

### **Civil Party's Challenge to Khieu Samphan to Account for the Disappeared Creates Drama and Tension in the Courtroom**

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It was a dramatic day in the Case 002 hearing at the Extraordinary Chambers in the Courts of Cambodia (ECCC), with Khmer Krom civil party Chau Ny not only testifying about discrimination against the Khmer Krom during the period of the evacuation of Phnom Penh but concluding his testimony with a controversial attempt to ask Khieu Samphan a direct question. Specifically, Mr. Ny entreated that Mr. Samphan divulge the whereabouts of Mr. Ny's uncle, an acquaintance of the accused who was allegedly summoned to Phnom Penh by Mr. Samphan during the evacuation of Phnom Penh and never heard from again.

Mr. Ny's request triggered a flurry of chaotic activity in the Court's final hearing hour before it takes a week-long break for the Cambodian Water Festival. Mr. Samphan himself was driven to comment, while his counsel complained that defense rights were being grossly violated by the Chamber's permitting Mr. Ny to ask such questions in the course of his statement of suffering. Nuon Chea's international counsel persistently attempted to give his views, prompting Judge Cartwright to suggest that he be removed from the courtroom.

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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>.

In the midst of this activity, the Court also heard detailed testimony from both Mr. Ny and the civil party preceding him, Ua Ry, about people suffering as a result of the evacuation of Phnom Penh. In particular, Ms. Ry testified about witnessing the execution of her entire family, while Mr. Ny relayed his experience of watching his family waste away and die of starvation and illness, with one of his nephews being compelled to eat his own excrement before eventually succumbing to his physical condition.

### ***Recognition of New Civil Party Lawyers***

At the start of the first session for the day, Trial Chamber Greffier Se Kolvuthy advised that the accused Ieng Sary remained absent “due to his health concerns” but had waived his right to be present in hearing the testimony of both civil parties slated to testify today. Trial Chamber President Nil Nonn then noted that there was a civil party lawyer present who had not yet been recognized. Ven Pov, representing the National Lead Co-Lawyer for the civil parties, was then given the floor to seek the Court’s leave to recognize both a new national civil party lawyer with identification number 583, as well as international civil party lawyer Mahdev Mohan of Access to Justice Asia, a member of the bar association of Singapore already recognized by the Bar Association of Cambodia.

### ***Clarification of Details Concerning the Evacuation of Phnom Penh***

When her examination resumed, civil party Ua Ry continued to give details of her family’s evacuation out of Phnom Penh under questioning from National Co-Lawyer for the civil parties Ty Srinna, observed by 250 university students from Svay Rieng province. Ms. Srinna began by requesting the civil party to clarify certain details of her previous testimony to the ECCC on November 22, 2012, in which she had detailed her family’s evacuation from Phnom Penh and subsequent sojourn through the provinces on foot and by boat, truck, and ox-cart. Focusing first on Ms. Ry’s testimony concerning Peth Thom hospital, where she had accompanied her injured sister,<sup>2</sup> the lawyer asked Ms. Ry to describe in more detail the wounded people she saw while at that hospital. The civil party replied, “They were civilians. They were neither Khmer Rouge soldiers nor Lon Nol soldiers.”

Next, Ms. Srinna queried whether Ms. Ry’s family tried to resist the order to evacuate Phnom Penh, for example by arguing that Ms. Ry’s mother was in a post-natal state and her sister was injured. The civil party explained:

My mother said she just had a baby and my elder sister was injured so we could not really go, but they insisted that we just had to go for three days and we would be allowed to return. ... They did not allow [residents] to stay in [their houses] as they had to clean the city.

Moving ahead in the civil party’s chronology of events during the evacuation, Ms. Srinna sought further details about the events that unfolded after Ms. Ry’s family disembarked from a boat and ordered to board trucks. Ms. Ry said:

I saw trucks, but I didn’t know how many because whenever the truck was fully loaded, it left and then another one came. ... There were many [people on each

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<sup>2</sup> This is a reference to the Prek Ketmealea Hospital in Phnom Penh.

truck], the trucks were fully loaded but I could not tell you the exact number. ... There were four [Khmer Rouge soldiers on each truck], a driver, a conductor, and two others staying with us on the truck. ... Each carried one gun.

As for where the civil party was being transported on the truck, Ms. Ry explained, “My mother actually asked whether we were being sent back to Phnom Penh, and they said there was no need for us to know and we would know when we arrived at the destination.”

Ms. Ry recalled that it took one day for them to travel to Pursat province, where they arrived in the late evening; the travelers were then taken by ox-carts to various villages, with her family being sent to Chamkar Tapou village with several other families. After staying in the village for four or five days, Ms. Ry stated, the family members were separated. She continued:

The parents were separated from us and I was also separated from my other siblings. They already built a long house for the families, and we were put into one room. ... It was a bamboo house. Everything was made out of bamboo and the roof was a thatch roof. ... The “base people,” they lived in their ordinary houses. As for the “new people,” we were put into that long house.

#### ***Food Shortages, Forced Labor, and Torture***

Regarding food conditions at Chamkar Tapou, the civil party testified:

When we first arrived, we had rice, that is, cooked rice, for lunch, and in the evening, we were given porridge. That lasted for a few days. Later on, it was all porridge. ... We only had one ladle of watery gruel per meal. ... The food was not sufficient, because one coconut shell ladle was not sufficient. My mother did not have enough to eat and sometimes I shared what I had with her.

