

KRT TRIAL MONITOR

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Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Stanford University
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*"I told him that the Cham were evacuated to Central Zone...
There were around 15 per cent left in the village. And he told me
that those Cham people would be smashed."*

- Witness Sos Rumly

I. OVERVIEW

Resuming hearings after two weeks of break for the Christmas and New Year period, the Chamber this week heard from three witnesses over the course of four days, potentially concluding the segment on the treatment of the Vietnamese. First, anonymous witness 2-TCW-1000 continued his testimony from 16 December 2015, under questioning by the two defense teams. His testimony focused on the treatment of Vietnamese by Naval Division 164, and the capture of American vessel the SS Mayaguez. Next, Theng Phal testified on the experience of the ethnic Vietnamese population in Prey Veng Province, detailing how treatment changed after the arrival of Khmer Rouge (KR) cadres. On Wednesday the Trial Chamber returned to the segment on the treatment of the Cham and heard from Witness Sos Rumly, who originally began testifying before the Chamber on 6 October 2015 but had to be rescheduled for procedural reasons. In addition to hearing testimony this week the Trial Chamber also heard oral arguments on requests made by the Office of the Co-Prosecutors (OCP) and Defense Team for Nuon Chea to admit new witnesses in the Vietnamese segment. A decision by the Trial Chamber was handed down on 12 January and will also be summarized below.¹ The recurring issue of torture-tainted evidence was again raised this week by way of a number of objections, coinciding with a recent Supreme Court Chamber (SCC) decision on the validity of this type of evidence, which will be analyzed further below.

II. SUMMARY OF WITNESS TESTIMONY

This week the Trial Chamber concluded hearing a total of three witness testimonies, finishing the segment on the treatment of the Vietnamese, and returning to focus on the treatment of the Cham, which was last touched upon on 7 October 2015. Witness 2-TCW-1000 was questioned about events on Koh Tang and Poulo Wai Island, including the capture of a US vessel. Theng Phal was then the final witness to speak on the treatment of the Vietnamese, pending the upcoming Trial Chamber decision to admit more witnesses in this segment. Finally Sos Rumly returned to testify

on the treatment of the Cham, as well as alleged rebellions in Krouch Chhmar district.

A. Summary of Testimony by Witness 2-TCW-1000

This week Witness 2-TCW-1000 continued his testimony from before the two-week break under questioning from the Defense teams over three sessions.² He testified to being a member of Division 164, the Khmer Rouge naval forces, and spoke of broader policies related to the Vietnamese as well as specific incidents he observed during the Democratic Kampuchea (**DK**) period. The Witness remained anonymous as a protective measure due to the Trial Chamber's prior ruling on the confidentiality of the investigations into Cases 003 and 004.³

1. Overview of Witness's Positions Within the Khmer Rouge

Under examination by the Defense Teams, the Witness detailed his position in the KR naval forces on the southern islands of Cambodia during the DK period. The Witness testified to joining the KR military on 2 May 1972 in Kampot Province, where he worked as a messenger for Ta Mon until 1973, when he was sent by *Angkar* to Phnom Penh. He said that about three days after the 17 April 1975 fall of Phnom Penh, he was assigned to work in Kampong Som. Initially assigned to work in a military unit, the Witness was later assigned to Battalion 129 within Regiment 62 of Division 164, under the command of Meas Muth.⁴ He confirmed that the regiment contained 1,062 members, but said he only knew a few members personally. 2-TCW-1000 stated that in 1975 he was assigned first to Koh Tang, and later moved to Koh Poulo Wai where he remained until 1977 when he was sent to the mainland to Ouchheuteal Port for training and then later to Dom Nak Sdach. When questioned, he emphasized that he had only ever been a combatant and had never held a position of command.

2. Mayaguez Incident

Although unrelated to the treatment of the Vietnamese, a large amount of this Witness's testimony focused on the capture of United States' ship the SS Mayaguez in 1975, and the fighting which then ensued. 2-TCW-1000 testified that he participated in the infamous attack which took place on 7 May 1975, while he was stationed on Koh Tang. Describing the attack, he stated that minesweepers stopped the American ship, and his unit was tasked with arresting the crew on board, who were then sent to Kampong Som. The Witness recalled staying on the ship until approximately 10:00pm when his unit received orders to return to Koh Tang to join the 100 other soldiers taking part in "intense fighting" between American and Khmer soldiers, which lasted until 7:00pm the following day. The Witness testified to personally using a 12.7mm machine gun to shoot down an American helicopter that came to bomb Koh Tang.⁵ 2-TCW-1000 was uncertain about where orders originated from in the capture of the Mayaguez, stating simply that orders came from the upper echelon down through the division, regiment and battalion leaders and that his unit was simply following orders in a time of war. He repeatedly told the Chamber that his unit was not able to act autonomously. When questioned specifically about who gave the orders he suggested that it had been Meas Muth, who had been in charge of the Division at the time, however it was clear that he had no first hand knowledge of this.

