



### **Sim Hao's Testimony Ends as the Tribunal Tends to Scheduling**

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Court proceedings at the Extraordinary Chambers in the Courts of Cambodia proceeded this morning with a Trial Management Meeting and were followed by the second part of the testimony of soldier and laborer, Sim Hao.

A mixture of students from university and high school attended the proceedings today, 379 of whom came from Phnom Penh and 473 from Kampong Cham Province.

#### ***Trial management meeting***

Unrobed, President Nonn welcomed the lawyers to the courtroom, explaining that the purpose of the trial management meeting was to give the parties a last opportunity to raise any issues that had not yet been raised, and to discuss the conclusion of the trial. Both the accused, Khieu Samphan and Nuon Chea, had been allowed the opportunity not to attend the meeting, and had decided not to.

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<sup>1</sup> Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC's hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

President Nonn announced that the chamber would be holding a hearing on the issue of Joint Criminal Enterprise, likely in the week commencing May 24 2013. The president wished to confirm that the Prosecutor and the Co-Lawyers for the Civil Parties were not duplicating in the material they wished to present to the court. For the prosecution, Deputy Co-Prosecutor William Smith confirmed that the parties were liaising with each other.

Mr. Smith also stated that the prosecution envisioned that they would need three days in order to present documents on forced transportation, forced marriage and the targeting of specific groups. Lead Co-Lawyer confirmed that they would be requiring 1.5 days to make submission on these issues.

In response to a question from Judge Lavergne, the prosecutor and civil parties informed the court that they had not yet shared a list of the documents which they would be referring to in these proceedings, however they would do so.

The President also informed the Court that the Nuon Chea defense team would not have documents to present, but had reserved a day to respond to the documents presented by the other parties.

The topic then turned to the participation of the Khieu Samphan defense team in the documentary hearings. Co-Lawyer for Khieu Samphan, Arthur Vercken, made extremely forceful submissions to the effect that it was their opinion that such key document hearings infringed upon the right to a fair trial. Evidence before them could not be properly scrutinized in an adversarial setting, and he went so far as to allege that misconduct occurred during key document hearings. Instead Mr. Vercken wished to have admissibility hearings held.

In response President Nonn explained that the chamber held key document hearings so that documents which had already been admitted into evidence during witness hearing, could be highlighted to the court and the public at large. Admissibility of the documents in question had already been determined at prior hearings, and so it was not appropriate for admissibility to be reargued. That said, the probative value of evidence could be argued.

The president asked the Khieu Samphan defense how much more time they wished to be allocated to scrutinize the documents presented, or adduce their own. In response he was told that the team's provision was unchanged. Mr. Vercken told the court that such hearings were "locking the door after the horse had already bolted." The narrative the court was using to justify these key document hearings was questionable, according to Mr. Vercken. Early in proceedings the court had claimed that such hearings were only for presenting documents to the public and the media. The court's aim, he said, should be judicial in essence. Instead of wasting time on such hearings, more time should be allowed for final arguments and the page limit for the final briefs should be extended. At present there is a 100-page limit on final briefs. "Please accept my apologies," he asked the court, in an unapologetic tone, "but this is extremely restrictive."

Mr. Vercken also told the court that he was coming to understand that parties would also have time limits for their final arguments, which should be an oral summary of their 100 page

documents. “These hearing have become a cover for the chamber to slice away at the possibility of leading a defense of Khieu Samphan,” he told the chamber. “We refuse to participate in these hearings which seem to us to be a trap.”

After the president had pushed him, counsel for Khieu Samphan would not give a direct answer as to how much time he would need to address the court during the key document hearings. The point was made by Judge Lavergne that the other defense teams were participating fully in the proceedings; the Khieu Samphan team was not the only defense team.

On this point Mr. Victor Koppe, Co-Lawyer for Nuon Chea, elaborated on his position asking the court, “Are we supposed to challenge the documents on the admissibility or the probative value? If the first then there is no problem, but if we are asked to comment on the probative value then this will be a cause of controversy.”

At this stage President Nonn introduced Judge Cartwright to respond on behalf of the court. She clarified that the term ‘key documents’ has always been used by the parties to refer to documents crucial to their case. The key document hearing was an opportunity given for each party to present such documents, and for other parties to comment on any point except for admissibility, which had already been covered. Judge Cartwright again enquired as to whether Khieu Samphan’s team would be wishing to present their own key documents.



