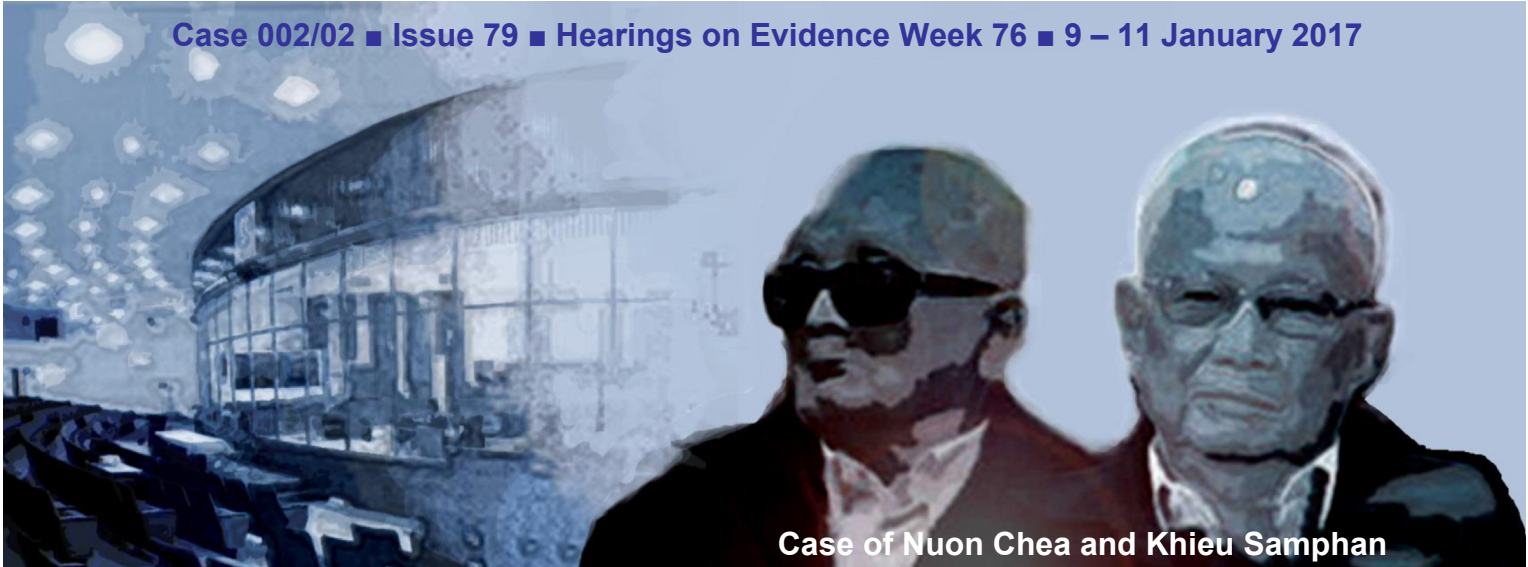


KRT TRIAL MONITOR

Case 002/02 ■ Issue 79 ■ Hearings on Evidence Week 76 ■ 9 – 11 January 2017



Case of Nuon Chea and Khieu Samphan

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

*“An important number of Civil Parties wish the trial to continue,
but... an equal number of Civil Parties consider non-judicial measures
could address their needs of justice and for support.”*

- International Lead Co-Lawyer for Civil Parties, Marie Guiraud

I. OVERVIEW

After 274 hearing days, over which 114 witnesses, 63 Civil Parties and 8 experts have been heard, this week marked the final week of evidentiary hearings in Case 002/02.¹ The Chamber sat for three days this week to hear final witnesses and discuss matters related to the end of the trial. On Monday, Witness Ms. Hin Sotheany, a former employee of the OCIJ, testified about her work compiling the list of 15,101 individuals who entered the S-21 Security Center during DK. On Tuesday the Chamber heard the remaining testimony of Mr. Voeun Vuthy, an archaeologist who began his testimony as an expert witness in December 2016. Following this, the Khieu Samphan Defense was given the opportunity to respond to the OCP’s treatment of their key document presentation last week. As the video-link testimony of 2-TCW-946 from Germany could not be arranged, on Wednesday morning Parties made oral submissions regarding how to treat the remainder of charges in Case 002. After a short discussion about resource shortages among the Defense Teams, the Chamber adjourned proceedings on Wednesday morning, announcing that no more witnesses are expected to be called in Case 002/02. Parties now have three months to prepare their closing briefs, and closing statements will be heard on 5 June 2017.²

II. SUMMARY OF WITNESS AND EXPERT WITNESS TESTIMONY

Hin Sotheany testified as a witness, and Voeun Vuthy as an expert this week; the final individuals to testify in Case 002/02. From 2014 to 2016 Hin Sotheany worked as a consultant for the Office of the Co-Investigating Judges (**OCIJ**), expressly hired to compile an updated list of prisoners who entered S-21. In court this week she was asked to explain her methodology in detail. On Tuesday morning, Voeun Vuthy returned to conclude his testimony about bone analysis he conducted on remains found at Choeung Ek and Kraing Ta Chan.