3. Treatment of the Vietnamese

The Witness was questioned both about broader policies regarding the treatment of the Vietnamese, and also specific incidents he observed during his time in the naval forces. Regarding the presence of Vietnamese people in Cambodian waters, the Witness testified that the role of his unit was to guard the territorial waters around Koh Tang and Koh Poulo Wai, and to arrest anyone found trespassing, regardless of their nationality or ethnicity. Despite these orders, the Witness did admit to different treatment of Thai and Vietnamese people found in Cambodian waters, with Thais arrested and sent to the port at Ream while Vietnamese were often shot on site.

One of the incidents the Witness testified to seeing first-hand was the killing of a Vietnamese couple and their baby on Koh Poulo Wai in late 1976 or early 1977. The Witness testified that he did not know the names of the soldiers who carried out these executions, but that they were carrying out orders from Yieng, the Chief of Battalion 129. He also testified about an incident which occurred in 1978 while he was stationed at Oucheuteal Port. He stated that at this time people were arrested on a monthly basis. He recalled two or three incidents in which Vietnamese people who had been arrested were sent through the port before being transported to Kampong Som. He alleged that Bong Somnang, the Commander of his Battalion, had given orders for the arrest and execution of Vietnamese people. The Witness specifically recalled the killing of a baby during the arrest of a Vietnamese ship at sea. According to the Witness, the baby was crying loudly, and was then thrown overboard by soldiers under the orders of Bong Somnang.

Finally the Witness was repeatedly questioned about the nature of training and study sessions during his time as a soldier. The Witness testified to being taught that the Vietnamese were the “hereditary enemy of the Khmer” by Bong Somnang in low-level study sessions on Koh Poulo Wai. He elaborated that these sessions lasted for one or two days and that it was during these study sessions that he first heard the names Brother Number One, Pol Pot, and Khieu Samphan.

4. Witness Demeanor and Credibility

Overall, Witness 2-TCW-1000 provided clear testimony about events and was forthcoming when he did not understand or know the answer to a question. He was, however, regularly vague in his responses, and was criticized by Defense Counsel Victor Koppe on a number of occasions for giving imprecise answers; an issue which he attributed to his poor memory and advanced aged. When confronted with contradictory testimonies given by other witnesses, 2-TCW-1000 generally did not adjust in his own recollection and simply stated that he could not comment on the experience of others.

B. Summary of Testimony by Witness Theng Phal

In the afternoon of 5 January the Trial Chamber began hearing testimony of Theng Phal, also known as Theng Huy, who lived in Pochen Dam Village, Svay Andong Commune, Prey Veng District, Prey Veng Province during the DK regime.⁶ The Witness, now aged 65, testified over three sessions about the treatment of Vietnamese families in his village after the arrival of the Khmer Rouge. He further detailed his knowledge of security centers and killing sites, and described his experience as a Buddhist monk after the Khmer Rouge took over.

1. Witness Background and Experience as a Former Buddhist Monk

The Witness testified to living in Pochen Dam Village throughout the DK period. In his testimony he claimed that the KR took control in his village on a small scale prior to 1975. He agreed with a statement from another villager that this happened in either 1972 or 1973.⁷ He testified that, at that time, “Vietnamese experts” were still in charge of administrative positions. Theng Pal told the Chamber that in 1975 this situation changed; the Village Chief was removed and replaced by a cadre named Seng, with Haun as his deputy. As part of the change of authority, the Witness was forced to build embankments and dig canals around the area of his village because he was accused of being the son of a capitalist by the new KR cadres.

Another change that occurred as a result of the arrival of KR cadres was the treatment of Buddhist monks, according to the Witness. Theng Phal said that until 1973 he had been a monk but that afterwards, monks in his area were pressured to leave the monkhood. Although he denied that there was a direct order to disrobe, he said he was pressured to quit, recalling that people said monks were exploiting the citizens by only collecting alms and doing nothing productive. Theng Phal further told the Chamber that from 1975 to 1979 monks were banned from entering the

village pagodas, which were instead used by cadres for housing. He added that people were also prohibited from celebrating Buddhist religious ceremonies.

2. Treatment of Vietnamese in Pochen Dam Village

Theng Phal stated that, prior to 1975, no distinction was made between ethnicities in Pochen Dam. He described the relationship between the groups as positive. He recalled that there were three couples of mixed Khmer and Vietnamese ethnicity living in his village during the DK period, adding that people with Vietnamese backgrounds could easily be identified by their accents. When asked, he provided the names of the three couples to the Chamber: a Vietnamese man named Ngang with a Khmer wife Tech; a Vietnamese man named Tep Chuy whose Khmer wife's name was Oeun, and a Khmer man Lach Ni, whose wife's name the Witness struggled to recall, although later he suggested it may be Yeay Chuy.