Ms. Srinna asked whether any care was given to Ms. Ry’s mother at this location since she was in a post-natal state. Ms. Ry denied this, stating that, instead, her mother “was sent to work in cleaning the rice, but in fact, after that, she got this disease, sickness from overwork and exhaustion. Even if she worked with the rice, the food given to her was not sufficient.”

Ms. Srinna inquired whether the civil party’s family was subject to any mistreatment at this time, but before Ms. Ry could respond, the president interjected, reminding the parties that Ms. Ry would have an opportunity to give a statement of suffering at the end of her testimony and that this trial segment related to the first and second evacuations, in particular the commencement of the evacuations and arrival at the destinations. He directed Ms. Ry not to respond to Ms. Srinna’s last question.



Ms. Srinna pled her case, however, explaining that she wished to question the civil party concerning her initial arrival at the “base” and her experiences at the time and wished to repeat her initial question as it related to Ms. Ry’s arrival at the destination. Seemingly unobstructed by the bench, Ms. Srinna then asked whether there was a distinction in the treatment of people in terms of their access to food. Ms. Ry denied this, explaining, “In fact, the ‘old people’ ate communally with the ‘new people’ as we all had to eat at the common dining hall. The only distinction is that they lived in their old houses while we lived communally in a long house.”

When her family arrived at Chamkar Tapou, Ms. Ry continued, her mother was requested to “work with the rice immediately and, even though Ms. Ry’s elder sister was still injured, she was also asked to work in the kitchen. “As for myself,” she said, “I was asked to cut the *tuntrean khaet*<sup>3</sup> trees in order to make fertilizer. My elder in law was asked to build canals, a dyke.”

As to the general conditions that Ms. Ry’s family faced at the “base,” Ms. Ry testified:

If we were late at work, we would be criticized. As for my mother, she would work the whole day from dawn until dusk, and when she came home, she would wish to see her children. However, because she did so, she was detained for one week and was deprived of her food rations.

Ms. Srinna asked the civil party why her mother was detained. However, this elicited an objection from National Co-Counsel for Ieng Sary Ang Udom on the basis that it did not fall within the scope of the current trial segment. He recommended Ms. Srinna assist parties by indicating the relevant timeline she was referring to, and further noted that Ms. Srinna’s question seemed to concern security centers, which were not part of the proceedings. Ms. Srinna responded that her question was relevant because evacuations would include, and resulted in, the civil party being sent to a province, and it was relevant to ask about what difficulties the family had encountered, since such hardships would arguably never have been incurred had the civil party and her family not been evacuated.

President Nonn, however, reminded Ms. Srinna that Ms. Ry was testifying as to the evacuation and not “all facts or results” of the evacuation. In the first and second phases of the evacuation, the president continued, the focus was on the policy to evacuate the population and the “immediate arrival of the population after being evacuated.” This did not include “a period of three or four years later,” which could “infringe the main purpose of the immediate evacuation.” Therefore, Mr. Udom was correct in suggesting Ms. Srinna’s question be rephrased to indicate dates precisely.

At this point, International Co-Counsel for Nuon Chea Andrew Ianuzzi was granted leave to interject. He first inquired, “Are you alright, Mr. President? You seem rather agitated.” “What is your problem?” President Nonn responded emphatically, pointing for emphasis, adding:

I think we have dealt with a problem that is not relevant to your comment. We were ruling on the objection by the counsel for Ieng Sary ... concerning the

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<sup>3</sup> The name of this tree species was relayed directly in the Khmer language in the English translation.

question put by counsel for the civil parties. ... We do not understand how you could be on your feet to intervene. ... We believe that you are not qualified to judge me as the president, and the Trial Chamber judges.



President Nonn cut off a further attempt from Mr. Ianuzzi to interject and directed Ms. Srinna to continue. The latter resumed her questioning accordingly, referring back to the detention of Ms. Ry's mother and asking whether she was detained soon after their arrival at Pursat. The civil party denied this, explaining, "She had been assigned to work for quite some time already. She was not detained immediately after arriving at Pursat."

Asked whether she was told the purpose of the evacuations. Ms. Ry said:

We were told that only the "new people" would be transferred from places. My sick sister, who asked to be allowed to stay with our grandparents, was not allowed to stay

with them. She had to also be evacuated because she was a "new person."

On whether people died or fell ill, Ms. Ry said that she observed sick people but had not seen people die. While there were many sick people during the evacuation, including her sister, who had to be helped the entire time by her family members, the civil party said, "no one took notice. ... Even though people were very sick, they were forced to move in the direction intended for us to go."

Food rations were also inadequate, Ms. Ry said. She elaborated, with a neutral expression:

We did not manage to find supplementary food. We were given these very little food rations, and that's all we had. I had to collect some things to supplement the very little food we were offered. I had to eat raw prawns collected from the farms to supplement my meals. ...

I wasn't allowed to come to my mother to share the food with her, but because I really missed her dearly, I knew I would be killed for going to see her, but I had to go and do that because I had to see her. My mother, upon seeing me, said I should never see her because it was so risky. I said that I missed her [and] I wanted to be with her. It was a trip at midnight, so that no one could see. The purpose of my trip was to share my food with her because I knew that she would not have enough to eat. ... If I was seen going and visiting my mother, I would have been killed or beaten to death. But I was never found out about this.

