

KRT TRIAL MONITOR

Case 002/01 Appeals ■ Issue No. 1 ■ First Set of Appeal Hearings ■ 2-6 July 2015



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center)

The rebellion plan was not behind anyone else. We had this kind of idea because we were thinking that we could no longer live in that regime. Many of our comrades disappeared. They were called into a study session in Phnom Penh and never returned.

- Witness Toat Thoeun

I. OVERVIEW

In the first set of appeal hearings since the Trial Chamber issued its Judgment in Case 002/01 on 7 August 2014, the Supreme Court Chamber heard the testimonies of three new witnesses. The Trial Chamber found the Co-Accused, Nuon Chea and Khieu Samphan, guilty of crimes against humanity comprising murder, inhumane acts, forced transfers, forced disappearances, attacks on human dignity, in the territory of Cambodia between 17 April 1975 and the end of 1977.¹ The Trial Chamber sentenced the two Accused to life imprisonment. The Defense Teams filed their appeal briefs against the Trial Chamber's Judgment on 29 December 2014, and Nuon Chea has also filed five separate requests for additional evidence in the appellate stage of proceedings. Nuon Chea raised 223 grounds of appeal and Khieu Samphan raised 148 grounds of appeal, covering alleged errors in both law and in fact.² The Co-Prosecutors filed a shorter appeal, which deals only with an alleged error in law related to the Chamber's decision not to apply the most extended form of joint criminal enterprise, also known as "JCE III", as a mode of criminal liability.³

The Defense Appeals requested *inter alia* that the Supreme Court Chamber summon a number of new witnesses, three of whom the Chamber decided to hear in its 29 May 2015 decision on part of Nuon Chea's requests for additional evidence.⁴ The Supreme Court Chamber scheduled a first set of initial hearings from 2 to 6 July 2015 as the commencement of the Parties' appeals in Case 002/01, but the Chamber specifically tailored the hearings to only examine the three witnesses called to appear. The three witnesses provided testimony over three days of hearings largely related to elements of the Judgment that found evidence of CPK policies to target former Khmer Republic soldiers and officials following the liberation in April 1975. The first witness, Sao Van (SCW-4), was called to discuss meetings in which he and other Khmer Rouge cadres were ordered not to harm Lon Nol soldiers. The Trial Chamber had relied upon the written record of an interview of the week's second witness, Sam Sithy (SCW-

3), in its Judgment concerning his survival of a massacre of Lon Nol soldiers and their families, but the Supreme Court Chamber decided to hear his testimony in person. Nuon Chea's Defense described the third witness to appear, Toat Thoeun (SCW-5), as a key witness with insight into the factional nature of the CPK hierarchy due to his close relationship with former Northwest Zone secretary Ruos Nhim. Throughout the three days of witness examination, the Parties attempted to advance many of the legal arguments presented throughout Cases 002/01 and 002/02, most notably at the October 2013 closing hearings of Case 002/01.⁵ As noted in this report's legal section, although the Parties made a significant number of objections that altered the predetermined schedule somewhat, the Judges effectively managed to curtail discussion of elements outside the scope of the appeals and Case 002/01, and successfully drew a number of new details from the examination of these three witnesses. The following report presents the procedural background of the appeal hearings, summarizes the week's witness testimonies, and analyzes the objections, which signaled debates that are likely to reappear throughout the appellate stage of proceedings in Case 002/01.

II. BACKGROUND OF APPEALS HEARINGS

Although this report does not summarize the entirety of Nuon Chea's appeal, it aims to provide some background on recent Defense submissions to guide greater understanding of the reasons for this initial set of narrowly tailored appeal hearings. The following section refers to Nuon Chea's appeal, as well as his five requests for additional evidence, and it summarizes the Supreme Court Chamber's decision to hear three of the witnesses requested therein.

A. Nuon Chea's Appeal and Defense Requests for Additional Evidence

Since 7 August 2014, when the Trial Chamber issued its Judgment in Case 002/01, the Defense for Nuon Chea has filed its appeal brief, as well as five separate requests for additional evidence in the Case, with the Supreme Court Chamber (**SCC**). The first request, in September 2014, requested the SCC to call journalists Thet Sambath and Robert Lemkin to testify.⁶ The second request, also in September, sought inclusion on the case file of recordings of former Judge Silvia Cartwright discussing the trial at a public event at the Aspen Institute while the trial was ongoing in 2013, as well as excerpts from a book by former international Co-Investigating Judge Marcel Lemonde.⁷ The third request, filed on 25 November 2014, further argued the need for Thet Sambath and Robert Lemkin to testify, and it also renewed Nuon Chea's longstanding demand that Heng Samrin, a former commander in DK's East Zone and the current President of the National Assembly, appear to testify. The same motion also requested the testimony of another witness with close ties to DK's Northwest Zone secretary, Ruos Nhim.⁸ The SCC would later give this witness the pseudonym, SCW-5. In his appeal brief, filed soon thereafter on 29 December 2014, Nuon Chea requested that the SCC call additional witnesses, including Ouk Bunchhoeun, currently a ruling party senator, as well as four persons later titled by the SCC as SCW-1, SCW-2, SCW-3, and SCW-4.⁹ On 29 May 2015, the SCC responded to part of these requests and reserved decision on the remaining requests until a later date.¹⁰ However, since that decision, Nuon Chea has submitted two further requests for additional evidence as well. The fourth motion, from 15 June 2015,¹¹ requested that the Case 002/02 testimony of Witness Pech Chim be added to the case file in the Case 002/01 appeals, noting its relevance to the impending testimony of SCW-4.¹² Finally, the fifth request, from 25 June 2015, asks that another five witnesses be called to appear and that five more written records of interview be added to the case file.¹³ Of course, these latter two requests were not covered in the SCC's May decision, and they were likewise not referenced during the 2-6 July appeal hearings.