When asked of the fate of these couples, the Witness detailed an event in either late 1976 or early 1977 where he and nine other people from his village were assigned by Angkar to cut *rumpeak*, a type of vine used for weaving baskets. When walking back to Pochen Dam Village after cutting the vines, his group stopped midway near Wat Chas, a security center at Ou Kandor Village, because Chief Seng's bicycle had broken. He told the Chamber that Ngang, one of the Vietnamese men from his village, was assigned to stay and repair the bike, while the others returned to the village at approximately 6pm. The Witness testified that, on their return, the group was informed that the Vietnamese wife of Lach Ni had been taken away on a horse cart to be re-educated somewhere east of Pochen Dam. Because he never saw either Ngang or Lach Ni's wife again, the Witness assumed they were both killed at Wat Chas, although he had no proof of this. He also recalled that Tep Chuy was arrested later on in early 1977 and sent to a study session from which he did not return.

Theng Phal testified that the Ngang's children and wife remained in Pochen Dam Village after the disappearance. In contrast, Lach Ni's children were taken away.⁸ He described how Lach Ni "became psychotic" after the loss of his family. International Defense Counsel for Nuon Chea, Victor Koppe, asked the Witness whether those who disappeared were connected to the "Sao Phim network," suggesting that they may have been arrested for taking part as soldiers in the subversive activities that were alleged in the East Zone at the time. The Witness denied that this was the case, saying that the three individuals had neither been connected to Sao Phim, nor had they been soldiers, particularly not Yeay Chuy as she was female.

3. Witness Demeanor and Credibility

Theng Phal generally gave consistent statements and was upfront when he was not able to recall an event, name, or place during his testimony. Although he sometimes had to be confronted with his own former statements to refresh his memory of details, the basic sequence of events was usually recalled by him independently. He seemed attentive, and made efforts to clarify statements which he thought had been misunderstood by Parties. The Witness often repeated that he was only an "ordinary citizen" during the DK regime, making him seem defensive at times, however this could be a reaction to repeated questioning by the Parties which he interpreted as doubt over his testimony.

C. Summary of Testimony by Witness Sos Rumly

Finally this week the Trial Chamber returned to the testimony of Sos Rumly who first appeared before the Chamber on 6 October 2015. His testimony had to be rescheduled following an objection made by the Nuon Chea Defense Team on the use of the same Duty Counsel for the testimony of both Ban Siek and Sos Rumly.⁹ Sos Rumly, an ethnic Cham man, was born in 1955 and continues to live in his birth village of Trea Pi (Trea Two) Village, Trea Commune, Krouch Chhmar District, Kampong Cham Province. Despite having various roles before and during the

DK regime, his testimony was largely limited to the treatment of Cham people within Trea Commune.

1. Witness Background and Positions Held during DK Regime

Sos Rumly testified to coming from a poor family with five brothers: the youngest worked as a cook during the DK regime, two others were in mobile units and his eldest brother was arrested by the KR in 1973 and never seen again. The Witness recalled that, in 1973, he himself was appointed Youth Chief in Trea Pi Village because of his hard work farming and because of his “good biography,” meaning that his family had no connection to the former administration. As Youth Chief, the Witness led a team of 30 youths, and was in charge of clearing forests. Then, in 1975, he was transferred to a mobile unit and became chief of the core group; a position he held for three months before being transferred to commune clerk for Trea Commune in late 1975. Sos Rumly said he had been told by a cadre that he was transferred because of his “beautiful hand-writing,” despite previously testifying to only having attended school until grade three. He said his functions as a clerk mainly included sending monthly reports to the district cadres about agricultural production. He also attested that he and a man named Yeay Yorb (who was in charge of a fishing committee for the Krouch Chhmar District Committee) were the only ethnic Cham people working in the commune office in Trea Pi Village. He testified that he was able to hide his ethnicity because of his proficiency speaking Khmer. Although he held a position in his village, the Witness denied ever being a member of the Communist Party of Kampuchea (CPK), and repeatedly described himself as an “ordinary citizen.”

2. Treatment of the Cham in Trea Pi Village

Sos Rumly testified that Trea Commune consisted of eight villages; five Cham and three Khmer, with a total of approximately 1,000 Cham families living in the entire commune prior to the DK regime. He estimated that about 200 Cham families lived in his village of Trea Pi. When asked, the Witness estimated that only about 400 Cham families returned to live in Trea Commune after 7 January 1979. The Witness testified that prior to the arrival of the KR, the Cham religion was freely practiced within Trea Commune.¹⁰ He said that after 1975 when the Khmer Rouge completely overtook his village, religion was forbidden, religious leaders were arrested, mosques were closed and turned into hospitals, and Qurans were destroyed. According to the Witness, the Khmer Rouge also prohibited traditional Cham headscarves and dress, cultural burials and speaking in the Cham language. However, the Witness did acknowledge that this prohibition extended to all religious practice and not just Islam; noting that Buddhist pagodas were also reattributed as bases for mobile units after 1975.