A. Summary of Testimony of Hin Sotheany

The Trial Chamber began the week with the testimony of Hin Sotheany in relation to the methodology involved in drawing up the new list of S-21 detainees prepared by the OCIJ.³ According to the list compiled by the Witness, which was forwarded to the Chamber on 30 March 2016, 15,101 people entered S-21 during the regime, an increase from the previously estimated number of 12,273.⁴ Hin Sotheany was assisted by a legal officer from the OCIJ, whose role was to protect the integrity of ongoing investigations before the tribunal.

1. Academic and Professional Background

Hin Sotheany testified that she completed her law degree at the Royal University of Law and Economics in 2006. She worked at the Documentation Center of Cambodia (**DC-Cam**) between 2004 and 2012, where she was involved in their Accountability Project, conducting research and interviewing survivors and former Khmer Rouge cadres. Between 2014 and 2016, she worked as an analyst at the OCIJ, focusing exclusively on the list of S-21 prisoners.

2. Compiling the OCIJ List of S-21 Prisoners and its Authenticity

The majority of Hin Sotheany's testimony centered around explanations of her methodology in creating the updated list of S-21 prisoners. She testified that two people worked on the list; herself and team leader Mr. Hiroto Fujiwara, who was responsible for collecting documents from DC-Cam and Tuol Sleng Museum.⁵ She told the court that she consulted a list of 13,383 documents, compiled from the DC-Cam website, as well as the Case 001 and 002 case files. She reviewed this list, and ultimately used 871 of those documents to create her spreadsheet of 15,101 names.⁶ The Witness stated that her role was to focus on the lists of incoming prisoners from 1975 to 1979, and said that there were daily, weekly, monthly and yearly lists.⁷ The Witness also went to examine original documents at Tuol Sleng Museum in either February or March 2016. When asked by Counsel Koppe whether she had consulted confessions over the course of her research, she said she had not. She reportedly only consulted an S-21 document that was a list of about 4,000 confessions found at Tuol Sleng. She did not examine photographs, nor interview any former cadre or staff from the prison as part of her work, and she was not able to consult Professor Heynowski's orange logbook because it only was delivered to the court after the conclusion of her consultancy.⁸

When Hin Sotheany was asked how she could be sure that the documents she used in her research were in fact created between 1975 to 1979, she acknowledged that she did not know about the chain of custody of these documents, since the documents from Tuol Sleng and DC-Cam were collected by their respective staff members. When asked about the methodology undertaken to exclude the possibility that a document was forged, the Witness replied that she examined the data on the documents, and did not use any other methods such as forensic analysis. Hin Sotheany noted that she was able to recognize documents originating in S-21 from their identifiable format, such as the letterhead and typography, as well as dates and signatures of S-21 staff members. The Witness added that there were headings that would describe if a document was a list of incoming prisoners to S-21 or a list of prisoners sent to other places. She stated that she had also worked on lists from other sectors, so she was able to differentiate between documents from different security centers. When asked how she avoided duplicating names or entries of prisoners, Hin Sotheany repeated that she had reviewed multiple documents, and had cross-checked names, aliases, and dates. Towards the end of her testimony, the Witness said that the list was forwarded to the Chamber on 30 March 2016, but she noted that it may have contained errors since she did not have time to review it fully before it was submitted.

3. Numbers of Prisoners Executed

Within the list compiled by the Witness, she included a column to record the date of execution. 5,512 of the total 15,101 prisoners have a date of execution listed next to their name in the OCIJ list. When asked, the Witness explained this small number of execution dates by saying that she did not have sufficient time to review all original documents listing prisoners who had died. Hin Sotheany confirmed that she would include whether the prisoner was listed as dying from disease or execution in the column called “remarks.”

4. Witness Demeanor and Credibility

While seemingly a cooperative and engaged witness, on a number of occasions Hin Sotheany needed to have questions repeated to her, or else struggled to respond to the question being asked. Judge Fenz intervened on a number of occasions to try to rephrase the question in a way that would be easier for the witness to understand, sometimes without success.⁹ At times the Witness had to be reminded to provide verbal answers for the written record, as she also had a tendency to nod or shake her head in response to questions.