B. Supreme Court Chamber Decision on Part of Nuon Chea's Requests

On 29 May 2015, the SCC issued its decision "on part of Nuon Chea's requests for additional to call witnesses on appeal." The decision dealt specifically with three of the requested

witnesses, which the Chamber categorized as SCW-3, SCW-4, and SCW-5. The decision also considered the SCC's limited power to call new witnesses during the appellate stage of proceedings according to Internal Rules 108(7) and 104(1).¹⁴ With reference to international jurisprudence, the SCC noted that Rule 108(7) requires "a three-prong test" to govern decisions on additional evidence on appeal. The test asks the SCC to "satisfy itself that the proffered evidence: (i) was unavailable at trial; (ii) could have been a decisive factor in reaching the trial decision under appeal; and (iii) pertains to specific findings of fact by the Trial Chamber."¹⁵ The decision also explained that Rule 104(1) allows the SCC to "call new evidence" through a discretionary power exercised *proprio motu* to determine "where the interests of justice so require" and "whether the evidence is 'conducive to ascertaining the truth'."¹⁶

The SCC determined that SCW-5, first requested in Nuon Chea's third request, should appear under Rule 108(7). Although it decided that Nuon Chea's Defense failed the three-prong test in requesting SCW-4 and SCW-3, the SCC exercised its power *proprio motu* to call them to testify nonetheless, pursuant to Rule 104(1). The SCC also issued an order concerning the conduct of the hearing,¹⁷ and it stated multiple times that these hearings would be narrowly tailored to hear the testimonies of these three witnesses and not any other matters concerning the rest of the appeals. The next section discusses the specific reasons why each Witness was requested by the Defense and subsequently admitted by the SCC and provides a summary of their respective testimonies.

III. SUMMARY OF WITNESS TESTIMONY

From 2 to 6 July 2015, the Supreme Court Chamber heard the testimony of three witnesses requested by Nuon Chea in his appeal brief and in his third request for additional evidence. Mr. Sao Van discussed his positions within the Khmer Rouge hierarchy in the Southwest Zone and recalled meetings after the Liberation in which leaders disseminated orders not to harm former Lon Nol soldiers. Mr. Sam Sithy, whose written record of an interview was used as evidence in the Trial Chamber Judgment's finding of CPK policies to target Lon Nol soldiers, testified about his family's massacre, which he survived. Lastly, Mr. Toat Thoeun testified on his close relationship with Northwest Zone secretary Ruos Nhim. His testimony dispelled many of Nuon Chea's principal arguments concerning factionalism within the DK hierarchical structure and conspiratorial plots to internally overthrow the regime.

A. Summary of Testimony by Witness Sao Van

The first Witness to appear in the appeal hearings in Case 002/01 was Mr. Sao Van, *alias* Sao Pauk (SCW-4), who today works as a rice farmer and as a council member of Cheang Tong Commune, in Tram Kak District, Takeo Province. He provided the Chamber with information on his involvement in the Revolution and the instructions he received regarding the treatment of former Lon Nol soldiers after the Khmer Rouge liberation of Cambodia.

In his appeal against the Trial Judgment in Case 002/01, Nuon Chea underlined that the Parties were notified about the existence of this Witness' statement only "72 hours before closing briefs in Case 002/01 were due." The Defense further argued that the Trial Chamber demonstrated bias when it made no mention of the Witness' statement in its Judgment.¹⁸ Although the SCC found that Nuon Chea failed to "exercise due diligence" in requesting the Witness' appearance at trial, the Chamber found that it "must give consideration to potentially exculpatory evidence" and determined that calling the Witness was in the "interests of justice,"¹⁹ pursuant to its power to hear new evidence *proprio motu* under Internal Rule 104(1).

1. Witness Background and Involvement in Revolution

The Witness confirmed that he lived through the American aerial bombardment of the

Cambodian countryside, a time of suffering that pushed rural people like him to join the revolutionary movements. At the time of the April 1975 liberation of the country, Sao Van was a member of the Cheang Tong Commune committee, in Tram Kak District, Sector 13, but, after three months, he became chief of Kampong Svay Commune, in Kien Svay District, Sector 25. He testified that he was eventually removed as chief after "they took away their trust in me." Sao Van recalled that Southwest Zone secretary Ta Mok instructed him and other commune chiefs that they did not have "the authority to decide the life and death of the people," as "the life issue was the ultimate decision of the Centre." The Witness further claimed to have no knowledge of killings during the DK period, explaining that people only disappeared "because of war and of fighting." He confirmed that Khom, Boeun, Neav, and Kieu were leaders of Tram Kak District, or District 105. Pech Chim oversaw economic matters at the District but was considered "petty bourgeoisie." A trio – Ta Saom, Ta Muth, and Ta Penh – was in charge of Sector 13. However, Sao Van later underlined that his knowledge on the administrative structures was limited, insisting, "I minded my own business, and I never wanted to poke my finger into other people's affairs." He adhered to a principle of confidentiality that reigned at the time, in which "everybody kept their mouth shut, because if secrecy was revealed, there might be chaos in a certain place."

2. Instructions Regarding Treatment of Former Lon Nol Soldiers

Having requested this Witness' appearance, the Defense primarily asked Sao Van questions concerning his knowledge of alleged policies not to harm former Lon Nol soldiers after the country's liberation.²⁰ He confirmed that, before the liberation, Khieu Samphan made a radio broadcast nicknamed "The Speech of Dirty Traitors," in which he declared an amnesty for any Lon Nol soldiers, ranked soldiers, officials, bourgeoisie, and urban inhabitants that joined the Revolution then. The Witness emphasized that the broadcast aimed to unify the people and form solidarity to build the country.

The Witness testified that, three months after the Liberation, Sector 13 chief Ta Saom invited cadres from various commune committees within the Sector to a meeting at Phnom Krael Mountain in District 106. Saom informed them that former soldiers should not be harmed because they had family living in the Liberated Zones who had contributed to the country's liberation. The Witness recalled that the message ordered, "From foot soldier up to the rank of colonel, these soldiers should not be harmed." After the cadres received these instructions, they had to relay the information to their colleagues at their communes and districts. The Witness told the Supreme Court Chamber that he felt "jubilant" about the policy, as his own brother was a former soldier, and he felt that no one was supposed to be discriminated under the new regime. After prompting by Defense Counsel Victor Koppe, the Witness further confirmed that, in 1976, he attended a second meeting during which such instructions were given again. He agreed with his prior interview record that Ta Saom and Ta Mok led this second meeting, which was held near the old market in Takeo town, with cadres and military personnel in attendance (the Witness himself was attending as a representative of Sector 25, once he had already moved to Kampong Svay Commune). Sao Van testified that three topics were primarily discussed at the Takeo meeting: the internal solidarity of the Party, expanding self-sustainability, and the ongoing border confrontations with the Vietnamese.

