

Another Trial



A review of Case 002/02:
the second trial of Nuon Chea and
Khieu Samphan at the Extraordinary
Chambers in the Courts of Cambodia

Caitlin McCaffrie and Daniel Mattes

14 November 2018
(revised version)

ANOTHER TRIAL

A REVIEW OF CASE 002/02: THE SECOND TRIAL OF NUON CHEA AND KHIEU SAMPHAN AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

By Caitlin McCaffrie and Daniel Mattes

Originally published on 6 November 2018
Revised version published on 14 November 2018

Report for the WSD HANDA Center for
Human Rights and International Justice at Stanford University
and the East-West Center

The contents of this paper may be reproduced for personal use. Single copies may be downloaded from the Center's website.

For information, please contact:

WSD HANDA Center for Human Rights and International Justice
417 Galvez Mall
Encina Hall West, Suite 216
Stanford, CA 94305-6045
United States of America
Tel: +1 (650) 736 7622
<https://handacenter.stanford.edu>

For Cambodia Programs:

WSD HANDA Center for Human Rights and International Justice, Cambodia Programs
Phnom Penh
Cambodia
ajji.krt@gmail.com
<https://www.krtmonitor.org>

Cover Photograph © ECCC Public Affairs Section / 2006-2018

© 2018 WSD HANDA Center for Human Rights and International Justice at Stanford University

Table of Contents

List of Figures and Tables	ii
List of Acronyms	iii
Timeline of Key Events	iv
Figure 1: Map of relevant crime sites	v
1. Introduction	01
2. Summary of Testimony	03
A. Worksites and Cooperatives	05
B. Security Centers and Internal Purges	08
C. Treatment of Targeted Groups	14
D. Regulation of Marriage	18
E. Nature of Armed Conflict	20
F. Role of the Accused	21
3. Critical Analysis of Legal and Procedural Issues	23
A. Severance and Scope Issues	23
B. The Impact of Ongoing Investigations on Case 002/02	25
C. The Roles of Witnesses and Civil Parties	26
D. Use of Torture-Tainted Evidence	28
E. The Right to Remain Silent	29
F. Boycotts and Delays	31
4. Conclusion	33
Acknowledgements	35
Authors	36

List of Figures and Tables

Figure 1	Map of relevant crime sites
Table 1	Full list of testimony separated by segment
Figure 2	Breakdown of testimony by gender
Table 2	Testimony related to security centers
Table 3	Testimony related to the treatment of targeted groups
Table 4	Types of Testimony in Case 002 and in Sub-Trial
Table 5	Instances of the Accused speaking in court in Case 002/02

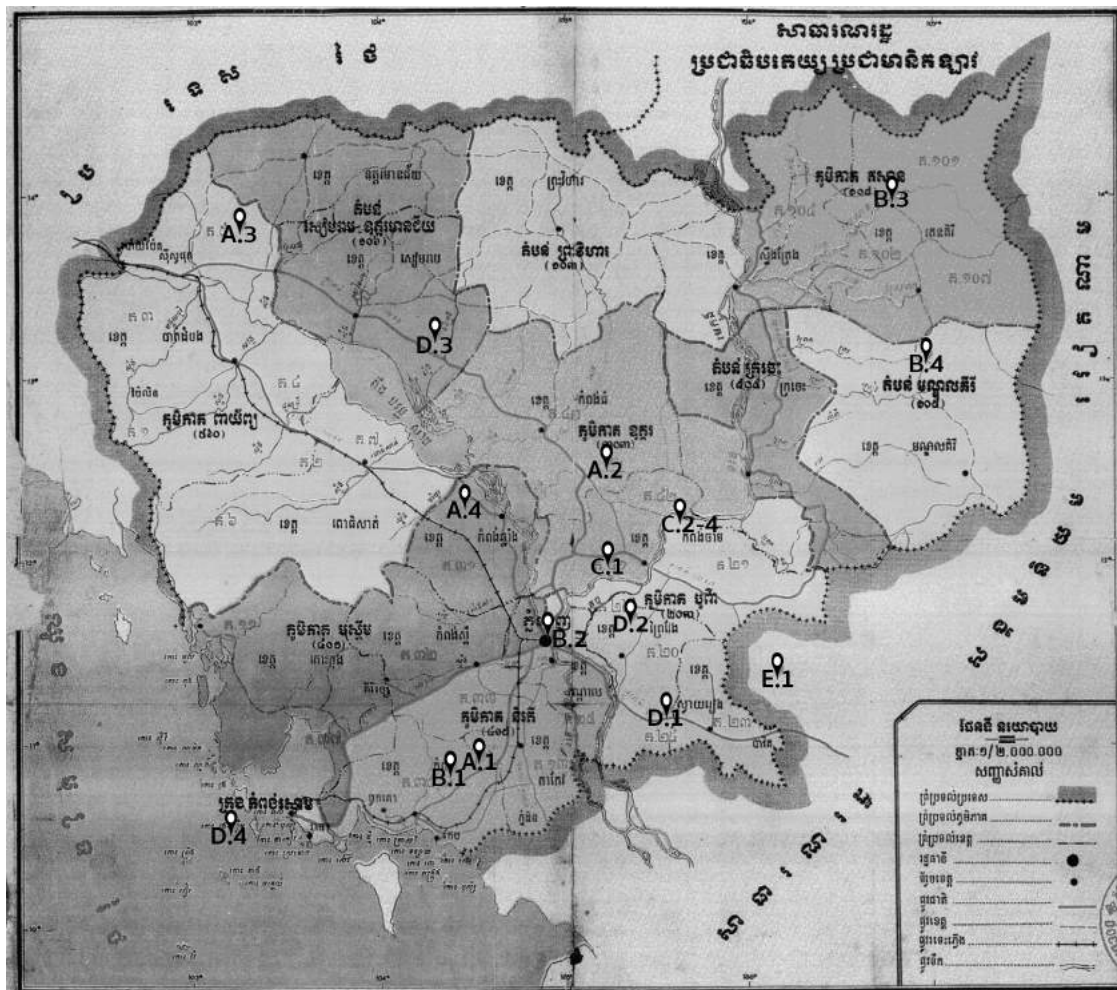
List of Acronyms

AIJI	Asian International Justice Initiative
Art(s).	Article(s)
CAT	Convention Against Torture
CPK	Communist Party of Kampuchea
DC-Cam	Documentation Center of Cambodia
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia
e.g.	Exempli Gratia
ibid.	Ibidem
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IRs	Internal Rules of the ECCC
ITU	Interpretation and Translation Unit
JCE	Joint Criminal Enterprise
KRT	Khmer Rouge Tribunal
LCLCP	Lead Co-Lawyers for Civil Parties
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutor
p.	Page
para(s).	Paragraph(s)
pp.	Pages
PAS	Public Affairs Section
PRK	People's Republic of Kampuchea
PRT	People's Revolutionary Tribunal
PTC	Pre-Trial Chamber
RAK	Revolutionary Army of Kampuchea
RGC	Royal Government of Cambodia
SCC	Supreme Court Chamber
SCSL	Special Court for Sierra Leone
UN	United Nations
UNAKRT	United Nations Assistance to the Khmer Rouge Tribunal
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

Timeline of Key Events

19 Sep 2007	Nuon Chea detained by Co-Investigating Judges and transferred to an ECCC facility, charged with crimes against humanity, grave breaches of the Geneva Conventions, genocide and crimes under the 1956 Penal Code of Cambodia
14 Nov 2007	Ieng Sary and Ieng Thirith detained and charged with the same crimes
19 Nov 2007	Khieu Samphan detained and charged with the same crimes
14 Jan 2010	Co-Investigating Judges conclude the judicial investigation in Case 002
15 Sep 2010	Co-Investigating Judges issue Closing Order in Case 002
27 Jun 2011	Initial hearing held in Case 002
22 Sep 2011	Trial Chamber issues first severance defining scope of Case 002/01
17 Nov 2011	Ieng Thirith officially severed from proceedings after having been found unfit to stand trial for health reasons on 13 September 2011
21 Nov 2011	Evidentiary hearings begin in Case 002, specifically in Case 002/01
08 Feb 2013	Supreme Court Chamber annuls severance decision after appeal by Prosecution and Defense Teams
14 Mar 2013	Ieng Sary passes away, and proceedings against him are terminated
26 Apr 2013	Trial Chamber releases second decision on severance reconfirming scope of Case 002/01
23 Jul 2013	Supreme Court Chamber upholds new severance decision
31 Oct 2013	Closing statements conclude in Case 002/01
04 Apr 2014	Trial Chamber issues decision confirming scope of Case 002/02
29 Jul 2014	Supreme Court Chamber upholds new scope of Case 002/02
30 Jul 2014	Initial hearing in Case 002/02
08 Aug 2014	Trial Judgment issued in Case 002/01
17 Oct 2014	Intended opening day of evidentiary hearings – start of Defense boycott
08 Jan 2015	Actual opening day – early adjournment due to Khieu Samphan’s health
21 Jan 2015	Evidentiary hearings in Case 002/02 resume
7-27 Jun 2016	Kaing Guek Eav (alias Duch), convicted in Case 001, testifies as a witness in Case 002/02
23 Nov 2016	Case 002/01 Appeal Judgment announced, affirming life sentences for both Accused even as some convictions are tossed out or modified
11 Jan 2017	Final day of evidentiary hearings in Case 002/02
13-23 Jun 2017	Closing statements in Case 002/02
16 Nov 2018	Trial Judgment to be announced in summary form in Case 002/02

Figure 1: Map of Relevant Crime Sites¹



- Key**
- A. Cooperatives and Worksites
 1. Tram Kak District Cooperatives
 2. 1st January Dam
 3. Trapeang Thma Dam
 4. Kampong Chhnang Airport
 - B. Security Centers
 1. Kraing Ta Chan Security Center
 2. S-21 and associated Choeung Ek Killing Fields
 3. Au Kanseng Security Center
 4. Phnom Kraol Security Center
 - C. Sites associated with segment on treatment of the Cham Muslims
 1. Wat Au Trakuon Security Center, Kang Meas District
 2. Trea Village Security Center, Krouch Chhmar District
 3. Koh Phal, site of Cham Muslim rebellion in 1975
 4. Svay Khleang, site of Cham Muslim rebellion in 1975
 - D. Sites associated with segment on treatment of the ethnic Vietnamese
 1. Svay Rieng Province (DK-era East Zone)
 2. Prey Veng Province (DK-era East Zone)
 3. Killing site at Wat Khsach, Siem Reap Province
 4. Executions of Vietnamese civilians captured at sea
 - E. Sites associated with RAK incursions into Vietnam in segment on the Armed Conflict
 1. Tay Ninh Province, Vietnam

¹ The pins have been placed on top of "A Khmer Rouge text describing the DK administrative and political geography, first published by the DK Ministry of Education for Elementary Class 2, 1977", in "DK Provinces, Zones, Regions and Districts", *Yale University Genocide Studies Program*, accessible at: <<https://gsp.yale.edu/dk-provinces-zones-regions-and-districts>>. The key has been corrected since this report's original publication.

1. Introduction

On 16 November 2018, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge Tribunal (KRT), will issue a summary of its judgment in Case 002/02, the second trial against Nuon Chea and Khieu Samphan, the two surviving senior leaders of the Democratic Kampuchea (DK) regime which ruled Cambodia from 17 April 1975 to 7 January 1979.²

With the final dismissal of charges against Im Chaem in Case 004/01,³ the recent split decision of the Co-Investigating Judges in the investigation of Ao An in Case 004/02,⁴ and uncertainty around the future of the investigations of Meas Muth in Case 003 and Yim Tith in Case 004, this may well be the final judgment to ever again emanate from the ECCC's Trial Chamber. The ECCC, crafted out of nearly a decade of negotiations between the Royal Government of Cambodia (RGC) and the United Nations (UN), may begin to wind down its operations more than a decade after it first began operating, even as the appeals process in this case will continue.

Regardless of the remaining cases' uncertain future, as of 16 November 2018, the Trial Chamber will achieve a noteworthy landmark; issuing a decision on the charges of genocide, crimes against humanity, and war crimes in the trial against Nuon Chea and Khieu Samphan. Where Case 001 was lauded for its efficiency and groundbreaking work to include victims in the judicial process, the legacy of Case 002 is not yet clear. Those who defend the Tribunal will refer to Case 002's depth and complexity, comparing its size to the cases in Nuremberg after World War Two.⁵ Others will condemn the ECCC by coupling the length of the proceedings — more than 11 years since the investigation opened in Case 002 — with the cost of the Tribunal's functions since its inception in a critique of the institution. Both the attacks and defenses in the discourse surrounding the ECCC in fact pay little attention to what truly took place in the courtroom or was written into submissions and decisions. The ultimate legacy of the Tribunal remains to be seen, but the immense breadth of witness and Civil Party testimonies and evidentiary documentation developed in the processes of its investigations, trials, and appeals should not be forgotten.

That is why it is disappointing that the Trial Chamber has decided to issue only a summary judgment on 16 November 2018. The ECCC was developed in part as an institution to serve as a model for Cambodia's weak domestic judiciary which so often issues summary judgments without full reasons. Translation delays, page lengths, staff turnover, and legal complexities in writing the Case 002/02 Judgment are no excuse for a process which began in 2007.⁶ The Tribunal's opportunity for establishing a real judicial legacy is diminished by this decision of the Trial Chamber.

² Extraordinary Chambers in the Courts of Cambodia, "Trial Chamber of the ECCC Sets 16 November 2018 for the Pronouncement of the Judgement in Case 002/02" (26 September 2018), accessible at: <<https://www.eccc.gov.kh/en/articles/trial-chamber-eccc-sets-16-november-2018-pronouncement-judgement-case-00202>>.

³ Extraordinary Chambers in the Courts of Cambodia, "The Pre-Trial Chamber issues its considerations on the International Co-Prosecutor's Appeal against the Co-Investigating Judges' Closing Order having dismissed the case against IM Chaem" (29 June 2018), accessible at: <<https://www.eccc.gov.kh/en/articles/pre-trial-chamber-issues-its-considerations-international-co-prosecutors-appeal-against-co>>.

⁴ Extraordinary Chambers in the Courts of Cambodia, "Co-Investigating Judges Issue Two Separate Closing Orders in Case Against AO An Case No. 004/2/07-09-2009-ECCC/OCIJ" (16 August 2018), accessible at: <<https://www.eccc.gov.kh/en/articles/co-investigating-judges-issue-two-separate-closing-orders-case-against-ao-case-no-004207>>.

⁵ For example, see Extraordinary Chambers in the Courts of Cambodia, "UK Pledges Another £600,000 to ECCC" (18 December 2012), accessible at: <<https://www.eccc.gov.kh/en/articles/uk-pledges-another-£600000-eccc>>.

⁶ In the latest ECCC Completion Plan, the Trial Chamber provided background on its decision to issue a summary judgment and withheld any guarantee of issuing the full reasons by the end of 2018. Its explanation for this decision provided numerous reasons related to translation delays, staff turnover, page lengths, legal complexities of the Case, and the need for one international judge to return to his home jurisdiction. While all of these points are valid and understandable, it is notable that the Trial Chamber fails to critically assess itself for its own missteps or delays in issuing a judgment on time. See Extraordinary Chambers in the Courts of Cambodia, Completion Plan Revision 18 (30 September 2018), pp. 9-10, accessible at: <https://www.eccc.gov.kh/sites/default/files/Completion%20Plan%20rev%202018.final_.pdf>.

After more than ten years of monitoring daily trial proceedings at the ECCC, KRT Trial Monitor is issuing this final report on Case 002/02 in order to summarize the substance of the trial and to connect the bigger picture to the details that emerged over 274 days of proceedings. This report is based on the notes, summaries, and data gathered by the monitoring team which was present at every day of hearings throughout Case 002/02. Monitors have produced 80 weekly reports covering Case 002/02's initial hearing in July 2014 until the closing arguments held in June 2017.⁷ This report seeks to lay out the full case in one document, while also situating this trial within the broader context of the ECCC and its previous Cases 001 and 002/01.

This report is separated into two major sections: the first summarizes the testimony and evidence presented in the courtroom over the almost exactly two years of evidentiary hearings; the second raises six legal or procedural issues which the authors and monitoring team determined to be most prescient. This report does not seek to make prescriptive suggestions to the Tribunal or any other institution. The authors hope it can serve as a tool for those interested in returning to Case 002/02 for its details: the stories from witnesses who may never have shared them publicly before, the tests to international legal standards, and the facts written into a history that has remained uncertain and unknown for too long.

⁷ For all weekly KRT monitoring reports and complementary Khmer-language summary reports, see <www.krtmonitor.org>.