B. Summary of Testimony by Voeun Vuthy

The final witness to be heard in Case 002/02 was Expert Witness Mr. Voeun Vuthy, who returned to the Trial Chamber on Tuesday to conclude the testimony he had begun on 14 December 2016.¹⁰ Questions were put to him by the Khieu Samphan Defense over one session, focusing on issues of methodology of exhumed bones at Choeung Ek and Kraing Ta Chan.¹¹

1. Details of Previous Excavations of Choeung Ek

The Expert was asked by the Defense about other excavations that may have taken place at the site of Choeung Ek. He told the Court that shortly after the end of the DK regime, in 1982 or 1983, people living near Choeung Ek had attempted to look for gold and clothing at the gravesite. He knew this because he asked witnesses who used to work near that location, reviewed a documentary produced by the Office of Culture and Propaganda in the 1980s, and observed documents preserved at Choeung Ek. When asked by Counsel for Khieu Samphan whether these villagers may have damaged the bones at the site in ways that could be confused for damage caused peri-mortem (during the DK period), the Witness explained that it was easy to differentiate between these two types of marks, and they were not at great risk of being confused. The Expert Witness told the Court that around 1987 or 1988, a Vietnamese medical team came to clean and count the bones at Choeung Ek before the bones were stored in the stupa. He clarified that this team did not conduct any excavation themselves. Voeun Vuthy testified that reports made by the Vietnamese were not accessible to his team while conducting the research, in spite of repeated attempts to contact various Vietnamese offices.

2. Scientific methods/ability to establish cause/date of death

The Expert explained that in order to establish precisely when and how victims at Choeung Ek had died, his team would have needed to conduct “C-14 bone analysis” (later referred to as “the carbon 14 technique”) or DNA analysis. Both of these techniques were impossible due to budget limitations. However, he said, his team was able to establish whether a person had died during DK, principally by analyzing the mud found on the bones. The Expert testified that he did not find evidence that any victims had been exhumed and reburied. He based this conclusion on differences in soil at different locations, which he analyzed with a microscope. He also noted that bones exhumed at Choeung Ek often contained DDT elements, which was a powder used to kill victims who did not die immediately. Voeun Vuthy added that he was able to classify the ages of the victims into different age brackets, which he told the court was in line

with international practice.¹²

3. Kraing Ta Chan

Due to time constraints, Anta Guissé only had time to ask one question about the remains the Expert studied at Kraing Ta Chan. She confronted Voeun Vuthy with the previous testimony of Civil Party Soy Sen, who estimated a figure of 17,000 people were killed at Kraing Ta Chan, and asked the Witness whether he had interviewed Soy Sen himself.¹³ Voeun Vuthy said that, from interviews, he believed about “more than 10,000” people were buried at Kraing Ta Chan, however he clarified that he had personally only been able to analyze the bones of 1,904 individuals exhumed there.

4. Witness Demeanor and Credibility

The Expert was polite and respectful when answering questions, and responded in a thoughtful manner. He was able to clearly explain the methods he employed in his analysis, and he did not appear to have a problem repeating himself when pressed on methodological questions. One persistent issue, which was also apparent in his previous testimony, was his use in Court of photographs that he had brought with him to illustrate his points. He had not informed the Parties beforehand that he would use these documents, so this posed some procedural difficulties. However it also appeared to indicate the Expert’s enthusiasm to testify, and his eagerness to thoroughly explain his profession to others.

III. RESPONSE TO KEY DOCUMENT HEARINGS

This week, Defense Counsel for Khieu Samphan replied to the OCP response to Khieu Samphan’s document presentation last week on the role of the Accused. The Bench scheduled time to hear this rebuttal after the Khieu Samphan Team raised objections to the OCP’s use of documents not cited in the original presentation.¹⁴ In order to give Defense Counsel time to rebut these documents, the Trial Chamber allotted time on Tuesday.

A. Response of the Khieu Samphan Defense Team

International Defense Counsel for Khieu Samphan, Anta Guissé, responded to the documents and arguments put forward by the OCP last week on the role of the Accused. She argued that the documents presented by the OCP in fact show that Khieu Samphan did not have knowledge of poor living conditions in the provinces during DK, and that there was a serious disparity between the policies of the Communist Party of Kampuchea (**CPK**) and what was occurring on the ground.