Even after providing these details about the two meetings, however, the Witness acknowledged to the Prosecution that he believes he was eventually removed from his position as Kampong Svay Commune chief due to his brother's position in the Lon Nol regime. The Witness explained, "I wasn't doubtful about the demotion I received, [but] I tried to adapt myself, to survive." He recalled that cadres considered him as petty bourgeois because he was educated prior to joining the Revolution and therefore considered a risk. Sao Van stated that the authorities preferred selecting illiterate people to lead because they would blindly follow instructions while the educated ones like him were "harder to lead."

3. Witness Demeanor and Credibility

Throughout his testimony, the Witness provided clear and direct answers. He indicated when he had no knowledge or no understanding of certain matters. This happened on several occasions, for example when questioned on killings or disappearances during the DK period. He told the Prosecution, "You don't need to ask me about such a topic." However, given his rather open discussion of former positions with the Khmer Rouge and his testimony that he had visited S-21 and Kraing Ta Chan Security Center, his claims of ignorance on matters such as killings were surprising and may have constituted attempts to avoid more problematic issues.

B. Summary of Testimony by Witness Sam Sithy

The second witness the Supreme Court Chamber heard was 54-year-old Sam Sithy (SCW-3), currently a police inspector in Kampong Chhnang city, born in Ph'er Village and Commune in Kampong Chhnang District and Province. The Witness testified on his family's evacuation from Ph'er, his father's registration as a former Lon Nol soldier at Chrak Sdach pagoda, and the subsequent massacre of his family, an event the Witness survived.

In his appeal brief, Nuon Chea noted that the Trial Chamber had relied upon the written record of this Witness' OCIJ interview in its Judgment. The Defense argued that the Chamber had erred in not calling the Witness to appear in person because of the significance of his testimony. The appeal noted "a remarkable coincidence," in which the audio recording of the interview cut out at the exact moment when he "supposedly" began to describe the massacre. The appeal emphasized that, although Sam Sithy was one of the only witnesses referenced in the Judgment with "evidence of any significance" on the executions of former Khmer Republic officials, he was never called to personally testify before the Chamber. Thus, the Defense requested "that [the SCC] summons Sam Sithy acting pursuant to its *de novo* jurisdiction over errors of fact."²¹ The SCC ruled in its decision that, although "the issue is not whether the Trial Chamber erred by not calling that witness," it was important to summons Sam Sithy, or SCW-3, for the appeal hearings, in the interests of justice and in order to ascertain the truth.²²

1. Witness' Background and Evacuation on 17 April 1975

The Witness stated that his family was evacuated from Ph'er Village, near Kampong Chhnang city, soon after its liberation on 17 April 1975. He underlined that his family did not intend to take a long journey, as they were initially warned to flee to the nearby mountainous areas to avoid an impending American bombardment. Sam Sithy testified that, on the way to the mountain, there were so many people on the road that one "could almost not walk straight." After approximately ten days of walking, and after running out of food supplies, the Witness and his family arrived along with other evacuees at Chrak Sdach pagoda.

2. Registration of Family and Subsequent Massacre

The Witness testified that, once they arrived at Chrak Sdach, an announcement called for former Lon Nol soldiers and officials to register themselves and their families. In return, they were promised rice and their former positions. As food was scarce, many people, including the Witness' father, admitted their former roles as soldiers. Sam Sithy confirmed to International Co-Prosecutor Nicholas Koumjian that the registrations took place at Chrak Sdach pagoda in Peam Commune, the same commune where the secret headquarters of Pol Pot was located at that time, just after the fall of Phnom Penh. After the registration, the Witness' family was led away together with six other families to Rongklas, approximately two kilometers south of the pagoda. Men and women were separated, and one militiaman took the men into the forest "to collect trees," while two others stayed with the women and children. Sam Sithy initially followed his father, but, when he saw other armed men appear in the forest with guns pointed at his father and the other man, the Witness ran back to his mother to warn her and encourage her to

flee. She refused and attempted to console the Witness. One hour later, they heard gunshots, and soon thereafter, the women and children were ordered deeper into the forest as well.

Throughout a rather repetitive examination by the two international Defense lawyers, Sam Sithy testified on the specifics of the massacre, which he claimed to have survived. He explained that the group of women and children was forced to sit in a pit created out of an existing B-52 bomb crater. He testified that he was sitting behind his mother when the militiamen started firing on the group, "going on a killing spree." The Witness recalled hearing one of the shooters say to the people, "You are contemptible. For years you have stepped on my chest, but now it's my turn to step on your chest." When a bullet hit his mother's chest, the Witness pretended to fall onto the ground alongside her body and played dead. The Witness testified that the militiamen used a club to further beat some of the victims and to kill the babies, but he claimed that he was not beaten further and was instead placed into the pit and buried under two other bodies. When the Witness was asked how he managed to trick the militiamen, Sam Sithy explained that "the soldiers did not do their job properly," as the rains had started to arrive and the soldiers wanted to retrieve the victims' belongings. Approximately two hours after the massacre, the Witness crawled out of the pit and called for other possible survivors, finding that, apart from him, his younger sister and two cousins were the only survivors. He then explained that the four of them returned to the pagoda to find family friends and ask for food. However, when word of the massacre and the surviving children began to spread through the pagoda site, the authorities announced over the loudspeakers that people should not believe the imperialists' propaganda, and that soldiers "were in pursuit to catch the four survivors." Thus, the Witness and his relatives had to go into hiding. He told Khieu Samphan's Defense Counsel, Arthur Vercken, that a number of people who were staying at the pagoda have survived the regime and could confirm his story, but he explained, "I cannot force these people to appear," as he declined to offer their names as well.

3. Additional Evidence Relevant to Case 002/01

The Witness was sent to a children's unit in Kraing Leav Commune, Rolea B'ier District, where he was tasked to produce fertilizer. While living in the cooperative there, the Witness told his sister and cousins "to work hard and not violate any regulations," since authorities were still looking for the children who had escaped the killing. He confirmed seeing young children being beaten up. On one occasion, when the Witness was tasked to tend cattle, he witnessed the gathering of prisoners as they were tied up and walked away, towards the East. Sam Sithy testified, "They were probably former soldiers."