2. Summary of Testimony

Over 274 hearing days in Case 002/02, the Trial Chamber heard from a total of 186 individuals: 114 fact witnesses, 64 Civil Parties and eight experts.⁸ Each of these individuals was called to give testimony in one of six discrete trial segments: i) worksites and cooperatives; ii) security centers and internal purges; iii) treatment of targeted groups; iv) regulation of marriage; v) the nature of armed conflict; and, vi) the role of the accused. What follows is an overview of the main evidence presented at trial, summarized by category. Overall summaries of the main arguments made by Parties can be found in the summary report on the closing statements, KRT Monitor Issue 80.⁹ For more detailed summaries of any of the evidence or individuals mentioned, consult KRT Monitor's weekly monitoring reports, Issues 1 - 79.¹⁰

Although witnesses and Civil Parties were called to testify based on their knowledge about specific crimes related to the charges against the two Accused, their testimony often also included information related to other charges, which makes it hard to strictly delineate their testimony by subject matter.¹¹

Table 1: Full list of testimony separated by segment

Trial Segment	Witnesses who gave evidence / Party	Estimated Days of TT*	% of OT*
Worksites and Cooperatives	Mr. MEAS Sokha [W]; Ms. OUM Sophany [CP]; Ms. CHOU Koemlan [CP]; Ms. CHEANG Srei Mom [CP]; Ms. Elizabeth BECKER [E]; Mr. RY Pov [CP]; His Rev. EM Phoeung [W]; Mr. PHNOV Yav [W]; Mr. SAO Hean [W]; Mr. PHANN Chhen [W]; Mr. NEANG Ouch [W]; Mr. NUT Nouv [W]; Mr. RIEL Son [W]; Mr. Richard DUDMAN [W]; Ms. TAK Sann [VIH] Ms. IEM Yen [VIH]; Mr. THANN Thim [CP/VIH**]; Mr. BENG Boeun [VIH]; Ms. YEM Khunny [VIH]; Mr. BUN Saroeun [VIH]; Ms. EM Vannak [VIH]; Ms. LIP Neang [VIH]; Mr. PECH Chim [W]; Ms. KHOEM Boeun [W]; Mr. AEK Hoeun [W]; Mr. OR Ho [W]; Mr. PECH Sokha [W]; Ms. MEAS Layhou [W]; Ms. HUN Sothany [CP]; Ms. UN Ron [CP]; Ms. SEANG Sovida [CP]; Mr. UTH Seng [W]; Ms. SOU Soeun [W]; Mr. CHAN Man [W]; Mr. KEO Kin [W]; Mr. KEO Loeu [W]; Mr. YEAN Lun [W]; Ms. KONG Siek [CP]; Mr. SEM Hoeurn [W]; Mr. HIM Han [W]; Ms. CHUM Samoeun [CP]; Ms. KANG Uth [W]; Mr. SEN Sophon [CP]; Mr. MAM Soeum [W]; Ms. KHEUN Vat [W]; Mr. OUM Chy [W]; Mr. KAN Thol [W]; Mr. LOT Suoy [W]; Mr. CHET Yourk [W]; Mr. CHHUM Seng [W]; Mr. TAK Boy [W]; Ms. YI Laisov [W]; Mr. CHHUY Huy [W]; Mr. NHIP Hori [CP]; Ms. NUON Narom [VIH]; Ms. CHAO Lang [VIH]; Mr. SOM Sak [VIH]; Mr. MEAN Loeuy [VIH]; Mr. SOT Sophal [W]; 2-TCW-996 [W]; 2-TCW-918 [W]	81 Days (KRT Monitor Reports 4-10, 12-13, 15-16, 18-29, 32, 35)	31.03%

⁸ Case 002/02 comprised 51 more trial days than Case 002/01 (a 122.77% increase), however heard 94 more people testify (186 people compared to 92 - a 202% increase in testimony) This does not necessarily signify an increase in efficiency on the part of the Trial Chamber, as Case 002/01 included a third Defense Team until Ieng Sary's death in March 2013; and, secondly, some witnesses, including Mr. CHHANG Youk and Mr. VANTHAN Dara Peou provided evidence in Case 002/01 that was used to form the foundation of Case 002/02, without them having to appear again in the second trial.

⁹ KRT Monitor Case 002/02, Closing Statements, Issue 80 (13-23 June 2018).

¹⁰ Weekly monitoring reports for Cases 001, 002/01, and 002/02 are all available at www.krtmonitor.org.

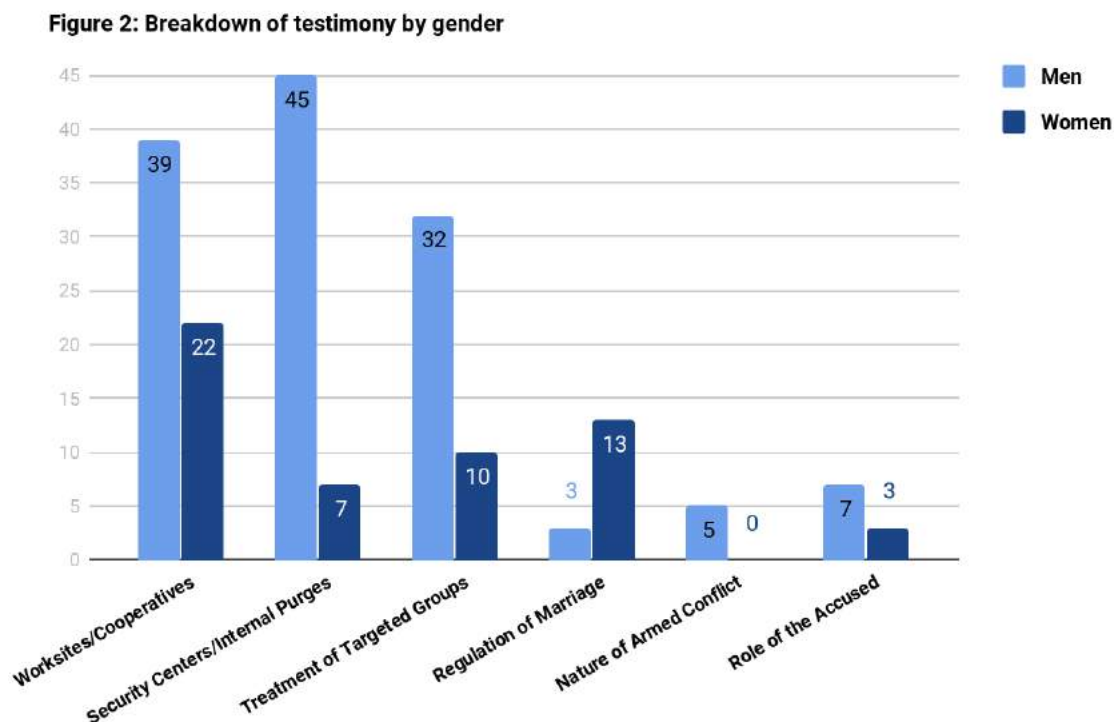
¹¹ On 22 April 2015 in the 13th week of evidentiary hearings, Parties held a lengthy debate in the courtroom about appropriate examination practices when Witness Pech Chim, called to speak on Kraing Ta Chan and Tram Kak, was also questioned about purges in the Central (former North) Zone. Ultimately the Chamber overruled the Nuon Chea Defense's objection to the broad scope of questioning, ruling that all topics within the scope of Case 002/02 could be raised, and that Parties should be appropriately prepared. Case 002/02 KRT Trial Monitor Issue 16, Hearings on Evidence 13 (21-24 April 2015) pp. 6-7.

Security Centers and Internal Purges	Mr. KEO Chandara [W]; Mr. SOY Sen [CP]; Mr. SREI Thorn [W]; Mr. VAN Soeun [W]; Mr. SOTH Saing [CP]; Ms. OUNG Saroeun [CP]; Ms. VORNG Sarun [W]; Mr. PHAN Thol [W]; Ms. MOEUNG Chandy [W]; Mr. CHAN Tauy [W]; Mr. NET Savath [W]; 2-TCW-900 [W]; Mr. BUN Loeung Chauy [W]; Mr. SAO Sarun [W]; Mr. SUN Vuth [CP]; Mr. PHAN Van [W]; Mr. CHUM Mey [CP]; Mr. NHEM En [W]; Mr. TOY Teng [W]; Mr. LACH Mean [W]; Mr. PRAK Khan [W]; Mr. MAK Thim [W]; Mr. HIM Huy [W]; Mr. SUOS Thy [W]; Mr. KAING Guek Eav [W]; Mr. CHHUN Samorn [CP]; Mr. MEAS Soeurn [W]; 2-TCW-1005 [W]; Mr. Henri LOCARD [E]; 2-TCW-976 [W]; Mr. CHEN Saroeun [W]; Mr. CHE Heab [VIH]; Ms. PHOUNG Yat [VIH]; Ms. ROS CHUOR SIY [VIH]; Mr. YUN Bin [VIH]; Ms. KAUN Sunthara [VIH]; Mr. CHAO Kim [VIH]; 2-TCCP-1040 [CP]; Mr. SUOY Sao [W]; 2-TCW-850 [W]; Mr. NIM Oem [W]; Mr. SEM Am [W]; 2-TCW-1036 [W]; Mr. CHEAL Choeun [W]; 2-TCW-1037 [W]; Mr. SIN Oeng [W]; 2-TCW-971 [W]; Mr. NORNG Nim [W]; Mr. VOEUN Vuthy [E]; Ms. HIN Sotheany [W]; Mr. NUON Trech [W]; 2-TCW-920 [W]	87 Days (KRT Monitor Reports 7, 9, 10-11, 14, 19, 45-46, 48-53, 55-64, 67-70, 75-77, 79)	33.33%
Treatment of Targeted Groups	Mr. ITH Seng [W]; Mr. SOS Ponyamin [CP]; Mr. SENG Khuy [W]; Mr. SENG Srun [W]; Mr. SAMRIT Muy [W]; Mr. TAY Kumhuon [W]; Mr. HIM Man [CP]; Ms. NO Satas [CP]; Mr. BAN Siek [W]; Mr. SEAN Sung [W]; Mr. PRAK Doeun [CP]; Ms. SAO Sak [W]; Mr. CHOEUNG Yaing Chaet [CP]; Mr. PRUM Sarun [W]; Mr. OUM Son [W]; Mr. ONG Sam Ian [W]; Ms. SIN Chhem [W]; Mr. EY Von [W]; 2-TCW-1000 [W]; Mr. THENG Phal [W]; Mr. SOS Rumly [W]; Mr. MOUY Vanny [W]; Mr. SOY Doeun [W]; Ms. MAT Sor [W]; Ms. YOU Vann [W]; Ms. PRAK Yut [W]; Mr. LACH Kry [CP]; Ms. DOUNG Oeun [CP]; Mr. PRUM Sarat [W]; Ms. EN Yoeun [W]; Mr. SAN Lorn [W]; Mr. SAO Van [W]; Mr. MEAS Voeun [W]; Mr. YSA Osman [E]; Mr. MEU Peou [VIH]; Mr. MAN Sles [VIH]; Ms. SIENG Chanthay [VIH]; Ms. KHAUNG Moy [VIH]; Mr. UCH Sunlay [VIH]; Mr. VAN Mat [W]; Mr. Alex HINTON [E]; Mr. SOS Kamry [W]	53 Days (KRT Monitor Reports 30-39, 40-43, 45-48, 50, 57)	20.31%
Regulation of Marriage	2-TCCP-274 [CP]; Ms. SOU Sotheavy [CP]; 2-TCCP-232 [CP]; Mr. SENG Soeun [CP]; Ms. CHEA Dieb [CP]; Ms. PHAN Him [W]; Ms. Kasumi NAKAGAWA [E]; Ms. MOM Vun [CP]; Ms. SA Lay Hieng [CP]; Ms. Peg LEVINE [E]; Ms. PEN Sochan [CP]; Ms. PREAP Sokhoeun [CP]; Mr. KOL Naem [VIH]; Ms. NGET Chat [VIH]; Ms. SOY Naroen [VIH]; 2-TCW-1002 [W]	20.5 Days (KRT Monitor Reports 64-65, 67-71)	7.85%
Nature of Armed Conflict	Mr. Stephen MORRIS [E]; Mr. CHUON Thi [W]; Mr. SAO Mang [W]; Mr. IENG Phan [W]; 2-TCW-1065 [W]	10 Days (KRT Monitor Reports 70-73)	3.83%
Role of the Accused	Mr. SAR Sarin [CP]; 2-TCW-913 [W]; 2-TCCP-235 [CP]; 2-TCCP-223 [CP]; Ms. TOUCH Sithorn [W]; Ms. BOETH Boeun [W]; Mr. SENG Lytheng [W]; Ms. KHIEU Nieb [CP]; 2-TCCP-1063 [CP]; 2-TCW-823 [W]	9.5 Days (KRT Monitor Reports 73-75, 77)	3.64%

Key: [W] = Witness of Fact who testified in court; [E] = Expert Witness; [CP] = Civil Party of Fact who testified in court; [VIH] = Civil Party of Suffering who testified at special hearings on victim impact.

*'TT' refers to 'trial time'; estimates made on rough calculations of hours spent during a particular week on hearing testimony and are for indicative purposes only. 'OT' refers to 'overall testimony'; percentages are given as a percent of the overall testimony.

As the below graph illustrates, most trial segments featured a majority of men testifying, with the exception of the segment on the regulation of marriage:



A. Worksites and Cooperatives

Following Case 002/01’s focus on the experience of urban populations forced to evacuate Cambodia’s cities in April 1975, Case 002/02 shifted the focus to experiences of rural life and labor under the DK regime. The trial began evidentiary hearings with over six months of testimony on rural cooperatives in Tram Kak District (known as District 105 in the Southwest Zone under the DK administrative system, in present-day Takeo Province) and forced labor at three worksites around the country. Those who testified in these segments spoke about a variety of topics, from the more banal details of their overtime working hours to the rapid elimination of Buddhist religious ritual to the shockingly sudden disappearances or deaths of their friends, family members, and neighbors across rural cooperatives and worksites. These first segments of the trial covered details of some of the most widespread and commonly encountered experiences of Cambodians under the DK regime.

In its second severance decision, which formulated the scope of Case 002/02, the Trial Chamber selected the Tram Kak District cooperatives and First January Dam, Trapeang Thma Dam, and Kampong Chhnang Airport worksites out of a total of six such crime sites addressed by the Co-Investigating Judges in the Case 002 Closing Order.¹² The same decision limited trial testimony related to the treatment of Buddhists specifically to events in Tram Kak District.¹³ By applying the testimony related specifically to Tram Kak District and the three worksites to criminal allegations on a

¹² Trial Chamber, ‘Decision on Additional Severance of Case 002 and Scope of Case 002/02’ (4 April 2014) E301/9/1, p. 21; Office of the Co-Investigating Judges, ‘Case 002 Closing Order’ (15 September 2010) D427, pp. 79-107. The other two worksites not included in the scope of Case 002/02 were Srae Ambel Worksite and Prey Sar Worksite (also known as S-24), the latter of which was administratively related to S-21 Security Center in Phnom Penh and was occasionally referenced in that later trial segment, as well as in the earlier Case 001.

¹³ Prior to the SCC’s final decision on severance, the LCLCP argued for the inclusion in Case 002/02 of the treatment of Buddhists on a nationwide basis, not only at Tram Kak Cooperatives. The Trial Chamber instead decided to limit the scope to only the cooperatives on the grounds that it “reasonably reflects the scale and nature of the alleged acts while maximizing the efficient hearing of the topic.” This was affirmed by the SCC. 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, p. 17.

nationwide scale, the Trial Chamber indicated that it intended to make Case 002/02 more representative of the full case than Case 002/01 had been. The allegations associated with these four crime sites resulted in numerous charges against the Accused for crimes against humanity of enslavement, extermination, imprisonment, murder, deportation, persecution on political, racial, and religious grounds, torture, racial persecution, and other inhumane acts through attacks against human dignity, rape,¹⁴ forced marriage, and enforced disappearances.

During closing arguments, the OCP stressed the criminal liability of the Accused for their role in developing and directing the Communist Party of Kampuchea (CPK)'s "Great Leap Forward" policy that led to the formation of cooperatives and worksites. Prosecutors argued that the crime of enslavement at these locations was, "A crime that affected virtually every Cambodian who lived through the DK regime." Throughout their presentation, the OCP drew attention to evidence such as contemporaneous telegrams and memoranda which indicated the Accused had knowledge and control of the living and working conditions at DK cooperatives and worksites. Nuon Chea's Defense denied the alleged crime of enslavement at worksites and cooperatives, deeming the contention "an ignorance of socialism." Khieu Samphan's Defense argued that the OCP and the Civil Parties failed to establish the Accused's *actus reus* with regard to enslavement at the worksites and cooperatives. They contended that the alleged crime of enslavement did not meet the threshold of two conditions: exercise of the right to ownership and imposition of forced labor. In rebuttal, the Civil Parties re-articulated their perspective on the crime of enslavement, citing the SCC's definition of the *actus reus* for enslavement, and arguing that the Civil Party testimonies demonstrated the CPK exercised virtual total control over the population.

Tram Kak District

In the segment on Tram Kak District, a total of 12 witnesses, four Civil Parties, and one expert, American journalist Elizabeth Becker, testified.¹⁵ Eight Civil Parties also testified in two days of "victim impact hearings" on harms suffered (see **Section 3.C.** below), one of whom, Thann Thim, was later called back by the Trial Chamber on the request of the Nuon Chea Defense to testify to facts beyond his previous statement of suffering. Some individuals also testified about Kraing Ta Chan, the security center located in Tram Kak District (see **Section 2.B.** below). The OCP argued that the Accused were responsible for crimes committed in Tram Kak, because the CPK Central Committee had praised the district as a model of production for the rest of the country and awarded the cooperative the "honorary red flag" in 1977. The OCP argued that testimony showed how, in this CPK "model district", those who dared to complain about the lack of food or difficult work conditions were arrested, sent to re-education offices, and never seen again. Numerous witnesses and Civil Parties testified about their experiences working overtime in rice fields and at dam and canal worksites. Civil Party Chou Koemlan described how she and other women were told about two women from a nearby work unit who were taken away, raped, and killed, as a warning for them to keep working according to orders. Others testified to the administrative hierarchy, explaining that many officials were relatives by blood or by marriage of Ta Mok, the secretary of the Southwest Zone and a member of the CPK's Standing Committee alongside Nuon Chea. Witnesses also discussed the experience of Buddhists. His Reverence Em Phoeung described being defrocked in 1975 and prevented from practicing Buddhist ritual until 1979. Pech Chim, a CPK cadre in the district and allegedly its chief at one point, described multiple meetings and ceremonies taking place in former Buddhist temples which had been

¹⁴ Discussion of rape outside the context of forced marriage was limited from the scope of Case 002/02 by the Trial Chamber and on immediate appeal by the Supreme Court Chamber although factual allegations related to rapes were included in the Case 002 Closing Order and heard by the Trial Chamber at trial. See more in **Section 3.A.** below.

¹⁵ Expert witnesses are called on to provide insight and clarification on specific issues of a technical nature deemed necessary to proceedings, as per Internal Rule 31(1). An expert is appointed through a judicial order specifying their exact assignment (Internal Rule 31(3)).

repurposed under the regime.¹⁶ Defense Counsel contended that the OCP relied too heavily on generalized facts from other sites without specific evidence from Tram Kak cooperatives and failed to establish the guilt of the Accused beyond reasonable doubt for crimes allegedly committed there.