1. Disparity Between CPK Policy and Reality

Counsel Guissé began her response by referring to the minutes from the Standing Committee meeting on 15 May 1976, at which Khieu Samphan had been present. While the OCP had argued that military affairs were discussed at this meeting, and thus Khieu Samphan must have been more involved in military matters than he claims, his Defense Team argued that he was there to discuss the situation in DK’s factories, which was another item on the agenda. Last week the OCP argued that the Khmer Rouge treated people as “cattle” in the practice of cooperatives. However, Anta Guissé referred to *Revolutionary Flag* and *Revolutionary Youth* magazines to show that there was a “stark distinction between what was observed by witnesses and what was in these magazines,” noting a “wide gap” between instruction from above and implementation on the ground.

Last week, in reference to Khieu Samphan’s alleged lack of knowledge of the situation on the ground, the OCP cited a statement made by Koh Vanny, who said she had been aware of

arrests of high-ranking cadre during the regime.¹⁵ The OCP had asked how it was possible that Koh Vanny had known about such events, when Khieu Samphan, who outranked her significantly, had not known. Counsel Guissé responded that Khieu Samphan based his information solely on what those at lower levels were telling him, saying he “simply read the documents and believed that the figures sent to him were real.” She reiterated her point from her original presentation that lower level cadres had a habit of exaggerating rice yields to try to win the favor of the senior leadership, therefore Khieu Samphan had no way to know what the situation was really like on the ground. She continued that, even when upper level cadres visited the provinces: “The cadres at local level cleaned things up and increased food and hid people who were too thin or ill.” Counsel Guisse stood by her earlier claim that her client had no knowledge of S-21 during the regime, saying that Kaing Guek Eav, *alias* Duch, had said himself that he never met Khieu Samphan until after the regime fell.

IV. LEGAL AND PROCEDURAL ISSUES

The admission into evidence of the orange logbook obtained from Professor Heynowski was discussed again this week, with Parties debating whether to also admit photographs into evidence. On Wednesday of this week the Trial Chamber addressed two procedural issues before announcing the conclusion of evidentiary hearings in Case 002/02. In September of 2016, the CPLCL had raised the issue of how to deal with the remaining charges in Case 002, and this week the Chamber heard all Parties arguments on this issue. The second issue debated was that of resource cuts. This concern was raised by the Defense, who told the Trial Chamber that they could be under-staffed leading up to the closing statements due to recently announced budgetary constraints.

A. Debate Over Admission of Orange Logbook and Related Photos

On Tuesday the Chamber announced that it had received a large box of photographs from Professor Heynowski on 26 December 2016, in addition to the documents it had already received from him.¹⁶ Some of these photographs could be separated and scanned page by page, while others could not. The OCP requested that the scanned photographs be admitted into evidence, because they could provide unique evidence. Prosecutors noted, for instance, that a preliminary search showed 36 names that did not appear on the OCIJ list of S-21 prisoners created by Hin Sotheany, written on the photographs. This made the photograph scans possibly the only evidence of those individuals’ entry into S-21. The CPLCL also supported entering these documents into evidence in order to see whether any names on the photographs corresponded to the civil parties. The Nuon Chea and Khieu Samphan Defense teams had no objection. Anta Guissé noted that the Khieu Samphan team had requested that the photographs taken by the Court Management Section (**CMS**) at the time of the receipt and opening of the orange logbook also be admitted into evidence for the purposes of transparency.¹⁷ There was no objection from the OCP or the Nuon Chea Defense. The CPLCL said that if it was deemed necessary by the Chamber, these photographs should be annexed to the Chamber’s memorandum with regard to contacting Professor Heynowski to testify. The Chamber will issue a ruling on this matter soon.

B. Remaining Charges in Case 002

On 9 September 2016, the CPLCL requested clarification as to how the remaining charges in Case 002 are to be treated.¹⁸ These charges relate to crimes alleged to have occurred at Sang Security Center, Koh Kyang Security Center, Prey Damrei Srot Security Center, Executions Sites in District 12, Wat Kirirum Security Center, North Zone Security Center, Koh Kduoch Security Center, Wat Tlork Security Center, Steung Tauch Execution Site, Prey Sar Worksite, Srae Ambel Worksite, the treatment of Buddhists (nationwide), the Movement of Population Phase 3 and crimes committed by the Revolutionary Army of Kampuchea (**RAK**) on Vietnamese territory.¹⁹ All Parties responded to the CPLCL request for clarification; all

essentially arguing that the Chamber should hear no more charges in Case 002.²⁰ The CPLCL then issued a specific response to the Nuon Chea response which had claimed that the CPLCL neglected to include the Krouch Chhmar Security Center in their initial request for clarification.²¹