4. Witness Demeanor and Credibility

The Nuon Chea Defense requested this Witness' appearance in an effort to discredit him, as his statements represented crucial evidence in the Trial Chamber Judgment's determination of a CPK policy to targeting former Lon Nol officials. Accordingly, the OCP set out to prove that Sam Sithy was indeed a truthful and credible witness. During his testimony, the Witness provided detailed answers, but the Parties and the Chamber itself had to remind him to be precise in answering the questions specifically put to him. Furthermore, his testimony included several inconsistencies regarding the alleged massacre. For example, he first stated that the families were seated in a B-52 bomb crater when they were shot, and that the guards simply covered the bodies afterwards, but his later testimony noted that the militia dragged the bodies and dropped them into the pits before covering them. Throughout the testimony, the Witness added and altered relatively minor details regarding the massacre, but the fundamental outline of the narrative did not change. He grew irritated when the Defense repeatedly questioned him on specific details of the massacre, at one point, asking Arthur Vercken sarcastically, "Are you clear enough now, Counsel?" When the OCP gave him the chance to respond to the Defense's direct allegations that he was lying, Sam Sithy underlined that he had told the Defense Counsel repeatedly that his story "is not a fabrication, and [that he] witnessed the events personally."

He further reminded the Chamber that he had taken an oath to only tell the truth, emphasizing that, as a police officer, "[he] hold[s] a strong belief in [his] oath."

C. Summary of Testimony of Witness Toat Thoeun

The last witness to testify was 60-year-old Toat Thoeun (SCW-5), a Brigadier General for the Royal Cambodian Armed Forces who lives in Samraong II Village, Battambang Province. Between 1970 and 1979, he was a messenger for the Northwest Zone headquarters and worked at one point as the deputy of the Zone military's General Staff. He testified about his relationship with Northwest Zone Secretary Ruos Nhim, his lack of knowledge of the events at Tuol Po Chrey, and Khmer Rouge policies concerning former Lon Nol soldiers.

In Nuon Chea's third request for additional evidence, his Defense characterizes the probable testimony of SCW-5, since identified as Toat Thoeun, as highly relevant evidence about Ruos Nhim's involvement in the killing of Khmer Republic soldiers in general and at Tuol Po Chrey in particular.²³ The Defense argued,

[SCW-5] is the best placed witness to test Nuon Chea's key overarching defence in both segments of Case 002: that the CPK was a deeply fragmented Party at its highest levels because some of its leaders -- chief among them, [SCW-5] -- were set against the Party's putative leadership in a bitter power struggle. For both of these reasons, the Defence would have vigorously sought [SCW-5's] testimony at trial had it known of his existence.²⁴

The Trial Chamber's failure to hear this Witness' possibly exculpatory evidence formed the basis of Ground 204 of Nuon Chea's appeal, which argued, "The Trial Chamber erred in fact in finding that orders to kill were given by the Zone committee."²⁵ The SCC decided to call Toat Thoeun to testify after the request for his appearance passed the "three-prong test" of Internal Rule 108(7).²⁶

1. Witness' Background and Relationship with Ruos Nhim

The Witness testified that his foster father was Moul Sambath, *alias* Ruos Nhim, the Secretary of the Northwest Zone. Between 1970 and 1975, Toat Thoeun worked for his foster father as the chief of couriers, in charge of communications between the battlefield and headquarters. He recalled that, in this position, he heard a discussion between Ruos Nhim and his colleagues concerning the evacuation of cities after the country's liberation. The Witness explained that Ruos Nhim argued that the only solution to rebuilding the country after the civil war was through foreign aid, and that the evacuation of the cities would hamper national development. The Witness also recalled delivering messages to Office 560, a telegraph office under Northwest Zone authority that would send and receive coded telegrams between the Zone and Phnom Penh. He also stated that he personally delivered messages to Office 870, near the Royal Palace in Phnom Penh, on occasion.

In mid- to late-1975, Toat Thoeun was promoted to deputy chief of the Northwest Zone's General Staff, even as he continued to assist Ruos Nhim as a bodyguard and messenger. The Witness did not attend any study or training sessions organized by the DK regime; however, he learned about some of the meetings from Ruos Nhim. After 1975, meetings shifted their focus from popular democratic revolution to socialist revolution and involved discussions of establishing cooperatives. Toat Thoeun also described driving Ruos Nhim to a conference in Phnom Penh that lasted for several weeks, but the Witness was not sure with whom Ta Nhim met while he was in the capital.

2. Secret Warehouse of Lon Nol Weapons and Witness' Defection from Regime

During his time as deputy chief of the General Staff, the Witness was charged with collecting over 20,000 weapons left behind by former Lon Nol soldiers, cleaning them, and storing them in a warehouse hidden in a bamboo forest. According to the Witness, only he, Ruos Nhim, and three old men involved in the transportation of the weapons knew about this warehouse. Although the Nuon Chea Defense suggested that this secrecy indicated a conspiratorial plot to utilize the weapons for subversive purposes,²⁷ the Witness rejected such a proposition outright. Toat Thoeun testified, "Gathering weapons in the first place was not initially a part of a plan for rebellion against the regime led by Ruos Nhim." The Witness explained that it was only in 1978, after two attempted arrests, that he himself defected and took some of the weapons for use against the DK regime. The Witness clarified again that "the weapons were not stored to start a rebellion against Pol Pot at the outset," and that his own eventual defection took place in opposition to his foster father's instructions.

The Witness claimed that DK authorities attempted and failed to arrest him twice, leading him to turn against the regime and plot a rebellion. Using the seized weapons he had collected, the Witness led a revolt with eventual forces of about 2,000 mobilized farmers and other workers, whom he incentivized with stolen rice. The Witness claimed that Ruos Nhim most likely had no knowledge of his plans for rebellion until he invited Nhim to join his troops. Ruos Nhim refused his foster son's request, even though the Witness emphasized how cadres throughout the Northwest Zone were disappearing in an ongoing purge. Toat Thoeun also testified to telling Ruos Nhim that Nuon Chea had betrayed them, in an attempt to explain the execution of people in their Zone. Later in 1978, once he had lost all those around him, Ruos Nhim asked the Witness for 300 of his men for protection, but the Zone Secretary continued to resist joining the Witness' rebellion up until his eventual arrest and execution. Toat Thoeun recalled working with the forces of Heng Samrin only after the Vietnamese-backed troops had invaded the country, explaining that he had led his troops to attack an area near the Koh Kong border in 1979.