Three Worksites

The subsequent trial segment centered on three infrastructure-related worksites around the country: the First January Dam Worksite (in present-day Kampong Thom Province), the Kampong Chhnang Airport Construction Site, and the Trapeang Thma Dam Worksite (in present-day Banteay Meanchey Province). In the segments on these three worksites, a total of 22 witnesses and seven Civil Parties testified. Four Civil Parties also testified about the two dam worksites in a special set of victim impact hearings at the end of the trial segment. No expert witnesses were called specifically in this segment.

First January Dam Worksite

With a total of eight witnesses and five Civil Parties providing their testimony on the First January Dam, it appeared long working hours both day and night, poor labor conditions, and inadequate access to food, water, sanitation, and shelter were the norm there. Some witnesses described what they believed were murders or unwarranted arrests, although cross-examination revealed the details of the stories were occasionally circumstantial or based on hearsay. Nonetheless, Civil Party lawyers and the OCP contended that the Accused were responsible for the crimes against humanity allegedly committed at the dam worksite. The OCP cited a visit to the First January Dam site by Nuon Chea, and a detailed speech by Khieu Samphan referencing the results of the dam's construction as one of the DK regime's great successes. The OCP also alleged the Accused knew of child labor at the worksite, recalling Khieu Samphan's specific praise of children helping to build dams and embankments in his aforementioned speech. The Defense for Khieu Samphan, however, rejected his 15 April 1977 speech as a sufficient link to establish the Accused's knowledge and endorsement of the crimes committed at the dam worksite. Nuon Chea's Defense held that the First January Dam and other worksites served as means of production under the new communist system rather than enslavement, arguing this was evidenced by the technical and scientific expertise leveraged to ensure the dam's long-term utility until the present day. They also denied allegations of child labor, referencing CPK policy documents that explicitly instructed that children were only to be given light tasks at First January Dam and other worksites. Both Defense teams regularly objected to the Trial Chamber hearing testimony related to Wat Baray Choan Dek, a nearby pagoda that was allegedly used as a killing site, claiming it fell outside the scope of Case 002/02.

Trapeang Thma Dam Worksite

A total of eight witnesses and four Civil Parties testified in relation to the Trapeang Thma Dam worksite. As at the First January Dam, multiple individuals described inadequate food, water, sanitation, and shelter, as well as long working hours beginning before sunrise and stretching until after dark. They explained the administrative hierarchy within the Northwest Zone and the way that this shifted when cadres from the Southwest Zone under Ta Mok arrived in the Northwest in 1977 and 1978 to begin purges of the former leadership. The LCLCP and the OCP reviewed such testimony to argue that the Accused were responsible for alleged crimes of enslavement, murder, extermination, and persecution on political grounds that took place there. Nuon Chea's Defense again related the labor conditions at the worksite to the need for the new socialist system to adjust the difficult

¹⁶ Although he appeared in the later trial segment on the treatment of targeted groups, Expert Witness Alexander Laban Hinton also testified about the treatment of Buddhists. He explained that the Khmer Rouge's destruction of Buddhism resulted in people losing "a central part of their balance," as the religion and its rituals had formed the basis of spiritual protection and community bonds. Dr. Hinton explained that the DK regime specifically employed "Buddhist methodologies" to secure its authority, replacing the foundational center of Buddhist tradition and its notions of hierarchy within family and community with the State, or *Angkar*.

economic conditions the country was facing, while Khieu Samphan's Defense regularly pushed for the Trial Chamber to keep certain details from nearby worksites (such as the Kamping Puoy Dam in Battambang Province) out of the trial, again arguing they fell outside the scope of Case 002/02.

Kampong Chhnang Airport Construction Site

Six witnesses and two Civil Parties testified specifically in relation to Kampong Chhnang Airport construction site, although much of their evidence addressed their experiences witnessing alleged purges of Khmer Rouge officials and soldiers, first from the North Zone and later from the East Zone. The LCLCP and the OCP argued that the laborers at this site were mostly CPK soldiers from purged military divisions working under Chinese military and engineering advisors in support of the DK regime. The OCP attempted to link a visit to the site by Khieu Samphan and many other top CPK leaders to the knowledge and approval of top DK leadership for the crimes committed there. Khieu Samphan's Defense, however, questioned the reliability of the documentary evidence used to support this assertion in the face of a lack of such evidence through witness testimony at trial. The Nuon Chea Defense Team argued that the airport's strategic significance at a time of war required Cambodians with military training to be present to perform "demanding construction work." Much of this segment blended into the trial segment on security centers and internal purges as a result of the Defense exercising its right to call witnesses who could provide exculpatory evidence for the Accused.

B. Security Centers and Internal Purges

Of the 11 security centers listed in the Case 002 Closing Order, the Trial Chamber selected four to try as part of Case 002/02: Kraing Ta Chan, Phnom Kraol, Au Kanseng, and S-21 (the last of which was covered extensively in Case 001).¹⁷ The Accused are charged in the Closing Order with crimes against humanity of enslavement, extermination, imprisonment, murder, persecution on political and racial grounds, torture and other inhumane acts through attacks against human dignity, rape, forced marriage, and enforced disappearances, as well as grave breaches of the 1949 Geneva Conventions at these four security centers. Those providing testimony in this section included former detainees, relatives of former detainees, or those who had worked at the security centers as guards, photographers, note-takers or interrogators (see **Table 2**).

Kraing Ta Chan Security Center

Evidence on Kraing Ta Chan Security Center was mostly heard in tandem with evidence about the Tram Kak Cooperatives mentioned above, and thus it was the first security center to be addressed in Case 002/02. Kraing Ta Chan was located in DK's District 105 in Sector 13 of the Southwest Zone, in present-day Tram Kak District, Takeo Province. The OCP and LCLCP maintained during closing arguments that there were "killings on a massive scale" at Kraing Ta Chan, pointing to its link to the "model district" of Tram Kak as an indication of the close attention paid by the regime's central administration to the running of this security center. Former guard Srei Thorn described the center as both a "re-education office" and a "killing site." Aside from S-21, descriptions at trial of interrogations and torture at Kraing Ta Chan were perhaps the most extreme. Keo Chandara described witnessing several graphic scenes during his 24-day detention there, including forced nudity, sexual violence, and the use of acid and sharp implements as weapons of torture. Former prison guard Soth Saing testified that prisoners were clubbed, whipped, or suffocated with plastic bags. Meas Sokha, who was detained at Kraing Ta Chan as a 15 year old, described the daily conditions there: prisoners were shackled together in groups of five, day and night, and fed insufficient rations. He estimated that between 20 and 100 people were executed daily. Although he said he only witnessed one execution

¹⁷ The security centers not included within the scope of Case 002/02 were Sang Security Center, Koh Kyang Security Center, Prey Damrei Srot Security Center, Wat Kirirum Security Center, North Zone Security Center, Krouch Chhmar Security Center and Wat Tlork Security Center.

himself, he testified to later seeing pits full of corpses. The OCP argued that 15,000 people died at Kraing Ta Chan, although expert witness Voeun Vuthy said during his archeological research there that his team only uncovered 1,904 skulls.¹⁸ The Nuon Chea Defense, on the other hand, dismissed most of the OCP's witnesses and Civil Parties as unreliable, either due to their advanced age or their status as Civil Parties, meaning they testified without taking an oath (see **Section 3.C.** below). Both Defense Teams dismissed district records from the area as unreliable due to their broken chain of custody since the DK period. Defense Counsel also emphasized that there had been no testimony indicating that responsibility for what took place at Kraing Ta Chan extended beyond the sector level, and that thus any crimes which may have occurred could not be directly linked to the two Accused. During closing statements, the OCP argued that the use of torture at Kraing Ta Chan was very similar to that employed at S-21, over which the CPK Center had tight control, and that this, coupled with Kraing Ta Chan's existence in the "model district" of Tram Kak, indicated a central policy regarding security centers.

Au Kanseng Security Center

Au Kanseng Security Center was located in DK's Sector 102 in the Northeast Zone, in present-day Labansiek Commune, Banlung District, Ratanakiri Province. Only three witnesses testified on Au Kanseng. The first two were Phan Thol and Moeung Chandy, who were previously married to each other. The two were arrested together in June 1977 and sent to Au Kanseng, which was also referred to as a "re-education center."¹⁹ Despite having been out of contact for decades, much of their testimony was corroborative. For example, both described conditions as more arduous for men than for women, and stated that women were not shackled there. While neither claimed to have been tortured themselves, both had heard rumors about the use of torture at Au Kanseng, and had seen instruments such as cables and whips in interrogation rooms and heard screams coming from the room on other occasions. Moeung Chandy was pregnant at the time of her arrest and gave birth while detained. The other witness to testify about Au Kanseng did so under the pseudonym 2-TCW-900 due to his role in ongoing investigations. The man testified that Au Kanseng was operated by Division 801 (previously Division 14) in the Northeast Zone, under the control of Sou Saroeun. The Witness said his role at the time had been to assist with interrogations and take notes. He denied ever interrogating anyone himself. Although details differed, all three witnesses testified to the arrival and subsequent disappearance of a group of ethnic Jarai people at Au Kanseng.²⁰ While no one witnessed the group's executions, all three witnesses testified that they later noticed either the smell of decomposing bodies or previously empty pits that had been filled in nearby after the group had disappeared. In response, the Nuon Chea Defense cited telegrams referring to this group as "Vietnamese soldiers" rather than Jarai, indicating the arrests and apparent disappearances may have been for justifiable political reasons.

Phnom Kraol Security Center

Phnom Kraol Security Center was located in Koh Nhek District, Mondulkiri Province, in DK's Autonomous Sector 105. Six men testified about Phnom Kraol: five witnesses and one Civil Party, Sun Vuth, who had been detained there. Sun Vuth testified to being tortured by electrocution while detained, although the Defense later asked why this torture had not been included in his original Civil

¹⁸ VOEUN Vuthy offered several possible reasons for the lower number of remains found, including having insufficient time and resources to search the area, and that remains may have been removed or damaged in the intervening decades between DK and his research. For more information on VOEUN Vuthy's testimony, see the section on S-21 Security Center below.

¹⁹ PHAN Thol said he was told he was arrested for using "capitalist" farming techniques while working at the rubber plantation, and MOEUNG Chandy said she had been questioned over alleged links with ethnic Vietnamese people. For a summary of their testimony from March 2016, see Case 002/02 KRT Trial Monitor, Issue 45, Hearings on Evidence Week 42 (29 February - 3 March 2016), pp. 8-12.

²⁰ During closing statements, the Defense emphasized discrepancies between the testimony of these three witnesses saying it was not possible to conclude they were all describing the same group of people. See Case 002/02 KRT Trial Monitor, Issue 80, Closing Statements (13-23 June 2017), pp. 12-13.

Party application. Two other former detainees testified in this segment, explaining that men and women were detained there separately, tied up, fed only once a day and kept in exceedingly unhygienic conditions. The three men who had been detained at Phnom Kraol all described being arrested as part of purges in Sector 105 following the deaths of Ta Ham (*alias* Laing) and Kham Phoun.²¹ The Defense arguments throughout the segment on security centers emphasized that DK was in a state of emergency at the time, and that in such a context, the arrest of those suspected of leading insurrection was legitimate. Throughout the testimony on Phnom Kraol, there were some uncertainty that the witnesses were in fact all describing the same site. Indeed, some witnesses seemed confused as to whether they were in fact talking about Phnom Kraol, as it appeared there had been multiple sites close together.²² The Defense requested the Chamber dismiss any evidence that related to Sector 105 in general as outside the scope of charges concerning Phnom Kraol. During closing statements, the OCP *announced that they were no longer seeking a conviction for the crime of extermination at Phnom Kraol, as they had not been able to present sufficient supporting evidence due to the number of witnesses who had passed away between the investigation and the trial.*²³

S-21 Security Center

The most well known of the four security centers featured in Case 002/02 was the last to be covered at trial. S-21, also known as Tuol Sleng, was situated in the center of Phnom Penh and was run by Kaing Guek Eav, *alias* Duch, the sole defendant in Case 001. Duch was sentenced to life in prison for his role as the prison's chief.²⁴ In mid-2016, Duch appeared as a witness in Case 002/02, leaving Kandal Provincial Prison to testify over 12 days about his role as prison chief, and about the communication he had with his superior at the time, Nuon Chea. Although Nuon Chea has previously denied responsibility for what took place at S-21, in court Duch expressed surprise at this denial, offering specific examples of times when he had received orders from "Brother Nuon", stating, "In every task, there was involvement by Nuon Chea as well." Duch later clarified that when S-21 was initially established, it was under the control of Son Sen, but on 15 August 1977 he met Nuon Chea for the first time, and it was explained to him that Nuon Chea would be replacing Son Sen from that point onward.²⁵ Duch testified he thereafter sent his reports to Nuon Chea. According to Duch's testimony, Nuon Chea never instructed him to release any prisoner, contrary to prior statements from Nuon Chea in which he said some people were freed from S-21. He also testified that Nuon Chea had on more than one occasion given him orders to execute prisoners in order to make more room for incoming prisoners.²⁶

Overall 10 witnesses, six Civil Parties, and one expert testified in the segment on S-21. This included S-21 survivor Chum Mey, who was the only Civil Party to testify outside of the victim impact hearings. While the other three security center segments featured a balance of testimony from former workers at the centers and former detainees, the number of survivors from S-21 is so low that staff witnesses dominated the segment in this instance.²⁷ While Case 001 featured testimony from many survivors

²¹ Witness SAO Sarun, former Sector 105 Secretary denied any such purges took place, however both CHAN Tauly and NET Savath said that Ta Ham's network retained control in the sector and arrested anyone with perceived links to Kham Phoun. See Case 002/02 KRT Trial Monitor, Issue 46, Hearings on Evidence Week 43 (7-11 March 2016) and Case 002/02 KRT Trial Monitor, Issue 49, Hearings on Evidence Week 46 (28-31 March 2016).

²² According to the Closing Order, Phnom Kraol Security Center was linked to K-11; the Sector 105 Office, and K-17; the headquarters of the Sector 105 Secretary, and the relationship between these three sites caused some confusion at trial. See Case 002 Closing Order, para. 625, p. 158.

²³ The italicized portion of this sentence has been added since the original 6 November version of this report.

²⁴ Duch was first sentenced to 35 years in prison with a five year reduction in recognition of the eight years he spent in pre-trial detention, however this was extended to a life sentence on appeal. See Trial Chamber, 'Judgment' (26 July 2010), E188; and, Supreme Court Chamber, 'Appeal Judgment' (3 February 2012), F28.

²⁵ The Defense queried this date and presented evidence that Duch had continued corresponding with Son Sen after 15 August 1977. In response Duch stated that he had maintained some contact with Son Sen however reaffirmed that Nuon Chea was in charge.

²⁶ These claims were made in the first week of Duch's testimony as a witness in Case 002/02, see KRT Trial Monitor Case 002/02, Issue 56, Hearings on Evidence Week 53 (6-9 June 2016).

²⁷ Five more Civil Parties testified in the dedicated victim impact hearings held on 11 and 15 August 2016. No other security centres were covered in victim impact hearings.

and their relatives, the Case 002/02 S-21 segment featured more testimony from guards, interrogators, photographers, and administrative staff. During closing statements, the OCP repeatedly referred to S-21 as “the most important crime site” in Case 002/02, arguing that “what took place was the very definition of arbitrary and extrajudicial imprisonment and execution.”²⁸

The total number of people killed at S-21 and its related execution site Choeung Ek has been the subject of much debate inside and outside the courtroom. At trial, the OCP repeatedly referred to a body of evidence, which has grown since Case 001, that now indicates that more than 18,000 people were detained at S-21 during DK, and more than 11,000 were executed.²⁹ Archaeologist Voeun Vuthy was called to testify toward the end of the trial as an expert witness due to his work on remains found at Choeung Ek.³⁰ Voeun Vuthy spoke in depth about the study he conducted on remains uncovered at Choeung Ek between 2013 to 2015. The Expert’s testimony highlighted the challenges in reaching a conclusive estimate of the total number of individuals killed at any one site, due to the uncertain quality of previous exhumations, deterioration of remains over time, and repurposing of some remains in museum displays. Further complications arose when studying Choeung Ek because, prior to the DK regime, the site was the location of a Chinese cemetery. Voeun Vuthy explained that it was relatively simple to differentiate between those who had been buried as part of traditional Chinese practice and those who had been executed there during DK, not least because the latter group was not buried in coffins so the rate of deterioration of remains was very different. He also noted that marks of trauma or injury were almost ubiquitous on remains dating from the DK period, stating, “We could only find one skull that was not the result of torture or beating with tools.”³¹ Voeun Vuthy said his team had uncovered exactly 6,426 skulls at Choeung Ek, the majority of which were from men aged between 20 and 34 when they died.³² The Closing Order states that S-21 prisoners were initially executed and buried on or near the S-21 compound, however “on an unknown date between 1976 and mid-1977, Duch decided that prisoners would henceforth be executed at Choeung Ek.”³³ This was based on Duch’s Case 001 testimony, however, while testifying in Case 002/02, Duch said the decision to turn Choeung Ek into an execution site for S-21 was made before he became the prison chief in 1976.

During the testimony of Prak Khan, a former guard and interrogator at S-21, issues arose related to the Khmer translation of the English term “torture”. Nuon Chea’s Defense noted that the Khmer language term commonly used by the ECCC’s translators, *tearuntakam*, can refer to a spectrum of acts ranging from disciplining a child to degrading treatment to acts legally constituting torture.³⁴ This general interpretation inserted uncertainty into the weeks of previous testimony from individuals referring to the conditions of their interrogations. The President of the Trial Chamber, Nil Nonn, said he was aware of this issue and advised Parties to avoid using the term in their questions. Careful review of the Khmer-language testimony of those testifying on security centers may assist the Bench in reaching a conclusion over which acts described constitute the strict legal definition of torture as defined in the United Nations Convention Against Torture (**CAT**), however it is likely this will remain a source of contention for Defense Teams, particularly in light of the Trial Chamber’s decision on the inadmissibility of evidence deemed to have been obtained under torture (see **Section 3.D**).

²⁸ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (14 June 2017) E1/521.1, p. 109.