The civil party also described instances of torture, stating that “Angkar asked me to plant cassava trees. I planted sweet potatoes, but I couldn’t do that properly. I was beaten severely until I passed out. I only regained consciousness a short while later.” Mr. Udom interjected again at this point, saying that it appeared the same line of questioning was being posed time and again and that facts concerning persecution and torture were not relevant to the facts at hand.

***“They Threw My Little Brother into the Air to Be Stabbed by a Bayonet”***

Ms. Srinna offered to rephrase her question, asking the civil party whether, while Ms. Ry was in Pursat, she noticed any deaths and to give details of these. The civil party obliged, stating:

At the beginning, I did not notice any deaths, but later on, people died of starvation. ... The food ration was very minimal. We were offered only thin gruel every day, and when we fell ill, we were only offered some rabbit’s pellets, a kind of medicine, and they didn’t help us at all. ...

When [my brother’s] wife was very thirsty of sugar juice, he had to climb the palm tree to collect the juice for her, but he was spotted and arrested and executed for that later on. ... I saw this when I was walking to work as usual. I saw my brother on the paddy dyke and he was beaten with a hoe. I was attempting to help him, but I was stopped by some other colleagues who said that I would also be killed if I insisted to go. Upon knowing that my brother was beaten to death, I told my mother about this. My mother couldn’t be this. She was shocked and shed tears. She couldn’t help my brother either. She was so shocked by this sad news. ... I was told that the person who killed my brother was a unit chief, and they accused my brother of being an imperialist. ...

Later on, people were killed. Not only were people killed, the whole family of mine. The *whole* family was executed. The whole family was killed and plunged into a pit. I was pleading and begging for the life of my mother, but they would never listen to me. They even said to me to leave the place where my whole family was being executed. They said that my day would come very soon, that I would also be executed. I could hear the cries, and I asked them not to kill my young brother who was very young. They did not really listen to me. They threw my little brother into the air to be stabbed by a bayonet. They warned me that I would also end up being executed because they would not want to spare me, as if I would live, I would take revenge at a later date.

I was chased. They wanted to kill me for the whole night. ... I got hit on my bottom by a bullet and my auntie also got hit by a bullet. We asked why our last family member was executed. We asked them this question, but they said that the people were executed, and there should not be any question at all. Later on, when my younger sibling was very hungry, I tried to ask the Khmer Rouge for some rice, but I was not given anything other than a handful of salt.

When I walking back with my younger sibling, the Khmer Rouge spotted us and said we too had to be killed because if we were spared, we would take revenge. At

that time, I knelt down and begged for my life. But at the same time, I said, “Okay, just kill me then, because you have already made our lives a living hell. You killed all our family members.” We told ourselves that we would be better off being killed anyway. However, we were lucky that we were not executed. We worked our best and we lived a very difficult life afterwards.

Ms. Srinna asked Ms. Ry to describe the situation of the execution in detail, but the president interrupted at this point to remind Ms. Srinna again to be specific as to the dates, and to keep her question within the scope of the facts relevant to the first and second phases of the evacuation. Otherwise, the responses would not be considered. Ms. Srinna turned to her final questions, seeking more details about the killing of Ms. Ry’s family and others. Ms. Ry replied:

It was the Khmer Rouge clique. I witnessed the killing with my own eyes. It was full moon and they were all armed. They fired on my family members. ... We were evacuated from the house and then we were asked to sleep in the rice field. I did not know exactly the reason behind the killing, because they came at night to kill my mother, my aunt, and all my siblings – I mean, all the rest of my family members.

#### ***Challenges to the Consistency of the Civil Party’s Testimony***

International Senior Assistant Co-Prosecutor Keith Raynor advised at this point that they did not have any questions for Ms. Ry. As such, National Co-Counsel for Nuon Chea Son Arun was given the floor to begin questioning by the defense. He began by directing Ms. Ry to a lengthy passage in her civil party application. In this passage, Mr. Arun described, the civil party stated that she was sent to pull and deliver seedlings for transplantation in early 1978 until late 1978, when the Vietnamese soldiers advanced on Kandieng district. They were evacuated by the Khmer Rouge up the mountain. Then her family traveled with people from Svay Rieng and the Khmer Rouge opened fire on her family, with her mother and five siblings dying and her younger brother being tossed into the air and pierced by a bayonet, convulsing and dying.<sup>4</sup>

Mr. Arun asked whether Ms. Ry could recall making that statement. Ms. Ry said that she could, adding, “I did make that statement but [the record] was not in detail. Actually, I spoke a little more than that. ... I can recall it.” Mr. Arun asked where Kandieng was located. Ms. Ry replied, “It was not in Prey Veng, it was somewhere in Pursat.”

Next, the defense counsel asked Ms. Ry to confirm that her family was indeed killed by the Khmer Rouge, implying that they may have been the Vietnamese. Ms. Ry responded:

They were Khmer Rouge because they knew my mother’s name very well. The Kampuchean troops almost arrived in Kandieng district but by then, people were sent to the forest already. ... It was only my family [fired upon]. As for the rest, they were all those people from Svay Rieng province. When we slept there it was only my family members: my mother, my siblings, my aunt.

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<sup>4</sup> This application has the number D22/3455, and the relevant ERNs are 00565899 (in Khmer), 00660730 (in English), and 00861206 (in French).

Mr. Arun queried why only the civil party's family was ordered to leave for the mountain? "All the people were ordered to leave, including the 'old people' and the 'base people,'" Ms. Ry replied. "We were all asked to leave and rest in the rice field. None were left in the village."