i. Civil Party Lead Co-Lawyers Arguments

Because it was the CPLCLs who made the initial request for clarification, they were given the floor first to explain their request, and make oral arguments about what their clients wished to have happen to the remaining charges in Case 002. Both the international and national Lead Co-Lawyers expressed the view of the majority of Civil Parties to hear the remaining charges. Marie Guiraud explained that, of the 3,860 Civil Parties still involved in Case 002/02, 446 had been admitted as either direct or indirect victims of facts as yet untried in Case 002. Of that number, the majority were admitted based their connection to what is known as “forced population movement phase three” or to the treatment of Buddhists. 60 Civil Parties were admitted on the basis of the other remaining charges in Case 002, and 34 of that number were solely admitted on the basis of untried charges. With these figures in mind, Counsel Guiraud explained to the court that the CPLCLs had consulted with Civil Parties extensively, to ascertain their views on what they wish to have happen with the remaining charges. She noted that the majority wish the trial to continue, while a few would consider “non-judicial measures” that would address their needs, such as healthcare.²² Pich Ang echoed his international colleague’s presentation, adding that those who did not wish to hear the remaining charges in Case 002 usually said so, as they did not want to “bear their suffering again.”

ii. OCP Arguments

The OCP’s main argument was that all legal charges in Case 002 have now been covered through hearings in Case 002/01 and 002/02. The international Co-Prosecutor highlighted that this trial was the most wide-reaching since Nuremburg, and said that it would be “impossible to ascertain every crime against every individual.” Drawing on his experience in other international tribunals, Nicholas Koumjian said that victims have a “great desire to see justice” but that this must be balanced with the cost and time necessary to conduct such a “massive” trial. He argued that he hoped all Civil Parties, even those who were admitted based on crime sites that have not yet been tried, could be satisfied that all the legal cases have been covered as part of the two parts of Case 002. He concluded by pointing out the time it would take to begin a whole new phase in Case 002, saying: “We think it does not make sense to continually try this case until everyone is deceased.”

iii. Nuon Chea Team Arguments

The Nuon Chea Team found itself in the unusual position of agreeing with the OCP that it was not necessary to hear the remainder of the charges in Case 002, pointing out that this debate had already been held before evidentiary hearings in Case 002/02 began. Counsel Koppe argued that the charges his client faced in Case 002/02 were already “much broader than the minimum that was advised by the Supreme Court Chamber,” and said it was “extremely unlikely” that there would be a third trial, pointing to “no legal necessity.” Echoing his written brief, however, Counsel Koppe argued that, should the Trial Chamber decide to hear a Case 002/03, his team would argue strongly for the inclusion of the Krouch Chhmar Security Center as a crime site, “for the benefit of the public.”

iv. Khieu Samphan Team Arguments

The Khieu Samphan Team similarly argued it was “very clear” that there was “no choice” but to close Case 002 proceedings after the conclusion of Case 002/02, expanding on what they saw as the legal basis for their argument. Counsel Guissé cited Internal Rule 89 *quarter*, which governs the reduction of the scope of the trial.²³ That rule states that:

In order to ensure a fair, meaningful and expeditious judicial process, in consideration of the specific requirements of the proceedings before the ECCC, the Trial Chamber may decide to reduce the scope of the trial by excluding certain facts set out in the Indictment.

According to Counsel, this rule “violates the principle of legality in Cambodian law,” because in civil law systems it is only the OCIJ that is allowed to “who decides who sees the Chamber and you cannot violate the decision.” She recalled that her team had previously “strenuously objected” to paragraph three of Rule 89 *quarter*, which includes the line: “Evidence relating to the facts excluded may be relied upon to the extent it is relevant to the remaining facts.”²⁴ She argued that this stipulation is “against the principle of a fair trial,” and that no facts should be able to be invoked related to those charges that are not heard. Counsel for Khieu Samphan then reiterated the history of the severance decision and SCC’s involvement in severance.²⁵ She emphasized that the two important legal elements concerned in this case are legal certainty and reasonable time, which she pointed out have been central issues of this trial since day one. She argued that hearing the remaining charges could not be said to be taking place in a “reasonable time” (as the Closing Order was issued in 2010), and it would also be violating the legal certainty of her client.

The Trial Chamber announced that it will issue its decision on this matter “in due course.”