²⁹ Reference to Annex F.1: Revised OCIJ Prisoner List, OCP Closing Brief, (2 May 2017) E/457/6/1, p. 412.

³⁰ VOEUN Vuthy currently works at the Cambodian Ministry of Fine Arts as Director of Archeology, Pre-History and Cambodian History, and has conducted studies of remains found at Choeung Ek, Wat Prasat Padei, Kok Prech and Kraing Ta Chan.

³¹ While noting that many of the bones had markings indicating torture or violent death, the Expert did note that it was not possible for him to establish forensically how long before death such injuries had been sustained, and therefore could not conclusively establish cause of death. Interestingly, VOEUN Vuthy said 1,686 bullet wounds had been found at Choeung Ek, despite both HIM Huy and TOY Teng previously testifying that victims were not shot there.

³² VOEUN Vuthy noted that a Vietnamese team of medics had recorded finding 8,985 crania in a 1983 exhumation.

³³ ‘Case 002 Closing Order’, p. 109, para. 418.

³⁴ For a summary of this discussion see Case 002/02 KRT Trial Monitor, Issue 52, Hearings on Evidence Week 49 (25-28 April 2016), p. 9.

Table 2: Testimony related to security centers

	Detainee/relative of detainee	Staff/cadre/guard
Au Kanseng	Mr PHAN Thol [W] Ms. MOEUNG Chandy [W]	2-TCW-900 [W]
Phnom Kraol	Mr. CHAN Tauy [W] Mr. NET Savath [W] Mr. SUN Vuth [CP] Mr. BUN Loeung Chauy [W]	Mr. SAO Sarun [W] Mr. PHAN Van [W]
S-21	Mr. CHUM Mey [CP] Ms. KAUN Sunthara [VIH CP] Mr. CHAO Kim [VIH CP] Mr. CHE Heab [VIH CP] Ms. PHOUNG Yat [VIH CP] Ms. ROS Chuor Siy [VIH CP]	Mr. Kaing Guek Eav [W] Mr. SUOS Thy [W] Mr. HIM Huy [W] Mr. NHEM En [W] Mr. TOY Teng [W] Mr. LACH Mean [W] Mr. PRAK Khan [W] Mr. MAK Thin [W]
Kraing Ta Chan	Mr. KEO Chandara [W] Mr. SOY Sen [CP] Ms. OUNG Saroeun [CP] Ms. VORNG Sarun [W] Mr. MEAS Sokha [W]	Mr. SREI Thorn [W] Mr. VAN Soeun [W] Mr. SOTH Saing [CP]

Key: [W] = Witness of Fact who testified in court; [CP] = Civil Party of Fact who testified in court; [VIH CP] = Civil Party of Suffering who testified at special hearings on victim impact.³⁵

Internal purges

At the outset of the Democratic Kampuchea regime, Cambodia was divided into six zones, which were expanded to seven in 1977 when the North Zone was divided into a separate North and Central Zone.³⁶ A key element of the Nuon Chea Defense’s arguments rested on claims that factionalism was rife within the CPK and that the Center’s forces based in Phnom Penh, which included Nuon Chea, had limited control over or knowledge of what took place in outer zones. Thus Nuon Chea’s team sought to include charges of internal purges within the scope of Case 002/02 on the grounds that they were the “most important” to back up this argument.³⁷ Although purges, defined at the ECCC as “to politically purify by means of a range of sanctions, from being demoted or reeducated, to being smashed” are alleged to have taken place in different parts of the country, the Trial Chamber was only seized of purges in two locations: the North Zone (1976-1977) comprising present-day Siem Reap, Oddar Meanchey, and Preah Vihear provinces, and the East Zone (1976-1978), comprising present-day Prey Veng, Svay Rieng and Kampong Cham provinces.³⁸ Many *who testified on internal purges did under a pseudonym* due to their involvement in ongoing investigations (see **Section 3.B**).³⁹

Such restrictions on the scope of the charges related to internal purges were questioned by the Khieu Samphan Defense at trial. International Counsel for Khieu Samphan, Anta Guissé, requested clarification that charges related to internal purges were in fact limited to the two sites mentioned above after Witness 2-TCW-1005 was called to testify about allegations of purges in Kratie

³⁵ This chart does not include Expert Witness Mr. VOEUN Vuthy who was called to testify on his expertise as an archaeologist, not his contemporaneous experience of security centers in DK.

³⁶ In addition to the zones, “which reported directly to the Centre”, DK also had five autonomous sectors (two of which were merged to form the new North Zone in 1977) as well as Phnom Penh, which was independent of any zone. For more detail, see ‘Case 002 Closing Order’, p. 23, para. 65.

³⁷ Trial Chamber, ‘Decision on Additional Severance of Case 002 and Scope of Case 002/02’ (4 April 2014), E301/9/1, p. 16. LCLCP also sought the inclusion of the charges of purges.

³⁸ ‘Case 002 Closing Order’, p. 52, para. 192.

³⁹ The italicized portion of this sentence has been added since the original 6 November version of this report.

Autonomous Region. Both the Nuon Chea Defense and the OCP argued that since the victims of purges all over the country were often sent to S-21, their testimony was relevant, even if it did not explicitly relate to the two purge sites in question. A good deal of time was also spent at trial on alleged purges in the Northwest Zone and the arrest of Northwest Zone Secretary Ruos Nhim, despite this not featuring within the scope of Case 002/02. Ultimately, the Trial Chamber is responsible for ensuring that the evidence relied upon in its Judgment is limited to the factual allegations within the Closing Order and its decisions on scope and severance, in accordance with the Internal Rules.⁴⁰

East Zone

A number of former cadres from the East Zone testified on purges taking place there, for example Civil Party Chhun Samorn, who recalled soldiers from the Central and Southwest Zones arriving in the East Zone in 1977, and intense fighting breaking out in 1978. Chhun Samorn described being accused of betraying the CPK and escaping execution by swimming to Vietnam.⁴¹ Meas Soeun, son of the former deputy chief of the East Zone, testified that the East Zone purges began on 25 May 1978, following an attempted *coup d'état* under the direction of East Zone Secretary Sao Phim. Following this date, those working in the East Zone were accused of collaborating with the Vietnamese, and cadres from the Center arrived and sent East Zone cadres, including Meas Soeun's father away to what were referred to as "study sessions" and he never saw his father or other leaders again.⁴² A cousin of Sao Phim, Norng Nim, and Sao Phim's former bodyguard, Sin Oeng, both testified about the East Zone Secretary's final departure from the Zone. After a series of arrests had taken place on or after 25 May 1978, Sao Phim was summoned to the Center and went with ten bodyguards in order to "find out the truth."⁴³ Sin Oeng testified that they were ambushed en route, and most were arrested. He said that he later heard that Sao Phim had either been killed or committed suicide.⁴⁴ The OCP argued that Sao Phim's willingness to go to Phnom Penh demonstrated his innocence and undermined the Defense argument that he had been attempting to stage a coup.

North Zone

The primary target of purges in the North Zone appeared to be soldiers from Division 310 of the Revolutionary Army of Kampuchea (**RAK**). In 1977, Southwest Zone forces entered the North Zone and began arresting cadres including Division 310 Secretary Ta Oeun, who was accused of planning a coup.⁴⁵ Witnesses Keo Leou and Nuon Trech recalled meetings following Oeun's arrest during which audio recordings were played of "confessions" of recently disappeared Division 310 leaders. Several former North Zone cadres testified to being sent to Kampong Chhnang Airfield Worksite for "tempering" after their arrests.⁴⁶ Some testified that wives and children of arrested cadres were also arrested themselves. The Nuon Chea Defense argued that the arrests of North Zone cadres were appropriate as they had been proven to be planning to overthrow the CPK Center, calling the actions "logical" and as an exercise of a "spirit of caution."⁴⁷

⁴⁰ Internal Rule 98(2) states "The judgment shall be limited to the facts set out in the indictment. The Chamber may, however, change the legal characterisation of the crime as set out in the Indictment, as long as no new constitutive elements are introduced." Extraordinary Chambers in the Courts of Cambodia, 'Internal Rules (rev. 9) (16 January 2015), p. 71.

⁴¹ For a summary of CHHUN Samorn's testimony on 28 June 2016, see Case 002/02 KRT Trial Monitor Issue 59, Hearings on Evidence Week 56 (27-30 June 2016), pp. 2-5.

⁴² For a summary of MEAS Soeun's testimony on 29 and 30 June 2016, see Case 002/02 KRT Trial Monitor Issue 59, Hearings on Evidence Week 56 (27-30 June 2016), pp. 5-7.

⁴³ For a summary of NORNG Nim's testimony on 12 December 2016, see Case 002/02 KRT Trial Monitor Issue 77, Hearings on Evidence Week 74 (12-15 December 2016), pp. 2-3.

⁴⁴ For a summary of SIN Oeng's testimony, see Case 002/02 KRT Trial Monitor Issue 76, Hearings on Evidence Week 73 (5-9 December 2016), pp. 1-3.

⁴⁵ Documents cited by the Nuon Chea Defense in court indicate Oeun entered S-21 on 17 or 18 February 1977. Case 002/02 KRT Trial Monitor Issue 68, Hearings on Evidence Week 65 (19-22 September 2016), pp. 5. The Nuon Chea team tried repeatedly to read elements of the 'confession' of Koy Thoun in court to support their case but were usually prevented from doing so as the document was presumed to have been the result of torture.

⁴⁶ For example, NUON Trech, HIM Han and KEO Leou.

⁴⁷ These statements were made during closing statements on 16 June 2017. See Trial Chamber, 'Transcript of Trial Proceedings (Public)' (16 June 2017), E1/523.1, pp. 55-56.

C. Treatment of Targeted Groups⁴⁸

The Trial Chamber is seized of charges that the Accused committed genocide against both the ethnic Vietnamese and Cham Muslim minorities. The charges in Case 002/02 related to the targeting of the ethnic Cham and Vietnamese minority groups are the first to include genocide at the ECCC. Although histories of the Khmer Rouge period in Cambodia and around the world consistently refer to the “Cambodian Genocide,” this term is not necessarily legally accurate as the technical elements of the crime have never been established in a court of law.⁴⁹ Only the People’s Revolutionary Tribunal, hastily set up in 1979 by the Vietnamese-backed People’s Republic of Kampuchea (PRK), ever made a legal finding of genocide by the Accused Pol Pot and Ieng Sary, but the proceedings of that court, often referred to as a “show trial”, are not considered to have been legitimate due to its issuance of a summary judgment of 30 pages⁵⁰ after having tried the two Accused in absentia.⁵¹ If the ECCC enters a conviction for genocide in Case 002/02, it will therefore be a noteworthy historic development. Recognizing this, Defense Counsel Victor Koppe asked Judges at closing arguments to retain impartiality, noting it may be “tempting to create a legacy as the Chamber who established the Cambodian genocide.”

Another highly charged element within the contemporary Cambodian context is the premise that the DK regime could have committed genocidal acts against ethnic minorities, including the marginalized ethnic Vietnamese minority,⁵² and not against a Khmer majority population which also suffered so seriously.⁵³ Although public debate often fails to distinguish semantic differences between different mass atrocity crimes, the legal task facing the Trial Chamber in Case 002/02 is to issue its decision on whether these two specific minority groups were targeted because of an “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group, as such” as the 1948 Genocide Convention defines genocide.⁵⁴ The OCP repeatedly reminded the Trial Chamber throughout both the trial and closing arguments that genocide has no minimum threshold for the number of people killed, unlike the crime against humanity of extermination, which requires killing on a mass scale.⁵⁵ In addition to charges of genocide for the targeting of both ethnic groups, the Accused are also charged with crimes against humanity of murder, extermination, enslavement, imprisonment, deportation, persecution on political, religious, and racial grounds, torture, racial persecution, and other inhumane acts through attacks against human dignity, rape, forced marriage, and enforced disappearances.

⁴⁸ The scope of Case 002/02 as set out in the Trial Chamber’s second severance decision includes crimes allegedly committed against four targeted groups: Buddhists, former Khmer Republic officials, the ethnic Cham Muslim minority, and ethnic Vietnamese Cambodians. As explained above, the targeting of Buddhists was constrained to only the trial segment on Tram Kak District, although it was discussed throughout the trial. The targeting of former Khmer Republic officials was restricted to specific crime sites as well but is discussed in this section, below.

⁴⁹ For more on the variety of applications of genocide in both a social and a legal form, see this insightful commentary from Dr. Timothy Williams for the Heinrich Böll Foundation in Cambodia in 2015: <<https://kh.boell.org/en/2015/01/13/cambodian-auto-genocide-musings-concept-neednt-exist>>. For more from Dr. Williams on similar topics, see Timothy Williams and Rhiannon Neilsen, “‘They will rot the society, rot the party, and rot the army’: Toxicification as an ideology and motivation for perpetrating violence in the Khmer Rouge genocide?”, *Terrorism and Political Violence* (October 2016).

⁵⁰ People’s Revolutionary Tribunal, *Judgment* (August 1979), accessible at Asser Institute (Netherlands): <<http://www.asser.nl/upload/documents/20120418T110703-Pol%20Pot%20-%2019-08-1979%20-%20Cambodia.pdf>>.

⁵¹ For more on the People’s Revolutionary Tribunal in relation to the ECCC, see Tom Fawthrop and Helen Jarvis, *Getting Away with Genocide?: Elusive Justice and the Khmer Rouge Tribunal* (Sydney: UNSW Press, 2005).

⁵² For more detail on the treatment of the ethnic Vietnamese minority in contemporary Cambodia, see Timothy Frewer, “Cambodia’s Anti-Vietnam Obsession”, *The Diplomat* (6 September 2016), accessible at <<https://thediplomat.com/2016/09/cambodias-anti-vietnam-obsession/>>, and see Lyma Nguyen and Christoph Sperfeldt, “Victim Participation and Minorities in Internationalised Criminal Trials: Ethnic Vietnamese Civil Parties at the Extraordinary Chambers in the Courts of Cambodia”, *Macquarie Law Journal*, vol. 14: 2014, pp. 97-126.

⁵³ The polemic discussion of the experience of the ethnic Vietnamese minority was even apparent between the international and national lead co-lawyers for the Civil Parties, with the latter refusing to join his international counterpart in support of one of the reparations projects proposed to the Trial Chamber at the close of Case 002/02. The reparation project, which was the only one not to receive support from both LCLCP, dealt with the restoration of civil identity cards of ethnic minority Civil Parties and their (re-)integration into Cambodian society. See Civil Party Lead Co-Lawyers, ‘Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02’ (30 May 2017) E457/6/2/1.

⁵⁴ United Nations General Assembly, ‘Convention on the Prevention and Punishment of the Crime of Genocide’ (Adopted 9 December 1948), No. 1021, Art. 2.

⁵⁵ Case 002/02 KRT Trial Monitor Issue 80, Closing Statements (13-23 June 2017), p. 15.

Over the course of the trial, the specific legal definition of genocide repeatedly came into conflict with the broader cultural and sociological understandings of the term. The conflict grew particularly contentious during the three days of expert testimony by genocide scholar and anthropologist Alexander Laban Hinton in March 2016.⁵⁶ Dr. Hinton explained that the CPK developed an explicit policy to “other” different segments of society to more easily control the disparate groups. He cited DK propaganda in publications like the magazine *Revolutionary Flag*, which were used for such “manufactured difference,” first in a class struggle against city people leading up to and immediately following the 1975 fall of Phnom Penh, but later moving against ethnic minority groups like the Vietnamese and the Cham Muslims in 1977 and 1978. The Defense teams regularly interrupted the Expert’s testimony to take issue with his use of the term “genocide” outside of its strict legal definition. Nuon Chea’s counsel Victor Koppe repeatedly criticized Dr. Hinton for being “just an anthropologist” without the legal or political expertise needed to make “sweeping generalized statements” about CPK policy, structure, and ideology. The Defense also criticized the Expert for his inability to publicly reveal his sources due to anthropological research ethics. At the end of Dr. Hinton’s testimony, Nuon Chea entered the courtroom on a rare occasion to respond and put two questions to the Expert (see **Section 3.F.** below).⁵⁷ The Expert responded firmly in defense of his views.

Table 3: Testimony related to the treatment of targeted groups

	Witness	Civil Party	Expert
Cham	Mr. ITH Seng Mr. SENG Srun Mr. SENG Khuy Mr. SAMRIT Muy Ms. MAT Sor Mr. VAN Mat Mr. BAN Siek Mr. TAY Kumhuon Mr. SOS Rumly Mr. MOUY Vanny Mr. SOY Doeun Ms. YOU Vann Ms. PRAK Yut Mr. SOS Kamry	Mr. SOS Ponyamin Mr. HIM Man Ms. NO Satas Mr. MAN Sles [VIH CP] Mr. MEU Poeu [VIH CP]	Mr. YSA Osman
Vietnamese	Mr. ONG Sam Ian Ms. SIN Chhem Mr. EY Von Mr. SEAN Sung Mr. PRUM Sarun Ms. SAO Sak Mr. THENG Phal Mr. OUM Son 2-TCW-1000 [M] Mr. PRUM Sarat Ms. EN Yoeun Mr. SAN Lorn Mr. MEAS Voeun	Mr. LACH Kry Mr. PRAK Doeun Mr. CHOEUNG Yaing Chaet Ms. DOUNG Oeun Ms. SIENG Chanthly [VIH CP] Ms. KHAUNG Moy [VIH CP] Mr. UCH Sunlay [VIH CP]	Dr. Alexander Laban HINTON
Fmr. Khmer Republic Officials	Mr. SAO Van		

Key: [M] = Male; [F] = Female; [VIH CP] = Civil Party of Suffering who testified at special hearings on victim impact.

⁵⁶ A professor of anthropology at Rutgers University in the United States, Alex Hinton wrote the book *Why did they Kill? Cambodia in the Shadow of Genocide*, among others. He serves as UNESCO Chair of Genocide Prevention and is former president of the International Association of Genocide Scholars. Many of the findings in his work emanate from research he undertook in the 1990s in Kampong Siem District, Kampong Cham Province (Region 41, Central Zone, under the DK system).
⁵⁷ More details can be found in Case 002/02 KRT Trial Monitor Issue 47, Hearings on Evidence Week 44, (14-17 March 2016).

