginia Tech University. In 1976 she obtained a Master's degree in psychology from Pepperdine University in California, and she went on to earn two doctoral degrees: one in the psychology of trauma and culture from Virginia Tech, obtained in 1984, and another in medical anthropology from Monash University, obtained in 2007. The Expert first came to Cambodia in late 1995 and early 1996 to meet with the psychology faculty of the Royal University of Phnom Penh (**RUPP**). She also has experience working as a clinician in a mental health center in Arlington, Virginia, in the United States, where she worked directly with Cambodian refugees.

Dr. LeVine commenced the PhD research that would form the basis for her book in 1997. She spent eight years researching marriage during the DK period. Dr. LeVine told the court that her interest in the topic was sparked by a conversation she had with a RUPP colleague who told her he did not describe his DK-era marriage as forced. Because this went against the grain of most scholarship she had read on DK marriages, she decided to research the topic further. She completed a doctoral thesis on the subject, which was finalized in 2007, and then published her findings as a book in 2010. When asked about differences between her thesis and book, Dr. LeVine said that the book contained more references, as more resources became available in the three years it took to publish. She also explained that she aimed to make her book easier to digest for the general public.⁵

2. Research Methodology

As with the majority of expert witnesses, Parties spent considerable time going through the Expert's research methodology for her main study into DK era marriages, which she described as "ethnographic [and] immersive." She was asked about how she chose her sample, how she conducted interviews and how she protected her work against bias.

i. Sample

Dr. LeVine explained to the Court that her research was conducted in three phases. She began with a first, "convenience" couple: her RUPP colleague and his wife who had not described their marriage as forced. She interviewed this couple numerous times both together and apart over a period of about three years. The second phase was to interview 10 other couples who fit her criteria of still being married to their DK-era partner, having been married inside Cambodia, and not having refugee status.⁶ The 10 couples were identified through "snowballing" and primarily came from DK's Central and Southwest Zones.⁷ The Expert used the information gathered from speaking with the 11 couples (including the original couple) to create a questionnaire that was then used to question her broader sample of 192 people: 90 of whom were interviewed by Dr. LeVine personally and 102 were interviewed by her students from RUPP.

ii. Interviews

Dr. LeVine believes that memory can be stimulated by visual queues, so in addition to questioning the respondents in neutral places the Expert also travelled with many of her respondents to important sites of their past and recorded videos of these interviews.⁸ The Expert then compared the responses provided in initial interviews with those provided during

the field interviews. She asked her first 11 participant couples a series of 13 questions, which she read out to the Court.⁹ She asked open questions, and took particular care to avoid using the word forced: “I tried to avoid even asking the question of whether they were forced or not.” After gathering the responses from her first group, Dr. LeVine created a template to use to question the larger group of 192. This group consisted of people married under DK, and represented 181 marriages, as 11 of the participants were married to each other. The Expert said she attempted to interview a roughly equal number of men and women, as well as people married at different times and in different locations, although approximately one quarter of her respondents were married in Kandal Province.¹⁰ The Expert told the Court that in addition to the 22 in her first sample and the 192 in her second, she also interviewed “well over 1000” other people living in the villages in an informal way to give her more background on the main issues.

iii. Ethics

When conducting her field interviews, Dr. LeVine travelled with psychologist Lina Huot in order to ensure her respondents received psychological support if needed. The Expert repeatedly told the Court she had made every attempt to avoid bias in her research, as the chief purpose of her study was to correct what she saw as a biased nature of prior research on the topic. She explained that she conducted her research in a self-funded, independent manner, without any connection to another organization, as it is her belief that NGOs sometimes “compromise” their research in order to reach conclusions that appeal to donors. During the process of having her PhD accepted, it underwent reviews by two different ethics committees at the two universities where she completed her doctoral degrees.¹¹

3. Expert’s View of DK Marriage

The majority of the Expert’s testimony centered on the regulation of marriage during DK and her theory that marriages were not “forced” but rather “conscripted.” During her testimony, Dr. LeVine explained on a number of occasions that her research had focused on marriages and childbirth during the DK period chiefly in the context of the destruction of rituals.

i. Role of *Angkar*

One of the questions asked by the Expert in her study was ‘What is *Angkar*?’ Dr. LeVine said she was interested and surprised to learn how her sample perceived *Angkar*: 22% considered *Angkar* to be a leader; 48% considered *Angkar* to be a more metaphysical force and 30% said they were unsure. Comparing the responses with what was discussed in existing literature, Dr. LeVine found that *Angkar* was considered by participants as a “transformational” force rather than a political force; one with the ability to appear at any moment, overhear people’s conversations and even read minds. She said that the more someone viewed *Angkar* as a metaphysical, transformational force, the more likely they were to comply with instructions. She identified women as more likely than men to view *Angkar* in a metaphysical way, whereas men she interviewed often associated *Angkar* with Khmer Rouge cadre.¹² Dr. LeVine felt that the couples held a loyalty to *Angkar* and respected the arrangement for their marriages, in a similar way to their obedience to parental choice in pre-DK era arranged marriages.

ii. “Ritualcide”

Although it has not been a major feature of the trials in Case 002/02, the chief focus of Dr. LeVine’s research was the effect the destruction of traditional rituals had on Cambodians living through the DK period. The Expert has coined the term ‘ritualcide’ which she considers a crime against culture, and spoke at length about this phenomenon. She told the court that this denial of ritual was what she found to be a great source of stress and pain for her subjects,

and that this was particularly apparent regarding weddings. She gathered significant data about the rituals and practices of weddings in Cambodia prior to the regime, aiming to discover the role of traditional Cambodian wedding rituals in weddings during the DK regime, and identify whether some wedding rituals were permitted. She concluded that the trauma of those she interviewed came from the loss of traditional rituals and their inability to have traditional weddings during the DK period.

iii. Consent and Marriage as ‘Conscripted’ not ‘Forced’