Didn't the civil party ever wonder why her your family was killed? Mr. Arun pressed. Ms. Ry replied, "They accused my mother of resting together with the people from Svay Rieng. For that reason, she was killed. As well, the rest of my family members were killed. The Svay Rieng people were already killed before my family members were killed." Mr. Arun noted that in Ms. Ry's previous testimony, however, she said that only her family members were killed. He recounted that Ms. Ry had testified: "My family members were killed first. Other family members were not yet killed. At that time, only my family members were killed, as well as those family members from Svay Rieng province." Did this mean that other people were also killed, then? Mr. Arun pressed. The civil party confirmed this.

Ms. Ry added that many people from Svay Rieng were killed, describing how "they were tied up and walked in lines. They were young men and women, and I witnessed this with my own eyes although I was pretty young back then. ... I was more than 10 years old."

Mr. Arun asked whether, when Ms. Ry was asked to go to the mountains, the voices she heard were Khmer or also foreign voices, such as Vietnamese voices. Ms. Ry testified, "The voice was a Khmer voice ordering us to go down to the mountain although I didn't know whose voice it was. A lot of people were ordered to go down and I walked along."

The defense counsel noted that Ms. Ry had testified that the Khmer Rouge had shot at her but the bullets did not fire, and this was the reason she survived. He asked her to recall the details of her survival, as opposed to that of her family members. Ms. Ry said, "I did not know why. Actually, I covered my family members. I would rather die than allow my mother to be shot and killed, but I did not know why the bullets missed me."

Referring to another of Ms. Ry's statements to the ECCC Victim's Unit, Mr. Arun noted that in this second document, what Ms. Ry stated was different; she stated that she lay down with her mother, embracing her and not being aware that she had already died, and at that point her other family members were shot. Then they came to shoot her again but the bullets did not fire, so she covered herself with a scarf.<sup>5</sup> He then asked why it was they feared that she would take revenge. Ms. Ry again denied knowledge of this, explaining:

I did not know why. They tried to shoot me once or twice, but they failed. I did not have any weapon to take revenge against them. I just tried to survive. ... That's what they said. They said that there was no need to spare my life, that I should be killed to complete the killing of my whole family; that I should be killed, that my younger brother should also be killed. But up to today, I have not taken revenge against anybody.

When Ms. Ry's family members were shot at, Mr. Arun asked next, where was Ms. Ry standing? How did the bullets miss her? Ms. Ry said, "I was resting together with my mother and with

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<sup>5</sup> D22/3455a 00586120 00858556

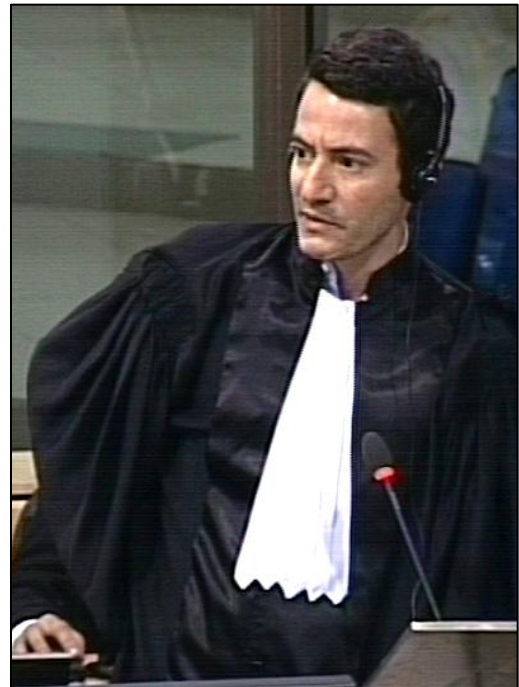


other siblings. We were sleeping on the ground in the open, in a rice field. ... People from Svay Rieng and 'base people' were sleeping nearby to us. We were about 10 meters apart from one another."

At this juncture, the president interjected, noting that Mr. Arun was referring to the period in late 1978, asking him to reframe his question to relate to the facts in the Case 002/1 trial segment, while his question related to facts in a later part of the trial hearing. The defense counsel said that the purpose of his questioning was to compare her testimony now with the statements she gave to the Victim's Unit. The president said that he understood the purpose of Mr. Arun's questioning but he had to nevertheless reframe his questions so as to limit them to the facts in Case 002/1, and that these were the instructions of the Trial Chamber president. Mr. Arun then advised that he had no further questions for Ms. Ry.

### ***Conditions in Phnom Penh Prior to the Evacuation and Final Questions from the Defense***

Mr. Ianuzzi took over questioning, first expressing that he was "quite sorry" as to Ms. Ry's loss of family. He then asked Ms. Ry when it was that she first moved to Phnom Penh. Ms. Ry could not recall, but stated, "When I grew up, I was in Phnom Penh." Did she leave Phnom Penh at any point prior to the evacuation? Mr. Ianuzzi asked. Ms. Ry replied that she was living in "Kilometer 6 village," though she could not recall the time period.



Mr. Ianuzzi noted that a civil party that testified in the ECCC on November 22, 2012, described a "sharp increase" in the price of rice in the years leading up to April 1975.<sup>6</sup> Asked about her own experience concerning the price of rice, the civil party responded that rice "was affordable for most people" and that she did not know if it became more expensive.

As to the number of people living in Phnom Penh in the years before April 1975, Ms. Ry stated, "I was too young to understand much about the population increase. I was rather young and I don't know about this."