In addition to the denial of religious rights, Sos Rumly also testified about the specific targeting of the ethnic Cham people. He testified to hearing of a forced evacuation of the ethnic Cham population to the Central Zone in 1977. He recalled a discussion he had with a cadre who was in charge of security at the district level, who told him that between 80 and 85 percent of the Cham population in the commune had been evacuated to the Central Zone for unknown reasons, and that after liberation only about 60 percent returned. In addition, Sos Rumly testified that this cadre told him that in the future the remaining Cham people would be “smashed.” In another instance, the Witness testified that he saw between 500 and 600 people arrive in Trea for a “study session.” They were taken to the District Office, after which point he never saw them again. The Witness said that he heard the meetings were arranged by the Krouch Chhmar District Chief with the alias ‘Ho’, who he had met only twice.¹¹ Sos Rumly testified that after 7 January 1979, he saw 20 to 30 pits containing human remains in his village. Although the Defense put forward the argument that the remains could have come from rebellions in neighboring villages, Sos Rumly stated that his belief was they were the remains of the Cham who attended the “study sessions.”

3. Rebellions in Koh Phal and Svay Khleang

Defense Counsel for Nuon Chea spent a good deal of time questioning the Witness about two rebellions which occurred in Krouch Chhmar District, however Sos Rumly repeatedly limited his answers to events occurring within his village. The Witness claimed to have heard about crackdowns that occurred in Koh Phal and Svay Khleang villages, during which ethnic Cham people were executed on a large scale because they had killed a commander in Svay Khleang, but repeated that he had no first hand knowledge of these events. He said that as far as he was aware, in Svay Khleang in 1975 the crackdown had led to the arrest of three *Hakims* who were detained at Spean Ta Buong in Krouch Chhmar District, ten *Hajjs*, physicians and three teachers of Islam: Tos Lemar from Egypt, Tos Taskos who studied in Malaysia and Ibrahim who was trained in Trea Village.¹² According to the Witness, all but one were taken away by the Khmer Rouge and never seen again. The Witness cited these arrests as the reason that there had been no uprisings in Trea Pi Village.

4. Arrests of District Chiefs and Fleeing

Sos Rumly recalled instances where district chiefs were arrested and subsequently replaced after being accused of betraying the CPK. The Witness testified that when he first became commune clerk, a man named Chhean was the Trea Pi Village Chief, and that later he was replaced by a cadre from Krouch Chhmar District who appointed Soem and Han as Chief and Deputy Chief. In 1978 Soem and Han were arrested by the Central Zone, led by Ho, who then replaced them with Meng from Praek Achy. The Witness testified that when Ho arrived in Trea Village he and some others fled to the forest. While he was confused about dates, he was clear that it occurred prior to 7 January 1979. He flatly stated, "I did not flee because of the arrival of the Vietnamese, it was because of the Khmer Rouge that I fled." According to the witness, both Khmer and Cham people fled together, including his fellow Cham colleague Yeay Yorb, who he heard was later arrested.

5. Group Wedding Ceremony

The Witness also testified that he had heard about group wedding ceremonies in Trea Commune, but he recalled only one or two of these events taking place in his village. To his recollection, only 4 couples were married in the first ceremony, while the second ceremony included approximately 20 couples. When questioned by national Civil Party Co-Lawyer Ven Pov as to whether the marriages were forced, Sos Rumly stated that to his knowledge some were voluntary and others forced. Interestingly, he did testify that ethnic groups married within their respective ethnic group. When pressed on this point by international Defense Counsel for Khieu Samphan, Anta Guissé, the Witness further clarified that Cham women married only Cham men, whereas Cham men were permitted to marry women of other religions, but that these choices were up to the individuals getting married and not governed by cadres.

6. Witness Demeanor and Credibility

During his examination, Sos Rumly gave clear and consistent testimony. He often asked for clarification on questions he did not understand, and declined to answer questions to which he did not know or could not recall the answer. However there were some inconsistencies in his testimony, particularly concerning dates. For example, when asked when the Cham people were evacuated from Trea village, he first said 1977, and then later said 1975, although this could be explained by the amount of time that has passed since the events in question. On a number of occasions the dates that international Defense Counsel for Khieu Samphan, Anta Guissé, cited were corrected by the witness, which she saw as an inconsistency but seemed to be more likely the result of interpretation issues. One inconsistency that went unexplained was Sos Rumly's testimony that he was chosen to be a commune clerk because of his "beautiful handwriting," despite the fact that he previously testified to having had limited schooling.

III. LEGAL AND PROCEDURAL ISSUES

This week a good deal of time was taken up by Parties discussing the possible hearing of new witnesses related to the segment on the Treatment of the Vietnamese. On 12 January 2015 the Trial Chamber issued a memorandum responding to these requests, with written reasons to follow. Furthermore, a number of objections related to the use of torture-tainted evidence were raised during the course of proceedings this week; a summary of which, as well as a brief analysis of the recent Supreme Court Chamber decision on the topic, are expanded upon below.

A. Discussion on Hearing New Witnesses on the Treatment of the Vietnamese

This week, the Trial Chamber opened discussion among Parties in response to one request made by the Nuon Chea Defense (document E380) and two from the OCP (documents E381 and E382) regarding hearing new witnesses and admitting new Written Record of Interviews (**WRIs**) for the segment on the treatment of the Vietnamese.