The Expert explained her rejection of the term “forced” by telling the Court: “It was only after the word ‘forced’ became an agenda item to be evaluated at the ECCC that people became ashamed to tell their children about how and when they were married.” She said that, having tracked some respondents over five years, she had observed an increase in “the shame factor” over time, particularly since 2004, which she attributed to portrayals of DK forced marriages in the media. Rather than use this term, therefore, the Expert used the term ‘conscripted’ to describe the weddings. A great deal of time was spent by Parties and the Bench trying to understand the Expert’s definitions of these two terms. Dr. LeVine explained that when speaking about conscription, she meant “national service.” In the Cambodian context, the Expert found the critical difference between conscripted marriage and forced marriage to be the element of national duty and loyalty to *Angkar*, describing loyalty to *Angkar* as “seductive” for those she interviewed. The international Co-Prosecutor raised a number of examples from her book of her respondents saying they feared punishment, in the form of forced labor or even death, for refusing a marriage. He asked the Expert whether she still maintained her position even in the face of these passages. She responded that those she spoke to for her interviews never used the term ‘forced’, and the majority responded in the affirmative when she asked whether their marriages were ‘authentic.’¹³ She also pointed out that in many countries, refusal to participate in military conscription could result in imprisonment.

iv. Comparison with Traditional Arranged Marriages

The Expert also testified briefly about DK marriage in relation to how it differed to traditional arranged marriages in Cambodia pre-1975. She said during her research it had been important to “move aside” her own personal views of love in partnership in order to understand traditional Cambodian views of marriage. She said the word “bond” more accurately described marriage than “love,” and she noted that “love was rarely discussed.” Traditional arranged marriages commonly had an “engagement” period from three to six months that was missing during DK. She told the court that just as children would not have questioned their parents’ choice of their future spouse, Cambodians in DK obeyed *Angkar*, who had replaced the role of their parents.¹⁴ Thus she argued, it was often a sense of duty to *Angkar* that compelled her subjects to marry, rather than fear of punishment. She also said that for many people she interviewed, marriage was a “relief” as those who were married were generally treated better than single people.¹⁵ She pointed to marriage as a source of comfort for her subjects in the post-DK era, saying they some “felt safe to talk about things they normally would not talk about.”

v. Consummation of Marriages

In her study, the Expert found that 76 out of the 192 she interviewed told her one or both of them had been “prescribed sex.” Of these 76, 19 told her that they consummated their marriage, while most others said they pretended. Some reported being spied on. According to her, no one in the sample was threatened explicitly with death, or asked after whether they had successfully consummated their marriage. She said couples would usually either go to their family’s home to spend their wedding night or, if this was not an option, they were provided with a hut. She elaborated that before the DK period there had already been an expectation that marriage would be consummated and the couple would produce children, and also noted that this was by no means unique to Cambodia.¹⁶

vi. Existence of Official Policy on Marriage

The expert testified that she was unable to comment on whether there existed an explicit CPK policy regulating marriage during the DK regime.¹⁷ She raised the inconsistencies and variation in how her respondents recounted their experience, concluding that marriages varied greatly from region to region, and depending on the character of the village chief. According to her research, it was “very difficult to say what was typical during this time.” However, she did testify that there appeared to be an “organic” development of marriage policy by late 1978, which manifested in an increasing uniformity of marriage procedure across the country. LCLCP Marie Guiraud confronted the Expert with a quotation from her own book: “Conscripted weddings became part of one’s duty to country to propagate (literally) the Communist state.”¹⁸ Counsel asked how the expert could at once believe marriage was a duty to the state and also hold that there was no state policy. In response Dr. LeVine repeated that the variation she had observed made it impossible for her to make a conclusion on the existence of a policy. In fact, in court she qualified what she had written in her book: “For me it was not about propagation *per se*, it was really about the creation of structures that would lead to formal communal living sites.”

vii. Expert’s Perception of Bias in Debate on DK Marriage

Counsel for Nuon Chea asked the Expert whether she considered the evidence presented in the courtroom by Civil Parties to be “anecdotal” rather than “reflecting a structural phenomenon.” In response, the Expert stated:

I do not question the integrity of Civil Party members and what they bring forward in this court. I have listened to them. I do not question that. What I question is the judgment, the values and the drivenness, perhaps, of some of the organizations that may have been involved in them getting to the point of being in this courtroom.

She also spoke about the sensitive nature of discussions on the prevalence of forced marriage during the DK regime. She described the topic as “emotional,” adding that “emotion without reliability may not actually be portraying what happened as it happened.” Dr. LeVine described what she saw as a “tendency to want to convince me of a particular way of looking at the weddings” by scholars and journalists during her study. The Expert read out an email she had written in 2008 in response to former Civil Party lawyer Silke Studinsky, in which the two exchanged their views on the prevalence of forced marriage. She referred to the representation of marriage in the media on a number of occasions, implying a certain bias and saying she “did not want to be media-driven.”

4. Questions Over Methodology and Findings

Judge Fenz questioned whether the results of these interviews could be skewed towards couples who had had a positive experience of marriage, as the Expert’s first sample of 22 was comprised entirely of couples who had stayed together after the end of the DK regime. In response, the Expert clarified that, in her broader sample of 192 people, the criteria that they be a couple who remained together was not a factor.¹⁹ She also clarified that couples were interviewed both together and separately, to allow them the opportunity to speak freely and allow her to corroborate their stories.

The international Co-Prosecutor asked Dr. LeVine how she could reach the conclusion that marriages were not forced if she had not questioned her subjects about consent to marry. Dr. LeVine again explained that she had asked open questions, because she wanted to avoid influencing her subjects’ responses, saying, “I don’t think it’s inconsistent to talk about authenticity and not force. I want to state that.” The OCP suggested that she could not be sure that the marriages were not forced if she did not specifically ask, and that her asking if the marriages were “authentic” was not synonymous with asking if they were voluntary. The OCP

further suggested that due to the constant state of fear during DK, the respondents may not have been capable of giving their consent. Dr. LeVine rejected this notion, saying that those she interviewed did not express this view. The OCP also pointed out that the Expert had made findings about the ability to refuse marriage when she was unable to interview anyone who may have been killed as a result of their refusal to marry.