As Mr. Vercken started to explain what had occurred in the past, Judge Cartwright pushed across him and asked him to answer the question. Ultimately counsel sad down angrily, having declared that they would not participate in a hearing which violated their clients fundamental rights.

Mr. Smith next contended that no fair trial rights were to be infringed if council took upon himself his duty to challenge evidence in the same manner in which it was presented. Giving what he called a “global” response, he stated that the court had had document hearings in the past, which were distinct from key document hearings. All parties had been able to argue for the admission of evidence and all parties had been able to challenge this.

The defense team for Khieu Samphan have “completely got it wrong,” argued Mr. Smith, as they had had the opportunity in the past to challenge the admissibility of this evidence. The purpose of a key document hearing is different; it is to make sure that the trial is transparent. How this could be a violation of the accused’s fundamental rights was difficult for him to understand.

At this stage, moving on, the president informed the court that there had been 4000 documents admitted into evidence so far during the course of the trial. In addition 800 documents were subject to a decision by the court on their admissibility.

Following indications that the accused wished to be questioned, the court had decided that no upper time limit would be placed on their examination, but rather they could be examined for as long as they were willing and as long as it were relevant to the case. Timely notice was to be given of the documents, which each party wished to be use in these examinations.

On the subject of closing briefs, President Nonn explained that the Co-Prosecutors had requested an extension to the filing deadline. In addition, Khieu Samphan's defense team desired three months. The court had resolved on a deadline of six weeks from the end of the evidentiary phase. The court would not entertain claims for additional time, or a more lenient page limit. At this point the court invited the prosecution to elaborate on an earlier request for clarification. Mr. Smith requested that the court give guidance on the format of closing statements, particularly how rebuttals and replies would be handled.

In addition, Mr. Smith requested that endnotes be used for the final briefs, rather than footnotes. The endnote pages should not, according to Mr. Smith, be included in the page count. This would allow council to make reference to the large number of documents cited in the course of the trial, without having to fear that half of their pages would be taken up by footnotes.

On this matter Ms. Elisabeth Simonneau Fort, International Civil Party Lead Co-Lawyer, agreed with Mr. Smith. She also addressed the court on the amount of time it would take the civil parties to address the court on key documents – three days, which could be reduced to two.

On the question of whether Khieu Samphan required more time to prepare for his examination, both the prosecution and civil party lawyers argued that he did not, as he had been afforded five years to prepare.

In response, National Co-Layer for Khieu Samphan, Kong Sam Onn, stated that the team did not need this time to prepare documents. Khieu Samphan had been in detention for five years, but this was not time he had used to prepare documents. Although younger than Nuon Chea he was not a "full strength youth." Whilst he had tried his best to follow, his defense team were requesting a week to make sure the case made sense to him and to go through documents.

Mr. Vercken, Khieu Samphan's international Co-Lawyer, reiterated this. He argued that hearing times were not a chance that could be used to do anything else. Thus, they were requesting three weeks to prepare and an additional fortnight to revise transcripts, which he said needed checking for translation errors. With regard to summing up the case in a 100-page brief, on this matter he declared, "Nobody can achieve the impossible."

On this matter Mr. Koppe concurred, stressing that summarizing 6000 documents in a 100-page brief would be impossible.

After a brief line of questioning from Judge Lavergne on how endnotes might work, the topic was changed to a question raised by the civil parties. The president told the chamber that the civil parties had sought clarification on reparations and their scheduling. He held that this would be dealt with later in the year and that final submissions on reparations were not to be expected imminently.

After a short check on the status of translating documents, a question was raised on *res iudicata*. Lead Co-Lawyer for the Civil Parties, Ms. Simonneau Fort, sought a legal judgment on this issue, essentially governing whether the courts judgment would be the final word, or whether a second trial could begin before the resolution of the first.

Judge Cartwright provided the courts response:

In reference to whether the chamber has a position on the legal issue of *res iudicata in relation to Case 002/02* and subsequent trials, the chamber considers it is premature to discuss these issues at this point. First, because we await a decision from the Supreme Court Chamber, which may well, clarify a few of these issues. Secondly, we haven't catered to the parties that after closing addresses are completed in case 002/01 we will be holding a trial management meeting where the issues such as *res iudicata* can be raised and all parties can make their submissions at that point.



The President next turned to the issue of admitting additional individuals as witnesses. At present there were additional seventeen witness requests before the court. The prosecution was invited to explain their additional witness requests. Mr. Smith outlined that they had ten in total. Five were to give evidence on the forced movement of people. Three on Taul Po Chrey, and two specifically with relation to the accused.<sup>2</sup> These additional witnesses were needed so that the prosecutor could reach the high burden of proving guilt beyond reasonable doubt.