Did the civil party recall bombs falling on Phnom Penh prior to 1973? Mr. Ianuzzi inquired. Ms. Ry testified that she did not remember this.

Mr. Ianuzzi noted that Ms. Ry mentioned her sister went to receive care at the "big hospital"<sup>7</sup> and had to pay money for this. Asked for more details, Ms. Ry said, "Yes, it is correct, because my mother told me that if we had money to pay, to bribe the doctors, then my sister would be quickly offered the service and that she would be quickly treated." Finally, Mr. Ianuzzi asked Ms. Ry if she knew whether it was a policy of the Lon Nol government to require the population

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<sup>6</sup> The defense counsel is referring to the testimony of civil party Meas Saran.

<sup>7</sup> This is a reference to Prek Ketmealea Hospital.

to bribe doctors in order to receive medical care. Ms. Ry responded, “I don’t know. I only know that my mother had to buy some good medicine to make sure that my sister recovered quickly. That’s all I know.”

Mr. Udom was given the floor and began his examination by asking the civil party for a clarification. He noted that in her family book, dated March 30, 1999, Ms. Ry had written that she was a wife,<sup>8</sup> while in her August 16, 2009, civil party application she said that she was single. Ms. Ry responded, “I don’t know what happened with that. I got married after the Khmer Rouge regime.” Mr. Udom asked which document was correct. The president advised the civil party that she was not expected to answer the question since she already made her marital status clear twice, and that the Chamber would not consider this document “strong evidence before the Chamber.” Mr. Udom said he had been seeking to check if there had been any error in Ms. Ry’s civil party application.

At this juncture, International Co-Counsel for Khieu Samphan Anta Guissé advised that she had no questions for the civil party. The president stated that Ms. Ry’s testimony had come to a conclusion and that she would be led out, before correcting himself and noting that she had an opportunity to express her statement of suffering.

***“My Life is Very Miserable”: Statement of Civil Party Ua Ry’s Suffering***

Ms. Ry concluded her testimony as follows:

What I wish to say is that after leaving Phnom Penh, I have lost everything including my house, property, and along the road, I was not given enough food and I had lived a very difficult life until I reached my hometown. When I got there, I thought that I would be in peace; I would reunite with my parents and grandparents. Unfortunately, I was time and again transferred until I reached Pursat province. There I was tortured because I was young, I could not work properly. I could not really give the best at work. I was beaten with a hoe. When I was carrying dirt, I was beaten by a pole that I used to carry the dirt. I was accused of being an imperialist, that I could not work properly carrying the dirt. I was too young and the load was too heavy. I couldn’t do that. Without being able to do that I was accused of being an imperialist. I was severely injured. The impact was that I still live the scars and these difficulties.

I have lost all the last members of my families. I am now a complete orphan. I live a very lonely life, very desperate for food. I had to pick up food leftover from others to make my meals. I had to ask people for food. Indeed, I asked for food to be offered to my younger sibling who was very hungry. Our legs became swollen. I got injured and I had difficulty walking. I still live with this very bad trauma all along. Recently, we met, I just found my sister. She survived the ordeal, but she got injured and the injury makes it impossible for her to live a normal life. We feel, I feel that my life is very miserable. We have lived a very different life because of the regime. Because of that, I would like to humbly ask your honors to find justice for us.

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<sup>8</sup> This family book has the document number D22/3455.

The president then invited parties to give comments regarding the statement of suffering. Noting that there appeared to be no such comments forthcoming, President Nonn adjourned the hearing for the mid-morning break.

### ***Khmer Krom Civil Party Chau Ny Takes the Stand***

Following the break, a new civil party, Chau Ny, took the stand. Under questioning from President Nonn, he offered some brief biographical details. Aged 59, Mr. Ny was born at Phnom Pear village, An Giang province, in Kampuchea Krom. This last statement elicited an audible whisper from several members in the audience. Mr. Ny currently lives in Takeo province, is married to San Sophum, and has three children. The president reminded Mr. Ny of his right to make a statement concerning harm he suffered at the conclusion of his testimony if he wished to do so.

Following an introduction from national civil party lawyer Ven Pov, his national colleague Kong Phallack began questioning of Mr. Ny, asking how he was feeling, and whether he had attended any hearings before. At this point, the president advised the civil party lawyer that he did not have the floor to “make chit chat,” causing several audience members to giggle. Mr. Phallack then asked Mr. Ny about the period when he first came to Phnom Penh, to which the civil party replied that he left Kampuchea Krom for Phnom Penh in 1970. “The purpose of traveling to Phnom Penh was to become a soldier for the American-backed government,” he related, “because the soldiers for the American-backed government could earn a lot of salary to support their families.”



“When I arrived in Phnom Penh,” Mr. Ny continued, “I tried to enlist myself, but my elder brother and sister-in-law did not allow me to join.” Mr. Ny lived with them when he arrived in Phnom Penh, he said, and his elder brother was a national bank officer with three children.

Before Mr. Phallack could proceed with further questions, the president again chastized the civil party lawyer to “absorb the knowledge” of his civil party lawyer colleagues when questioning Mr. Ny and learn to pace himself for the translators. Mr. Phallack then referred the witness to his civil party application in which he stated that he had lived in a cooperative for five months, where his two nephews became skinny and ill from the lack of food and eventually died in early 1976. Mr. Phallack asked why there were inconsistent references to the number of nephews the civil party had, noting that in his testimony he referred to three nephews but his application referred to two. Mr. Ny responded, “When the application was filled in, I talked about my nephews who died, about whose deaths I knew.”