5. Witness Demeanor and Credibility

Dr. Peg LeVine was an engaged witness who had evidently reviewed her research in detail prior to her appearance, as she was able to refer to names, dates, and details with ease despite the six years that have passed since the publication of her book. The Expert was careful to qualify and explain her answers, and was diligent in referring to her research in order to provide as much evidence to back up her answers as she could. When confronted with sources she was unfamiliar with, she often paused to consider them, and sometimes came back after a break or even the following day with a response. Dr. LeVine readily discussed the issues in depth, particularly related to rituals, however sometimes her answers appeared tangential to the question asked. On a number of occasions, after responding to a question posted by Defense Counsel the international Co-Prosecutor rose to point out that the Expert had not in fact answered the question put to her. Peg LeVine maintained her conclusions even when confronted by seemingly contradictory evidence by the OCP and LCLCPs. Her position that marriages during DK were on the whole “conscripted” and not “forced” was weakened by her apparent reluctance to define the term “forced.” She also failed to fully address evidence provided by some respondents in her survey who appeared to have been married under threat. However, as the Expert pointed out on a number of occasions, the chief purpose of her study had been to analyze ritual harm during the DK regime, not to make a finding on whether or not marriages were forced. Overall Dr. LeVine was a cooperative and thoughtful witness who did not appear to speak to questions outside her realm of expertise or speculate on answers.

B. Summary of Testimony by Civil Party Pen Sochan

Next to testify this week was Civil Party Pen Sochan, who first appeared in Court on Wednesday afternoon.²⁰ Pen Sochan was born in 1962 in Pursat Province and testified to being raped by a man she had been forced to marry toward the end of the DK regime.

1. Experience of Marriage During DK

Before 1975, Pen Sochan lived with her parents in a village in Khnar Totoeng Commune, Bakan District, Pursat Province. She was evacuated to another village in the same commune after 17 April 1975. She testified that five or six months before the Vietnamese invaded Cambodia, she was married to a 25 year-old named Tok Sat who she had never met before. At that time, she was only 16 or 17 years old. Describing her wedding day, Pen Sochan said that after finishing work at 5:00PM she was told go to eat, however, on arrival, instead of eating she was informed by her unit chief that she was to get married. Pen Sochan said she tried to refuse the marriage because she was not “mature” enough, however her Unit Chief Om said that if she did not agree she would be “refashioned,” and if she kept refusing she would be killed.

Pen Sochan’s marriage took place in Deum Roka Village, Khnar Totoeng Commune, and eleven other couples were also wed in that same ceremony. On that day she was given a scarf, a shirt, and a black skirt to wear. Only Comrade Oeun, Unit Chief Om, and five militiamen were present at the ceremony; none of her family members, friends or relatives were there or even aware of her marriage. The Civil Party described feeling tired and hungry during the ceremony because they had not yet had dinner. At the ceremony Om and Oeun each made a speech about the importance of staying together “even if [couples] did not like each other” and to have children “for *Angkar*.”

Although the Civil Party did not know at the time of her marriage who had ordered the match, when participating in the documentary Red Wedding, she spoke with both Om and Oeun, who denied ultimate responsibility and said she should speak to Roem, the Chief of Bakan District. When she went to see Roem as part of the filming, he indicated it was Ta Mok who had ordered him to arrange marriages, and “if I wanted to know more I should exhume his body and ask him.”

2. Sexual and Other Violence Experienced During First Nights After Marriage

The night of the wedding all couples had to sleep in the same long building: each couple in their own small room. Pen Sochan said she overheard five militiamen giving her husband an instruction to consummate the marriage, although she admitted she could only hear part of the conversation. On their first night together, the Civil Party refused to have sex with her husband and wore two pairs of pants for protection, but in response her husband beat her and tore her clothes. The next day she was “refashioned” by Comrade Om, who warned her that if she continued to refuse she would be killed. The second night she was beaten again by her husband for refusing to consummate their marriage. Pen Sochan’s uncle Khom intervened and pleaded with Tok Sat not to hurt his niece. On the third night of marriage, Pen Sochan decided to stop resisting her husband in order to save her own life. That night her husband tied her hands to a pole so she could not move. He hit her, ripped off her two pairs of trousers then raped her, while five militiamen watched. The militiamen stood in front of the entrance of her house and she could see them through the holes of the walls, laughing. As a result of that night the Civil Party said she bled for a month and had no medical care. On the fourth night of her marriage Pen Sochan fled from her husband and went to her mother’s house for help, however her mother was scared that the rest of her family would be killed for helping her. She begged her mother for some food, so her mother made her a vegetable soup and then she left. After this Pen Sochan and her husband went to work in their separate work units.

3. Consequences for Refusing to Consummate a Marriage

When asked about the consequences of refusing to consummate a marriage, Pen Sochan told the Chamber about a couple called Khom and Mut who had been married in a ceremony similar to hers. The Civil Party used to sleep next to the woman, Khom, but one day Khom and Mut’s names were called and they were taken away. Before leaving, Khom hugged Pen Sochan and then left her belongings behind. She never came to collect her belongings, and Pen Sochan never saw either of them again. The Civil Party said this happened regularly after this, around every three days. She did not know what happened to those who were taken away but heard rumors they were taken to Phum Kvang.

4. Participation in Documentary ‘Red Wedding’

During her testimony, several excerpts from the film ‘Red Wedding’ were shown, and questions asked about her participation in the documentary. Pen Sochan explained that she had participated in the filming process after being interviewed by her Civil Party lawyer about her marriage. Although the film depicts her in the process of filling out her Civil Party application form, the Civil Party explained that this was for show, and she had in fact already done this. She believed the filmmakers were particularly interested in her story because she was married at a young age during DK. She made it clear that she did not receive any money or financial help for her participation in the film, adding that her desire to become a Civil Party stemmed from wanting to share her experience with the younger generation.