The first three additional witnesses, who would testify on forced movement, would each be from a different geographical region. This would allow the widespread targeting of members of the Lon Nol regime by the Khmer Rouge. Nuon Chea in recent motions, and Khieu Samphan over recent weeks, have both been clear that this policy of targeting is contested. The prosecution estimated that only half a day would be needed for each witness.

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<sup>2</sup> Taul Po Chrey is the site of alleged killing by the Khmer Rouge of Lon Nol soldiers.

The prosecution went on to explain that it was important that they have a chance to show the dispersal of the Cham people. (Not the genocide or anything else outside of the severity). The additional witnesses on forced movement would be Cham, none of who had thus far given evidence before the court. Again, the estimate was that half a day would be needed for these three witnesses, bringing the total for the five witnesses on forced movement to 2.5 days.

Judge Cartwright questioned whether the witnesses could realistically be examined in this timeframe. She could not recall a witness having taken only half a day since the beginning of the trial. In response Mr. Smith submitted that it was a genuine estimate, and that they had factored in time for cross-examination by the defense in this estimate.

Having been asked whether the defense objected to these new witnesses, Mr. Koppe replied on behalf of Nuon Chea. He claimed that there was no objection in principle, to new witnesses. That said, he questioned the need for the Cham witnesses, who he could not see as representing a genuine new issue.

Mr. Vercken, for Khieu Samphan, accused the prosecution of “overloading the case with elements.” He questioned the late introduction of the witness and felt the time would have been better spent allowing the parties to plead properly. The prosecution contested that these witnesses were being introduced late.

The next set of witnesses that they sought to introduce were five individuals who had not previously been identified as relevant. They were identified from the film *One Day in Taul Po Chrey*, which was put on the Civil Party document list in April 2011. Although two witnesses had already been put before the court on the subject of the executions that took place at Taul Po Chrey, there were outstanding matters, which the prosecution wished to address. The Civil Parties expressed to the court that they supported the introduction of these witnesses.

Mr. Koppe, Co-Lawyer for Nuon Chea addressed the court with respect to an urgent motion he had filed to have five witnesses summonsed, also with regard to the killing at *Taul Po Chrey*. The Nuon Chea defense team were contesting that there was a targeted killing policy against Lon Nol officials. Mr. Koppe also questioned why the prosecution was seeking to call five individuals who were in a documentary film, but not the filmmaker himself. Nonetheless he was clear that they “agreed to disagree” with the prosecutor on the occurrences at Taul Pol Chrey, and that he did not object to the new witnesses.

### ***The continued evidence of Sim Hao***

Following the lunch recess, evidence continued to be heard from Mr. Sim. Judge Lavergne initially questioned the witness. He asked the witness whether he had been to any other places after he had left KM6. The witness explained that he'd been kept in a holding area, before then being dispatched to Kampong Sam. The judge also asked whether the witness knew someone in charge of the Ministry of Commerce, called Nhem. The witness explained that he had not met this person; however he knew who he was. Nhem had been the supervisor of all of the laborers in his province.

Mr. Sim did not know when and why Nhem was arrested, however he did recall a person at the Ministry telling him that the supervisor had been removed. Chea, whose arrest Mr. Sim described in his previous day's evidence, it must have been arrested because he was Nhem's "messenger."

***Khieu Samphan's defense question Mr. Sim***

Mr. Kong, Co-Lawyer for Khieu Samphan initiated the defense examination of the witness. He began by clarifying the source of the dates contained within the witness's personal biography, which had been quoted to the court on the previous day. The witness testified that dates had come from his own recollection.



Mr. Sim was asked about his claim that when he had been a laborer in late May of 1975 he had witnessed an aerial bombardment. From the witness testified that she watched a plane circle the warehouse and the port at Kampong Sam. He then heard noise, and later witnessed destruction at the site of a warehouse.

The subject was then turned to the instances at which the witness had seen Khieu Samphan during the Khmer Rouge period. The witness saw him first when he was working as a laborer. Mr. Khieu Samphan was walking down the road and inspected the products Mr. Khieu Samphan was working on. He told the worker to be careful as the products were for export. The witness testified that he did not know Khieu Samphan, and this was the first time he had seen him.

