

# KRT TRIAL MONITOR

Case 002/02 ■ Issue 75 ■ Hearings on Evidence Week 72 ■ 28 Nov – 1 Dec 2016



Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANNA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center)

*"I would like to ask Khieu Samphan...  
people died and where was he? Why didn't he see that?  
Why didn't he see the suffering that people were in?"*

- Civil Party Ms. Khieu Nieb

## I. OVERVIEW

After the Supreme Court Chamber announced its Case 002/01 appeal verdict last week, this week proceedings resumed in Case 002/02. Over four days, the Trial Chamber heard from three witnesses and two Civil Parties, mainly in the segment on the role of the Accused. First, Ms. Boeth Boeun told the court about meetings she attended that were presided over by Nuon Chea and Khieu Samphan, and also about being sent to Kampong Chhnang Airfield worksite after the arrest of her husband. Second to testify this week was Mr. Seng Lytheng, the nephew of Pol Pot, who worked with him throughout the regime. Third this week, Civil Party Ms. Khieu Nieb testified to seeing Khieu Samphan distribute blue and white checked scarves to recent evacuees from the East Zone in 1978. 2-TCCP-1063 also testified, under protective pseudonym, to having seen Khieu Samphan distributing food and supplies at a market. The witness recalled him giving a speech about the need to eliminate intellectuals. Finally this week, Mr. Sin Oeng, a distant relative of Sao Phim who worked as his bodyguard during the regime, testified about relations between the East Zone and the Center. Questions seen as falling outside the scope of Case 002/02, particularly concerning what is known as the third phase of population movement, drew objections on a number of occasions from the Defense this week.

## II. SUMMARY OF WITNESS AND CIVIL PARTY TESTIMONY

Five individuals testified this week, chiefly about the role of the Accused, although other topics that were covered included the regulation of marriage, purges in the East Zone and treatment of former Lon Nol soldiers.

### A. Summary of Testimony of Boeth Boeun

66-year-old Boeth Boeun, of Kandal Province, was the first witness to testify this week.<sup>1</sup> As a

party member and unit chief at the Ministry of Commerce, she was able to provide interesting testimony on Nuon Chea and Khieu Samphan's participation in study sessions and ministry meetings. She also told the court of the disappearances of her husband and co-workers, and said she was herself punished for her association with her husband.

### **1. Joining the Khmer Rouge and Role Prior to 17 April 1975**

Boeth Boeun testified to joining the Khmer Rouge in 1971 after revolutionaries appealed to her to join the fight against Lon Nol. After joining, she was sent Kampong Chhnang Province to assist in rice farming, until she was reassigned to hospital P-28. At P-28, she was tasked with digging tree roots to be boiled for medicine. After her time at P-28 she was assigned to a rice field at Thma Yong. In 1973, she joined the Khmer Rouge army, and was assigned to all-female Battalion 229 based in Kob Srov. Boeth Boeun explained that although she had been a member of the battalion and carried guns for Unit 80, she was "simply an ordinary soldier." Her unit transported ammunition to soldiers in Phnom Penh on 17 April 1975. After the fall of Phnom Penh the Witness was sent to Samroang Andaet to farm rice, and later to Kilometer 6 to sew clothes for soldiers. At this time, she said, she was based near the Olympic Stadium in Phnom Penh.

### **2. Role in the Ministry of Commerce and Arrests of People Working There**

In July 1977, Boeth Boeun joined the Ministry of Commerce, based near the Chinese Embassy and Wat Tuol Tompong. She said at this time she collected, sorted and packaged products: mainly coffee beans and cotton. At Wat Tuol Tompong she became a unit chief with the domestic commerce office. She told the court that "after Sao Phim had been arrested" her fellow workers began to "disappear" from the Ministry of Commerce, including her supervisor Ta Hong, who was deputy chief of the Ministry of Commerce. Although she had not witnessed any arrest first hand, she heard that Ta Hong was arrested along with his wife and grandchildren, all accused of being traitors. Boeth Boeun's husband, who worked as Ta Hong's driver, also disappeared at this time and she never saw him again. After these disappearances, Boeth Boeun was sent to Kok Ksach Pagoda to harvest rice with other women whose husbands had been arrested.

### **3. Study Sessions and Role of the Accused**

In 1977 Boeth Boeun became a member of the Communist Party of Kampuchea (**CPK**), which she referred to as "the party of Pol Pot." She attended two major study sessions during the regime: each lasting three days and each featuring senior CPK leaders. She recalled that "Pol Pot was the chief, the deputy was Nuon Chea, [and] members were Khieu Samphan, Ieng Sary and Ieng Thirith." The Witness said she "knew Khieu Samphan was subordinate to Nuon Chea."<sup>2</sup> Boeth Boeun told the court that Pol Pot spoke first and most often at these meetings, followed by Nuon Chea, then others. At these sessions party members learned about "political organization or work leadership" and were also read the content of *Revolutionary Flag* magazines. The study sessions also discussed "enemies" of the Party, including the Vietnamese, senior Lon Nol officials and their relatives, the CIA and the KGB: "they said sometimes the enemies were our parents, or our relatives." In addition to these big study sessions, Boeth Boeun explained that Khieu Samphan held monthly meetings she attended at Tuol Tompong because he was in charge of the Ministry of Commerce. She estimated she attended six during her time working at the Ministry and recalled the topics of discussion were morality and "the psychological enemy, those who were lazy to work." The Witness said these meetings were small, with only herself, Ta Hong, Ta Rith, Tha, Oeun and Khieu Samphan in attendance.