On April 17, Mr. Ny continued, “I was at my brother’s house behind Olympic market. On April 17, 1975 ... Phnom Penh residents came out to congratulate the victory of the Democratic Kampuchea group. A lot of people came out to greet them,” however he did not, because “I had young nephews to look after and my elder sibling was unwell.” His nephews were seven, six, and four at that time.

The civil party then described the events occurring immediately after April 17:

Two or three days after, a group of Khmer Rouge soldiers made an announcement asking people to leave Phnom Penh. At the time, I heard gunfire. I also heard the screaming of people looking for their relatives and friends in their preparation to leave Phnom Penh. ...

At the time, the Khmer Rouge people were armed. They appeared at the front of my brother’s house and shouted that we all had to leave; otherwise we would be bombarded by the Americans. My family was rather late, and then they continued shouting about why we were late. We had to leave quickly. We only had to leave for three days so there was no need for us to take any property or belongings. After that, they pushed my brother. I entered the house and packed a few belongings and comforted my nephews; ... then I took my nephews and we left with my brother.

As for events during the course of the evacuation, Mr. Ny explained that he and his brother left Phnom Penh with the intention to travel to their native village. Along the route, he observed sick people, sitting on the side of the road, as well as dead people. “Nobody could help anybody else,” he recalled. He headed toward National Road 2 where he could travel to Kampuchea Krom, he continued, but after walking for 10 days and arriving in Bati district, Trapeang Sab, he was told that “whoever came from Kampuchea Krom, when we reached the border, we would be killed ... I decided to remain in Trapeang Sab for a few days.”

Pressed for further details about these initial stages of the evacuation, Mr. Ny said:

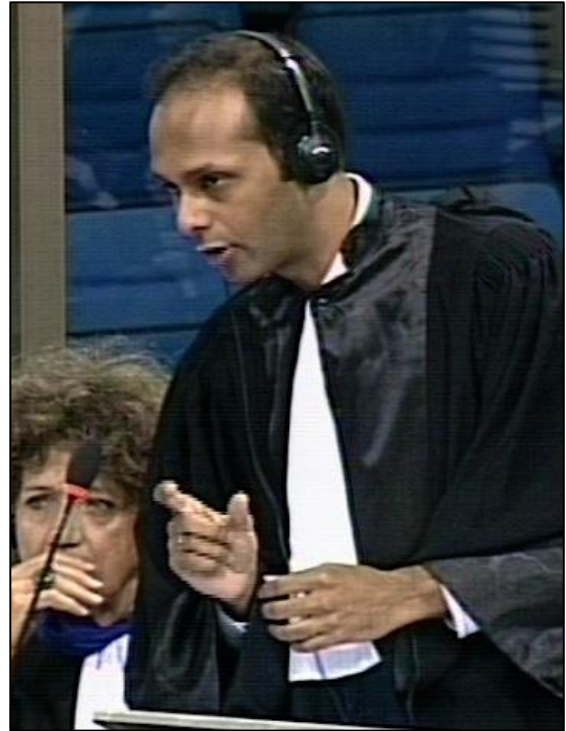
I do not remember the exact days but I can say that the trip took several days. ... We left Phnom Penh for Bati, Trapeang Sab. Life was very difficult during the course of the evacuation. Our young members of the family were not used to going to the countryside, living there. My sister-in-law had to carry them. ... We could not bring any belongings other than very basic belongings such as pots, sarongs. Mid-way, we could use the money to trade for some goods, foodstuff. We knew the foodstuff was very expensive but we needed to give the young people something to eat.

***“I Had to Hide My Identity as a Khmer Krom,” Civil Party Testifies***

Mr. Ny elaborated further on being told that his Kampuchea Krom origins would get him killed, explaining that he was “very fortunate.” He continued, “I don’t remember those who told me about this. It was my luck. Luck was on my side that I knew about this before it was too late.”

At this juncture, international civil party lawyer Mahdev Mohan took the floor. He first asked Mr. Ny to confirm that he was headed to Kampuchea Krom when he was stopped in Batheay as he was advised not to go to the border to Kampuchea Krom for fear of being killed. The civil party confirmed this was accurate, adding that he was told that “I had to hide my identity as a Khmer Krom.” Mr. Mohan pressed Mr. Ny to explain why he felt this was necessary. The civil party said this was because “I felt that I would be killed and concealing my identity would spare me.” Mr. Ny explained:

I changed my family name too. ... Ny was still my first name but my last name [became] Lun. I changed from Chau to Lun [because] the Khmer Krom people share different family names. People from Mot Chrouk [district]<sup>9</sup> have Chau as their family name ... People from different [districts] of Kampuchea Krom would have different family names and could be identified by these family names.



Did the “base people” know his true identity? Mr. Mohan asked. The civil party denied this, explaining that “those ‘base people’ regarded me as an ‘April 17’ person only. They didn’t mention my name. There were quite a lot of ‘April 17’ people including my family.” Regarding his treatment by the “base people” more generally, Mr. Ny said, “We were not treated equally. We were not talked to nicely. We were regarded as imperialists, capitalists ... those who reaped the benefits of the peasants. This kind of language was very often used against us.”