Mr. Khieu Samphan was described by the witness as having a small beard and not being large or fat. He was wearing a black uniform, with a jacket, and black trousers. The witness could not recall the shoes Mr. Khieu Samphan had been wearing, despite Mr. Kong's asking.

Prior to that day Mr. Sim testified that he had heard of Mr. Khieu Samphan. Specifically he had heard his name long before, however did not know his role. On the question of how he had come to hear about the United Front of Kampuchea, the witness testified that Ta Rith had told him about it at meetings. He had gotten to know Ta Rith in 1977 when he was assigned to his position at the Ministry of Commerce.

The witness testified that he saw Khieu Samphan on an additional occasion. He was asked who accompanied Khieu Samphan, and explained that he had been followed closely by "messengers." When asked what there were he told the court that he referred to all those who followed the leaders as "messengers." The witness was asked by Mr. Kong specifically about a bowing head gesture he had seen Rith make towards Khieu Samphan, This the witness described as a respectful bow. Mr. Kong unsuccessfully sought the courts permission to ask the

witness to re-enact the bow. Under examination he then estimated that Khieu Samphan could not have been more than a couple of years older than Rith.

Moving forward in time Mr. Kong asked the witness about meetings he attended with Khieu Samphan shortly before the fall of Phnom Penh in 1979. These meetings lasted approximately an hour and a half, and were held in the mornings at a location, which Mr. Sim could not recollect. Approximately 100 people attended them. At these meetings Mr. Khieu Samphan told the audience that when they went back to their homes they must dig trenches, as a US bombardment was imminent. They must be ready to fight back.

The next day the witness heard gunfire and fled the city after he had heard artillery fire. Although this artillery fire could be heard on the previous day, it was over night that it got close enough to scare Mr. Sim.



Questioning of the witness was at this stage turned over to Mr. Vercken, Co-Lawyer for Khieu Samphan. He reconfirmed that Khieu Samphan's order had been to dig trenches, and sought to understand the witness's comprehension of the reasoning for this order. The witness testified that they were asked to dig for their own protection. When asked if he agree that the aim was not to counter attack, the witness explained that they had no arms with which they could have mounted a counterattack.

The witness was asked if he remembered telling the Documentary Center of Cambodia that the other leaders had all fled at this point. He testified that this is something he remembered being told by Khieu Samphan at the meeting the day before the Vietnamese took Phnom Penh.

Mr. Vercken concluded his examination with two short lines of questioning. The first regarded testimony given by the witness about the arrest of Ta Pok. A discrepancy was highlighted between the witness's interviews and the testimony he had given. In the former he could not read the number plate whereas in the latter he was able to recall some of the plate. Secondly, he asked the witness why his brother left the Vietnamese army. The witness told the court his brother left the army in 1970 and returned home on the same day that their father died.

### ***Nuon Chea's defense question Mr. Sim***

Mr. Koppe very quickly questioned the witness. He firstly asked the witness to reconfirm the testimony he had given on the previous day, in which he had told the court that he had not witnessed Khmer Rouge soldiers seeking out Lon Nol soldiers from those evacuating Phnom



Penh in 1975. While he was in his battalion he only ever witnessed one or two arrests in Kampong and did not know what had happened to those who had been arrested.

The witness also testified that he had not ever seen the execution of Lon Nol officials or soldiers however had seen some dead on the battlefield.

### ***Trial Management Meeting Continued***

Following Mr. Sims evidence the trial management meeting that had begun in the morning was completed. Now unrobed, President Nonn started the meeting by asking the Nuon Chea defense to continue elaborating on the witnesses they requested.

Firstly the documentary maker of *One Day in Taul Po Chrey* was sought, as within the documentary Nuon Chea stresses that there was no policy to kill Lon Nol officials or soldiers.

In addition, Mr. Koppe explained that witness TCW223 was sought because “not only does he know Nuon Chea well, but also he was a senior military commander having knowledge about the policy on Nol Lon soldiers. The other five related to the killing at Taul Po Chrey, and were necessary because the two witnesses heard so far did not confirm what they had told the Co-Investigating Judges. As such Mr. Koppe submitted that it was of the utmost importance that the five witnesses that the Co-Investigating Judges rely on in their closing statement should appear before the court.

Finally, the prosecutor requested two additional witnesses in order to demonstrate the role of Khieu Samphan in education, forced transfer and in Joint Criminal Enterprise. This was in light of his defense that he was not a senior leader. The prosecution sought to call the witnesses for half a day each in order to focus on Khieu Samphan’s role alone.

The Court will reconvene on Monday June 17 at 9:00