Targeting of the Muslim Cham Minority

The Accused are charged with the genocide of the Cham Muslim minority in Cambodia, with the Closing Order primary referring to events which unfolded at crime sites in the Chams' ancestral center in Kampong Cham Province, within DK's Central and East Zones. The Trial Chamber heard from 13 fact witnesses, five Civil Parties (two of whom testified in victim impact hearings), and experts Ysa Osman, within the dedicated trial segment. As the Cham Muslims constituted both an ethnic and a religious group, the Accused were charged with genocide for their intent to destroy this group as such, but also with the crimes against humanity of both racial and religious persecution. The OCP repeated that a finding of genocide did not depend on the number of individuals killed, but rather on the CPK's intent to destroy elements, particularly religious practices, which made the Chams a distinct group. The OCP therefore relied on testimony heard throughout trial on the Khmer Rouge's denial of religious rights to Cham people, the forced consumption of pork, the forced cutting of women's hair, and the burning of holy texts. The OCP referred to documentary evidence such as scholar Ben Kiernan's *The Pol Pot Regime* and to expert testimony from Dr. Hinton concerning the evolution in the CPK's views of the Cham Muslims. However, Dr. Hinton himself explained that the intent to destroy the Cham appeared within CPK policy only after the rebellions against the DK regime in its early months in 1975 at Svay Khleang and Koh Phal. Nonetheless, both the OCP and the LCLCP presented evidence to develop a clear narrative of the CPK's genocidal intent: the 1975 rebellions of Cham peasants and fishermen against the new regime's religious restrictions and forced assimilation led to violent repression, murder, and forced evacuation to empty areas with previously high concentrations of Chams. Witnesses and Civil Parties put names and faces to the sites of these deportations and killings, with particular emphasis placed on killings at Wat Au Trakuon Pagoda in Kang Meas District, Central Zone, and at Trea Village in Krouch Chhmar District, East Zone. Expert Ysa Osman, himself a Cham Muslim Cambodian who had previously worked at DC-Cam and the OCIJ before writing multiple books on the topic, described his research findings in greater detail to back up this argument for genocide.

Khieu Samphan's Defense Team did not reject that the Muslim Cham population suffered during the DK regime, but they did not accept the criminal responsibility of their client for that suffering. They also noted that the OCP overly relied on witness statements and secondary source interviews like those of Ysa Osman and Ben Kiernan rather than providing CPK documents to establish proof of a genocidal policy of the DK Center. The Defense noted that many low-level perpetrators who testified never described orders from anyone above the Sector level to carry out acts against the Cham. Nuon Chea's Defense took this further, arguing that the OCP had failed to provide sufficient evidence linking the experiences of the Cham Muslim populations to their identity. Nuon Chea's team referred to CPK policies on equality, arguing that suffering in communal spaces like cooperatives and dining halls, or even in security centers, was shared across ethnic or religious lines and had not targeted the Cham specifically. Nuon Chea's Defense also raised security concerns over an insurgent Cham population as a hypothetical reason for repression, rather than their group identity. However, on rebuttal, the International Co-Prosecutor pointed out that motives such as national security could not change that the intention in order to achieve such a motive was to target the group, as such, through what he argued were genocidal acts.⁵⁸ As his example, the Co-Prosecutor recalled testimony about executions of children of Cham Muslim descent, whom he argued could not possibly have been murdered on security grounds.

⁵⁸ The International Co-Prosecutor referred here to the ICTY's *Stakić* Appeal Judgment, which states: "In genocide cases, the reason why the accused sought to destroy the victim group has no bearing on guilt." See Judgment, *Prosecutor v. Stakić* (IT-97-24-A) ICTY Appeals Chamber, 22 March 2006, p. 18, para. 45.

Targeting of the Ethnic Vietnamese Cambodian Minority

Nuon Chea and Khieu Samphan were also charged with genocide of ethnic Vietnamese people in Prey Veng and Svay Rieng Provinces in the East Zone of DK. In total, the Trial Chamber heard from 13 fact witnesses, seven Civil Parties (three of whom testified in victim impact hearings), and expert Dr. Hinton in this segment of the trial. Only one of the seven Civil Parties to testify identified as ethnically Vietnamese himself: Choeung Yaing Chaet, who told of being the sole survivor of the mass execution of his entire family.⁵⁹ Civil Parties Doung Oeun and Lach Kry, both from the same village of Pochen Dam in Svay Antor Commune, Prey Veng District, Prey Veng Province, testified that no Vietnamese person was left in their village by the end of the DK era. Many testified that Vietnamese families were targeted based on matrilineal descent - the killing of the children of women of Vietnamese origin - in order to destroy the bloodline. The OCP argued that there was an explicit CPK policy to remove all Vietnamese inhabitants from Cambodia, initially by forcing them to go back to Vietnam. While agreeing that deportation does not itself amount to one of the five acts listed in Article 2 of the Genocide Convention, International Co-Prosecutor Koumjian argued this demonstrated an intent to destroy the group in whole or in part.

The Defense for Nuon Chea pointed out at trial that it was not possible to measure either the number of Vietnamese people living in Cambodia before, during or immediately after DK, due to a lack of demographic information at the time.⁶⁰ Counsel for Nuon Chea further argued that any alleged persecution of or discrimination against groups contradicted the CPK's policy of equality. He also argued that if the CPK wanted to increase the population and encourage people to have more children (as was argued in other segments such as the segment on the regulation of marriage, see **Section 2.D** below), it would not make sense for the regime to kill large parts of the population. During closing statements, Khieu Samphan took the floor (a rare event throughout the years of trial) to read a prepared statement labeling genocide charges a "shameful and tragic irony" considering his view that Vietnam had "reap[ed] the fruits of its expansionist ambition" by invading DK in early January 1979.⁶¹ During his testimony, the Expert Witness explained that DK viewed Cambodian-born Vietnamese people as no different from the Vietnamese Army, which they began to fight in border skirmishes in 1977. The skirmishes allegedly aggravated long-standing policies of discrimination under Sihanouk and Lon Nol, which in turn gave rise to a more extreme form of discrimination in the form of genocide. The Defense position largely argued that those "Vietnamese enemies" identified in CPK documents, such as the files from S-21, were references to Vietnamese military agents, and that the CPK had never condoned targeting civilians. In response to this argument, Co-Prosecutor Koumjian described it as "typical" of a genocide that authorities would later seek to legitimize their own actions by labeling their targets as existential threats.

Targeting of Former Khmer Republic Soldiers and Officials

In addition to the charges of genocide and other crimes committed against the two minority ethnic groups discussed above, the Trial Chamber was also seized of factual allegations and criminal charges related to the crime against humanity of political persecution of former soldiers and officials of the Khmer Republic, also known as the Lon Nol regime. In its second severance, the Trial Chamber limited this topic to four specific crime sites: Tram Kak cooperatives, 1st January Dam, S-21 Security Center, and Kraing Ta Chan Security Center. During closing statements, Khieu Samphan's international counsel, Anta Guissé, argued that the OCP and the LCLCP inappropriately discussed treatment of former Lon Nol soldiers and officials in a nationwide manner outside of this narrow scope. Both Defense teams drew attention to the SCC's determinations in the appeal judgment in

⁵⁹ Choeung Yaing Chaet testified in December 2015. A summary of his testimony is available in Case 002/02 KRT Trial Monitor Issue 36, Hearings on Evidence Week 33 (7-11 December 2015). For more detail on the participation of Vietnamese Civil Parties at the ECCC, see Nguyen and Sperfeldt, 2014.

⁶⁰ The closest censuses before and after the DK period were taken in 1962 and 1998.

⁶¹ Trial Chamber, 'Transcript of Trial Proceedings (Public)' (23 June 2017), E1/528.1, p. 37.

Case 002/01 to throw out the conviction of the Accused for the murders and extermination of former Lon Nol soldiers at Tuol Po Chrey in Pursat Province in 1975. In that Judgment, the SCC found that although such killings appeared to have occurred, they could not be tied to the common purpose of the joint criminal enterprise, which allegedly included the Co-Accused. The Defense argued that this finding could be applied to other crime sites covered in Case 002/02, with the Defense for Nuon Chea emphasizing, for example, the testimony of former Tram Kak district cadre Pech Chim as exculpatory following his claim that, in a meeting held soon after the April 1975 fall of Phnom Penh, CPK officials were notified that they should not target former soldiers of the Khmer Republic up to the rank of colonel.⁶² Nuon Chea's counsel Doreen Chen also criticized the OCP for relying on some of the same evidence presented in Case 002/01 to prove their case in Case 002/02. However, the OCP argued that something had changed within the common purpose by 1976, as the CPK Standing and Central Committees grew more paranoid and began targeting Lon Nol soldiers. At closing arguments, assistant international prosecutor Dale Lysak drew attention to a number of prison records and internal CPK memos indicating those connected to the former regime had been targeted, arguing that according to the OCP's own research, approximately half of the prisoners who were sent to Kraing Ta Chan prison had been connected to the former regime in some way. Given that Case 002/02 has a temporal scope covering the full length of the DK regime from 17 April 1975 to 6 January 1979, unlike the first trial's focus on April 1975 through December 1977, the Trial Chamber may be able to reuse some of its previous findings and evidence in greater detail and with more context of the reasons for and consequences of any alleged targeting.

D. Regulation of Marriage

The two Accused are charged with *the crime against humanity of other inhumane acts through acts of forced marriage, and through rapes within those marriages*.⁶³ 16 individuals were called to testify specifically on the regulation of marriage, although it was something that touched many people's lives during DK and was often raised in other segments. The segment was heavily skewed toward Civil Party testimony, with only two fact witnesses and two expert witnesses among the total 16 individuals who appeared. It was also the only segment to feature testimony from more women than men (see **Figure 2**).⁶⁴ Due to the higher number of Civil Parties testifying in court, dedicated victim impact hearings were shortened to one day rather than the usual two. Looking toward a potential appeal in this case, this reliance on Civil Parties could be an issue raised by the Defense teams, who have previously argued that Civil Party evidence is of an inherently lower probative value than that of fact witnesses, as Civil Parties are not required to take an oath.⁶⁵

Many of those who testified in this segment said they had received little to no prior notice about their DK-era weddings, and most expressed sadness that their parents had not been allowed to attend or even know about the wedding, expressing views such as, "My parents worked hard to bring me up. And when [it was] the time for me to get married, how come that they could not know about this?"⁶⁶ Most had taken part in group wedding ceremonies of between two and 50 couples, and had not known their partners before the ceremonies. Numerous individuals testified to being or feeling forced

⁶² For more on Pech Chim's testimony, see Case 002/02 KRT Trial Monitor Issue 16, Hearings on Evidence 13 (21-24 April 2015).

⁶³ Case 002 Closing Order, pp. 354-355, paras. 1441-1447. The italicized portion of this sentence, and this footnote, have been corrected since the original 6 November publication of this report.

⁶⁴ One fact witness in this segment, 2-TCW-1002, testified on 5 September 2016 in closed session and her redacted testimony was not made publicly available in time for it to be included in any of the weekly KRT Monitor reports.

⁶⁵ In its appeal judgment the Supreme Court Chamber dismissed this argument on the grounds that all Parties had been aware throughout proceedings in Cases 001 and 002/01 that Civil Party evidence could be used to establish guilt and therefore the Trial Chamber did not err in its weighing of that evidence. The Supreme Court Chamber did not, however, that more explanation should have been given by the Trial Chamber in its initial judgment on how it assessed the probative value of evidence on a case by case basis. Supreme Court Chamber, 'Case 002/01 Appeal Judgment' (23 November 2016) F36, paras. 311 to 324.

⁶⁶ SOY Naroeun's testimony in victim impact hearings on 25 October 2016. Trial Chamber, 'Transcript of Trial Proceedings (Public)' (25 October 2016), E1/489.1, p. 37.

to consummate the marriage on their wedding nights. Many reported that this consummation had been monitored by cadres or militiamen, however no one testified in court to actually having seen anyone monitoring them. Most also reported being separated from their new spouses shortly after the wedding ceremony. Witness 2-TCW-1037 testified that those who divorced would be taken away and killed. Some women reported being raped by their new husbands, and one woman told a harrowing account of being raped by a military commander as a “warning” to her after she had earlier refused consummate her new marriage. Many women also spoke of the pregnancies that resulted from these marriages during DK, or domestic violence experienced in the years since the DK regime. Sou Sotheavy, a transgender woman, testified of the pain she suffered at having been forced to marry a woman during DK, and said she had heard of other transgender Cambodians committing suicide during the regime rather than be forced to marry someone not of their own choosing.

While most individuals testified about their own personal experience of having been married during DK, one Civil Party provided testimony on the process of arranging such marriages. Seng Soeun was in charge of the Sa’ang District Office in present-day Kandal Province and said he arranged marriages for those working in mobile units; he described rules that grooms needed to be over the age of 25 and brides three to five years younger than their partners. He also said that “new” and “base” people could not marry each other at the time. Seng Soeun testified that couples could refuse to get married, although he also noted that he did not know “if they faced other issues later on.”⁶⁷ Two experts testified in the regulation of marriage segment: Kasumi Nakagawa and Peg LeVine. Both experts testified that there was insufficient evidence to demonstrate the existence of any nationwide policy regulating marriage. Kasumi Nakagawa emphasized during her testimony that, although the charge had become widely treated as a crime against women specifically, regulating marriages and, thus by extension, the births of the children of these marriages, was a crime against both the husband and the wife involved.⁶⁸ Trauma psychologist Peg LeVine rejected the use of the term “forced” in reference to the DK-era marriages, and explained her preference to use the term “conscripted”. Dr. LeVine testified that of the 192 individuals she interviewed as part of post-doctoral research into marriages during DK, none of them described their marriage as “forced”, although many did note their coercive nature.⁶⁹ Civil Party Pen Sochan, who appeared immediately after Peg LeVine, testified about her experience being violently raped by the man she was forced to marry when she was 16 or 17 years old.⁷⁰

The OCP argued that the CPK introduced a policy to force couples to marry and consummate those marriages in order to increase the population for economic reasons, citing an edition of *Revolutionary Flag* declaring the CPK aimed to increase the population to 15 to 20 million within 10 to 15 years.⁷¹ Comments made by both Nuon Chea and Khieu Samphan regarding marriage were used by the OCP as evidence. The OCP cited a statement allegedly made to filmmaker Thet Sambath, in which the Accused Nuon Chea apparently said: “The man always wants to choose a beautiful girl, so that’s why we forced them to get married, and Angkar chose the wife.”⁷² The OCP also points to a speech made by Khieu Samphan to staff of DK’s Ministry of Commerce at Wat Ounalom in Phnom Penh, saying

⁶⁷ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (29 August 2016), E1/465.1, p. 24.

⁶⁸ Kasumi NAKAGAWA elaborated on that argument in a subsequent op-ed in the local media: Kasumi Nakagawa, “An Inhuman Act Against Men and Women”, *Phnom Penh Post* (19 September 2016), accessible at: <<https://www.phnompenhpost.com/opinion/inhuman-act-against-men-and-women>>.

⁶⁹ This research informed her book: Peg LeVine, *Love and Dread in Cambodia: Weddings, Births and Ritual Harm under the Khmer Rouge* (NUS Press: Singapore, 2010).

⁷⁰ Civil Party PEN Sochan featured in the documentary *Red Wedding* produced by Lida Chan and Guillaume Suon. During questioning, Counsel for Nuon Chea objected to only having been informed of this two days prior to her testimony, however the Lead Co-Lawyer for Civil Parties pointed out the film was produced in 2012 and admitted as evidence in 2015 so Counsel had had plenty of time to access it. Her testimony, as well as that of Peg LEVINE, is summarized in Case 002/02 KRT Trial Monitor, Issue 69, Hearings on Evidence Week 66 (10-13 October 2016).

⁷¹ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (14 June 2017), E1/521.1, p. 66.

⁷² This quote was read out most recently by the OCP in closing statements on 14 June 2017: Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (14 June 2017), E1/521.1, p. 66.

that those old enough should get married to “produce children and defend the country.”⁷³ The OCP emphasized that, although there were variations in style and size, evidence showed that marriages were regulated across the country and with increasing frequency toward the end of the regime. The OCP has been criticized in the media for insufficient planning in this segment, as well as for their choice of experts.⁷⁴ Neither Defense Team disputed that the CPK had a policy to regulate marriage, however both disputed that this policy amounted to a crime. Nuon Chea’s Defense argued during closing statements that the CPK was within its rights to institute a marriage policy to increase the population and, perhaps more significantly, that there is no link between such a policy and their client. Khieu Samphan’s Defense instead focused on the fact that forced marriages of any kind were not considered crimes against humanity in 1975. Both Defense Teams pointed to Cambodian traditions of family-arranged marriage, not considered a crime in any country, and compared them to DK-era marriages. Nuon Chea’s Defense in particular stressed that the CPK’s “sixth revolutionary moral principle” governing relations between men and women expressly forbade rape. During his testimony, former cadre Seng Soeun noted the principle did exist, although pointed out “in terms of actual implementation, it is unclear.”⁷⁵ Expert Witness Kasumi Nakagawa also noted that codification of this principle in fact legalized rape within forced marriages, and noted that the consent given by those Parties being married was not given freely in many cases.

E. Nature of the Armed Conflict

Nuon Chea’s Defense was characterized by two main arguments: that internal factions divided the CPK and diminished the level of control the Center could exercise, and that DK was facing an existential threat through armed conflict with Vietnam. This second point was allotted a specific sub-segment at trial that was referred to as “the nature of the armed conflict”. During the initial hearing in Case 002/02, Nuon Chea’s Defense argued that this segment should be the first to be heard at trial as, in their view, it is not possible to analyze events in DK without this overarching context. The OCP, in contrast, argued there was no need for a dedicated section, as the topic would be pertinent to the other segments and should thus be discussed throughout the trial.⁷⁶ The argument that DK was under constant internal and external attack while at war with Vietnam was used at trial to justify strong national security and defense policies as well as the policies that targeted ethnic Vietnamese people. Both Defense Teams emphasized the importance of looking at the DK period *in context*, particularly in light of the subsequent Vietnamese presence in Cambodia until 1989. The OCP response to these arguments was mainly that a state of emergency or war could not justify extra-judicial killings or other violations of human rights alleged to have been committed by the two Accused as part of the alleged joint criminal enterprise.