3. Treatment of Former Lon Nol Soldiers

Nuon Chea's appeal argues that there was no national policy to execute former Lon Nol soldiers, and it claims that Ruos Nhim and Northwest Zone cadres massacred former soldiers at Tuol Po Chrey in an act of vengeance on their own initiative. Nuon Chea's Defense specifically noted Toat Thoeun's proximity to Ruos Nhim in making such decisions as one of several reasons for calling the Witness to testify in the appeal hearings.²⁸ However, the Witness denied any knowledge about Tuol Po Chrey and Ruos Nhim's alleged involvement. Rather, the Witness responded to a question from Judge Agnieszka Klonowiecka-Milart that he overheard Zone leaders announce a policy from the Center concerning Lon Nol soldiers approximately a month after the country's liberation in April 1975. Ta Nhim led the meeting with different Zone and Sector chiefs in attendance, and this policy required cadres to "smash all former imperialists" and "former feudalists." The Witness described how cadres in the Northwest had expressed their desire to spare Lon Nol soldiers, but that the "upper echelon" policy did not change. As a messenger, the Witness learned about the execution of multiple truckloads of Lon Nol soldiers who had been tricked by a Zone cadre, Ta Vanh, that they would be sent to greet King Sihanouk, about ten days after the country's liberation in April 1975. However, he testified to having no knowledge of whether or not his foster father was involved with ordering the execution.

4. Witness Demeanor and Credibility

Toat Thoeun gave clear – albeit sometimes lengthy – responses to questions throughout his testimony. He indicated when a question was unclear to him, or when he had no knowledge on a certain topic. His answers were generally very direct and provided detailed examples, bolstering his credibility. Some of the Witness's answers, however, were repetitive, making

them appear rehearsed. Moreover, he initially testified to having had no knowledge of Vietnam, including its very location, but he later described personally transporting Khmer Krom people from Battambang Province to Vietnamese authorities at the border at some point after the liberation of the country in 1975.

IV. LEGAL AND PROCEDURAL ISSUES

The Parties lodged a significant number of objections throughout the appeal hearings from 2 to 6 July. 13 objections related to the scope of the present appeal hearings as well as the wider scope of the whole of Case 002/01, and the Chamber sustained the majority of objections from both sides. The two sides were split evenly in objecting to leading questions, questions asking the witnesses to speculate, questions misstating evidence, repetitive questions, improper use of documents, and attempts to use documents that the Supreme Court Chamber had specifically disallowed prior to the commencement of hearings. These types of objections totaled 36, and the Judges also intervened six times on their own initiative in relation to such matters.²⁹

A. Objections Related to Scope of Appeal Hearings and Case 002/01

Several objections were raised concerning the scope of questions admissible in the appeal hearings. On Thursday the 2nd, Civil Party Lead Co-Lawyer Marie Guiraud objected to Defense Counsel for Khieu Samphan Arthur Vercken's line of questioning concerning food and nutrition during the DK period. She objected that such "general questions about the food situation during the entire DK period" are relevant to Case 002/02, but not the appeal of Case 002/01. Mr. Vercken argued that his questions were within the scope of Case 002/01, as they related to the guilt of the Accused in relation to the Judgment's findings on the establishment of cooperatives. Ms. Guiraud responded that the Supreme Court Chamber's decision to call the Witness instructed Parties to focus on certain points of the Judgment in Case 002/01, excluding cooperatives. The President ruled that the main focus of these particular appeal hearings concerned the policies of the CPK and its dissemination within the context of the first and second forced evacuations, and he therefore determined that Mr. Vercken's line of questioning fell "far from this context."

Objections concerning the scope of the appeal hearings were also raised on Friday the 3rd, during International Co-Prosecutor Nicholas Koumjian's questioning of Witness Sam Sithy. Defense Counsel for Nuon Chea, Victor Koppe, objected to Mr. Koumjian exceeding the scope of the appeal when Mr. Koumjian asked the Witness about B-5, the secret office of Khmer Rouge senior leaders immediately before the April 1975 fall of Phnom Penh, and its proximity to the Chrak Sdach pagoda, where the Witness claimed his father registered as a former Lon Nol soldier and was subsequently massacred. The President initially deemed Office B-5 outside the scope of the trial; however, Mr. Koumjian established the relevance and significance by linking it to Case 002/01 and the potential knowledge of the Party leadership concerning the treatment of former Lon Nol soldiers, especially in such close proximity to their headquarters. The Defense Teams continued to object throughout the Co-Prosecutor's examination of Sam Sithy. In total on Friday, Mr. Koppe and Mr. Vercken lodged seven objections regarding the scope of the hearings and the appeal; the Chamber only sustained one objection.

Objections related to the scope of Case 002/01 and of the appeal hearings recurred during the examination of Witness Toat Thoeun on 6 July. Ms. Guiraud again objected to Counsel Koppe's question regarding events that took place in 1978, reasoning that the period the Trial Chamber's Judgment in Case 002/01 was narrowly focused on events and alleged crimes that took place between 17 April 1975 and December 1977. Defense Counsel for Khieu Samphan, Arthur Vercken, rose to take issue with Ms. Guiraud's objection, suggesting that the end of 1977 was "an arbitrary date for the movement of peoples." He also noted that the CPLCL's assertion was a "practical" consequence of the "problems to do with the severance" in Case 002, an issue which the Defense Teams had covered in their appeal briefs. After the CPLCL