5. Statement of Suffering and Questions to the Accused

In her statement of suffering, Pen Sochan told the Chamber that she had suffered a lot, as a she had only been a child during the DK period. She was forced to marry, raped by her

husband, and lost many family members and relatives. She described the harsh conditions she endured, with limited food, and with a great deal of abuse from her work supervisors. After the fall of the regime, she remarried, however her second husband also mistreated and abused her. She now lives as a widow with her six children, and says she has “never had a happy life.” The Civil Party then put questions to the Accused. She asked why people were chosen to marry one another even if they did not know each other, and also why some people were made to do forced labor and others were killed, even those who were educated.

C. Summary of Testimony by Witness Cheal Choeun

On Thursday afternoon the Chamber began hearing testimony of 64-year-old Witness Cheal Choeun, from Prasat Village, Svay Doun Kaev Commune, Bakan District, Pursat Province.²¹ Cheal Choeun had originally been called to appear as a Witness requested by the Nuon Chea Defense Team, however they subsequently sought to withdraw the witness, based on additional information they obtained. Nonetheless, the Court proceeded to hear the Witness and will conclude his testimony next week. (See **Section III. A**). He testified with the assistance of Duty Counsel Sok Socheata.

1. Background and Joining Unit 35

Cheal Choeun testified that he was a monk prior to the DK regime, however, after being made to disrobe, he fled to Au Sralao in Battambang. While there, he joined Unit 35, Battalion 18 in the Northwest Zone as a Private, although he seemed not to have chosen to join this unit, saying: “I was not sure of my duty when I was there... I was given a weapon to carry and a mosquito net.” He identified a cadre named Roeun as in charge of his company, however he did not remember the company’s number. Cheal Choeun was able to identify Ruos Nhim as the chief of the Northwest Zone, although said he never met him personally.

2. Execution of Lon Nol Soldiers

Soon after the fall of Phnom Penh, while still a part of Unit 35, the Witness was instructed by Doeun, his platoon leader, to go to Phnom Tipadey mountain to guard soldiers who were expecting a visit from the Late King Father Norodom Sihanouk. The soldiers he was tasked with guarding were unarmed former Lon Nol regime soldiers who had been transported from Battambang. Although he heard later that the people were ranked soldiers, he was not aware of this at the time. He estimated there were approximately 50 soldiers there. When the soldiers arrived, they were shot at, and most were killed. Cheal Choeun later heard that the man responsible was called Saroeun, alias Ren, although he did not know him personally. The Witness described being “terrified” while the shooting was taking place, but said he was kicked by someone and told to fire at the Lon Nol soldiers. He said at the time he didn’t even know how to work a gun. Later, when he asked Doeun why the Lon Nol soldiers had been killed, he was told that he did not need to know, and then was sent to work on the railways.

3. Work on Railways in Battambang

After around one month in Unit 35, Cheal Choeun was sent to work on the railways between Kmauch and Au Sralau near Battambang. While working there, he was reclassified as a civilian and made to hand over his weapon. He recalled being tasked with collecting weapons from other soldiers and delivering them to a warehouse at the house of someone named Pheap. He also had to hand over his own rifle at this time. He only identified Pheap as being “in charge of [him]” while at the railway. He was unsure where the weapons were transported or why, but he recalled being told that, because he was no longer a soldier, there was no need for him to carry a weapon. He denied ever having heard about a rebellion plot, however he did say that, while working at the railway, he and others received military training for about half an hour every afternoon. He was not sure why he and the others at the railway were given military training,

and remembered being told to keep this a secret during the regime. The Witness said that Pheap later disappeared, along with the then-chief of the railroad, Ta Hoeun *alias* Mom. He did not know the fate of any of the three men, but said that after each disappeared, an announcement was made that they were traitors. He recalled hearing that Ta Mok visited the railroad site after the disappearance of Pheap and the railway chief, but before the disappearance of Mon. However, he did not ever directly see Ta Mok.

4. Participation in Documentary *Enemies of the People*

During questioning by Judge Lavergne the Witness confirmed that he had participated in the making of the documentary *Enemies of the People* produced by Robert Lemkin and Thet Sambath. Cheal Choeun explained that he was asked to help them find locations for shooting their film. He also travelled with them to Thailand where he was interviewed, but he confirmed he never received any reimbursement for his participation. Judge Lavergne read Cheal Choeun an extract from the book authored by filmmaker Thet Sambath with Gina Chon, *Behind the Killing Fields*, in which the authors claim Ruos Nhim instructed someone named Cheal Choeun to coordinate with Thai Communists to arrange supplies for a coup, however the Witness denied any knowledge of this in court.²²

5. Witness Demeanor and Credibility

Cheal Choeun was a cooperative and clear-spoken witness who appeared not to respond to questions beyond his knowledge. His memory appeared to be strong, and he was able to testify to details including numbers, names, and locations without much difficulty. Although he appeared to contradict an earlier statement in which he is recorded as having claimed to make “bombs” during the DK period, it appears this could be from a translation issue of the original quotation. In court this week his answers were largely internally consistent.

III. LEGAL AND PROCEDURAL ISSUES

By far the most frequent legal issue raised this week concerned questions seen as falling outside the scope of Case 002/02, including questions on the treatment of Lon Nol soldiers in the immediate aftermath of 17 April 1975. Also controversial was the question of whether or not Cheal Choeun should testify as a witness. The Parties gave input to the Court on Monday about the value of the potential testimony, with the Nuon Chea Defense Team seeking to withdraw him from their witness list. Ultimately, however, the witness did appear on Thursday.