Regarding his living conditions at Trapeang Sab and his eventual departure, Mr. Ny said:

People at the “base” did not pay attention to the “new people” or “April 17” people like us. The situation was too difficult for us to continue living there and we had to move on to a new location. ... We were there for a few days only, about 10 days to a month. ... We left the location altogether with the whole family and a few other “April 17” people.

As to what happened next, the civil party explained, “When I went to Trapeang Sab, I did not know where else I should go. Having noted the railway tracks, I took advantage of the railway tracks to go along these to somewhere else.” He confirmed, when queried, that he was going wherever he could go.

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<sup>9</sup> This was incorrectly translated as a province. It was a district in Kampuchea Krom.

***Train to Battambang: “We Knew We Were Destined for Death”***

Mr. Mohan asked how the civil party’s family survived the next leg of their journey. Mr. Ny said:

During the first few months, we did not work, but we had to exchange our belongings for food. ... We could survive on that. ... There was a great impact on my family. It was a very difficult time. It was the rainy season and my younger members of the family had to be exposed to the wind and the rain, in the open. It was miserable.

At the time, I discussed this with my family, in particular my brother and sister-in-law, that we would have to come back to Phnom Penh. ... There were other people as well. We were joined by other families. ... It was not easy to tell whether these people were purely “April 17” people or whether we were joined by some “base people” as well.

Making their way to Phnom Penh along the railway tracks, Mr. Ny recalled, “we did not start working. We only made use of our belongings ... to trade for food or something that could keep us alive. We were not placed in the cooperative yet.” They did not reach Phnom Penh, however, because, as Mr. Ry recounted, “we had to observe some rests” and stopped at several locations. “On this long journey along the railway tracks,” he stated, “we were met by some people who were in black clothes with scarves. We did not know whether they were soldiers or militia ... but we were stopped ... we were met by these people on several occasions.” These “militiamen” did not allow Mr. Ry and his family to stay in one location for long; at one point, they were forced by this “militia” to board a train. “I cannot remember the exact date,” the civil party stated, “but it took us about one day before we reached Mong Russei station in Battambang province.”

Mr. Mohan asked Mr. Ny for further details about boarding the train, including whether he was given a choice in the matter. Mr. Ny obliged, stating:

At the time, no one could resist such orders by the militia. There were about 10 of them who forced us onto the train and they were all armed. ... There were a lot of people who were forced onto the train because when the train was coming to the station, it was already packed with a lot of other passengers already.

The civil party added that he did not remember the exact location where he boarded the train because he had never been there before. Mr. Mohan turned Mr. Ny’s attention to the inside of the train itself. The civil party accordingly testified, “There were some Khmer Rouge soldiers who were escorting the train,” and passengers were not given any food or water. They were, however, allowed to speak, but “only to the people who were sitting or standing close to us.” The passengers did not know the destination. Mr. Ny explained that when boarding the train, his feeling was “mixed,” recalling, “We did not know whether we would be sent to be executed. But it was an order by the militia, so we had to board that train, although we knew we would be destined for death.”

As for the events that unfolded after the civil party arrived in Battambang, he described:

When we got to Mong Russei district and got off the train, we were received by some people on some ox-carts and we were taken to cooperatives. ... At the beginning, I did not know the exact name of the cooperative, nor the location where we were taken to. However, a few days later, we heard people talking about this. They represented themselves as the people in charge of Ta Heuy's cooperative, so I knew that it was Ta Heuy's cooperative.

### *Dire Conditions in the Cooperative*

Mr. Ny explained that at first there were many people in the cooperative, which was located in Chak Tom, in the Mong Russei area of Battambang. Mr. Mohan asked whether there were many other people who were also there in Chak Tom cooperative. Mr. Udom objected at this point that according to the document setting out the scope of the first trial segment,<sup>10</sup> cooperatives were not among the matters to be discussed in these proceedings as yet. Mr. Mohan responded that he did not seek to go into the details of the cooperative but of the evacuation itself. The president overruled Mr. Udom's objection on the basis that Mr. Mohan's question was indeed not about the cooperative structure but about the immediate conditions of the second phase of the evacuation.

The civil party lawyer reiterated that his question concerned the period when Mr. Ny was in Chak Tom cooperative. He asked Mr. Ny to explain the living conditions there. The civil party responded:

At the Chak Tom cooperative, immediately upon arriving at the cooperative we were not given enough food. We were offered some thin gruel. We were treated as newcomers with a very small bowl of thin gruel. Every family member was offered the same ration. The food was very insufficient. A few months at the cooperative, my nephews became seriously ill and there was no medicine available.

These conditions resulted in Mr. Ny's nephew Chau Soeun contracting diarrhea. The civil party said, "When Chau Soeun's father got a sweet corn, he offered it to Chau Soeun. Chau Soeun got a diarrhea. He ate the sweet corn, but all the corn passed out. He had to really make use of the feces with the corn again. He ate his own excrement," a statement that appeared to elicit no reaction from the attentive audience.

More generally, Mr. Ny said:

At first, there were a lot of people. The cooperative was very crowded. I can't estimate how many people there were but there were a lot. ... I cannot say whether all the people were purely "April 17" people or mixed with people from other locations, because we were not allowed to talk to each other.

At this juncture, the president sought to adjourn the hearings for the lunch break. Mr. Ianuzzi notified the court that his client Nuon Chea had been sleeping for some half an hour and his team

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<sup>10</sup> This has the document number E124.

thought that the doctor should see him since he had clearly not been effectively participating in the day's proceedings. He accordingly requested that his client be permitted to watch the proceedings from his holding cell for the remainder of the proceedings and for the doctor to examine him over lunch to determine if there were any special reasons for his physical state today. President Nonn permitted Mr. Chea to retire to his holding cell due to his health concerns and to have the doctor examine him over lunch and report to the Chamber through its greffier before the next session resumed.