#### **4. Witness's Marriage**

Boeth Boeun told the Court she was married in 1977 while working at the Ministry of Commerce. She said her husband, who was a driver for Ta Hong, proposed to her, and they were the only couple at their wedding. She testified that she had the right to refuse his proposal, explaining: "Most of the couples liked the people who proposed to them." However she continued that, for marriages arranged by *Angkar*, people had to get married and "did not have rights." When asked whether she was instructed to consummate her marriage, she said there was "no need" for such an instruction because "they already were married." After they were married, Ta Hong was arrested and shortly afterward her husband too was arrested and taken away. Shortly afterwards, the Witness realized she was pregnant and was told by Comrade Tha that she had to "destroy" her fetus. Boeth Boeun said she was given an injection in order to kill the fetus, adding: "I did not know [why], I was told that *Angkar* wanted me to abort the baby."

#### **5. Kampong Chhnang Airfield**

After working in the rice fields at Kok Ksach, Boeth Boeun was sent to Kampong Chhnang Airport worksite<sup>3</sup> in a truck, then a train.<sup>4</sup> The Witness testified that when she arrived at the worksite, she saw approximately two thousand people already working there, who were "so skinny, their knee was the size of their head." She said the majority of those sent to work at the airfield were soldiers, although some were women, and a few were children. It was the Witness' understanding that those at the airfield were seen as enemies implicated in destroying the Khmer Rouge. They were fed watery gruel and slept in long shelters with the other workers. Men were sent to break rocks, while women were sent to work at the rice fields in Kampong Chhnang Krom, about three kilometers away.

#### **6. Witness Demeanor and Credibility**

Boeth Boeun was generally a cooperative and engaged witness. She answered questions directly and did not tend to go beyond the scope of the question in her responses. On a few occasions when she was unable to answer a question she explained that this was because she had trouble remembering incidents that had happened so long ago. During her testimony she was able to differentiate between occasions when she had witnessed something firsthand and when she had heard it through others, although sometimes this distinction took further questioning to establish.

### **B. Summary of Testimony by Seng Lytheng**

70-year-old Mr. Seng Lytheng was the second to testify this week on the role of the Accused.<sup>5</sup> Originally from Preak Sbov Village, Kampong Svay Commune, Kampong Svay District, Kampong Thom Province, and currently living in Pailin, Seng Lytheng is the nephew of Pol Pot and worked with him closely throughout and after the regime. The Witness said that he was known by the name Poul during the regime. He is also the younger brother of Saloth Ban, alias So Hong, who testified in Case 002/01.<sup>6</sup>

#### **1. Background and Roles at Ministry of Foreign Affairs**

Seng Lytheng told the court that prior to 1970 he had been arrested and served two years of a twenty year sentence.<sup>7</sup> Describing his background, the Witness said, "before the coup I was in a secret insurgency movement, and then in 1970 I joined the Vietnamese army." In 1973 he joined the North Zone army commanded by Ke Pauk. Around 1974, after being injured, the Witness was reassigned to the guard unit in Chamkar Leu District, Kampong Cham Province. After 17 April 1975, he was reassigned to work in the Ministry of Foreign Affairs near the Chinese Embassy in Phnom Penh, where he worked as a guard and receiver of (mainly

Chinese) guests.