1. Defense Team's Response and Allegations of Bias

The Defense Team for Khieu Samphan made a lengthy oral argument objecting to the requests of both Nuon Chea and the OCP for the hearing of additional witnesses in the segment on the treatment of the Vietnamese. Kong Sam Onn, national Defense Counsel for Khieu Samphan, told the Chamber that these requests were “repetitive and not necessary,” and would cause undue delay to proceedings. He also argued that some of the proposed witnesses had already been rejected by the Trial Chamber. He pointed out that a number of the newly requested witnesses appear to have been added in response to the recent addition of Witness 2-TCW-1000 (who testified this week). Counsel argued that these individuals could have and should have been requested contemporaneously with the original request to admit 2-TCW-1000. The Khieu Samphan Defense also noted that they had previously objected to the introduction of this witness on 1 December 2015, on the grounds that it did not fit Internal Rule 87(4) requiring evidence to have only come to light after the proceedings began.¹³

Kong Sam Onn argued that the OCP request for new witnesses was an attempt to “fill the lacuna” of their earlier investigation; stating that they only requested new witnesses after some witness testimony did not meet their expectations. He warned that the Trial Chamber’s decision would open “a can of worms” and lead to unending delays to the Vietnamese segment. He argued that the Defense Teams were at a disadvantage because they are not part of the investigations into Cases 003 and 004, unlike the Prosecution. Taking matters further, Kong Sam Onn brought up an allegation of bias on the part of the Judges, particularly international Judge Jean-Marc Lavergne who, the Defense team argued, “lends his hand to the Co-Prosecutors.” To support his argument that the Judges grant more OCP requests for additional witnesses than Defense requests, Kong Sam Onn pointed out that his team had requested seven new witnesses in May 2015 and was still waiting on a response from the bench. In closing, Kong Sam Onn requested the Trial Chamber limit the scope strictly to what had already been investigated in Case 002 in order to maintain the right of the accused to know the charges against them. He repeated earlier arguments that new witnesses must be chosen for both inculpatory or exculpatory purposes, and argued that the trial of Meas Muth would essentially begin early if so many witnesses from the investigations into Case 003 were admitted, per the requests of Nuon Chea and the OCP, particularly regarding the treatment of the Vietnamese by Division 164, which had been led by Meas Muth.

Following Khieu Samphan’s Defense Team’s statement, Nuon Chea’s international Defense Counsel Victor Koppe took the floor briefly to remark that, while his team had “given up” making such arguments, he concurred with everything that was said, adding that “the term ‘can of worms’ is a phrase which would also be used by me because it fits pretty well to this situation.”

2. OCP and LCLCP Response to Defense Arguments

Before Kong Sam Onn took the floor, the international Senior Assistant Prosecutor Vincent de Wilde d'Estmael first responded to document E380; the Noun Chea Defense's request for admission of the records of three new witnesses. The OCP stated they had no objections to any of the proposed witnesses, and indeed supported the admission of the third witness in particular (2-TCW-1010) because of their belief in the value of their evidence regarding crimes against the Vietnamese in Kampong Som, both regarding the crime of genocide and proving the necessary intent. The international Lead-Co-Lawyer for Civil Parties, Marie Guiraud, said they would rely on the discretion of the Chamber.

Later, after the lengthy argument by the Khieu Samphan Defense, Mr. Vincent de Wilde d'Estmael took the floor again to respond. He explained that the witness list had been changed on a number of occasions since last September due to the deaths of a number of witnesses and changing availabilities. He also refuted the Defense Team's argument that some requested witnesses had previously been rejected by the Chamber, asserting that they were rather not selected at the time due to poor health. He reminded the parties that the burden of proof falls to the Prosecution, so it was natural that his team should make as many requests as they feel necessary to prove the intent of genocide and other relevant crimes against the Vietnamese.

Mr. de Wilde d'Estmael called allegations that the OCP was attempting to delay proceedings "untrue," adding that this segment was more challenging than others to identify witnesses because by definition, survivors of a genocide are rare. He also said the allegation of delaying proceedings was "unfair" considering the Defense Teams have delayed proceedings in the past on a number of occasions by temporarily boycotting trial.¹⁴ The Prosecution also objected to what Khieu Samphan team had called a "can of worms," arguing that many of the documents related to these proposed witnesses date back to at least May 2015 and therefore now can be said to form part Case 002, no longer only Case 003. He highlighted the importance in particularly of hearing Witness 2-TCW-1010, who was also requested by the Nuon Chea Defense Team, who could speak on the existence of a national policy against the Vietnamese in Kampong Som.