responded, Judge Agnieszka Klonowiecka-Milart intervened to allow Mr. Koppe's question due to its relevance to the DK command structure, noting the irrelevance of the CPLCL and Counsel Vercken's dispute in relation to the ongoing hearing. When Mr. Koppe later attempted to question the Witness about a supposed decision made at the Fourth Plenum of the Vietnamese Communist Party in 1978, Co-Prosecutor Koumjian objected on grounds that the event occurred after 1977 and therefore fell outside the scope of Case 002/01. Mr. Koppe disagreed, referring to the "incomprehensible" severance decision that permitted the Chamber to rely on post-1977 S-21 documents in its Judgment, and noting that the role of Vietnam was "crucial to understanding how anything happened in Democratic Kampuchea from 1975 to 1979." The President intervened to note that Mr. Koppe needed to provide his documentary reference and rephrase his question so as to clarify its relevance within the scope of the case. In his final question to the Witness, Mr. Koppe attempted to present a photograph of war crimes committed by Lon Nol soldiers during Cambodia's civil war. Mr. Koumjian objected that the photograph was not relevant to any Defense and illegitimately sought to justify the Khmer Rouge's alleged war crimes with the crimes of its enemy. Mr. Koppe responded that he wanted to establish whether the atrocities committed by the Lon Nol army during the period of 1970 to 1975 related to possible revenge-taking by the Khmer Rouge's Northwest Zone army, which executed Lon Nol soldiers at Tuol Po Chrey soon after the country's liberation in April 1975. After receiving confirmation from Counsel Koppe that the photograph was taken in the years between 1970 and 1975, the President determined that the photograph and the question fell outside the scope of Case 002/01.

B. Other Objections

The Parties objected to each other's examination practices a number of times, and the Judges also intervened occasionally, when questions were phrased in improper manner. The OCP and Civil Parties objected nine times on 2 and 6 July to leading questions put by the Defense Teams. In one instance, Mr. Koppe restated the same question three different times, but the Prosecution objected and the Judges prohibited the question each time. Judge Milart explained to Counsel, "You are summarizing, and objecting to the summary takes as much time as the summary itself. We are capable of making inferences of the questions and answers so far. So if we could move on." Mr. Koppe attempted a number of other times to evade objections, either by rephrasing quickly or by prompting the Witness to answer immediately, before the Parties or Judges had time to respond.³⁰ Both sides objected three times each to questions from the opposing Parties that required the Witness to speculate about others' experiences or feelings. While the OCP and Civil Parties objected four times to Mr. Koppe and Mr. Vercken for questions that either misstated evidence or were not specific enough, these grounds for objections were voiced twice as often by the Defense Teams. On 2 July, the Defense Teams repeatedly took issue with International Co-Prosecutor Nicholas Koumjian's usage of the terms "Democratic Kampuchea" and "Khmer Rouge," calling such terminology historically inaccurate.³¹ Further objections from the Defense related to documentary references, although they were overruled each time. When Mr. Koppe objected to the Prosecution's question about the meaning of the term "smashed" in a document put before Witness Sao Van, Mr. Koumjian responded bluntly, "If the documents weren't highly relevant, the Defense wouldn't be making so many objections. This goes directly to the policy of killing Lon Nol soldiers and officers." The President subsequently overruled the objection. Throughout the hearings, the President and Judge Milart intervened six times on their own initiative to prohibit improper questions or ask Parties to rephrase. Judge Milart also occasionally took up the Parties' questions and clarified them, in an effort to encourage witnesses to respond and to speed up proceedings.

V. TRIAL MANAGEMENT

The Supreme Court Chamber opened its first appeal hearings in Case 002/01 with an emphasis on the narrow focus of the hearings and a strict timetable to ensure proceedings

moved efficiently. Although the Chamber made slight adjustments to the hearing schedule, granted greater time allocations to the Defense Teams, and allowed proceedings to run late each day, it also successfully heard the three witnesses called to testify in the hearings, without requiring use of a fourth day scheduled for reserve hearings. All of the Judges of the Supreme Court Chamber were also notably involved in the proceedings, intervening in disputes between Parties and putting questions to the witnesses.

A. Attendance

Both Nuon Chea and Khieu Samphan were present in the courtroom for the first session of appeal hearings on 2 July. However, Nuon Chea complained of backache just prior to the morning break that day and retired to the holding cell to observe proceedings. Nuon Chea waived his right to be present in the courtroom and observed proceedings from the holding cell for the remainder of the appeal hearings, while Khieu Samphan was present in the courtroom during all sessions from 2 to 6 July.

Judge Attendance: All Judges were present in the courtroom throughout this week.

Civil Parties Attendance: Ten Civil Parties observed the proceedings each day this week from inside the courtroom; the Greffier read out each of their names at the start of each day.

Parties: All Parties were properly represented in the courtroom throughout the hearings.

Attendance by the public:

DATE	MORNING	AFTERNOON
Thursday 02/07/2015	<ul style="list-style-type: none"> ▪ Approximately 280 villagers from Preah Sdach District, Prey Veng Province ▪ 23 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 150 villagers from Preah Sdach District, Prey Veng Province ▪ 8 foreign observers
Friday 03/07/2015	<ul style="list-style-type: none"> ▪ Approximately 150 villagers from Takeo Province ▪ 8 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 115 villagers from Takeo Province ▪ 6 foreign observers
Monday 06/07/2015	<ul style="list-style-type: none"> ▪ Approximately 140 villagers from Traing District, Takeo Province ▪ 16 students from the Center for Khmer Studies, Siem Reap Province ▪ Approximately 40 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 120 villagers from Traing District, Takeo Province ▪ 15 students from the Center for Khmer Studies, Siem Reap Province ▪ Approximately 16 foreign observers

B. Time Management

Throughout the appeal hearings from 2 to 6 July, the Supreme Court Chamber followed a strict time allocation set out in its previously announced timetable.³² As Nuon Chea had requested the three witnesses, his Defense Counsel commenced the witness examinations each day and received the longest respective time allocation. The Chamber nonetheless accommodated all the Parties, but especially the Defense Teams, when more time was requested. Due to a significant number of objections during the 2 July testimony of Sao Van, the President granted the Defense Counsel for Nuon Chea, Victor Koppe, and the OCP an additional ten minutes and fifteen minutes, respectively, to question the Witness.