A. Nuon Chea’s Request to Withdraw Witness Cheal Choeun

On Monday morning, the Nuon Chea Defense Team sought to remove Cheal Choeun from their witness list. Counsel Koppe explained that his team had originally found what they saw as “interesting, exculpatory” evidence related to alleged coup plots in the Northwest Zone in *Behind the Killing Fields* that they believed was attributed to Cheal Choeun. However after then receiving his WRIs, the Team was less confident that Cheal Choeun was indeed the person Thet Sambath referred to. Further, Mr. Koppe argued, the evidence contained in the WRI was “more likely to be potentially inculpatory” and thus they no longer believed that calling him as a witness would be beneficial. A Trial Chamber memorandum from 17 September (which is as of writing not publicly available) contains a copy of an email from filmmaker Robert Lemkin who raised questions about the identity of this witness.²³ Counsel Koppe stated that his team was withdrawing their request to hear this Witness, because, “he is still relevant to the case, but he is not relevant to our theory of the case.”

While noting that they believed the Witness could provide interesting evidence on the policy to kill Lon Nol soldiers or the treatment of Buddhists, the OCP expressed no opposition to withdrawing the Witness, as a lot of evidence had been heard on these topics already. The

Khieu Samphan Defense said that since it was the Nuon Chea Team's request that was the basis of the Trial Chamber calling the Witness, it would be "normal" for the Chamber to follow the Nuon Chea Team's proposal to now withdraw the witness. Judge Lavergne pointed out that in the civil law system, once a witness has been proposed by a party, he or she becomes a witness of the Chamber, and therefore it is not possible for a single party to withdraw the witness, particularly if the witness still meets the admissibility criteria laid out in Internal Rule 87(4).²⁴ Later that day the Chamber announced without giving reasons that it would maintain its decision to hear the Witness, so Cheal Choeun was ultimately heard on Thursday.

B. Definition of Term 'Forced Marriage'

Unsurprisingly the term 'forced marriage' came up on numerous occasions during the testimony of Dr. Peg LeVine this week, leading Parties on both sides to attempt to reach a consensus on the definition of forced marriage. Dr. LeVine herself said: "I cannot define [the term] because it was not part of my findings." When Marie Guiraud asked on behalf of the LCLCP how she was able to establish that "weddings were not forced" if she did not define what "forced" meant, she reiterated that it was not the purpose of her study to look at people who had experienced forced marriage and instead she focused on whether the marriages were "authentic." International Co-Prosecutor put forward a definition of marriage that was used in *Prosecutor v. Sesay et. al* at the Special Court for Sierra Leone (**SCSL**) which states that forced marriage: "describes a situation in which the perpetrator...compels a person by force, threat of force, or coercion to serve as a conjugal partner."²⁵ The Expert responded that including the term 'coercion' in this definition could lead to defining arranged marriages as 'forced', which she was not comfortable with. She also said the use of the term 'force' twice in this definition was "confusing."

Nicholas Koumjian repeatedly tried to establish a definition of 'forced' that the Expert would agree with, providing examples such as refusing a marriage and then being sent to do hard labor, as two of her subjects had been. Counsel for Nuon Chea objected to trying to use legal terms with the Expert, arguing that it was up to the Chamber to establish whether the marriages she described had been "forced" to which Mr. Koumjian responded that the word "force" was not necessarily a legal term on its own. Judge Fenz intervened and conceded that it is "difficult to draw the line" between legal and common-use definitions, and advised the OCP to leave conclusions to the Bench, and focus on the Expert's own understanding on terms.²⁶

C. Objections Over Perceived Late Notice of Civil Party's Involvement in the Film, *Red Wedding*

On Thursday Counsel Koppe attempted to confront Civil Party Pen Sochan with excerpts from the film *Red Wedding*; a documentary in which she features heavily. Initially the Defense Counsel tried to describe events in the film and read English-language translations of what she had said, however both the LCLCP and the Bench suggested it may be preferable for the Civil Party to hear the original excerpts in her own language. After arguing that he was unprepared to play the clips and even suggesting to play the entire film instead, Counsel Koppe noted: "I find it quite incredible that only on Tuesday we were informed that this Civil Party is in fact the main character in the film," expressing surprise that the Civil Party lawyers had not informed Parties of this fact sooner. Marie Guiraud, for the Civil Party lawyers, responded that the film was produced in 2012 and was admitted by the Chamber in June 2015.²⁷ She noted that "many people in this courtroom, perhaps not Mr. Koppe, know that this Witness (sic) Pen Sochan is the main character." Ultimately, the Nuon Chea Team prepared the excerpts during the next break and were able to use them to question the Civil Party afterwards, making things more clear.

D. Decision on LCLCP Request for Additional Time for Victim Impact Hearings on Marriage

On Thursday the Trial Chamber issued an oral ruling in response to the LCLCP request to increase the time allotted for victim impact hearings on the regulation of marriage segment from one to two days. The LCLCP argued that this was justified, as the Chamber was no longer hearing 2-TCCP-264 due to medical reasons, so more Civil Parties could be heard in the impact hearings. They also argued that this did not prejudice any Party. The Khieu Samphan Team filed a response on 12 October 2016 objecting to this proposal. The Chamber reiterated that one day had been scheduled for these hearings since 28 June 2016. Further, the Chamber noted that a large number of Civil Parties had been selected to be heard in the main part of the trial segment and also that 2-TCCP-284 and 2-TCCP-1064 had been added to the list since its original creation. The Chamber ultimately rejected the LCLCP request and asked them to reformulate their proposed schedule for the victim impact hearings to reflect this.