In total, the Chamber heard from six witnesses and one expert in this segment.⁷⁷ Several witnesses, including Chuon Thi and Sao Mang, testified to being part of RAK divisions engaged in conflict with the Vietnamese at the borders in Svay Rieng and Mondulkiri, respectively. Both men testified that they never entered Vietnamese territory and only fought against the Vietnamese when those forces entered DK territory.⁷⁸ The Defense and Prosecution’s arguments differed on which side instigated most of the conflict. During key document hearings, the OCP presented contemporaneous telegrams and minutes from meetings indicating aggression from the DK side, while the Khieu Samphan Team presented a speech Leng Sary gave to the United Nations in October 1977 that expressed DK’s desire

⁷³ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (14 June 2017) E1/521.1, p. 68.

⁷⁴ Theresa de Langis, (22 September 2016) ‘Prosecution Must Take Forced Marriage, Rapes, Seriously’, *Phnom Penh Post*, <<https://www.phnompenhpost.com/opinion/prosecution-must-take-forced-marriage-rapes-seriously>>.

⁷⁵ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (29 August 2016), E1/465.1, p. 79.

⁷⁶ For a summary of this debate, see Case 002/02 KRT Trial Monitor Issue 1, Initial Hearing (30 July 2014), pp. 3-4.

⁷⁷ The Trial Chamber originally also called Nayan CHANDA as a second expert witness in this segment, however he told the Court he would not be available for questioning. Trial Chamber, ‘Decision on Witnesses, Civil Parties and Experts Proposed to be Heard during Case 002/02’ (18 July 2017), E459, p. 84.

⁷⁸ For a summary of the testimony of CHUON Thi and SAO Mang, see Case 002/02 KRT Trial Monitor Issue 71, Hearings on Evidence Week 68 (24-27 October 2016), pp. 6-9.

to resolve the dispute peacefully, as well as academic and other documents indicating the desire of Vietnam to overthrow the DK government. Counsel for Khieu Samphan also pointed to the historical enmity between Vietnam and Cambodia, arguing that DK was no more antagonistic than prior Cambodian governments had been toward their neighbor.

Stephen Morris, an Australian historian who wrote the book *Why Vietnam Invaded Cambodia*, which he began researching in 1985, was called to testify as an expert witness in this segment.⁷⁹ While the Expert interviewed both the late King Father Norodom Sihanouk and former DK Foreign Minister Ieng Sary as part of his research, he did not consult contemporaneous DK documents, basing most of his findings instead on records he accessed in Soviet archives. Under questioning, Nuon Chea's Defense asked the Expert several questions about the "imperial ambitions of Vietnam." In response, Stephen Morris did acknowledge Vietnam's nationalism at the time, however he argued that in his view DK's actions toward Vietnam had been "irrational" and "bizarrely aggressive."⁸⁰ He described DK as paranoid and hyper-Maoist, and said that their repeated attacks on Vietnam and refusal to negotiate forced Vietnam to sever diplomatic ties and retaliate with force.

A recurring challenge during the segment on the nature of the armed conflict was the geographic limitation of the scope of Case 002/02 to actions which took place within the borders of DK. Although incursions into Vietnam could be seen as proof of conflict or aggression, any crimes committed while on Vietnamese territory are outside the geographic purview of the ECCC's mandate. The Trial Chamber tended to take an expansive attitude toward such matters of scope, allowing questions where they broadly related to purges or arrests where people were eventually sent to the security centers which formed part of the case.⁸¹

F. Role of the Accused

The final segment heard in Case 002/02 was on the roles of the two Accused, however few of those called to testify in this segment ultimately had much to say on the topic. In total the Trial Chamber heard from six witnesses and four Civil Parties during this segment. Both Defense teams repeatedly questioned why certain individuals had been called for this segment as they did not appear to have particular knowledge of either Accused, leading Nuon Chea's international counsel to ask whether the segment was "some left-over category."⁸² On 15 December 2016, Parties debated whether to call additional witnesses in this segment as over half of the 10 witnesses originally scheduled to testify had not been able to appear either for health or other reasons. The OCP and LCLCP were in favor of calling more witnesses, however the Defense Teams objected on the grounds that the request was tardy and that the witnesses in the segment were being used to cover other topics beyond the role of the Accused. Ultimately the Chamber rejected the requests as untimely.⁸³ Thus in the end, very little was uncovered about the role of the Accused during this segment. Most who testified simply claimed to have seen one or both men at a distance while they spoke at rallies or public events.⁸⁴

During closing statements, both Defense Teams stressed that it was the duty of the Prosecution and not the Defense to prove criminal responsibility for the crimes alleged at trial. Neither man contested that he held a senior position within the CPK: Nuon Chea as Deputy Secretary and Khieu Samphan

⁷⁹ Stephen Morris, *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War* (Stanford University Press: California, 1999).

⁸⁰ For a full summary of Stephen MORRIS' testimony, see Case 002/02 KRT Trial Monitor Issue 70, Hearings on Evidence Week 67 (17-20 October 2016), pp. 5-8.

⁸¹ This was the case, for example, during questioning of SEM An in September 2016. See Case 002/02 KRT Trial Monitor Issue 68, Hearings on Evidence Week 65, (19-22 September 2016).

⁸² Trial Chamber, 'Transcript of Trial Proceedings (Public)' (10 November 2016), E1/498.1, p. 89.

⁸³ Trial Chamber, 'Transcript of Trial Proceedings (Public)' (15 December 2016), E1/514.1, pp. 3-25.

⁸⁴ See *supra* note 8. The case file in Case 002/02 included all the evidence and testimony included in Case 002/01, not just what was presented in this trial or in this segment on the "Role of the Accused" alone. This footnote has been added since the original 6 November publication of this report.

as Chairman of the State Presidium. However both disputed that they could be held liable for most of the crimes alleged. During his closing remarks, International Co-Prosecutor Nicholas Koumjian repeatedly referred to the two men as “a double shadow” of Pol Pot, or part of a “gang of three,” however this characterization of the CPK hierarchy was dismissed by both Defense Teams as untenable. Nuon Chea’s counsel Victor Koppe argued that it was not realistic to hold top leaders responsible for crimes committed by low-level cadres in any regime, and he particularly derided the idea of Khieu Samphan being included in any “gang of three” with Nuon Chea and Pol Pot. Anta Guissé, counsel for Khieu Samphan, similarly dismissed the term, calling it “a new opportunistic interpretation of the facts because it sounds nice in the press.” She stressed that the two Accused have different defense strategies and had substantially different roles during DK, and she castigated the OCP for often treating the two Defense teams as a united front.⁸⁵

⁸⁵ Case 002/02 KRT Trial Monitor Issue 80, Closing Statements (13-23 June 2017), p. 8.

3. Critical Analysis of Legal and Procedural Issues at Trial

The ECCC has dealt with an enormous range of legal issues over the course of its existence. These have partly arisen from the Tribunal's unique hybrid nature and the procedural tension between civil and common law traditions. The Court has also faced challenges balancing fair trial rights with efficiency, while ensuring the equality of arms between the Prosecution and the Defense. As the co-authors of this report noted previously in *Justice on Appeal*, many of the fundamental legal and procedural issues confronted in Case 002/01 were bound to recur in Case 002/02, which was a much larger and more complex second trial.⁸⁶ In anticipation of the Trial Judgment in Case 002/02, the co-authors have undertaken an analysis of the key recurring legal and procedural issues that arose during the Case 002/02 trial, as observed by the KRT Monitor team which was present for every day of court proceedings. This section will first address persistent confusion over the scope of Case 002/02 caused by the way the case had been severed into multiple trials. The co-authors then discuss the impact that ongoing investigations in Cases 003 and 004 had on evidence permitted in Case 002/02. Sub-section C details contestation over the probative value of testimony from witnesses and Civil Parties, and it also addresses some issues raised regarding the reparations scheme. The remaining sub-sections address how the Court handled evidence thought to have been obtained under torture, how they interpreted the right of the Accused to remain silent, and the impact of boycotts and delays on the progress of the case.

A. Severance and Scope Issues

As noted above, the scope of the second trial dealt with a far wider range of issues and locations than was covered in Case 002/01. When affirming the new severance order and scope the day before the 30 July 2014 initial hearing in Case 002/02, the Supreme Court Chamber found that the combination of the then-nearly completed Case 002/01 and the new scope of Case 002/02 met the standard of "reasonable representativeness" for the full indictment.⁸⁷ Nearly two and a half years later, with Case 002/02 nearing the conclusion of evidentiary hearings, the Trial Chamber issued its decision to reduce the scope of Case 002, confirming that Case 002/02 would be the last trial against DK's surviving senior leaders (there would be no Case 002/03 to cover the remaining charges from the Closing Order).⁸⁸ Despite the high stakes that the finality of Case 002/02 represented for all Parties, there was considerably less contestation and confusion over scope than there had been during the trial in Case 002/01. Parties largely refrained from requesting further additions to the scope, and generally raised straightforward objections to additional allegations or crime sites entering the case from other parts of the Case 002 Closing Order which the Trial Chamber had intentionally left out in its second severance decision.

A principal area of scope-related objections dealt with the OCP's attempt to address the treatment of the Khmer Krom ethnic minority, a subject which was in fact kept out of the Case 002 Closing Order following a decision by the OCIJ. Particularly during the segments on Tram Kak District cooperatives and the targeting of the ethnic Vietnamese, the OCP repeatedly sought to ask about the experiences of the Khmer Krom minority, which was allegedly often seen as having "Khmer bodies with Vietnamese heads." Following Defense objections and motions, the Trial Chamber clarified its position that the topic was outside the scope, although the Khmer Krom issue continued to be discussed as late as week 74 of the trial.⁸⁹ Khieu Samphan's Counsel argued that the OCP was not only trying to introduce an entirely new targeted group into the scope of the trial but was also

⁸⁶ Cohen, Mattes and McCaffrie, *Justice on Appeal*, p. 18.

⁸⁷ 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.

⁸⁸ Trial Chamber, 'Decision on Reduction of Scope of Case 002' (27 February 2017), E439/5, as referenced in Cohen, Mattes, and McCaffrie, *Justice on Appeal*, p. 18.

⁸⁹ Case 002/02 KRT Trial Monitor Issue 77, Hearings on Evidence Week 74 (12-15 December 2016), p. 9.

attempting to use evidence related to the treatment of the Khmer Krom minority to build its case for a conviction of genocide against the ethnic Vietnamese.⁹⁰ Counsel similarly criticized the OCP for reneging on its previous position that incursions into Vietnam were outside the geographical jurisdiction of the ECCC in order to bolster its case for genocide.⁹¹ Nuon Chea's Defense also attempted on many occasions to remind the Trial Chamber it had erred in its second severance order in not including Krouch Chhmar Security Center in the trial, as it related to the other segments on the treatment of the Cham and internal purges.⁹²

The other noteworthy area of confusion over scope concerned allegations of rape outside the context of the regulation of marriage. The crime against humanity of rape was removed from the criminal indictment against the Accused after the Pre-Trial Chamber ruled that rape did not legally constitute a crime against humanity in its own right at the time of the DK regime. Rather, they concluded, it was subsumed under the crime against humanity of "other inhumane acts", and could not be charged any other way without violating the international principle of legality. Although the criminal charges related to rape were removed except for the rapes within forced marriages (which the OCIJ had determined were used by CPK leaders to implement the common purpose of a joint criminal enterprise), the LCLCP argued that the factual allegations of rape should remain in the Closing Order without dismissal or modification. The Closing Order alleged that rape was committed in "diverse circumstances" including at Kraing Ta Chan, S-21 and the Tram Kak Cooperatives. In March 2016, before the commencement of the segment on the regulation of marriage, the LCLCP requested clarification of the scope of Case 002/02 as it concerned rape outside of these marriages. The Trial Chamber did not respond to this request for clarification before the start of the segment on marriage, leading the Khieu Samphan Defense team to make a further oral request for clarification. The Trial Chamber ultimately reiterated its position that it was not seized of facts of rape outside of forced marriage, and the Supreme Court Chamber upheld this finding when the LCLCP appealed the decision. The Trial Chamber found that the second severance had not included the allegations of rape within those sections of the Closing Order in the trial as "the crime of rape for which the Accused were charged in the dispositive section of the Closing Order is to be interpreted as excluding rape committed in security centers and cooperatives outside the context of forced marriage." During closing statements in June 2017, Marie Guiraud, the international Lead Co-Lawyer for Civil Parties, said she felt "bitterness" about the two Chambers' decisions, which she said she "still did not understand." However, she noted that her team had left the evidence of such rapes out of its closing briefs.

Although international Defense Counsel Anta Guissé and international LCLCP Marie Guiraud engaged on *the legal elements related to scope* at the closing arguments,⁹³ the OCP largely failed to respond, with the male prosecutors often engaging in more tit-for-tat historical arguments with Defense Counsel Victor Koppe instead. In her final remarks at trial, Counsel Guissé responded to the lack of an OCP rebuttal on these matters: "Are the Co-Prosecutors so unpreoccupied with the law? Or does their silence in relation to some of our arguments simply mean that they have no answer?"⁹⁴ Anta Guissé further raised the matter of scope as she traced a legacy of incorrect procedure back to the OCIJ's initial Closing Order, which she said "meanders" through facts for which the OCIJ was not seized in the OCP's initial submissions, with particular emphasis on the example of Kraing Ta Chan Security Center. LCLCP Marie Guiraud rebutted this last example by explaining that the security center was mentioned in annexes of the OCP's initial submissions, and it also fell inside the boundaries of Tram Kak District, a crime site raised in the initial submissions.

⁹⁰ For a summary of the Trial Chamber's oral decision on the Khmer Krom, see Case 002/02 KRT Trial Monitor Issue 20, Hearings on Evidence Week 17 (25-28 May 2015), p. 8.

⁹¹ Office of the Co-Prosecutors, 'Co-Prosecutors' Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A' (5 December 2013), E301/2, p. 5, para. 11.

⁹² This forms one argument of his closing statements, see: 'Nuon Chea's Closing Brief in Case 002/02', pp. 311-313, paras. 701-704.

⁹³ The italicized portion of this sentence has been modified since the 6 November publication of this report.

⁹⁴ Trial Chamber, 'Transcript of Trial Proceedings (Public)' (23 June 2017), E1/528.1, p. 22.

Although the SCC dismissed the broadest severance-related challenges on appeal in Case 002/01, it also warned the Trial Chamber in the then-ongoing Case 002/02 of the risk that criminal findings could be tainted by the Judges' decision to sit for a second trial of the same Accused and with overlapping factual findings related to DK administration and CPK policies.⁹⁵As noted by these co-authors previously in *Justice on Appeal*, it is incumbent upon the ECCC Trial Chamber to make up for its errors in its initial severance of Case 002 and take every legal argument put forward by the Parties into account in its eventual Judgment in Case 002/02. The Trial Chamber would then be able to legitimately respond to allegations of impropriety stemming from the crossover of the same Trial Chamber for the same pair of Accused sharing the same underlying case file. These allegations have made their way into the Defense's closing briefs and they will surely make their way into any appeals should the Accused be convicted.

B. The Impact of Ongoing Investigations on Case 002/02

While Case 002/02 was ongoing, the Co-Investigating Judges were in the process of conducting investigations into four other individuals: Meas Muth (Case 003), Yim Tith (Case 004), Im Chaem (Case 004/01), and Ao An (Case 004/02). Some of the charges investigated against those four overlap with charges in Case 002/02, in particular the targeting of Cham populations in the Central Zone and purges of CPK forces in the East and North Zones. One of the most frequently occurring and disruptive issues facing the Trial Chamber in Case 002/02 was therefore how to deal with evidence originating from these investigations but relevant to Case 002/02 - both new and old documents and witness statements, as well as newly identified witnesses and Civil Parties.

According to Internal Rule 87(4), the Trial Chamber is permitted during the trial to admit new evidence it deems "conducive to ascertaining the truth" as long as it is not "irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law; or intended to prolong proceedings or is frivolous."⁹⁶ The introduction of new evidence during the trial, which first took place as early as the sixth week of evidentiary hearings, caused challenges in terms of procedure and also in terms of the right of the Accused to have access to the evidence against them. On multiple occasions, the Defense teams expressed their frustration with a "tsunami" of new evidence coming in, and requested additional delays of trial for them to prepare after new evidence was introduced.⁹⁷ This also raised issues related to the equality of arms, as in civil law systems the Prosecution is uniquely privy to information in ongoing investigations while the Defense is prohibited both from participating or conducting its own investigations. On at least one occasion, Counsel for Nuon Chea accused the OCP of using their advanced knowledge of ongoing investigations to inform their strategy in Case 002/02, putting the Accused at a disadvantage.⁹⁸ The OCP maintained that it was obliged to disclose potentially exculpatory evidence and that it was natural for the Trial Chamber, particularly during such a lengthy trial, to admit new evidence. During the last courtroom debate on this issue in Case 002/02 - in September 2016 - Assistant Prosecutor Dale Lysak told the Bench that they had "a duty not to box [them]selves in to an investigation that was conducted years ago."⁹⁹

Another related challenge that arose from the introduction of evidence uncovered as part of ongoing investigations was that witnesses and Civil Parties identified in those cases were asked to testify to facts relevant to Case 002/02, but because of the confidentiality of ongoing investigations, had to do so under protective measures. This happened with increasing frequency over the course of Case

⁹⁵ Supreme Court Chamber, 'Case 002/01 Appeal Judgment' (23 November 2016), F36.

⁹⁶ Extraordinary Chambers in the Courts of Cambodia, 'Internal Rules (rev. 9)' (16 January 2015) Rule 87(3) and (4), p. 67.

⁹⁷ See Case 002/02 KRT Trial Monitor Issue 33, Hearings on Evidence 30 (5-7 October 2015), p. 5.

⁹⁸ *Ibid.*

⁹⁹ Trial Chamber, 'Transcript of Trial Proceedings (Public)' (16 September 2016), E1/474.1, p. 79.