Proceedings ended that day 30 minutes late, near 4:30PM. The President also granted the Defense Teams an additional 40 minutes to question Witness Sam Sithy on the morning of 3 July, and another 30 minutes that afternoon. Proceedings exceeded the Chamber's predetermined schedule by 35 minutes, concluding around 4:00PM. Although the Defense Team for Nuon Chea did not proceed efficiently with its examination of Witness Toat Thoeun on 6 July, the Supreme Court Chamber granted additional time for Counsel Victor Koppe to question the Witness. Ultimately, Nuon Chea's Defense examined Toat Thoeun for over three hours, roughly equivalent to the time allotments for all the other Parties and the Judges combined. This flexibility appeared to result from the Chamber's desire to provide the Defense with greater time to question a witness it had categorized as a "key" source of exculpatory evidence. Although the proceedings ended over an hour late, at 5:11PM, the Chamber did not require hearings on 7 July, the date it had scheduled for reserve hearings.

C. Courtroom Etiquette

On 3 July, as he neared the end of his time allocation to examine Witness Sam Sithy, Defense Counsel Victor Koppe told the President that the amount of time he was given to question the Witness was "ridiculous." When the President announced that the Defense would receive additional time, Mr. Koppe then apologized for "losing his temper." During the OCP's examination that afternoon, both Defense Teams repeatedly accused the Prosecution of deliberately wasting time in order to "steal" time from the Defense by asking questions they claimed fell outside the scope of the appeal hearing. Mr. Koppe also characterized the Prosecution's questions as "absurd" and a "mockery" of the appeal. At one point, Mr. Koppe stood up during a short pause to resolve a technical issue and instructed the Prosecutor with the phrasing normally used by the President of the Chamber. He stated, "We are not really interested in this incident; please use these last minutes to ask about the massacre, Mr. Prosecutor." The Chamber and the OCP appeared to ignore the Defense Counsel. The Chamber deemed most of the Prosecution's questions admissible, and it eventually granted the Defense additional questioning time as well. Moreover, both Mr. Koppe and the President reprimanded Witness Sam Sithy several times for digressing or giving overly lengthy answers. On 6 July, Counsel Koppe notably ignored opposing objections and continued with his questioning of Witness Toat Thoeun without rephrasing, perhaps in an effort to speed up his examination and avoid lengthier arguments. The Chamber occasionally allowed Counsel to continue as he pleased, choosing not to intervene in multiple instances in which Mr. Koppe asked apparently irrelevant or repetitive questions.³³

D. Translation and Technical Issues

A number of technical and translation issues occurred during proceedings. Arthur Vercken, Defense Counsel for Khieu Samphan, noted a translation issue with the French version of the OCIJ interview of Witness Sam Sithy. On 6 July, Witness Toat Thoeun gave lengthy responses to a number of Defense questions, and the interpreters were unable to keep up with the Khmer testimony. After this occurred in response to a question from Defense Counsel Arthur Vercken, Counsel remarked, "Sometimes, I wonder what kind of translation you're receiving." Throughout proceedings from 2 to 6 July, microphone errors interrupted communications between the Judges and the Witness multiple times. Witness Sam Sithy stood and made several gestures to demonstrate his response to Judge Milart's question about the distances involved in the alleged massacre, but the microphone did not record his response, and he did not repeat his motions.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Thursday 02/07/2015	9:00	10:46 – 11:03	11:55 – 13:27	15:34 – 16:01	16:32	5 hours and 16 minutes
Friday 03/07/2015	8:57	10:25 – 10:47	12:12 – 13:00	14:37 – 14:56	16:05	5 hours and 39 minutes
Monday 06/07/2015	9:14	N/A	11:53 – 13:24	15:12 – 15:26	17:11	6 hours and 12 minutes
Average number of hours in session				5 hours and 42 minutes		
Total number of hours this week				17 hours and 7 minutes		
Total number of hours, day, weeks in appeal hearings				17 hours and 7 minutes		
3 APPEAL HEARINGS OVER 1 WEEK						

*This report was authored by David Cohen, Lillian Gill, Lea Huber, Hout Pheng Ly, Daniel Mattes, Lina Tay, and Oudom Vong as part of AIJI's KRT Trial Monitoring and Community Outreach Program. AIJI 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
- § photographs are courtesy of the ECCC.

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias "Duch"</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (Case No. 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
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
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
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
RAK	Royal Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ Trial Chamber, “Case 002/01 Judgment” (7 August 2014), E313 [hereinafter, **TRIAL CHAMBER JUDGMENT**].

² Nuon Chea, “Nuon Chea’s Appeal Against the Judgment in Case 002/01” (29 December 2014), F16 [hereinafter, **NUON CHEA’S APPEAL**]; Khieu Samphan, “Mémoire d’appel de la Défense de M.KHIEU Samphân contre le jugement rendu dans le process 002/01” (31 December 2014), F17/Corr.1. Khieu Samphan’s initial appeal brief was filed by the deadline on 29 December 2014 but corrected two days later, however, an English translation of the appeal brief has yet to be published.

³ Office of the Co-Prosecutors, “Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01” (28 November 2014), F11.

⁴ Supreme Court Chamber, “Decision on Part of Nuon Chea’s Requests to Call Witnesses on Appeal” (29 May 2015), F2/5 [hereinafter **SUPREME COURT CHAMBER DECISION**].

⁵ See relevant CASE 002/01 KRT TRIAL MONITOR reports on the October 2013 closing statements in Case 002/01: CASE 002/01 KRT TRIAL MONITOR, Issue 70, Hearings on Closing Statements Week 1 (16-18 October 2013); CASE 002/01 KRT TRIAL MONITOR, Issue 71, Hearings on Closing Statements Week 2 (21-25 October 2013); CASE 002/01 KRT TRIAL MONITOR, Issue 72, Hearings on Closing Statements Week 3 (28-31 October 2013).

⁶ Nuon Chea, “Request to Obtain and Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (1 September 2014), F2.

⁷ Nuon Chea, “Second Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (3 September 2014) F2/1.

⁸ Nuon Chea, “Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (25 November 2014) F2/4 [hereinafter **THIRD REQUEST**].

⁹ NUON CHEA’S APPEAL, paras. 730(a), 730(c).

¹⁰ SUPREME COURT CHAMBER DECISION, paras. 8, 18.

¹¹ Nuon Chea, “Nuon Chea’s Fourth Request to Consider Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (15 June 2015) F2/6.