E. Request to Admit Documents into Evidence Ahead of 2-TCE-98

The Chamber noted that the Expert on the nature of armed conflict, 2-TCE-98, is currently scheduled to testify next week. In light of this, the Nuon Chea Defense Team filed an Internal Rule 87(4) motion to admit documents into evidence and a Rule 93 motion filed on 11 October that related to two documents.²⁸ The Khieu Samphan Defense Team did not object to the request, particularly stressing the importance of the eighth listed document: a series of letters written by the Late King Father Norodom Sihanouk that discuss the geo-political situation between Vietnam and Cambodia. Counsel Anta Guissé argued that Norodom Sihanouk's speeches and letters made before, during, and after DK are relevant, "particularly since they refer to the term *yuon*." Nicholas Koumjian responded by pointing out that all of the documents requested were available before the start of the trial, and therefore did not fit the criteria of Rule 87(4). However, he added that he would not object to admitting the documents written by the Expert. One caveat was made by the OCP; Mr. Koumjian requested that, should the eighth document be admitted, the Chamber also admit "rebuttal evidence" in the form of three articles authored by Elizabeth Becker about the late King Father in order to present "a more complete, complex picture" of his views towards the DK regime. Counsel Koppe argued that "rebuttal evidence" was not allowed in the court particularly in light of the "strict" deadline issued by the Chamber over issuing new evidence. Judge Fenz clarified that such evidence was permitted "under certain circumstances."²⁹ He further pointed out that the articles by Elizabeth Becker had also been available for a long time and could have been foreseen to be relevant as this segment has been upcoming for a while.

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

Judge Lavergne spent most of Thursday afternoon this week questioning Cheal Choeun. Although unusual during a Judge's questioning, he was interrupted by both Defense Counsel over lines of questioning deemed to go outside the scope of Case 002/02. Counsel Koppe objected to the Judge asking about military structure of the Northwest Zone, arguing that it might lead to "retrying 002/01." He said that the killings of Lon Nol soldiers at Tuol Po Chrey (and the military structure in the Northwest Zone at the time) was part of Case 002/01, as well as the final appeal verdict, which is due to be released on 23 November. Accordingly, any new discussion of these facts may impact that appeal judgment. To make his argument, the Defense Counsel quoted parts of the transcript from 2 and 3 February 2016, in which the Bench prevented questions being asked about the treatment of former Lon Nol soldiers in the immediate aftermath of 17 April 1975, on the grounds that this was not part of Case 002/02.³⁰ Ultimately he argued that the topic of Tuol Po Chrey "is so closely connected to what this Trial Chamber adjudicated in 002/01, that we believe that these questions should not be asked that that is why we object." He also indicated that the massacre at Tuol Po Chrey, contained in his WRI, was "that is why we believe this witness is here," however as the international co-

prosecutor pointed out, the witness was originally proposed by the Nuon Chea Defense Team for information they believed he possessed about alleged coup plots in the Northwest Zone (See **Section III.A.**).

Judge Lavergne pointed out that when Counsel Koppe objected, he had only been asking about military structures in the Northwest Zone that the Witness knew about when he was a soldier there, and had said nothing about the evacuation of Phnom Penh or Tuol Po Chrey. Nicholas Koumjian argued that the treatment of Lon Nol soldiers was explicitly a part of the scope of Case 002/02 and that, regardless, the Witness's WRI states that he was not personally present at Tuol Po Chrey. He also argued it was impossible this evidence could harm the Defense's position on appeal, and "promised" not to attempt to admit Cheal Choeun's testimony as evidence to the Supreme Court Chamber, as Case 002/02 evidence is not part of the appeal record and the SCC judges had no reason to consider it. Counsel Koppe said he believed it was an OCP obligation to disclose relevant information to the SCC regardless of what the international Co Prosecutor "promised" however Mr. Koumjian maintained that the Witness's evidence did not appear to fit the criteria for disclosure. The LCLCP expressed her confusion at the objection, and said that since Case 002/01 was closed, she did not understand why there was any issue. The President overruled the objection because it was unfounded.

Later that day, international counsel for Khieu Samphan objected to questions asked by Judge Lavergne about the treatment of former Lon Nol soldiers in the immediate aftermath of 17 April 1975 on the grounds that they had been covered in Case 002/01 already. However, Judge Lavergne dismissed the objection by stating that the temporal scope of Case 002 begins on 17 April 1975, and anything that takes place after that is within the scope of Case 002/02.

IV. TRIAL MANAGEMENT

This week the Trial Chamber resumed proceedings after a one-week postponement following the annual Pchum Ben holiday break, due to high water level within the ECCC compound. Over four days, the Trial Chamber concluded the testimonies of one Expert Witness and one Civil Party in relation to segment on the regulation of marriage, and began hearing one Witness concerning the segment on internal purges.

A. Attendance

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

Judge Attendance: The President of the Trial Chamber, Nil Nonn, returned to the courtroom this week after a long absence due to health problems. All judges of the Bench were present in the courtroom, however international reserve Judge Martine Karopkin was absent on Wednesday.

Parties: Counsel Liv Sovanna, national Defense Lawyer for Nuon Chea, was absent on Wednesday and Thursday for health reasons. Counsel Pich Ang, national Lead Co-Lawyer for Civil Parties, was absent during the morning session on Wednesday for personal reasons. In both cases the international colleagues were present in the courtroom to represent their clients.

Attendance by the public: Throughout the week, the public in general, excluding the media, was not allowed to observe directly in the court's public gallery due to high water levels within the compound of the ECCC. However, there was an online live stream of the proceedings.

DATE	MORNING	AFTERNOON
Monday 10/10/2016	<ul style="list-style-type: none"> No public attendance 10 Civil Parties 	<ul style="list-style-type: none"> No public attendance 10 Civil Parties
Tuesday 11/10/2016	<ul style="list-style-type: none"> No public attendance 9 Civil Parties 	<ul style="list-style-type: none"> No public attendance 7 Civil Parties
Wednesday 12/10/2016	<ul style="list-style-type: none"> No public attendance 10 Civil Parties 	<ul style="list-style-type: none"> No public attendance 10 Civil Parties
Thursday 13/10/2016	<ul style="list-style-type: none"> No public attendance 9 Civil Parties 	<ul style="list-style-type: none"> No public attendance 8 Civil Parties

B. Time Management

After returning from a week break for Cambodian religious holiday of Pchum Ben, the Trial Chamber was forced to postpone proceedings for another full week due to high water levels in the compound of the ECCC making it impossible to access the Chamber. The Trial Chamber resumed proceedings on Monday 10 October as usual, after starting late at 10:05AM on Monday due to particularly bad traffic congestion along the road leading to the Court. The Trial Chamber managed to balance the time allotted to Parties this week, assigning an extra session to each side of the Chamber to question Expert Witness Peg LeVine.