002/02 as investigations progressed. Overall, 20 people testified under a pseudonym (six Civil Parties and 14 witnesses), although this was later ruled to be unnecessary in one case, and the name of that witness was subsequently made public.¹⁰⁰ The segment of the trial most affected by *this* was that of internal purges, during which seven individuals testified under pseudonyms.¹⁰¹ Internal Rule 29 outlines provisions for protecting the identity of individuals testifying before the Tribunal, including use of a pseudonym, distorting the audio or visual recording of the person while testifying, or in the most essential cases, hearing their evidence *in camera*.¹⁰² Despite causing some confusion, ultimately the Chamber managed to hear the majority of this testimony in open court: only four people were heard exclusively in closed session, and two partially in closed session.¹⁰³

C. The Roles of Witnesses and Civil Parties

Of the 186 individuals to testify in Case 002/02, 64 were Civil Parties—more than double the number who participated in Case 002/01. 3,869 Civil Parties were admitted to Case 002 overall. Table 3, below, breaks down the testimony by Case 002/01, Case 002/02, and Case 002 overall:

Table 4: Types of Testimony in Case 002 and in Sub-Trials¹⁰⁴

Testimony Type	Case 002 - Full		Case 002/01		Case 002/02	
	#	%	#	%	#	%
Witnesses	172	61.87%	58	63.04%	114	61.29%
Civil Parties	95	34.17%	31	33.70%	64	34.41%
Experts	11	3.96%	3	3.26%	8	4.30%
Total	278		92		186	

Case 002 has seen many debates on the difference between Civil Parties who testify on suffering and those who testify on facts.¹⁰⁵ The Trial Chamber changed its procedure in Case 002/02 to address some of the perceived flaws in Case 002/01. Nuon Chea argued on appeal in Case 002/01 that the Trial Chamber had erred in law in relying on Civil Party evidence to ascertain guilt, partly on the twin grounds that Civil Parties, unlike witnesses, do not take oaths and are allowed to consult with their lawyers prior to testifying.¹⁰⁶ In its appeal judgment in Case 002/01, the Supreme Court Chamber supported the weight given to Civil Party evidence by the Trial Chamber in its original judgment, however the Supreme Court Chamber did note on numerous occasions that the Trial Chamber had failed to provide any explanation of how it assessed the evidence before it.¹⁰⁷

¹⁰⁰ This was the case for Civil Party YOS Phal, who was only identified as 2-TCCP-232 during his testimony. See Trial Chamber, 'Transcript of Trial Proceedings (Public)' (25 August 2016), E1/464.1.

¹⁰¹ These seven were 2-TCW-1005, 2-TCW-976, 2-TCCP-1040, 2-TCW-850, 2-TCW-1036, 2-TCW-1037, and 2-TCW-971. The italicized portion of this sentence has been modified since the 6 November publication of this report.

¹⁰² Extraordinary Chambers in the Courts of Cambodia, 'Internal Rules (rev. 9) (16 January 2015), pp. 30-31.

¹⁰³ Those heard exclusively in closed session were PRAK Yut, YOU Vann, 2-TCW-1002, and 2-TCW-996. SOTH Saing and 2-TCW-976 testified partially in closed session. Redacted transcripts of these individuals' testimony were later made available to the public.

¹⁰⁴ This table was first produced by KRT Monitors for the report *Justice on Appeal*, published in 2017. See Cohen, Mattes and McCaffrie, *Justice on Appeal*, p. 23.

¹⁰⁵ For further detail, see Cohen, Hyde, and Van Tuyl, *A Well Reasoned Opinion? Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)*, East-West Center (2015), pp. 22-29.

¹⁰⁶ Nuon Chea Defense Team, 'Nuon Chea's Appeal Against the Judgment in Case 002/01' (29 December 2014) F16, p. 81, para. 201.

¹⁰⁷ Supreme Court Chamber, 'Appeal Judgement' (23 November 2016), F36, pp. 141-149, paras. 305-324.

On one occasion during Case 002/02 hearings, Defense Counsel Victor Koppe questioned the right of a testifying Civil Party, Seng Soeun, to this status, describing it as “incomprehensible” considering his identity as a former CPK cadre.¹⁰⁸ According to the ECCC’s Internal Rules, individuals can apply for Civil Party status if they can:

demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.¹⁰⁹

Although Seng Soeun was indeed a former cadre, he also lost several family members during internal purges, and the international LCLCP strongly defended his right to Civil Party status. This was one example of many of the blurred lines between victim and perpetrator the DK regime.

Another debate over the different roles filled by Civil Parties as opposed to witnesses took place during the trial segment on the role of the Accused, when Civil Party Sar Sarin announced he wanted to withdraw from appearing to be questioned by the Defense Teams.¹¹⁰ He began his testimony on 8 November 2016, and was questioned by Civil Party lawyers and the OCP, but then did not return to complete his testimony the following day citing poor health, even though the court doctor had pronounced him fit to testify. The Chamber later announced that Sar Sarin no longer wished to testify as a Civil Party, sparking a debate over whether the ECCC could compel a Civil Party to testify, and about how the Bench should treat the testimony he had already supplied. Nuon Chea’s Defense expressed the view that only Civil Parties who testify in dedicated victim impact hearings are “volunteers”, and that those who testify in normal evidentiary hearings “become a witness.” This view was disputed by both the Khieu Samphan Defense and the international LCLCP who argued strongly that it was not possible to compel a Civil Party to testify. Ultimately the Tribunal did not force Sar Sarin to return.¹¹¹ It remains to be seen how they will treat the testimony he already provided in court. The OCP argued that it should be given the same probative value as an out-of-court statement, whereas the Khieu Samphan team argued his prior testimony should be deemed entirely inadmissible as it was not cross-examined.¹¹²

Victim Impact Hearings

As noted above, there is a distinction made between those Civil Parties who appear in specialized victim impact hearings and those who appear in normal hearings on fact. Of the 64 Civil Parties who testified, 26 were called to testify in special victim impact hearings.¹¹³ In theory these hearings were intended to provide an alternative outlet for Civil Parties to express their suffering to the Court. In his Case 002/01 appeal brief, Nuon Chea further argued that in addition to being less reliable than witness testimony, Civil Party testimony given either during statements of suffering or victim impact testimony should be “excluded entirely from the Chamber’s consideration of the substance of the allegations.”¹¹⁴ The Khieu Samphan Team argued similarly in their Case 002/01 appeal brief.¹¹⁵

¹⁰⁸ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (29 August 2016), E1/465.1.

¹⁰⁹ Internal Rules (rev. 9), Rule 23*bis*, p. 24.

¹¹⁰ Sar Sarin previously testified on 29 April 2013 in Case 002/01, however after expressing a fear for his personal safety should he continue testifying, he concluded his testimony without having been questioned by the Defense Teams. At that time he requested the ECCC supply him with bodyguards for life, or else relocate him to a Western country. The Trial Chamber ruled that it did not have sufficient grounds or jurisdiction to grant either request and said it could not compel him to testify. During the initial hearing into scheduling of Case 002/02 in July 2014, the Khieu Samphan Team requested the Chamber not call Sar Sarin due to this experience of his prior testimony. See Case 002 KRT Trial Monitor Issue 58, Hearings on Evidence Week 53 (29 April - 3 May 2013), pp. 1-2, and Case 002 KRT Trial Monitor Issue 69, Hearings on Evidence Week 64 (23 July 2012), p. 2.

¹¹¹ This sentence has been modified since the 6 November publication of this report.

¹¹² The Trial Chamber did not issue an oral ruling on this at the time and no written decision on the treatment of Sar Sarin’s testimony has been found by monitors as of writing.

¹¹³ This number includes THANN Thim, who first appeared in victim impact hearings and was later called back to testify to facts.

¹¹⁴ Nuon Chea Defense Team, ‘Nuon Chea’s Appeal Against the Judgment in Case 002/01’ (29 December 2014), F16, p. 75, para. 187.

¹¹⁵ Khieu Samphan Defense Team, ‘Mr. Khieu Samphan’s Defence Appeal Brief Against the Judgement in Case 002/01’ (29 December 2014) p. 14, para. 30.

Before the first victim impact hearings in Case 002/02, therefore, Parties debated amending the format in which they were held, ultimately giving time for the Defense to question the Civil Parties as well, partly in order to address the criticisms of the Civil Party testimonies from victim impact hearings. Another change from Case 002/01 was that, rather than read statements of their suffering, Civil Parties who appeared in victim impact hearings in Case 002/02 were asked questions by Civil Party lawyers, much like Civil Parties who appeared in regular hearings. On only one occasion was a Civil Party testifying in victim impact hearings — Thann Thim — invited back on request of the Defense Teams to testify to facts in a later hearing due to topics raised in the victim impact hearing.¹¹⁶

Requests for Reparations

The evolving system for reparations has also raised new issues in Case 002/02, since adjustments were made after Case 001, as detailed in the report, *A Well-Reasoned Opinion?*¹¹⁷ In Case 002/02, the LCLCP submitted a final request for twelve reparations projects at the closing statements in June 2017.¹¹⁸ It is not the purpose of this report to summarize those projects, which have all been funded by donors and which are either partially or fully completed at the time of writing. In total, as the LCLCP characterize them, three projects deal with guarantees of non-repetition, four benefit specific groups, four promote satisfaction, and one relates to rehabilitation.¹¹⁹ However, during closing statements, international Lead Co-Lawyer Marie Guiraud took issue with the way the Judges conceived of the reparations process as it related to the status of the two Accused. As she explained, the LCLCP have been encouraged by the ECCC to begin planning and implementing reparations projects before the guilt of the Accused had been established, and then seek recognition of these projects as reparations through the Judgment. Counsel Guiraud reminded the Chamber that “judicial” reparations “should stem from the guilt of the Accused,” and that, in this system in practice, the judicial reparations were “not based on the conviction of the Accused because the implementation of these projects starts before the finding of guilt of the Accused. These reparations cannot even symbolically be paid for by the Accused.”¹²⁰ The Defense Teams have not taken significant issue with the reparations scheme, as it lies outside the substance of the trial proceedings and was crafted through Internal Rule 23*quinqüies*(b) to not impact the Accused. However, it is a noteworthy example of the twin roles of Civil Parties, who simultaneously take part in trial in support of the Prosecution as well as seek moral and collective claims from the Accused. The Court’s primary concern in its prior changes to the reparations scheme dealt with seeking outside funding given the finding of the Accused’s indigence.¹²¹ Whether or not it was the Court’s intention, this adjustment has actually insulated the Civil Parties’ role in the trial from their reparations claims process by allowing the latter to take place before the delivery of a trial verdict. In doing so, it has detached the reparations process from the “judicial.”

D. The Use of Torture-Tainted Evidence

19 of the 77 weeks of trial saw proceedings interrupted as Parties debated the validity of the use or potential use of documents resulting from or obtained through torture. The issue was most frequently raised during the segment on S-21, but was not limited to that segment by any means. Both the OCP and Nuon Chea Defense Teams were repeatedly stopped by the Bench during hearings for attempting to refer to documents either known to or presumed to have been produced under

¹¹⁶ Thann Thim testified in victim impact hearings on 2 April 2015 and later appeared to testify to facts on 21 April 2015.

¹¹⁷ See *A Well-Reasoned Opinion? Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)*, pp. 22-29 for more information about the evolution of Civil Party participation at the ECCC.

¹¹⁸ Civil Party Lead Co-Lawyers, ‘Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02’ (30 May 2017) E457/6/2/1.

¹¹⁹ For more information, see Case 002/02 KRT Trial Monitor Issue 80, Closing Statements (13-23 June 2017), pp. 22-23.

¹²⁰ Trial Chamber, ‘Transcript of Trial Proceedings (Public)’ (13 June 2017), E1/520.1, p. 114.

¹²¹ *A Well-Reasoned Opinion? Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)*, p. 24; Extraordinary Chambers in the Courts of Cambodia, “Eight (sic) ECCC Plenary Session Concludes” (17 September 2010), accessible at <<https://www.eccc.gov.kh/en/articles/eight-eccc-plenary-session-concludes>>.

conditions amounting to torture. The Trial Chamber did not issue a written decision on the use of evidence obtained under torture until February 2016, more than halfway through evidentiary hearings in Case 002/02.¹²² Prior to this, the Chamber was making decisions on a case-by-case basis and using a Supreme Court Chamber decision on admissible documents in Case 002/01 as a guide.¹²³ During the Case 002/01 appeal process, Nuon Chea argued that Article 15 of the CAT was only intended to limit the use of “torture-tainted evidence *against* an accused, not its use in his defense.”¹²⁴ The OCP responded to this argument by saying that this would essentially encourage torture, and was thus “legally specious and morally bankrupt.”¹²⁵

Article 15 of the United Nations’ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**CAT**) provides that:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.¹²⁶

With no definitive judgment or guidance from the Trial Chamber for such a prolonged period of the trial, each Party in Case 002/02 interpreted this article differently. Even when the Trial Chamber eventually issued its decision on torture-tainted evidence, Judge Fenz wrote a dissenting opinion related to the interpretation of Article 15.¹²⁷ The Trial Chamber ruled that both the CAT and Cambodian Code of Criminal Procedure prohibit a court from giving weight to any statement obtained by coercion. Statements originating from security centers considered to have used torture on-site are thus not permitted at the ECCC to establish the truth of their contents. Basic biographical information such as names and dates may be used to form the basis of questioning, however the contents of confessions are not permissible, unless it could be proven on a case-by-case basis that torture was definitely not employed in that instance.¹²⁸ Judge Fenz issued a dissenting opinion in which she argued that the Majority had interpreted Article 15 too broadly and that it should in fact prohibit the use of torture-tainted evidence in any way other than to show that such a statement was in fact made. She argued that the Majority decision would allow for a torture-tainted document to be used “to establish facts other than the truth of the statement,” such as whether action was taken based on facts included in the statement.¹²⁹ For Judge Fenz this was not narrow enough and did not go far enough to discourage the use of torture by the State as was intended by the drafters and signatories of the CAT.

E. The Right to Remain Silent

Unlike in Case 001, in which Duch provided testimony and responded to questions, the two Accused in Case 002 have consistently exercised their right to remain silent and have not responded to questions. Nuon Chea’s Defense announced at the opening of Case 002/02 evidentiary hearings on 17 October 2014 that he would not be responding to questions in the case. On 1 August 2016, Nuon Chea’s Defense amended this position slightly to say that Nuon Chea would respond to questions if

¹²² The OCP had argued the Trial Chamber should delay its decision until after all evidence has been heard in Case 002/02 and strike evidence deemed inadmissible later. See: Office of the Co-Prosecutors, ‘Co-Prosecutors’ Submission Regarding the Application of the Torture Convention to S-21 Confessions and the Other Records Relating to Interrogations of Prisoners’ (21 May 2015), E350/1, pp. 9-10, para. 22.

¹²³ Supreme Court Chamber, ‘Decision on Objections to Document Lists, Full Reasons’ (31 December 2015), F26/12, pp. 11-36, paras. 26-68.

¹²⁴ Nuon Chea Defense Team, ‘Nuon Chea’s Appeal Against the Judgment in Case 002/01’ (29 December 2014), F16, p. 261, para. 706.

¹²⁵ Office of the Co-Prosecutors, ‘Co-Prosecutors’ Response to Case 002/01 Appeals’ (24 April 2015), F17/1, p. 2, para. 6.

¹²⁶ United Nations General Assembly ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ Res 39/46 (ratified 10 December 1984).

¹²⁷ Trial Chamber, Claudia Fenz, ‘Reasons for Partially Dissenting Opinion of Judge Fenz’ (11 March 2016), E350/8.1.

¹²⁸ In their majority decision, the Chamber finds that all security centers relevant to Case 002/02 had a high likelihood of using torture to obtain ‘confessions’.

¹²⁹ Fenz, p. 1, para. 4; and Trial Chamber, ‘Decision on Evidence Obtained through Torture’ (5 February 2016), E350/8, pp. 28-29, para 75.

the Trial Chamber summoned one particular witness who was described as “Nuon Chea’s only character witness” and “in a completely different stratosphere to every other witness.”¹³⁰ Although this witness’s name continues to be redacted in publicly available documents, his present-day position was repeatedly referenced in court as the current president of the National Assembly of Cambodia and leading member of the ruling party.¹³¹ After the Trial Chamber ultimately decided not to call this witness, Nuon Chea’s international counsel argued that his client would not participate further in the trial as he felt the Chamber “is disinterested in fully understanding the CPK and the reasons and justifications for Nuon Chea’s conduct, and is instead focused on substantiating Nuon Chea’s guilt.”¹³²

While not answering any questions asked at trial by Civil Parties, the two Accused have each broken their silence on a handful of occasions to read prepared statements to the court. These instances are listed in Table 5, below.

Table 5: Instances of the Accused speaking in court in Case 002/02

Date	Instance	Detail
17.Nov.2014 (KRT Monitor Issue 3)	Khieu Samphan was present to announce his team would continue their boycott.	Khieu Samphan reiterated his team’s position that Case 002/02 proceedings should not begin until after the deadline for the filing of appeal briefs in late December 2014.
11.Feb.2015 (KRT Monitor Issue 8)	Nuon Chea put two questions to Expert Witness Elizabeth Becker, both concerning the American bombing of Cambodia in the years leading up to 1975 and their contribution to later events.	This was criticized in court by LCLCP Marie Guiraud who asked why Nuon Chea would respond only to Becker, who she termed “kind of VIP” and not to the Civil Parties who had asked him questions.
28.Apr.2015 (KRT Monitor Issue 17)	Khieu Samphan broke his silence on two instances in the afternoon.	During key document presentations, Khieu Samphan rose twice, first while gesticulating and saying he had had no knowledge of what happened in Tram Kak and Kraing Ta Chan, and later to defend accusations that his lawyer Arthur Vercken was unprepared.
27.Aug.2015 (KRT Monitor Issue 28)	Khieu Samphan and Nuon Chea made statements in support of their Defense Teams boycotting key document hearings.	
1. Mar.2016 (KRT Monitor Issue 47)	Nuon Chea responded to Expert Alexander Hinton’s testimony.	Nuon Chea requested time in advance to respond to Alexander Hinton’s testimony, arguing that it had made him “uncomfortable” and denying the Khmer term <i>yuon</i> has or had derogatory connotations. He asked two questions, firstly whether the Expert believed Vietnam had given up its “ambition to swallow and grab Cambodia”, and also whether he considered the American bombing of Cambodia a war crime or a case of genocide.
26.Apr.2016 (KRT Monitor Issue 52)	Nuon Chea made a statement related to the nature of armed conflict with Vietnam and the state of war between Vietnam and DK.	After his statement, Judge Fenz admonished the Accused and his counsel for raising this issue, which she deemed irrelevant to the segment being tried at that time, S-21 Security Center.