## **2. Work at K-1 Office**

Around 1978, the witness was reassigned again to work at Office K-1, which he said was located where the White Building is currently located in the Tonle Bassac area near the river. He said about 20 others also worked as guards and messengers with him, and he identified Pang, chairman of K-1, as his superior.<sup>8</sup> Seng Lytheng identified the leaders of K-1 as Pol Pot, Nuon Chea, Ieng Sary and Khieu Samphan, and he denied ever having seen Son Sen at K-1. While at K-1 he also would escort Pol Pot when he inspected Steung Dam and the 7 January Dam construction site<sup>9</sup> in Kampong Thom Province. The Witness was unable to provide much detail about these worksites, as he had been “focused” on guarding Pol Pot, however he remembered seeing children working there and militiamen with AK rifles guarding the workers. When asked if he ever escorted Pol Pot to study sessions, the Witness responded that Pol Pot had only been to such a session at the opening of Borei Keila, and that normally it was Nuon Chea, whom the witness was never tasked with guarding, who went to such events. He did accompany Ieng Sary to Vietnam, however this trip occurred before 17 April 1975. Seng Lytheng also worked as a messenger at this time, on three occasions delivering letters to East Zone Secretary Sao Phim.<sup>10</sup> He said he was given these sealed letters by Pol Pot, and he did not know their contents or who had written them. He estimated he had delivered the letters to Sao Phim in 1978, although was not certain of the date. Seng Lytheng described the relationship between Pol Pot and Sao Phim as “close,” and said Pol Pot would send the East Zone leader gifts. In addition to his other tasks, Seng Lytheng also worked as a photographer, a skill he had picked up initially while living in the jungle before the DK era, and subsequently received training in China in 1977. He would photograph when delegations from China or elsewhere came to meet senior leaders, and also testified to making a video of Vietnamese prisoners in Phnom Penh using a Chinese camera.<sup>11</sup> When asked about Pol Pot’s character, the Witness described the former DK leader as “not a brutal person... He was a polite, gentle person, friendly with other people.”

## **3. Marriage**

Seng Lytheng also testified about his marriage during DK. He told the court he was married while working at K-1 and chose his wife “because [he] liked the woman.” He said his wife worked as the cook for Ieng Thirith at the Ministry of Social Affairs and they were introduced to each other by Ieng Thirith. He said he made a request to his unit chief to be allowed to marry and it was granted. He and his wife were the only couple to be married in the ceremony, which took place one week after both he and his wife consented to the marriage. At the ceremony there was a special meal and the couple was advised to “love one another for life.” He said he was not instructed to consummate his marriage. Seng Lytheng also said he was unaware of any policy to marry people when they reached a certain age, saying he believed only “status” was considered when the upper level decided if a person could get married.

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

Seng Lytheng appeared as a cooperative and polite witness who answered questions directly. Having lived with Pol Pot until his death in 1998, the Witness was able to provide personal insight into the former leader’s character. When he could not remember details he said so, and when confronted with photographs he did not recognize he explained that there had been a number of other photographers in DK.

### **C. Summary of Testimony by Khieu Nieb**

64-year-old Khieu Nieb, from Damrei Slab Village, Damrei Slab Commune, Kampong Svay District, Kampong Thom Province testified on Tuesday and Wednesday this week.<sup>12</sup> She

testified about having seen Khieu Samphan distributing blue and white checked scarves, or *kramas*, to evacuees from the East Zone.

### **1. Background and Moving to Phnom Penh**

Civil Party Khieu Nieb testified that she had married her husband, Kheng Choeun, in 1973 and had known him since childhood. She said that her husband joined the revolution in 1974 and said that after 17 April 1975 he was assigned to work at the Central Market in Phnom Penh to gather rice and vegetables and to carry the products to store in warehouse, while she remained living in their hometown. According to the Civil Party, her husband did not hold any particular rank in the revolutionary army, he simply was a laborer who carried products to store in warehouse. She said the Office in charge of distributing food was known as "Ministry 870."<sup>13</sup> After he was sent to Phnom Penh, Khieu Nieb only saw him for half a month in 1975, until she moved to Phnom Penh in 1978 after the commune chief granted her husband's request for her. She recalled that her husband's supervisors Bhu Wyn and Bhu Phuy came to collect her a few days before the celebration of the New Year so she could join the celebration together with her husband in Phnom Penh.<sup>14</sup> On arrival in Phnom Penh she was taken to live at the Central Market together with her husband and their son, who had been born in 1974. She worked as a cook for the staff who worked at the warehouse, and her daily sleeping quarters was a place about 50 meters away from the warehouse where her husband worked.

### **2. Seeing Khieu Samphan**

The Civil Party testified that at around 7:00am one morning in 1978, sometime after Pchum Ben, she had seen Khieu Samphan distributing food and *kramas* at the Central Market in Phnom Penh to "hundreds" of evacuees from Prey Veng who were subsequently to be transferred to the Northwest Zone.<sup>15</sup> While initially she described having watched the event, she later said she had only seen Khieu Samphan give one *krama* to one elderly woman. The Civil Party said that Khieu Samphan was present at the market for about five minutes and was accompanied by his messenger who carried a gun and stood behind him. At first she did not recognize Khieu Samphan, however her husband told her it was him. The Civil Party recalled that the scarves he was distributing were blue and white color and that he himself was wearing a short sleeved white t-shirt and white trousers. That day there were hundreds of evacuees who received food and clothes, but she only personally saw Khieu Samphan distributing the products to one elderly woman. Khieu Nieb said that she had seen Khieu Samphan very briefly, and was standing about five meters away from him. He was wearing a short-sleeved white shirt and black shorts.