3. Trial Chamber Memorandum in Response to OCP and Defense Request

On 12 January the Trial Chamber issued a memorandum in response to the above requests. The Chamber ultimately agreed to hear two of the requested Nuon Chea witnesses: 2-TCW-1008 and 2-TCW-1009, and one of the witnesses requested by the OCP: 2-TCW-849. The Nuon Chea witnesses are related to the treatment of Vietnamese people at sea by the military forces of Division 164, whereas the OCP witness relates to events in Prey Veng and Svay Rieng Provinces as they concern the existence of a national policy on the treatment of the Vietnamese. The Chamber rejected hearing 2-TCW-939, 2-TCW-905 and 2-TCW-1010, and deferred a decision on 2-TCW-843, 2-TCW-957, 2-TCCP-245 until after 2-TCCP-844 and 2-TCCP 869 have testified before the Chamber. Further, the Chamber deferred its decision on if it would hear 2-TCW-823 until the topic on the role of the Accused begins. No reasons were given in the memorandum and full written reasons for this decision are yet to be issued, but will be in due course.

B. Update on Scheduling of Upcoming Witnesses

On the same day, national Civil Party Lead Co-Lawyer Pich Ang was asked by the Bench to provide an update on the availability of Civil Parties 2-TCCP-869 and 2-TCCP-844 in order to schedule proceedings next week. He stated that 2-TCCP-869 remained afraid to testify before a crowd in the courtroom and therefore preferred not to appear. He highlighted the Witness's limited education and health issues. However, Pich Ang informed the Chamber that this individual did feel able to testify if they could come for only the morning sessions. As for the second Civil Party, 2-TCCP-844, Pich Ang confirmed that the witness would be available due to improved health, however he did request that the Trial Chamber appoint a standby doctor to sit with these two witnesses during their testimonies as a precautionary measure. On Friday, the

President announced the witnesses to be heard the following week. The list did not include these two Civil Parties.

C. Renewed Discussion over the Use of Torture Tainted Evidence

On Friday afternoon international Co-Prosecutor Nicholas Koumjian raised an objection to Defense Counsel Victor Koppe's use of an interview with current Cambodian People's Party Senator, Mr. Ouk Bunchhoeun, about information that he had heard that originated in a confession obtained through torture. When reading the excerpt originally, Mr. Koppe had omitted the sentence which specifically stated that "this [the information] was according to their confessions." After the objection was made, Mr. Koppe used the opportunity to point out that Ouk Bunchhoeun had previously been requested as a witness by his Defense Team, but on 18 December 2015 the Trial Chamber had denied the request, making it impossible to corroborate with him whether the information mentioned in his statement had indeed been obtained via torture. Further, he argued that the prohibition on torture-tainted evidence only applied to statements originating in S-21. Because this document was related to Krouch Chhmar Security Center, Counsel argued that it was not certain that torture had been used. The President did not address this argument, and called on the Defense Counsel to move on. Mr. Koppe responded that he understood the topic was "sensitive."

This is not the first time that the Trial Chamber has confronted questions about the use of torture-tainted evidence, particularly by the Defense teams. Significantly, this month the SCC released a ruling on its reasons for rejecting document lists in the Case 002/01 Appeal Hearings, including an extended analysis of the value of documents obtained via torture.¹⁵ The SCC found that applicable law from both the Constitution of the Kingdom of Cambodia and Cambodian Code of Criminal Procedure contain provisions prohibiting the use of evidence obtained through compulsion, and the ECCC's Internal Rules supports these laws by stating that all evidence may be admitted except where it is "not allowed by law."¹⁶ The SCC noted that Internal Rule 21(3) prohibits the use of any statements or interviews conducted in investigations that included "inducement, physical coercion or threats thereof." Article 15 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter **CAT**) is also applicable to the ECCC insofar as Article 31(1) of the Cambodian Constitution stipulates respect for United Nations conventions.¹⁷

While it is not applicable to this week's objection over the use of documents from Krouch Chhmar Security Center, the SCC specifically analyzed whether it had been conclusively established that S-21 statements were obtained through torture. Based on evidence from Case 001, the SCC decided that there is a "real risk" that S-21 documents derive from torture, enough so that no further investigation into the likelihood is required. The SCC also looked into Nuon Chea's argument that Article 15 of the CAT only limits the use of torture *against* an accused, not *for* an accused. The Chamber rejected this argument, noting that the right to present a defense is not superior to the dignity of the torture victim's integrity. Ultimately based on the above analysis, the SCC found that "a party requesting the use of evidence derived from torture or wishing to tender such evidence must first demonstrate that it is being introduced only for the reason permitted in Article 15 of the CAT."

IV. TRIAL MANAGEMENT

Returning from a two-week judicial recess, the Chamber heard from three witnesses over the course of four days, and also managed to discuss a number of issues with the upcoming schedule. A serious breach of courtroom etiquette occurred when one lawyer used the real name of anonymous Witness 2-TCW-1000 in the courtroom.

A. Attendance

Nuon Chea waived his right to be present in the courtroom in order to observe proceedings from the holding cell due to his poor health. Khieu Samphan was present in the courtroom during all sessions throughout this week.

Judge Attendance: National Judge Ya Sokhan was absent for two days in a row due to personal matters. He was replaced by national Reserve Judge Thou Mony, although this fact was only announced by the Greffier on Tuesday and not Wednesday. International Reserve Judge Martin Karopkin was also absent for two days during the week, however this went unnoted by the Greffier and no reason was given for his absence. All other judges were present throughout the week.