¹³⁰ Nuon Chea Defense Team, ‘Nuon Chea’s Notice of Current Intention to Exercise his Right to Remain Silent in Case 002/02’ (1 August 2016), E421/1/1.

¹³¹ As this witness’s name was repeatedly redacted by the Trial Chamber in its public documents and with respect to the ECCC’s public instructions of procedure, KRT Trial Monitor does not list his name in this report beyond what was stated in the courtroom on the public record even if it appears obvious and straightforward whom he is.

¹³² ‘Nuon Chea’s Notice of Current Intention to Exercise his Right to Remain Silent in Case 002/02’, p. 2.

23.Jun.2017 (KRT Monitor Issue 80)	Khieu Samphan participated in Case 002/02 closing statements.	Both Accused participated in closing statements in Case 002/01, however this time Nuon Chea declined to participate. Khieu Samphan made a final statement categorically rejecting the charges against him and denying contemporaneous knowledge of the alleged crimes with which he is charged.
---------------------------------------	--	---

While the two Accused were required to be present in the courtroom to hear the case against them, Nuon Chea waived this right almost every day of proceedings due to poor health. He would instead follow proceedings via video-link from the holding cell beneath the Trial Chamber. Khieu Samphan, on the other hand, was generally well enough to be present inside the courtroom throughout the trial and seemed to actively take notes during most of the proceedings.

F. Boycotts and Delays

Unlike in Case 002/01, which saw many delays due to the health of the Accused, there were only minimal disruptions in Case 002/02 for health reasons.¹³³ Case 002/02 was instead more often disrupted by lingering legal and procedural issues stemming from the Trial Chamber’s severance of Case 002. The decision to begin hearings in Case 002/02 before the appeals process had ended in Case 002/01 resulted in a series of boycotts and interruptions that meant Case 002/02 got off to a very fitful start. Within weeks of the Trial Chamber handing down its judgment in Case 002/01, Khieu Samphan’s Defense had filed a request to delay proceedings until either the appeals process was concluded in Case 002/01, or the Trial Chamber judges were disqualified.¹³⁴ On 29 September 2014, the Nuon Chea Defense similarly requested the Trial Chamber judges from Case 002/01 be disqualified from hearing evidence in Case 002/02.¹³⁵ The Trial Chamber denied the Defense request to delay proceedings on 19 September 2014 and as a result, on the trial’s intended opening day, 17 October 2014, both Defense teams announced they would be boycotting the hearings until the Judicial Administration Committee determined whether or not to disqualify the judges.

The Judicial Administration Committee announced its decision on 14 November, dismissing the Defense motions to disqualify judges, *the reasons for which were published later, on 30 January 2015*.¹³⁶ After this, the Nuon Chea Team was prepared to participate, however the Khieu Samphan Team continued to boycott the ongoing Case 002/02 hearings, leading the Trial Chamber to announce Khieu Samphan’s Counsel Kong Sam Onn, Arthur Vercken, and Anta Guissé were now reclassified as “Court-appointed counsel,” and thus could be ordered to appear by the Trial Chamber, on the grounds that Khieu Samphan’s conduct was, “substantially obstructing the proper and expeditious conduct of this trial.”¹³⁷ The Khieu Samphan Team responded in a press release that the Trial Chamber had no right to do this and were again absent from the first scheduled day of hearings on 24 November 2014. The Trial Chamber then adjourned until 8 January 2015, after the late December deadline for the filing of appellate briefs in Case 002/01. When proceedings resumed, the Trial Chamber had appointed two counsels, Cambodian lawyer Touch Vorleak and American lawyer Calvin Saunders as “stand-by

¹³³ Hearings were delayed for just two weeks in January due to Khieu Samphan’s health, see Case 002/02 KRT Trial Monitor Issue 4, Hearings on Evidence Week 1, 8-9 January 2015.

¹³⁴ Trial Chamber, ‘Case 002/01 Judgment’ (7 August 2014), E313; Khieu Samphan Defense Team, ‘Mr. Khieu Samphan’s Request for Reconsideration of the Need to Await Final Judgement in Case 002/01 Before Commencing Case 002/02 and the Appointment of a New Panel of Trial Judges’ (25 August 2014), E314/1.

¹³⁵ Nuon Chea Defense Team, ‘Nuon Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara’ (29 September 2014), E314/6.

¹³⁶ Special Panel of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia, ‘Decision on Applications for the Disqualification of the Trial Chamber Judges’ (14 November 2014), E314/12, and *Special Panel of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia, ‘Reasons for Decision on Applications for Disqualification’ (30 January 2015), E314/12/1*. The italicized portions of this sentence and this footnote have been modified since the 6 November publication of this report.

¹³⁷ Trial Chamber, ‘Decision on the Appointment of Court Appointed Counsel for Khieu Samphan’ (21 November 2014), E320/2, p. 5.

counsel for Khieu Samphan.” This appointment certainly added to the procedural and financial burden of the Court, as these two lawyers sat in the courtroom for the full length of the trial of Case 002/02 in preparation to replace the Accused’s chosen counsel should they boycott again.¹³⁸ This never took place.

On 26 August 2015, both Defense Teams walked out of the second set of key document hearings in Case 002/02 after the OCP began reading out written records of interview (**WRIs**) as “key documents”. Khieu Samphan’s Defense objected to the reading out of such documents, which had originated from Cases 003 and 004.¹³⁹ The Nuon Chea Defense likewise disagreed with the use of the statements from witnesses who had not appeared in court to be cross-examined by the Defense. Initially, the President ruled, “The Chamber allows Parties to present such written records of interviews as long as the Parties can prove that the witness in the written records of those interviews passed away.” Deputy Co-Prosecutor William Smith immediately asked that the OCP be allowed to present WRIs “whether or not the person is dead or alive,” arguing that the ruling would otherwise “change the nature of our presentation quite markedly.” The Judges deliberated, and the President confirmed that the Court would allow the Prosecution to present WRIs from ongoing investigations, regardless of whether the individual had passed away or not. Both Defense Teams walked out in response to this ruling. When the Parties came together again in a subsequent hearing to discuss the events which led to the walk-out, the OCP and LCLCP both argued that admitted WRIs were allowed as “corroborative evidence” before the ECCC as well as other tribunals, and that WRIs had already been presented without objection at the key documentary hearings in the segment on Tram Kak Cooperatives.¹⁴⁰ The Nuon Chea Defense Team refused to participate in any further key document hearings in the trial after this point.¹⁴¹ The Civil Party lawyers ultimately presented statements from 100 Civil Parties via key document presentations.¹⁴²

¹³⁸ Trial Chamber, ‘Decision on the Appointment of Court Appointed Stand-by Counsel for Khieu Samphan’ (5 December 2014), E321/2, p. 5.

¹³⁹ The Khieu Samphan Team objected to the use of inculpatory WRIs from Cases 003 and 004, citing Internal Rule 53(4) which states: “The Co-Prosecutors shall, as soon as practicable, disclose to the Co-Investigating Judges any material that... may suggest the innocence or mitigate the guilt of the Suspect...” Extraordinary Chambers in the Courts of Cambodia, ‘Internal Rules (rev. 9)’ (16 January 2015), p. 43.

¹⁴⁰ Case 002/02 KRT Trial Monitor Issue 28 (24-27 August 2015), pp. 5-7.

¹⁴¹ Other key document hearings were held from 23-26 February 2016 on the treatment of targeted groups; 11-16 August 2016 on security centers and internal purges; 6-8 September 2016 on the regulation of marriage; 3 and 7 November 2016 on the nature of armed conflict; and, 4-5 and 10 January 2017 on the role of the Accused.

¹⁴² As noted in *Justice on Appeal*, this went some way to address the very low number of Civil Parties who were able to testify in court as a percentage of the total number of Civil Parties admitted in Case 002. See Civil Party Lead Co-Lawyers, ‘Civil Party Lead Co-Lawyers’ Closing Brief in Case 002/02 [Redacted]’ (2 May 2017), E457/6/2, pp. 14; Cohen, Mattes and McCaffrie, *Justice on Appeal*, p. 23.

4. Conclusion

The ECCC was a long time in the making. The two elderly men currently on trial are being held to account for actions they took four decades ago. Cambodians have had to wait a long time for justice. Balancing the need to provide meaningful justice to Cambodians while ensuring international fair trial standards was always going to be a challenge. It is important to remember the ECCC's achievements. One of the first witnesses to testify in Case 002/02, Mr. Keo Chandara, who described his detention at Kraing Ta Chan during the regime, summarized Democratic Kampuchea: "They did not take people through a court like in this court. They just simply killed people." For all its flaws, the ECCC is important to many people for the rule of law that it represents.

The fact that Nuon Chea and Khieu Samphan have already been found guilty and sentenced to life imprisonment for crimes covered in Case 002/01 should not undermine the significance of Case 002/02. After Case 001, which dealt with one specific crime site, and Case 002/01, which had a more limited temporal and geographic scope, Case 002/02 covers crimes which impacted people across the country: the regulation of marriage, the treatment of ethnic Vietnamese, Muslim Cham, and Buddhist groups, and former Khmer Republic soldiers, forced labor at worksites, and cruel treatment at security centers in one way or another touched all Cambodians.

Throughout the 274 hearing days spread over two full years, Case 002/02 was beset by many challenges. Some stemmed from the sheer size and breadth of the case file or the three working languages of the Tribunal, and others from decisions made prior to the trial's commencement.

At the time of writing, the future of Cases 003 and 004 remains uncertain. This may thus be the final case to ever be tried against senior leaders and those most responsible for crimes that took place during Democratic Kampuchea. What the upcoming judgment will mean for Cambodian survivors and descendants of survivors remains to be seen. They have had to wait a very long time for justice. Of the 3,867 Civil Parties admitted as part of Case 002, 181 had already passed away by the end of closing statements in mid-2017. Now, in late 2018, we are still waiting for a reasoned judgment. Almost four years after hearings in Case 002/02 began, the fact that only a summary of the judgment will be made available is disappointing to many. The ECCC was established in Cambodia in part in order to bolster the capacity of the local courts, which consistently rank low in global independence measures and are known for issuing summary judgments without full reasons. The Judges of the Trial Chamber need to release a fully reasoned judgment as soon as possible. Cambodians deserve to know the full reasons for any convictions. They have waited long enough.

Acknowledgements

The authors would like to thank Tay Lina for his tireless daily contribution to the monitoring team as the lead national trial monitor throughout the trial. This report would not exist without his exceptional observation and language skills, keen interest, and dedication to developing the skills of the junior members of the monitoring team. The authors would also like to thank Kum Somaly for her hard work and administrative support which were fundamental to ensuring the success and high morale of the monitoring team.

Thanks are of course due to the Handa Center's core team: David Cohen, Penelope Van Tuyl, Jessie Brunner, Melanie Hyde, and Christoph Sperfeldt for each of their roles in bringing us into this team and pushing us into the unscrupulous obsession that is trial monitoring, and particularly for Penelope's painstaking editing while managing a new research center and raising two daughters.

We also would like to thank all of the former monitors and interns, too numerous to name here, but without whom the 80 weekly reports covering the entirety of Case 002/02 would not have been possible. In particular, we would like to thank the PACE team at Macquarie University, Marburg University, and Stanford University for their support of our internship program over the years. Monitors and intern-monitors for Case 002/02 have come from Cambodia, the United States, the United Kingdom, Australia, Canada, Germany, the Netherlands, Singapore, and Sweden.

Monitoring of the ECCC throughout Cases 001, 002/01, and 002/02 was facilitated by the WSD Handa Center for Human Rights and International Justice and East-West Center, who have coordinated their collaboration for years through the Asian International Justice Initiative (AIJI).

WSD Handa Center for Human Rights and International Justice

Established in 2013 at Stanford University, the WSD Handa Center for Human Rights and International Justice succeeds and carries on all the work of the University of California at Berkeley's War Crimes Studies Center, which was established by Professor David Cohen in 2000. Since its founding, the Center has been dedicated to promoting the rule of law, accountability, and human rights around the world, in post-conflict settings, developing countries, and in societies grappling with difficult legacies from a historical period of violent conflict. Through research and international programs, the Handa Center supports and helps improve the work of domestic courts, international tribunals and human rights commissions around the world. Relying on a small core group of lawyers, scholars, student interns, and volunteers, the Center concentrates its resources where it can make a real difference helping people make sense of the past, come to terms with periods of violent social upheaval, and build institutions that will promote justice and accountability.

East-West Center

The East-West Center promotes better relations and understanding among the people and nations of the U.S., Asia, and the Pacific through cooperative study, research, and dialogue. Established by the U.S. Congress in 1960, the Center serves as a resource for information and analysis on critical issues of common concern, bringing people together to exchange views, build expertise, and develop policy options. The Center is an independent, public, nonprofit organization with funding from the U.S. government, and additional support provided by private agencies, individuals, foundations, corporations, and governments in the region.

Authors

Caitlin McCaffrie

Caitlin has worked with the AIJI team since September 2015, monitoring Case 002/02 full-time and supporting ongoing outreach, research and education projects. In 2017 she co-authored the research report *'So We Can Know What Happened': the Educational Potential of the ECCC*, presenting youth views of the ECCC. Prior to joining the AIJI team, Caitlin worked with the Cambodian Center for Human Rights and United Nations Office for Project Services in Phnom Penh, and the Australian Permanent Mission to the United Nations in Geneva. She has been published in *The Diplomat*, *New Mandala* and *Justice in Conflict*, and in 2016 she was the Indo-Pacific Fellow for Young Australians in International Affairs. Caitlin holds a first class Honors degree in International Studies from the University of Adelaide and a Masters of Public Policy and Management from the University of Melbourne. She also works with the Centre for Policy Development in Melbourne as a Policy Adviser, focusing on issues related to forced migration in Asia.

Daniel Mattes

Daniel is an international consultant with the Cambodia Programs of the WSD HANDA Center for Human Rights and International Justice at Stanford University. He has monitored Case 002 in a variety of roles with the Handa Center's KRT Monitor since September 2012, and he has supported the Cambodia Programs' ongoing outreach and research projects. In 2017 Mattes co-authored *Justice on Appeal*, with McCaffrie and Prof. David Cohen, the Handa Center's Director, critically analysing the Case 002/01 Appeal Judgment, and *'So We Can Know What Happened': the Educational Potential of the ECCC*, presenting youth views of the ECCC. Mattes earned an MSc in global politics and global civil society from the London School of Economics and Political Science, focusing on modern Southeast Asian political history, in particular. He completed a dissertation analyzing the transnational activist response to capital-led rubber development in Cambodia's Ratanakiri Province. He received his BA from Stanford University in International Relations and Italian, with Honors from the Center for Democracy, Development, and the Rule of Law. He also works with an emerging group of filmmakers at the independent Cambodian production company, Anti-Archive.

ANOTHER TRIAL

A REVIEW OF CASE 002/02: THE SECOND TRIAL OF NUON CHEA AND KHIEU SAMPHAN AT THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

BY CAITLIN MCCAFFRIE AND DANIEL MATTES

On 16 November 2018, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC), also known as the Khmer Rouge Tribunal (KRT), will issue a summary of its judgment in Case 002/02, the second trial against Nuon Chea and Khieu Samphan, the two surviving senior leaders of the Democratic Kampuchea (DK) regime which ruled Cambodia from 17 April 1975 to 7 January 1979. This may well be the final judgment to ever again emanate from the ECCC's Trial Chamber. After more than ten years of monitoring daily trial proceedings at the ECCC, KRT Trial Monitor is issuing this final report on Case 002/02 in order to summarize the substance of the trial and to connect the bigger picture to the details that emerged over 274 days of proceedings. This report is based on the notes, summaries, and data gathered by the monitoring team which was present at every day of hearings throughout Case 002/02. This report is separated into two major sections: the first summarizes the testimony and evidence presented in the courtroom over the almost exactly two years of evidentiary hearings; the second raises six legal or procedural issues which the authors and monitoring team determined to be most prescient. This report does not seek to make prescriptive suggestions to the Tribunal or any other institution. The authors hope it can serve as a tool for those interested in returning to Case 002/02 for its details: the stories from witnesses who may never have shared them publicly before, the tests to international legal standards, and the facts written into a history that has remained uncertain and unknown for too long.

Cover Photograph: Courtesy of the Extraordinary Chambers in the Courts of Cambodia (ECCC).

The **WSD HANDA Center for Human Rights and International Justice at Stanford University** equips a new generation of leaders with the knowledge and skills necessary to protect and promote human rights and dignity for all. Reflecting a deep commitment to international justice and the rule of law, the Center collaborates with partners across Stanford University and beyond on innovative programs that foster critical inquiry in the classroom and in the world. Since its founding nearly two decades ago, the Center has pursued its mission through a range of international programs including justice sector capacity-building initiatives, civil society outreach efforts, trial monitoring, expert consultancies, and archival resource development, with a focus on transitional justice initiatives and new technologies. In 2014, Director David Cohen moved the Center from UC Berkeley to Stanford University with the generous support of Dr. Haruhisa Handa. The move enabled the Center to sustain its established international programs while expanding the scope of opportunities for meaningful student engagement by integrating classroom curricula with faculty research, student internships, and community-engaged learning opportunities.

417 Galvez Mall | Encina Hall West, Suite 216
Stanford, CA 94305-6045 | USA
+1 650.736.7622
handacenter.stanford.edu



WSD**HANDACENTER**
FOR HUMAN RIGHTS & INTERNATIONAL JUSTICE
Stanford University



EAST-WEST
CENTER