C. Courtroom Etiquette

There were no substantial breaches of courtroom etiquette this week and in general Parties conducted themselves professionally.

D. Translation and Technical Issues

This week, during the Expert's testimony, some Parties had problems understanding the difference between the English terms "forced" and "conscripted" as these were often translated into the same word in French. International Judge Claudia Fenz and Counsel Anta Guissé, international Defense Lawyer for Khieu Samphan, helped to sort this issue by seeking for clarification from the Expert Witness. Monitors also noted English-to-Khmer interpreters struggle with some technical terms used by the Expert in explaining her research methodology.³¹ There were no notable technical interruptions and overall proceedings ran smoothly and effectively.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 10/10/2016	10:05	10:35-11:07	11:33-13:31	14:41-15:01	16:01	3 hours 6 minutes
Tuesday 11/10/2016	9:01	10:19-10:38	11:34-13:30	14:25-15:02	16:00	4 hours 7 minutes

Wednesday 12/10/2016	8:59	10:25-10:44	11:40-13:31	14:42-15:01	16:03	4 hours 35 minutes
Thursday 13/10/2016	9:00	10:06-10:29	12:04-13:31	14:49-15:08	16:07	4 hours 58 minutes
Average number of hours in session				4 hours and 11 minutes		
Total number of hours this week				16 hours and 46 minutes		
Total number of hours, day, weeks at trial				902 hours and 18 minutes		
238 TRIAL DAYS OVER 69 WEEKS						

*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 ECCC)	<i>The Case of Kaing Guek Eav alias “Duch”</i> (CaseNo.001/18-07-2007-
Case002 Samphan	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu</i> (CaseNo.002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC

¹ Unless otherwise indicated, all quotations in this report are based on monitors notes of proceedings. As of writing the official transcripts from this week’s proceedings are yet to be made available.

² 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 Ms. Kasumi NAKAGAWA, 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 67, Hearings on Evidence week 64 (13-16 September 2016); 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).

³ Expert Witness Peg LEVINE (2-TCE-81) was questioned in the following order: President NIL Nonn; international counsel for Khieu Samphan, Anta GUISSSE; international judge Claudia FENZ; national deputy prosecutor SENG Leang; international co-prosecutor Nicholas KOUMJIAN; international Civil Party lead co-lawyer Marie GUIRAUD; international counsel for Nuon Chea, Victor KOPPE; international counsel for Khieu Samphan, Anta GUISSSE.

⁴ The book was an adaptation of her PhD thesis, see Peg LeVine, “Love and Dread in Cambodia: Weddings, Births and Ritual Harm under the Khmer Rouge” (Singapore: NUS Press, 2010).

⁵ Immediately prior to her appearance as an Expert Witness on Monday morning the Chamber addressed a number of requests to admit new documents into evidence ahead of her testimony. The Chamber granted the request to admit the Expert’s book ‘Love and Dread in Cambodia: Weddings, Births and Ritual Harm Under the Khmer Rouge’ in full, as only her PhD Thesis was previously on the case file. Originally the LCLCP requested five chapters from the book be submitted but in response the OCP requested the entire book. This request was granted despite objections from the Khieu Samphan team that only the chapters identified by the LCLCP have substantial differences to the PhD thesis and thus need to be admitted. The Chamber also granted Khieu Samphan Team request to admit Dr. LeVine’s DC-Cam interview and comments she had made on her methodology.

⁶ Dr. LeVine explained that she wanted to choose couples that had stayed together so that she could compare their stories to ensure there was consensus about their situation, and she wanted to non-refugees because research had already been done into the Cambodian refugee experience, which was very different to the experience of those who never left Cambodia.

⁷ Dr. LeVine repeatedly used the term ‘snowballing’ to describe how she identified her interview subjects. She explained that she met couples by referrals from other couples she had interviewed.

⁸ Having a film recording of her interviews also allowed the Expert to get a second, independent translator to re-translate the material in order to verify the original interpretation she received from the interpreter who accompanied her to interviews. This was important for academic rigor and also because the interpreter who accompanied her on her work had also lived through the DK regime. Dr. LeVine said she followed the same verification process with the interviews conducted by RUPP students.

⁹ The questions in her interview were: 1) Tell me when you first met your spouse 2) Tell me what was happening in your life before you met 3) Describe the wedding day in as much detail as possible 4) Was it a real marriage 5) What happened after you married? 6) Were you told to have sexual relations by anyone before or after your wedding 7) What keeps you together? 8) What or who protected you? 9) What protects you now? 10) Please describe your own or a family member’s pregnancy during that time 11) Can you please tell me about the delivery of your child? 12) Please tell me about the first few days following delivery 13) Kindly describe the care for your child and others’ children in the commune.

¹⁰ Dr. LeVine’s respondents came from: Phnom Penh (5), Kandal (53), Prey Veng (21), Svay Rieng (8), Kampong Cham (7), Koh Kong (1), Takeo (28), Siem Reap (3), Battambang (18), Malai Mountain near the Thai border in Battambang (1), Pursat (8), Kampot (7), Kampong Speu (18), Kampong Thom (6), Ratanakiri (1) Kampong Chhnang (4), Oddar Meanchey (1) and Preah Vihear (2), see Table IV: Regional Patterns in Peg LeVine’s book *Love and Dread in Cambodia*, pp 190-192. Further, a legal issue was raised when Dr. LeVine explained that 29 couples in her sample of 192 people were married in 1979, potentially after the 7 January 1979 which is the limit of the temporal jurisdiction of the ECCC. The Expert was able to verify that only 2 of these marriages took place prior to 7 January, but noted that the rest of the weddings took place in regions still controlled by the Khmer Rouge.