Civil Parties Attendance: Approximately ten Civil Parties observed proceedings from inside the courtroom every day this week.

Parties: International Defense Counsel for Khieu Samphan, Anta Guissé and international Standby Counsel for Khieu Samphan, Kevin Saunders were absent for two days in a row due to personal reasons. The international Defense Counsel for Nuon Chea, Victor Koppe was also absent in the last session of the hearing on 8 January, 2016. However, all Parties were represented properly in the courtroom throughout the week.

Attendance by the public:

DATE	MORNING	AFTERNOON
Tuesday 05/01/2016	<ul style="list-style-type: none"> ▪ Approximately 130 students from Paññāsāstra International School (PSIS), Phnom Penh ▪ 13 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 200 villagers from Teuk Chhou District, Kampot Province ▪ One foreign observer
Wednesday 06/01/2016	<ul style="list-style-type: none"> ▪ Approximately 100 villagers from Kampong Tralach District, Kampong Chhnang Province ▪ Eleven foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 70 villagers from Kampong Tralach District, Kampong Chhnang Province ▪ Six foreign observers
Friday 08/01/2016	<ul style="list-style-type: none"> ▪ Approximately 70 villagers from Kampong Tralach District, Kampong Chhnang Province ▪ Ten foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 120 villagers from Kampong Tralach District, Kampong Chhnang Province ▪ Four foreign observers

B. Time Management

After returning from a judicial recess of two weeks and one day for the 2016 New Year period, the Trial Chamber successfully heard testimonies of the three scheduled witnesses this week. The Trial Chamber also opened a debate among the Parties on scheduling the appearances of the upcoming witnesses for the following week, in response to the concern of future witnesses involving OCP’s recent disclosure of documents from Cases 003 and 004. After liaising with WESU, the Trial Chamber made an oral ruling during the second session on Friday about the schedule of witnesses for the next week’s proceedings; announcing that witnesses 2-TCW-987, 2-TCW-988, 2-TCW-928 will be heard in that order, starting from Monday 11 January, followed by 2-TCW-894 and 2-TCW-938. After Tuesday morning was taken up with the above procedural issues, the Trial Chamber granted an OCP and CPLCL request for additional time to question Witness Theng Phal, extending their time by 40 minutes. This decision did not negatively impact proceedings.

C. Courtroom Etiquette

A significant issue arose this week concerning the confidentiality of witnesses from the investigation into Cases 003 and 004. Although all Parties were informed by the President at the beginning of the week that Witness 2-TCW-1000 would be using a pseudonym throughout his testimony, national Defense Counsel for Khieu Samphan, Kong Sam Onn referred to the Witness by his real name while he was questioning the witness. The President reminded him of proper protocol, and the transcript of the hearings from that day have been appropriately redacted, however no other measures were taken to address the issue. Court etiquette was also strained at times, largely during interactions between Victor Koppe and the President, particularly in instances where the Defense Counsel for Nuon Chea was basing his questioning on allegedly torture-tainted evidence. Mr. Koppe was abruptly stopped from using such evidence without the chance to argue his case, with the President interrupting to say: “whatever it came from...the Chamber doesn’t grant you to ask those things. If you don’t have more questions, the floor will be given to other parties.”

D. Translation and Technical Issues

Monitors noted a handful of translation issues this week which slowed down proceedings slightly as the confusion brought on by incorrect translations had to be clarified. For instance, on 6 January, national Civil Party Lead Co-Lawyer Pich Ang cited an English-to-Khmer translation problem when an interpreter mistakenly rendered an individual’s name of ‘Ngoy’ into ‘Ngang’ in Khmer. There were also mistaken translations from Khmer to English such as the words in Khmer for “deputy chief” into “other positions” in English and words in Khmer “Svay Khleang” into “Khleang” in English. There were also several minor technical malfunctions with missing the audio channels from French-to-English and English-to-Khmer, however these did not cause significant delays to proceedings.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Tuesday 05/01/2016	9:04	10:16 – 10:36	11:36 – 13:32	14:48 – 15:12	16:06	4 hours 22 minutes
Wednesday 06/01/2016	9:02	10:26 – 10:46	11:36 – 13:34	14:45 – 15:02	16:00	4 hours 23 minutes
Friday 08/01/2016	9:00	10:07 – 10:32	11:32 – 13:30	14:44 – 15:01	15:18	3 hours 38 minutes
Average number of hours in session				4 hours and 7 minutes		
Total number of hours this week				12 hours and 23 minutes		
Total number of hours, day, weeks at trial				486 hours and 36 minutes		
129 TRIAL DAYS OVER 38 WEEKS						

*This report was authored by Alexander Benz, Borakmony Chea, Caitlin McCaffrie, Elizabeth Orr, Thi Son, Lina Tay and Penelope Van Tuyl as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations made By AIJI staff; and
- photos are courtesy of the ECCC.