C. Discussion on Resources for Defense Teams

Before concluding proceedings on Wednesday, the Trial Chamber gave time to the Defense Teams to express their concern about recently announced budget cuts that the Defense argued unreasonably affect them. The floor was given first to the Defense for Nuon Chea, who described the news about budget cuts from the Office of Administration as “alarming.” As he explained the situation, all sections of the ECCC are experiencing funding issues due to pressure from donors. He pointed out the practical consequences of such cuts as meaning that from the end of March, 24 days prior to the deadline for submitting closing briefs, his team would have to lose two members, because they would not be able to afford to renew their consultancy contracts.²⁶ Counsel said such a loss would be “highly problematic” for his team, and this was not in line with previous assurances given to them by the Defense Support Section. Counsel Koppe said that, should the budget cuts eventuate, his team would be “forced to request to extend deadlines and that will of course delay the trial, something I believe no one in this courtroom wants.” He requested that the Chamber contact the Office of Administration as soon as possible, and argue on behalf of his team against the cuts, so that they may extend the contracts of the two consultants. Counsel for Khieu Samphan supported this argument and stressed that, even though lawyers would no longer be needed in the courtroom until June, there was still an “enormous amount of work that people do not see” behind the scenes in order to prepare for the closing briefs and statements. She said that: “to reduce our team at this crucial time is simply impossible to understand.” Counsel Guissé also asked the Trial Chamber to request to the Office of Administration to secure funding that would keep their team in tact until the last day of closing arguments. The Trial Chamber will consult with the Office of Administration on how to move forward with this issue.

IV. TRIAL MANAGEMENT

The Trial Chamber heard its final two witnesses in Case 002/02 this week. After dealing only with a small number of outstanding legal and procedural issues, the Chamber adjourned early on Wednesday morning for the final time in evidentiary hearings and will reconvene on 5 June 2017 to hear closing statements from Parties.

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: All Judges were present in the courtroom this week as normal

Parties: National CPLCL Pich Ang was absent from the courtroom on Tuesday for personal reasons, however all other Parties were present in the courtroom throughout week. A legal officer from the OCIJ was present on Monday to provide counsel to Witness Ms. Hin Sotheany, should any questions potentially have an impact on ongoing cases.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 09/01/2017	<ul style="list-style-type: none">80 villagers from Korko District, Pursat Province3 foreign observers9 Civil Parties	<ul style="list-style-type: none">3 foreign observers
Tuesday 10/01/2017	<ul style="list-style-type: none">110 villagers from Memut District, Tboung Khmoum Province7 foreign observers10 Civil Parties	<i>No proceedings</i>
Wednesday 11/01/2017	<ul style="list-style-type: none">170 villagers from Boribo District, Kampong Chhnang Province12 foreign observers;8 Civil Parties.	<i>No proceedings</i>

B. Time Management

The Chamber informed Parties on Monday afternoon that the scheduled video-link testimony of 2-TCW-946, based in Germany, would not be possible this week, and thus only two individuals were heard.²⁷ The President allowed the Nuon Chea Defense an additional twenty minutes to question Witness Hin Sotheany after Counsel Koppe miscalculated his allotted time.²⁸ The OCP expressed no disagreement to this decision. On Tuesday the Bench similarly allowed the Khieu Samphan Team an additional ten minutes to conclude questioning of Mr. Voeun Vuthy on the Kraing Ta Chan Security Center. No Party objected. As only two witnesses were ultimately heard this week, the Chamber was able to conclude key document hearings on the role of the Accused and hear oral arguments about how to treat the remaining charges in Case 002 before adjourning early on Wednesday morning. This week marked the final week of evidentiary hearings in Case 002/02. Closing statements will begin on Monday 5 June 2017.

C. Courtroom Etiquette

There were no significant breaches of courtroom etiquette this week.

D. Translation and Technical Issues

No significant translation or technical issues interrupted proceedings this week.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 9/1/2017	9:02	10:14-10:32	11:45-13:29	-	15:23	4 hours 19 minutes
Tuesday 10/1/2017	9:01	10:26-10:44	-	-	11:39	2 hours 20 minutes
Wednesday 11/1/2017	9:03	9:57-10:20	-	-	10:42	1 hours 16 minutes
Average number of hours in session				2 hours and 38 minutes		
Total number of hours this week				7 hours and 55 minutes		
Total number of hours, day, weeks at trial				1032 hours and 20 minutes		
273 TRIAL DAYS OVER 79 WEEKS						

*This report was authored by Allison Hendriks, Amanda Huynh, Caitlin McCaffrie, Sivutha Tan, Lina Tay, Lyly Thy 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 HANDACENTER 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 The Chamber advised that it may reopen proceedings prior to 31 January 2017 if it becomes possible to hear the testimony of 2-TCW-946 via video-link from Germany, but noted that it did not intend to hear any other witnesses. All outstanding decisions or written reasons for decisions will be issued by the Trial Chamber as soon as practicable. The Trial Chamber also noted that the LCLCP appeal against the Trial Chamber’s decision on allegations of rape outside the context of forced marriage was still before the Supreme Court Chamber, however noted that regardless of the outcome the LCLCP have said they will not be calling any extra witnesses in this regard. Further, monitors note that the President announced there have been 274 hearing days in Case 002/02 while our reports cite this figure at 273. It is presumed that the court is including the initial hearing day in its count, which is not included in ours.