### **3. Disappearance of Husband**

The Civil Party testified that in December 1978, her husband was arrested and disappeared. On that day at around 8:00AM her son came to tell her that his father had gone away, along with two others named Nhet and Run; Khieu Nieb herself did not witness his arrest. The Civil Party told the Chamber that she then went to Ministry 870 to ask if they knew where her husband was, but they only told her that he was sent to do rice farming. She said she had doubted the veracity of this at the time, because all of his belongings remained at their house. About an hour after her husband's arrest she was instructed to gather her own belongings and her child and board a vehicle, which took them to Chey Odom Pagoda where she was assigned to harvest rice. Later she went to Siem Reap to collect rice and there she met Ret, who told her that her husband was either in prison at Prey Sar or in S-21. At that time she was seven months pregnant, although said she "had to work every day like the rest." The Civil Party told the court that she never found out exactly what happened to her husband or why he had been taken away.<sup>16</sup>

#### **4. Treatment of Former Lon Nol Soldiers**

Khieu Nieb testified that her uncle, Chun Chun, was a former Lon Nol soldier who disappeared shortly after 17 April 1975 and never returned. She said her uncle “fell into a trick” by which Khmer Rouge soldiers asked people to record their pre-1975 roles, announcing that people would be able return to their previous employment if they were honest.

#### **5. Statement of Suffering and Questions to the Accused**

At the end of her testimony, Ms. Khieu Nieb gave a statement of suffering and asked questions of the Accused. She told the Chamber that, “the things that remain with me are the sorrow and pain that I have from the previous regime.” She described her pain at the arrest of her husband, leaving her alone with her young child and pregnant with another. She said that although she was forced to travel, she never stopped searching for her husband. At the end of her statement Khieu Nieb directed one question to Khieu Samphan: “He claims he liberated the country through revolution, but how come people died and where was he? Why didn’t he see that? Why didn’t he see the suffering the people were in?” No Party responded to the statement of suffering, and both of the Accused maintained their right to not to respond to the question.

#### **D. Summary of Testimony by 2-TCCP-1063**

After hearing the testimony of Khieu Nieb, the Trial Chamber then heard the testimony of another Civil Party who was identified only by the pseudonym 2-TCCP-1063, due to his involvement in ongoing investigations at the court.<sup>17</sup> He testified on the role of the Accused.

##### **1. Evacuation of Svay Rieng Provincial Town**

The Civil Party told the Chamber that before the DK regime he had been a farmer living with his eight family members in Svay Rieng Provincial Town, before being recruited to join Division 410 in the Lon Nol army in 1971 at the age of 25. Shortly before 17 April 1975, the Khmer Rouge evacuated Svay Rieng Provincial Town, and sent his family to Ta Chey Village, Kampong Chamlang Commune, Svay Chrum District, Svay Rieng Province.<sup>18</sup> He described in detail being relocated, saying his family had brought no belongings, and that they were warned “if we would reject, we would be shot dead.”<sup>19</sup> He said they believed they were only leaving the town for two or three days because the Khmer Rouge soldiers said they needed time to “clean the enemy.”

##### **2. Treatment of Lon Nol Soldiers**

After one month in Ta Chey Village, the Civil Party’s brother was taken away because he was discovered to have been a Lon Nol soldier. About half a month later, his father was taken away too, although the Civil Party said he had been an “innocent civilian” and never joined the Lon Nol army. Another half-month after that, the Civil Party himself was taken to “study” Ta Chey pagoda, however on arrival it turned out that the pagoda was used as a prison. 2-TCCP-1063 said that lower ranking Lon Nol soldiers were held there, however those with higher ranks were taken to “study at a distant place.” He testified that there were about 500 other prisoners there, of whom he estimated 30% were former Lon Nol soldiers and the rest were civilians and university students. Describing the conditions, he said: “They use people labor like animals,” saying they were only given two cans of rice per meal to feed ten people. At the time he was assigned to work digging canals and streams and carrying wood to the kitchen hall. While there, he was interrogated about his role and position in the previous regime, although he said he was not tortured or tied up during these interrogations.<sup>20</sup> One day while at Ta Chey pagoda, he heard the gun shots from the edge of the pagoda, although he said no one dared to go and look at what happened. The next morning, guards took prisoners to see the dead bodies, and

warned them that if they ran away they too would be shot dead. After nine months, he and his father were allowed to return to their family.

### **3. Khieu Samphan's Presence at Market**

The Civil Party testified that in 1977 he was evacuated from Svay Rieng Province to go to the Southwest. He said on the third day of travelling they stopped overnight at Chbar Ampov Market,<sup>21</sup> where he met Khieu Samphan, who had come to distribute materials including food and rice to “thousands” of evacuees from the East Zone (present day Kampong Cham, Svay Rieng and Prey Veng Provinces). The Civil Party said Khieu Samphan arrived at the market at around 8:00AM with about 10 colleagues. He first gave a speech: “We made revolution in order to eliminate the Lon Nol regime and... to eliminate the capitalists, feudalists and intellectuals.” According to the Civil Party, Khieu Samphan also warned that those who did not follow the revolution would be killed. 2-TCCP-1063 estimated that Khieu Samphan spoke for between thirty minutes and one hour using a battery-powered microphone. The Civil Party said there had been about 20 people standing between himself and Khieu Samphan, however he was nonetheless able to see that the man wore black clothes with a blue scarf around his neck and a car tire sandals. He could recognize the man as being Khieu Samphan because he had seen his face in a video shown to him during the DK period. After he made his speech, they distribute the material to the people, including the Civil Party, who said his name was read out on a list of people who were to receive goods.