¹¹ Dr. LeVine explained that she began her doctorate at the University of Victoria in New Zealand, however after her two supervisors left their positions at that university she transferred to Monash University in Melbourne, Australia in order to work under the supervision of David Chandler. This transfer meant her work ultimately went through two separate ethics clearance processes.

¹² In making this point, Dr. LeVine pointed out that the majority of Civil Parties in Case 002 have been women.

¹³ In her book, Dr. LeVine cites 158 of her 192 respondents (82.3%) as having described their marriages as “authentic” when asked.

¹⁴ Kasumi NAKAGAWA also testified about her perception of the difference between marriages arranged by parents and marriages arranged by *Angkar*. Ms. NAKAGAWA testified that even pre-DK, women’s ability to make a decision about her own marriage was “almost zero” however stressed the difference between a child relying on their parents to choose their spouse and a child being arranged to marry by a non-family authority figure, adding that the element of consent was lacking in DK that had existed in the family’s choice of spouse. See CASE 002/02 KRT TRIAL MONITOR, Issue 67, p. 1-6.

¹⁵ The other Expert Witness to testify on the regulation of marriage, Ms. Kasumi NAKAGAWA, differentiated between “authorized” and “forced marriages”: the former being a marriage agreed to by a couple in order to improve their living conditions, and the latter being one in which no choice was given or perceived.

¹⁶ She pointed out that even today the Roman Catholic Church can annul marriages if they have not consummated their weddings.

¹⁷ Ms. Kasumi NAKAGAWA testified that: “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” see CASE 002/02 KRT TRIAL MONITOR, Issue 67, p. 5.

¹⁸ LeVine, *Love and Dread in Cambodia*, p. 29.

¹⁹ That said, the majority of the 192 respondents had remained with their partners, 24 were widows or widowers, 39 had separated and two had remarried.

²⁰ PEN Sochan (2-TCCP-298) was questioned in the following order: President NIL Nonn; national Civil Party lead co-lawyer PICH Ang; assistant prosecutor Joseph Andrew BOYLE; Judge Claudia FENZ; international co-counsel for Nuon Chea, Victor KOPPE; national co-counsel for Khieu Samphan, KONG Sam Onn; international co-counsel for Khieu Samphan, Anta GUISSSE.

²¹ CHEAL Choeun (2-TCW-960) was questioned in the following order: President NIL Nonn; Judge Jean-Mark LAVERGNE.

²² Counsel Koppe objected to this line of questioning on the basis of a Trial Chamber memorandum from 27 September 2016 containing a copy of an email from filmmaker Robert Lemkin dated 1 September 2016. Although the memorandum is not yet publicly available, Counsel Koppe summarized Mr. Lemkin's position as being that the quote read by Judge Lavergne from the book *Behind the Killing Fields* had been misattributed to Cheal Choeun. The International Co-Prosecutor interjected to argue that his interpretation of the email from Mr. Lemkin rather meant that Cheal Choeun had been wrongly identified as the speaker of this quote in the sense that he had been promised confidentiality. Judge Lavergne dismissed the objection on the grounds that his questions were attempting to clarify the matter. Ultimately it was not established whether Cheal Choeun had been incorrectly cited or incorrectly identified in the book.

²³ For more information about the Trial Chamber's 27 September 2016 memorandum see **Endnote 22**.

²⁴ Internal Rule 87 governs the rules of evidence at the ECCC. Internal Rule 87(3) provides that all evidence is admissible unless it is "a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or 3) intended to prolong proceedings or is frivolous."

²⁵ Prosecutor v. Sesay et. al. Case No. SSL-04-15-A, Special Court for Sierra Leone Appeals Chamber "Judgment" (26 October 2009) para 735, p 262.

²⁶ A similar debate occurred during the testimony of anthropologist Mr. Alexander HINTON, a scholar of genocide studies who frequently used the word 'genocide' during his testimony. The Expert was asked to avoid using the term where possible, as its legal definition differed from that which he used. See *see* CASE 002/02 KRT TRIAL MONITOR, Issue 47, p. 6.

²⁷ The LCLCP corrected herself after a few minutes. Initially she said the film had been admitted in 2012, but then clarified it was produced in 2012 rified it was produced in 2012 and admitted three years later.

²⁸ As of writing this document, listed by the Chamber as E445/1, has not yet been made public. Rule 87(4) governs the admission of new evidence and provides that "During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth... in accordance with the criteria set out in Rule 87(3)" and Internal Rule 93 governs requests for investigative action and states that the Trial Chamber "may, at any time, order additional investigations" See Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9) (16 January 2015) p. 67 and 70.

²⁹ On 21 September 2016 the Trial Chamber released a memorandum explaining that, although the deadline for new evidence was put at 1 September 2016, there is an obligation for exculpatory evidence to be disclosed when it is discovered in the course of ongoing investigations, which could lead to Rule 87(4) requests by the Defense Teams. In light of this the: "in order to allow a full adversarial debate on the evidence, the Chamber finds that the Co-Prosecutors must be given the opportunity to challenge the evidence adduced by the Defense... therefore, as an exception to the 1 September 2016 deadline, the Chamber will consider the Co-Prosecutors' or Lead Co-Lawyers' requests to admit new evidence where they seek to rebut new evidence." Trial Chamber "Decision on Requests Regarding Internal Rule 87(4) Deadlines" (21 September 2016) E421/4, p. 9.

³⁰ On 2 February 2016 the OCP objected to Counsel Koppe's questions about the immediate aftermath of 17 April 1975, however the Bench allowed him to continue the line of questioning. The next day, 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. Counsel Koppe raised this same example on 19 September 2016, when international assistant prosecutor Dale Lysak pursued a line of questioning about the treatment of Lon Nol soldiers immediately after 17 April 1975, however despite Nuon Chea Counsel's objection, this line of questioning was allowed, see CASE 002/02 KRT TRIAL MONITOR, Issue 68, Hearings on Evidence week 65 (19-22 September 2016).

³¹ For example, monitors noted some difficulties in translating the English terms qualitative and quantitative research and "snowball."