¹² CASE 002/02 KRT TRIAL MONITOR, Issue 16, Hearings on Evidence Week 13 (21-24 April 2015), pp. 3-6.

¹³ Nuon Chea, “Nuon Chea’s Fifth Request to Consider and Obtain Additional Evidence in Connection with the Appeal Against the Trial Judgment in Case 002/01” (25 June 2015) F2/7.

¹⁴ The ECCC’s Internal Rules (Revision 9, dated January 2015) provide the Supreme Court Chamber with two ways of calling new evidence during the appellate stage of proceedings. Internal Rule 104(1) reads, in part, “The Supreme Court Chamber may itself examine evidence and call new evidence to determine the issue.” Internal Rule 108(7) reads: “Subject to Rule 87(3), the parties may submit a request to the Chamber for additional evidence provided it was unavailable at trial and could have been a decisive factor in reaching the decision at trial. The request shall clearly identify the specific findings of fact made by the Trial Chamber to which the additional evidence is directed. The other parties affected by the request may respond within 15 (fifteen) days of the receipt of notification of the request.”

¹⁵ SUPREME COURT CHAMBER DECISION, para. 16.

¹⁶ SUPREME COURT CHAMBER DECISION, para. 18. *Proprio motu* is a Latin maxim for “of one’s own initiative.”

¹⁷ Supreme Court Chamber, “Directions on the Conduct of the Hearing” (17 June 2015), F26.

¹⁸ NUON CHEA’S APPEAL, para. 567.

¹⁹ SUPREME COURT CHAMBER DECISION, paras. 24-25.

²⁰ NUON CHEA’S APPEAL, para. 567. The Appeal argues: “[SCW-4] states he personally attended a meeting in Takeo city at which cadres were instructed that ‘soldiers with the ranks from Second Lieutenant to Colonel’ – in other words, all officers below the rank of General – ‘were not to be harmed.’ This announcement was made by a member of the Sector 13 Committee in the presence of Standing Committee member and SW Zone secretary Ta Mok.”

²¹ NUON CHEA’S APPEAL, para. 595.

²² SUPREME COURT CHAMBER DECISION, paras. 22-23

²³ THIRD REQUEST, paras. 14-33.

²⁴ THIRD REQUEST, para.26.

²⁵ NUON CHEA’S APPEAL, paras. 459-462.

²⁶ SUPREME COURT CHAMBER DECISION, paras. 19-21. The SCC decision recalled that the “three-prong test” requires the SCC to “satisfy itself that the proffered evidence: (i) was unavailable at trial; (ii) could have been a decisive factor in reaching the trial decision under appeal; and (iii) pertains to specific findings of fact by the Trial Chamber.” In its Decision, the SCC noted that Toat Thoeun’s written record of interview was only disclosed in October 2014, after the Judgment in Case 002/01, satisfying part (i). The Decision found that Toat Thoeun “may provide material information concerning the alleged CPK policy against Khmer Republic soldiers and officials – including the events at Tuol Po Chrey, the factional character of the CPK, and Ruos Nhim’s independent decision-making power,” satisfying parts (ii) and (iii) of the test.

²⁷ THIRD REQUEST, para. 19.

²⁸ THIRD REQUEST, para. 17.

²⁹ Both sides objected 18 times each on these grounds over the three days of hearings. The Judges overruled Defense objections seven times and OCP or Civil Party objections six times.

³⁰ For example, in response to one objection on 2 July, Mr. Koppe explained, “I agree it’s a bit leading, Mr. President, but I’m asking the Witness about an emotion, and I would argue at this stage of my questioning, and because it’s about a specific emotion, I would be entitled to lead the Witness, as it goes to his brother. I can reformulate it though.” With no immediate reaction from the Judges, Mr. Koppe restated his originally problematic question and prompted the Witness to respond, technically mooted the original objection.

³¹ When the International Co-Prosecutor, Nicholas Koumjian, referred to Democratic Kampuchea in a question, Counsel Victor Koppe rose to object. He argued, “Democratic Kampuchea didn’t come into existence until March or April 1976. Before that, there was [sic] only the FUNK and GRUNK governments. Be more historically accurate.” Mr. Koumjian rephrased and went on to use the term, “Khmer Rouge Regime.” However, Counsel Arthur Vercken later took issue with this terminology as well, stating, “Khmer Rouge is a name that was given by King Sihanouk; it’s not a title that has any historic meaning, and the term should be used accordingly. If the Prosecutor is discussing 1971, he should use the term applying to that period.” Mr. Koumjian responded, “I’m talking about the Khmer Rouge. I know they changed their names in various times in various periods. Everyone in this courtroom knows it. ‘Khmer Rouge’ is something everyone understands.” In response, Mr. Koppe rose and, voicing his irritation clearly, declared, “That is such an ahistorical proposition, Mr. President! In 1971, it was the Front. The majority in the Front was not the CPK. Then, a period of government before DK installment, then, CPK came into the government. But that’s the problem of this whole trial, isn’t it? To try to sum it up conveniently. That’s fine in 002/01, but not now in the appeal, to sum it up and call it all ‘Khmer Rouge’.” The President responded by advising the Co-Prosecutor to use correct wording.

³² Supreme Court Chamber, “Annex – Timetable for the Hearing” (22 June 2015), F26.1.

³³ For example, in the second session on 6 July, Mr. Koppe asked Witness TOAT Thoeun, “In its Judgment, the Trial Chamber found that your foster father, Nhim, ordered the killings [at Tuol Po Chrey]. Did he?” The International Co-Prosecutor objected that the question had already been asked to the Witness, but Mr. Koppe reacted, “True, but I wanted to try it differently.” Before waiting for any reaction from the OCP or the Judges, Counsel turned to the Witness to restate the same question: “Did your foster father order the executions of these former soldiers and officials?” Monitors in the courtroom’s public gallery noted that the President, hearing the exact same question restated, turned to the Co-Prosecutor and smiled. Only after this exchange of smirks did the Co-Prosecutor again rise to object once more, noting, “Again, it’s the same question. I don’t think there was a ruling.” The President confirmed that the question was repetitive but ordered the Witness to answer. On other occasions, the President did not intervene at all as Mr. Koppe pushed through his response to objections in order to immediately resume his questioning without any instructions from the Chamber.