### **4. Statement of Suffering and Questions to the Accused**

At the end of his testimony, the Civil Party gave a very long statement of suffering describing his experience during the DK regime. He spoke of his fear during the evacuation of Svay Rieng when he saw people shot dead in front of him. Moreover, after one month his father was taken away, having been accused of being part of militia group, although the Civil Party testified that his father was just an ordinary civilian. After DK regime officials found out that the Civil Party had been a Lon Nol soldier, they sent him for education at Ta Chey pagoda where he was made to pull an ox cart to carry wood. “I underwent very bad experience,” said the civil party. He spoke of his sorrow at losing his father, his mother, and his two younger siblings during the time that they were sent to Chenh Chean cooperative in Pursat province. The President interrupted the Civil Party after he had been speaking for almost twenty minutes to explain that the statement of harm and suffering was not intended to be a retelling of “your entire life experience during the regime.” Prompted by the CPLCL, the President then allowed the Civil Party to put questions to the Accused. He asked Khieu Samphan how he could deny that he had known about the evacuation or killing of people saying: “is that true? Does he deny this?” Parties did not respond to the Civil Party’s statement, and both Accused maintained their right to remain silent.

### **E. Summary of Testimony by Sin Oeng**

59-year-old Mr. Sin Oeng testified to being related to East Zone leader Sao Phim and working as a bodyguard for him until his death during the DK regime.<sup>22</sup> At the beginning of his testimony the Defense for Nuon Chea requested additional time to question this witness, which was granted, meaning he will testify over a total of one and a half days, forecast to conclude on Monday.

#### **1. Meetings between Ruos Nhim and Sao Phim**

Sin Oeng recalled meetings between Northwest Zone Secretary Ruos Nhim and Sao Phim, although it was clear that he had not been invited to attend said meetings. He said he saw Ruos Nhim coming to the guard office of the East Zone on three occasions. On each occasion he saw Ruos Nhim entering Sao Phim’s house while the Witness stood guard outside, unable to

hear what was being said inside. Sin Oeng stated that each time the pair met, they met in the same house, which was a traditional Khmer house in Suong, and Rhuos Nhim came alone or with a small boy who the witness suggested may have been his grandson. Each visit lasted between one and two hours. Sin Oeng stated that he never accompanied Sao Phim to visit Ruos Nhim in the Northwest Zone, but he said that it was possible that the visits took place outside of his shifts.

## **2. Knowledge of Fate of Sao Phim's Relatives**

Sin Oeng also described several members of Sao Phim's family and their roles during the DK regime. He recalled that Sao Phim's wife, Yeay Karo, was the chairperson of an agricultural worksite in the Northeast Zone. Yeah Karo was from the same village as Chea Sim, and the Witness said Sao Phim went to meet with Chea Sim "often" at a house in Steung. Sin Oeng also discussed Sao Phim's children, specifically Nat, Sy, Ta Dev and Touch. He said Nat was male, and the chairperson of the P-2 Hospital; Sy was female, and married Ruos Nhim's son shortly after Sin Oeung came to work with Sao Phim.<sup>23</sup> Sin Oeng also spoke about Ta Dev, who was female, and was separated from the rest of the family, although the Witness does not know exactly what happened to her. Sin Oeng answered questions about Prak Choeuk who he described as a "distant nephew" of Sao Phim. The Witness remembered Prak Choeuk being arrested in Suong but did not recall the date this occurred. Sin Oeng then spoke about Sao Phim's siblings. He described his elder sister Prak Chhun as "strict," and said that Sao Phim's brother Prak Thet (also known as Dul) was the chief of Krouch Chhmar District in Kampong Cham, and after 1979 became the chief of the Svay Teab District Police.

## **3. Military Commanders in the East Zone**

Sin Oeng testified that Mao Pouk was the chief of Battalion 09 of the East Zone. He heard about clashes between East Zone and Central Zone forces after he had fled, but was not involved in these personally. The Witness also spoke about the military structure of the East Zone, identifying Heng Samrin as a chief of Division 4. He explained that there were five divisions of the East Zone, but he was not aware of the names of other division leaders, and was not sure of the number of personnel in each division.