² The President announced that Closing Briefs are due on 24 April 2017 in one ECCC language and noted that no written responses will be accepted. Page limits for closing briefs are as follows: OCP no more than 800 pages and LCLCP and both Defense Teams will have 550 pages each. The LCLCP final reparations claim is due 22 May 2017. In terms of the schedule for the closing statements: LCLCP have been allocated 1 day, OCP 3 days, and each Defense Team 2 days. 1 day has been allocated for rebuttal and 4 hours for the Final Statements of the Accused, should they choose to exercise that right.

³ Witness Ms. HIN Sotheany (2-TCW-1042) was questioned in the following order: President NIL Nonn; international co-lawyer for Nuon Chea, Victor KOPPE; international Judge Claudia FENZ; international Judge Jean-Marc LAVERGNE; international assistant prosecutor Dale LYSAK; international co-lawyer for Khieu Samphan, Anta GUISSÉ; international co-lawyer for Nuon Chea, Victor KOPPE; international Judge Claudia FENZ.

⁴ The latter figure is based on a previous list drawn up by the OCP, see: Office of the Co-Prosecutors “Annex 1 – Revised S-21 Prisoner List” (19 May 2009) E3/342

⁵ When Anta Guissé asked the Witness about how she determined documents were not related to S-21, the Witness answered that she would discuss among members of the group along with the team leader. However, at the beginning of her testimony during questioning by the Nuon Chea Defense, she noted that only she and the team leader was working on the list.

⁶ The Witness was asked several times by Defense Counsel for Nuon Chea to explain how she had selected only 871 documents from the over 13,000 she studied, but this question appeared to confuse the witness and she was not able to provide a more expansive answer than that: “First I referred to incoming prisoners on year then checked and verified with other documents.”

⁷ During her two years working at the OCIJ, the Witness spent almost half a year reviewing the 1976 list and that it was confusing in terms of incoming and outgoing prisoners, requiring additional review of other documents. She spent almost one year reviewing the lists of 1977 and 1978 lists, which she said were more clear and easier to understand.

⁸ The Witness received a hard copy of the orange logbook before December, but had the chance to review the original copy during the break on the day of her testimony. The Witness told the Chamber that it was a master list of prisoners and included the signature of Hor. She said that she had the same list, although not the original document, and made reference to it in her list. According to the Witness, the list contained the particular days that prisoners entered and notes if prisoners died of disease.

⁹ As an example, Judge Fenz asked why there were time restraints, to which the Witness answered “I didn’t have enough time.”

¹⁰ Defense Counsel began by reestablishing the previous experience and work credentials of Voeun Vuthy. The Expert testified that he attended the University of Hawaii and for approximately 10 months between 2010 and 2011 he conducted forensic analysis of human bones. He confirmed to Counsel Guissé that he is not a medical doctor and has not studied recently deceased bodies or the effects of blood or tissue damage; his study being limited solely to bones.

¹¹ Witness Mr. VOEUN Vuthy (2-TCW-1062) was questioned this week in the following order: international Counsel for Khieu Samphan, Anta GUISSÉ. For a summary of his prior testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 77, Hearings on Evidence week 74 (12 – 15 December 2016) pp. 5-6.

¹² The age brackets used by the Expert were: 8-19 years, 20-34 years, 35-49 years and 50-69 years. When asked, he confirmed that he based this method of age classification on an international standard. It was not his own arbitrary characterization.

¹³ Soy Sen testified as a Civil Party in Case 002/02. For a summary of his testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 7, Hearings on Evidence week 4 (2-6 February 2015) pp. 4-8 and CASE 002/02 KRT TRIAL MONITOR, Issue 14, Hearings on Evidence week 11 (24-26 March 2015) pp. 3-4.

¹⁴ The Khieu Samphan Team’s key document presentation and the OCP’s response to it are summarized in CASE 002/02 KRT TRIAL MONITOR, Issue 78, Hearings on Evidence week 75 (4-5 January 2017) pp. 1-5.