Glossary of Terms

Case001	<i>The Case of Kaing Guek Eavalias “Duch”</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (CaseNo.002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Trial Chamber “Decision on motions to hear additional witnesses on the topic of the treatment of the Vietnamese, with reasons to follow (E380, E381, E382)” (12 January 2016) E380/1.

² This week Witness 2-TCW-1000 was questioned in the following order: international defense counsel for Nuon Chea, Victor KOPPE; national defense counsel for Khieu Samphan, KONG Sam Onn. For a summary of 2-TCW-1000’s prior testimony see: CASE 002/02 KRT TRIAL MONITOR, Issue 37, Hearings on Evidence week 34 (14-16 December 2015) pp. 4-6.

³ Trial Chamber. ‘Decision on International Co-Prosecutor’s Request to Admit Documents Relevant to Tram Kok Cooperatives and Kraing Ta Chan Security Center and Order on Use of Written Records of Interview from Case Files 003 and 004’ (24 December 2014) E319/7.

⁴ Meas Muth was charged as part of Case 003 on 14 December 2015 with the crimes of Genocide, Crimes against Humanity, Grave Breaches of the Geneva Conventions of 1959 and Violations of the 1956 Cambodian Penal Code.

⁵ Earlier in his testimony the Witness stated that 12.7mm machine guns were only used on ships, never on land, and that the infantry used 17 or 18mm guns instead.

⁶ Witness THENG Phal (2-TCW-848) was originally scheduled to testify on Friday 11 December 2015 however had to postpone his/her testimony as his/her mother passed away. The Witness was questioned in the following order: President NIL Nonn; deputy national co-prosecutor SENG Leang; international assistant prosecutor Joseph Andrew BOYLE; national civil party lead co-lawyer PICH Ang; international defense counsel for Nuon Chea, Victor KOPPE; national defense counsel for Khieu Samphan, KONG Sam Onn.

⁷ The WRI was from Mr. IENG Un, another villager from Pochen Dam, who testifying to working with THENG Phal during the DK Regime.

⁸ It should be noted that this confirms paragraph 215 of the Closing Order, which alleges that: “If a Vietnamese man was married to a Cambodian woman, only the man would be killed and the woman and any children would be spared. However, if a Vietnamese woman was married to a Cambodian man, the woman and any children of the marriage would be killed, while the man would be spared.”

⁹ Witness SOS Rumly (2-TCW-904) began his testimony on 6 October 2015. Today he was questioned in the following order: national deputy co-prosecutor SREA Rattanak; international co-prosecutor Nicholas KOUMJIAN; national civil party lawyer VEN Pov; international defense counsel for Nuon Chea, Victor KOPPE; national defense counsel for Khieu Samphan, ANTA GUISSÉ. For a summary of the issues preventing him from testifying earlier, see: CASE 002/02 KRT TRIAL MONITOR, Issue 37, Hearings on Evidence week 33 (5-7 October 2015) (30 October) pp. 4-6.

¹⁰ There was some debate between the Defense Team for Nuon Chea and the Prosecution about the period when the Khmer Rouge arrived in Trea Commune; Victor Koppe argued that there was evidence that cadres arrived as early as 1970, however Prosecutor Nicholas Koumjian limited his questioning to after 17 April 1975.

¹¹ SOS Rumly said he heard the man’s name was Ho from his father-in-law who assisted Ho in his duties as Head of the fishing unit in Stueng Trang Region. It is unclear whether this is the same ‘Ho’ who was previously identified by NO Satas in her testimony, or the ‘Hor’ that BAN Siek used as an alias while working in Chamkar Leu District.

¹² “*Hakim*” is the term for an elder Cham Muslim religious leader and a “*Hajj*” refers to someone who has made the pilgrimage to Mecca.

¹³ The Khieu Samphan Defense team argued that this witness was known to the OCP during the investigation into Case 002, however the OCP responded that only the witness’s subsequent interview for the Case 003 investigation revealed information relevant to the segment on the Vietnamese, and thus the Trial Chamber ruled in favor of admitting the new witness. See CASE 002/02 KRT TRIAL MONITOR, Issue 36, Hearings on Evidence week 33 (7-11 December 2015).

¹⁴ For more information on recent Defense boycotts and walkouts see 002/01 APPEALS KRT TRIAL MONITOR, Issue 2, Second Set of Appeal Hearings (11 December 2015)

¹⁵ Supreme Court Chamber “Decision on Objections to Document Lists Full Reasons” (31 December 2015) F26/12, pp. 11-37.

¹⁶ See: Constitution of the Kingdom of Cambodia (21 September 1993). Art. 38. Code of Criminal Procedure of the Kingdom of Cambodia (10 August 2007). Art. 321; Extraordinary Chambers in the Courts of Cambodia Internal Rules, rev. 9 (16 January 2015). Rule 87(3)(d).

¹⁷ “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” United Nations. General Assembly. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (10 December 1984). New York: United Nations (Entry into force 26 June 1987). [hereinafter **CAT**]. Art. 15.