## **4. Knowledge of Coup Plot**

Sin Oeng was questioned about an alleged *coup d'etat* in the East Zone in May 1978. He explained that at the time arrests and arbitrary executions were common, and he saw this as evidence of a conflict between the Center and the Southwest and East Zones, although he was unclear which group was instigating the coup. He said there were clashes at the time, and he was initially arrested, although managed to escape and flee. Counsel Koppe read a prior statement of the Witness in which he had described a meeting between Sao Phim and Heng Samrin. Sin Oeng claimed to have overheard part of a conversation between the two men while he cleared their glasses. In court, Sin Oeng confirmed the statement, saying he had heard Sao Phim tell Heng Samrin to "go to the forest and struggle" and to fight against the "Phnom Penh Khmer" if he did not return from his impending trip to Phnom Penh. Sin Oeng said that about three days later Sao Phim went to the capital, and about week after that he heard of Sao Phim's suicide. Finally Sin Oeng said he recalled airplanes dropping leaflets claiming that Sao Phim had cooperated with the Vietnamese.<sup>24</sup>

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

This week once again objections were raised when lines of questioning were seen as going beyond the limited scope of Case 002/02 as laid out in the Severance Order.<sup>25</sup>

#### **A. Objections related to the Scope of Case 002/02**

This week the Khieu Samphan team repeatedly objected to lines of questioning that they saw as outside the scope of Case 002/02. On Tuesday the international Civil Party lead co-lawyer questioned Civil Party Khieu Nieb about seeing Khieu Samphan distributing clothing and food at the Central Market in 1978. After establishing that the people being given supplies were “evacuees” from Prey Veng, Marie Guiraud asked what happened to the evacuees after receiving the supplies. Counsel for Khieu Samphan objected to this direction of the questioning, as the evacuation of people from Prey Veng is not part of the charges against her client in Case 002/02. The CPLCL took note of the objection and changed her line of questioning. However, the same topic was raised by Vincent de Wilde d’Estmael the following day, leading Khieu Samphan’s Counsel to object once more. On this occasion the senior assistant prosecutor argued at length as to why his questions were indeed within the scope of the current trial. He argued that his questions focused on the role of Khieu Samphan, attempting to identify whether the blue and white scarves he distributed were a gift or an attempt “to identify those from the East Zone in order to allow people to commit crimes against them.” He told the Chamber that this line of questioning was “completely relevant” to the crimes alleged against Khieu Samphan, as well as his role within an alleged Joint Criminal Enterprise. In response, Counsel Guissé argued that her team was unprepared for such a line of questioning, as the treatment of evacuees was not part of the current case. Asking “questions that the defense cannot cross examine effectively” was a violation of her client’s rights to a defense, Counsel argued. The President overruled the objection, while reminding the prosecutor to limit his questions to the role of the Accused, and not to ask “details” about the third phase of evacuation. Only minutes later, the same objection was raised when the Prosecutor continued to question the Civil Party about the number of evacuees she remembered seeing in the crowd. Again, the President reminded the Prosecutor not to ask detailed questions that fell outside the scope, and directed him that the crux of his questioning should focus on the current segment of the trial.

Later that afternoon, while international co-prosecutor Nicholas Koumjian was questioning 2-TCCP-1063 about his experience being evacuated from Svay Rieng, Counsel Guissé rose to her feet to reiterate her objections from the morning session. Counsel Koumjian pointed out that the severance decision notes that the third phase of population movement will be dealt with “to a certain extent in Case 002/02 through the inclusion S-21 and internal purges, which are closely related to this particular phase of population transfer.”<sup>26</sup> The Khieu Samphan Defense responded that neither S-21 nor internal purges were at issue here and thus said the justification was flawed. The President overruled this objection on the same grounds as earlier, also instructing the Co-Prosecutor not to seek details about the movement in particular.

### **IV. TRIAL MANAGEMENT**

This week the Trial Chamber managed to conclude the testimonies of four people and begin the testimony of a fifth, effectively managing the time allotted to Parties with minimal delays.

#### **A. Attendance**

This week the Trial Chamber successfully concluded the testimony of two Witnesses and two Civil Parties, and commenced the partial testimony of Witness Sin Oeng in relation to role of the Accused segment in Case 002/02.

#### **A. Attendance**

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. Khieu Samphan was present in the courtroom throughout the week. Duty Counsels Sok Socheata, Mam Rithea and Chan Sambo were present in the courtroom to provide counsel Boeth Boeun, Seng

Lytheng and Sin Oeng respectively in relation to privilege against self-incrimination.

**Judge Attendance:** All Judges were presented in the courtroom this week with the exception of national Judge You Ottara who was absent on Wednesday 30 November due to “urgent personal issues.” National reserve Judge Thou Mony was seated in his stead.

**Parties:** All Parties were represented in the courtroom all week. On Thursday 1 December, national Civil Party Lead Co-Lawyer, Pich Ang, was absent for personal reasons. KRT monitor observed international Civil Party Lead Co-Lawyer Marie Guiruad was also absent in the first session in the afternoon on Tuesday 29 November, however her national colleague was present to represent their client.