¹⁵ Counsel Guissé noted that Ko Vanny was unable to be called as a witness as she has passed away. According to Ko Vanny’s statement she was a former cadre at the Department of Social Affairs under Ieng Thirith.

¹⁶ These documents were mostly received on 2 December 2016 and include a 250-page orange logbook of approximately 4,000 names of people who entered S-21 Security Center over eight months of 1977 and loose pages of notes and photographs depicted in his 1981 film documentary, *Die Angkar*. Oral arguments over whether these documents should be admitted into evidence pursuant to Internal Rule 87(4) were heard on 9 December 2016 and is summarized in CASE 002/02 KRT TRIAL MONITOR, Issue 76, Hearings on Evidence week 73 (5-9 December 2016) pp. 6-7.

¹⁷ She stated that staples had fallen out and that it would be important to know what the original state of the logbook had been before this happened. Clarification was requested by Judge Fenz and Judge Lavergne as to whether Anta Guissé referred to photographs of only the logbook, not any accompanying documents in the same box, to which Anta Guissé suggested that perhaps CMS should be approached to clarify exactly what the contents of the box were.

¹⁸ The scope of Case 002/02 is outlined in the severance order issued by the Trial Chamber on 4 April 2014, which found that “the disposition of the remaining charges in Case 002/02 does not arise at this time and will be addressed in due course.” Trial Chamber, “Decision on Additional Severance of Case 002 and Scope of Case 002/02” (4 April 2014) E301/9/1, p. 21.

¹⁹ Civil Party Lead Co-Lawyers, “Civil Party Lead Co-Lawyers’ Request for Clarification relating to the remaining charges in Case 002” (9 September 2016) E439.

²⁰ See: Co-Prosecutors, “Co-Prosecutors’ Response to Civil Party Lead Co-Lawyers’ Request for Clarification Relating to Remaining Charges in Case 002” (19 September 2016) E439/3; Nuon Chea Defense Team, “Nuon Chea’s Response to Civil Party Lead Co-Lawyer’s Request for Clarification Relating to the Remaining Charges in Case 002” (19 September 2016) E439/2; Khieu Samphan; “Observations de la Défense de M. KHIEU Samphan en réponse à la demande de clarification des Parties civiles concernant les poursuites restantes du dossier 002” (19 Septembre 2016) E439/1 (as of writing this report is only available publicly in French).

²¹ Civil Party Lead Co-lawyers, “Civil Party Lead Co-Lawyers’ Reply to Nuon Chea’s Response to Request for Clarification Relating to Remaining Charges in Case 002” (23 September 2016) E439/4.

²² At the end of the LCLCP presentation Judge Fenz interjected to point out that “non-judicial measures” are outside the purview of the court and that the Trial Chamber is not able to issue any such measures as part of reparations. Pich Ang replied that the LCLCPs understood this and explained they were merely expressing the views of the Civil Parties in the courtroom.

²³ See: Extraordinary Chambers in the Courts of Cambodia, “Internal Rules (rev. 9)” (16 January 2015) Rule 89 *quarter* (amended on 16 January 2015) p. 69.

²⁴ Défense de M. Khieu Samphan, “Appel immédiat de la Défense de M. Khieu Samphan interjeté contre la Décision portant nouvelle disjonction des poursuites et fixant l’étendue du procès 002/02” (5 May 2014) E301/9/1/1/1.

²⁵ Counsel Guissé also highlighted paragraph 76 of the SCC’s “Decision on Khieu Samphan’s Immediate Appeal Against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02” in which the SCC says that, after the initial severance, should the Trial Chamber decide to hear further charges: “the Trial Chamber’s decision to sever prior to taking evidence in Case 002/02 will cause that evidence taken henceforth will not be formally common to any future proceedings on the charges remaining outside the scope” which would mean, according to the Khieu Samphan Defense, that a large amount of evidence would have to be re-heard in order to be admissible to any future cases in Case 002. See: Supreme Court Chamber, “Decision on Khieu Samphan’s Immediate Appeal Against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002/02” (29 July 2014) E301/9/1/1/3, para 76, p. 35.

²⁶ Counsel Koppe said that these two team members had been hired to deal with increased disclosures of evidence from Cases 003 and 004.

²⁷ At the end of hearings on Wednesday, the Chamber announced that it would continue to try to arrange the testimony of 2-TCW-946 until 30 January 2017, after which it will be considered not feasible.

²⁸ The President interrupted Counsel Koppe after he had gone over his extra allotted time by a further seven minutes.