**Attendance by the public:**

DATE	MORNING	AFTERNOON
Monday 28/11/2016	<ul style="list-style-type: none"><li>▪ Approximately 110 villagers from Sampov Meas, Pursat Province</li><li>▪ 8 Civil Parties</li><li>▪ 13 foreign observers</li></ul>	<ul style="list-style-type: none"><li>▪ 7 Civil Parties attended in the courtroom</li></ul>
Tuesday 29/11/2016	<ul style="list-style-type: none"><li>▪ 9 Civil Parties attended in the courtroom</li><li>▪ 44 foreign observers</li></ul>	<ul style="list-style-type: none"><li>▪ 9 Civil Parties attended in the courtroom</li></ul>
Wednesday 30/11/2016	<ul style="list-style-type: none"><li>▪ 10 Civil Parties attended in the courtroom</li><li>▪ Approximately 150 villagers from Kandeang District, Pursat Province</li></ul>	<ul style="list-style-type: none"><li>▪ 10 Civil Parties attended in the courtroom</li></ul>
Thursday 01/12/2016	<ul style="list-style-type: none"><li>▪ 10 Civil Parties attended in the courtroom</li><li>▪ 200 student and teachers from Preah Beyda Ekreach High School, Korng Pisey District, Kampong Speu Province</li><li>▪ 62 students from the Royal School of Administration, Phnom Penh</li><li>▪ 40 students from Royal University of Law and Economics</li><li>▪ 6 foreigners observers</li></ul>	<ul style="list-style-type: none"><li>▪ 10 Civil Parties attended in the courtroom</li><li>▪ 1 foreigner observer</li></ul>

**B. Time Management**

Over the course of four days this week, the Trial Chamber successfully concluded the testimonies of the two Witnesses and two Civil Parties, and began the partial testimony of Witness Sin Oeng. On Wednesday and Thursday this week, the Trial Chamber took some time to discuss the schedule, as two scheduled witnesses, 2-TCW-1060 and 2-TCW-920, were unable to appear due to poor health. The Chamber granted the Nuon Chea Defense’s request for additional time when questioning Sin Oeng, and allotted three sessions for each side.<sup>27</sup> The Trial Chamber also granted Khieu Samphan’s Defense Counsels an extra 15 minutes on Wednesday to conclude their line of examination.

**C. Courtroom Etiquette**

This week there were no significant breaches of courtroom etiquette.

#### D. Translation and Technical Issues

This week, Monitors noted a few mistranslations from Khmer to English regarding number of year, title and name of persons. In general, the President helped to resolve these issues quickly.<sup>28</sup> There were no significant technical issues this week and overall proceedings run smoothly.

#### E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 28/11/2016	9:04	10:14-10:31	11:39-13:30	-	14:36	3 hours 24 minutes
Tuesday 29/11/2016	9:00	10:14-10:31	11:26-13:30	14:28-15:06	16:00	4 hours 1 minutes
Wednesday 30/11/2016	9:02	10:16-10:36	11:28-13:31	14:10-14:29	16:00	4 hours 16 minutes
Thursday 01/12/2016	9:00	11:02-11:16	11:27-13:29	14:43-15:01	16:01	4 hours 27 minutes
Average number of hours in session				4 hours and 2 minutes		
Total number of hours this week				16 hours and 8 minutes		
Total number of hours, day, weeks at trial				992 hours and 17 minutes		
260 TRIAL DAYS OVER 75 WEEKS						

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

<sup>1</sup> Witness Ms. BOETH Boeun (2-TCW-953) was questioned in the following order: President NIL Nonn; international deputy co-prosecutor William SMITH; national deputy prosecutor SENG Leang; international co-lawyer for Khieu Samphan, Anta GUISSE

<sup>2</sup> When asked how she knew this, the Witness responded that Pol Pot had announced at the meeting that he was the CPK leader, Nuon Chea was his deputy and Khieu Samphan and Ieng Sary were members.

<sup>3</sup> For specific crimes alleged to have taken place at the Kampong Chhnang Airport worksite, see Office of the Co-Investigating Judges, “Closing Order” (15 September 2010) D427 (paras 383-398).

<sup>4</sup> She recalled that each truck carried around 20 people and there were 15 trucks altogether. The train was fully with people standing

<sup>5</sup> Witness Mr. SENG Lytheng (2-TCW-897) was questioned in the following order: President NIL Nonn; international assistant prosecutor Dale LYSAK; national lead co-lawyer for Civil Parties PICH Ang; Judge Jean-Marc LAVERGNE; international co-lawyer for Nuon Chea, Victor KOPPE.

<sup>6</sup> Saloth Ban testified in Case 002/01 in early 2012. For a summary of his testimony see CASE 002 KRT TRIAL MONITOR, Issue 21, Hearings on Evidence Week 16 (30 April – 3 May 2012) pp. 1-5.

<sup>7</sup> The reason for Seng Lytheng’s arrest was never established in court.

<sup>8</sup> The Witness explained that these 20 were guards assigned to the inside of the K-1 office compound, and he was unsure about how many worked outside the compound.

<sup>9</sup> The Witness first said 7 January worksite but later it was referred to as the 6 January worksite. This was not clarified in court.

<sup>10</sup> SENG Lytheng said these were the only three occasions when he left his zone to deliver a message.

<sup>11</sup> During his testimony, KAIENG Guek Eav, alias Duch, confirmed that Theng had made this film about Vietnamese prisoners. Duch said the film was shown in Jakarta to demonstrate to the international community that Vietnam posed an existential threat to the DK regime. When asked, Seng Lytheng was unaware of whether the film had been shown in China. See CASE 002/02 KRT TRIAL MONITOR, Issue 57, Hearings on Evidence Week 54 (13-16 June 2016) p. 5.

<sup>12</sup> Civil Party Ms. KHIEU Nieb (2-TCCP-258) was questioned in the following order: President NIL Nonn; international co-lawyer for Civil Parties Marie GUIRAUD; senior assistant prosecutor Vincent DE WILDE

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D'ESTMAEL; international co-lawyer for Khieu Samphan, Anta GUISSÉ, national co-lawyer for Khieu Samphan, KONG Sam Onn.

<sup>13</sup> KHIEU Nieb consistently referred to this body as 'Ministry 870' not 'Office 870'.

<sup>14</sup> It was unclear whether the New Year referred to was 1 January or Khmer New Year, which usually takes place in April.

<sup>15</sup> She said she knew the group was from Prey Veng because she had asked them, however although she was asked on a number of occasions about how she knew the evacuees were heading to the Northwest Zone, the Civil Party was unable to respond.

<sup>16</sup> Marie Guiraud, CPLCL, told the court that Khieu Nieb had initially applied to be a Civil Party in Case 001 but had been "rejected" as there was not enough evidence at the time that her husband had died at S-21. She then read in court the name of the Civil Party's husband as featured on a list of prisoners who entered S-21 Security Center in December 1978.

<sup>17</sup> Civil Party 2-TCCP-1063 was questioned in the following order: President NIL Nonn; Civil Party lawyer TY Srinna; international co-prosecutor Nicholas KOUMJIAN; international co-lawyer for Khieu Samphan, Anta GUISSÉ;

<sup>18</sup> The Civil Party estimated it was around 14 April 1975, during Khmer New Year, that Svay Rieng Town was evacuated.

<sup>19</sup> The Civil Party testified that he saw one elderly man shot dead for walking too slowly.

<sup>20</sup> The Civil Party recalled that in order to elicit a response he was told that if he told them his previous position in the former regime he would be reinstated in that position in the current regime.

<sup>21</sup> Although unable to describe the location of Chbar Ampov market in detail, and admitting that he had not been very familiar with Phnom Penh during the DK regime, he said he had been told the name of the market by others who were staying there before he arrived. Anta Guissé raised discrepancies between prior statements in which the Civil Party had identified the market as Psar Thmey, or Central Market, however the Civil Party said he had made an error in the prior statement, saying "it was my mix-up." He also explained to Counsel that he had not mentioned Khieu Samphan in his initial Civil Party Application as no one had asked him about Khieu Samphan. Only in later interviews had he been asked about the former senior leader, he said.

<sup>22</sup> Witness SIN Oeng (2-TCW-1069) was questioned in the following order: President NIL Nonn; international co-lawyer for Nuon Chea, Victor KOPPE;

<sup>23</sup> Sin Oeng recalled that the couple married in 1976 but the Witness was not aware of where the ceremony took place. He said Sy moved to the Northwest Zone shortly after her marriage and thus he never met her in person.

<sup>24</sup> Civil Party 2-TCCP-1040 similarly testified that leaflets were dropped by plane in the East Zone announcing Sao Phim and Yeay Karo had betrayed the revolution and calling on others from the East Zone to surrender. See: CASE 002/02 KRT TRIAL MONITOR, Issue 63, Hearings on Evidence Week 60 (15-18 August 2016) p. 6.

<sup>25</sup> Trial Chamber. "Decision on Additional Severance of Case 002 and Scope of Case 002/02" (4 April 2014) E301/9/1. [HEREINAFTER REFERRED TO AS **SEVERANCE ORDER**]

<sup>26</sup> **SEVERANCE ORDER**, para 37, p. 17.

<sup>27</sup> The same time extension was also granted for upcoming Witness 2-TCW-1070.

<sup>28</sup> For example on 29 November, President Nil Nonn explained discrepancy between the terms 'massager' in English and 'Chaek Chay' in Khmer, and translated terms in Khmer between 'loudspeaker' and 'microphone.'