***Clarification of the Civil Party's Testimony and Details of His Family Members' Deaths***

After the lunch break, a new audience of 250 students from the Pour Un Sourire d'Enfant Institute in Phnom Penh took their seats in the public gallery. Before continuing with his questions, Mr. Mohan advised, in response to a request by the president, that he would take about 45 minutes for his additional questions. International Senior Assistant Co-Prosecutor Tarik Abdulhak advised that he would have 20 to 30 minutes of additional questions. The president asked them to rearrange their time allocation, as their time allocation would end at the mid-afternoon break, which would occur in just over one hour.

Mr. Mohan was then permitted to proceed. Mr. Mohan reminded Mr. Ny that he told the Court it was a "very difficult time" for his family, being asked to board the train, and that they may be "destined for death." Asked to confirm whether this was correct, Mr. Ny responded, "At that time, I didn't know where to go. I didn't have any particular destination in mind." Next, Mr. Mohan asked the civil party to confirm that the time period of this event was around late 1975 or early 1976. Mr. Ny said, "It was not an absolute indication of the time. I thought it was in late '75 or early '76."

Upon arriving in Battambang province, according to Mr. Mohan's summary of Mr. Ny's testimony, the civil party was transported by ox-cart to the cooperatives. Asked who exactly received him and what they were wearing, the civil party responded, "I didn't know whether the person who rode the ox-carts was a militia or an ordinary villager. From my observation, the dress that they wore and the uniform that the Khmer Rouge soldiers wore was similar, I mean, they wore black clothing and a scarf around their neck." These people "did not say anything much; they asked us to get on the ox-carts," he recalled.

After they arrived at Chak Tom cooperative, Mr. Ny continued, the militia "used bad words towards the 'new people.' ... They called us capitalists, feudalists; ... they accused us of plowing the rice fields on the backs of the peasants. We were later put into separate houses which they had already built for us. ... At that time I dared not tell them that I was from the Khmer Krom," Mr. Ny said, concealing his identity and place of birth instead as he had been advised to do in Takeo province. Mr. Mohan asked whether Mr. Ny felt that if the Khmer Rouge militia there knew that he was Khmer Krom, that he would have been killed. National Co-Counsel for Khieu Samphan Kong Sam Onn objected to this





question on the ground that it was speculative. The president agreed, instructing Mr. Ny not to respond to it.

Accordingly, Mr. Mohan moved on, asking Mr. Ny to describe any speeches made by the Khmer Rouge militia to him or his family in Chak Tom cooperative. Mr. Ny said that:

They didn't say anything else because by that time, we were asked to focus on the rice production ... to at least harvest at least two to three tons per year ... so everyone strived to engage in the daily activity in the rice production. So we were forced to work hard. We barely had a break.

On the issue of food, Mr. Ny described that for any meal they received, they were "only given one ladle of a very watery gruel." He explained, "We spent a lot of our strength in the labor work, and of course the food given to us was very little. We cannot compare the strength that we spent in our work to the food that was given to us." With an anguished look, the civil party described the impact of food shortages on his family members:

Due to the lack of food, my three nephews, including my other sibling, got sick and died. My nephews, before they died, were in a very pitiful state. Even if the food was coming out among the feces, they ate that food as well. Even for my brother, before he did, he only begged for a small piece of palm sugar but we could not find the palm sugar for him before he did. My elder sister-in-law tried to find the sugar but when she arrived, her husband already passed away.

Regarding the medical treatment of his family members, Mr. Ny testified:

When the young children were sick, there was nothing else for their treatment except the rabbit pellets. Whatever condition they were in, they only treatment for them was rabbit pellets, rabbit droppings. ... Based on what I saw, when my nephews got serious diarrhea, they took those rabbit pellets, and three hours later, they died.

As to his treatment by the unit chief Ta Heuy, the civil party said, "The language that they used towards the 'April 17' people was very unpleasant, nothing else besides that. They kept scolding us. They accused us of being capitalists, etc."

Mr. Mohan noted that in Mr. Ny's victim statement, he stated that the cooperative was led by Ta Heuy, who was also known as "Smiling Cold Murderer."<sup>11</sup> He asked the civil party why Ta Heuy had this nickname and reputation. Mr. Ny replied, "At the time, I didn't know why he got that nickname, but he was known as a 'Smiling, Cold Murderer.'" Did Mr. Ny hear about any killings or disappearances under Ta Heuy's leadership? Mr. Mohan asked. Mr. Ny responded, "While I was living there, I did not personally witness any killing by him, but I believed that the nickname given to him indicated that he had killed people somewhere. But from my observation, the

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<sup>11</sup> This statement has the document number D22/253, and the relevant ERNs are 00421599 (in Khmer), 00478480 (in English), and 00858937 (in French).

number of the population at the cooperative decreased gradually; however I had no personal knowledge about whether they were transferred somewhere else or killed.”

As to whether anyone had better food and medicine than him or his family, Mr. Ny responded:

Regarding clean water, we never had any clean water. We drank water from whichever ponds we could find. Sometimes we fetched water from the pond to our house. Of course there was no medicine for our condition. When we were sick, no medicine was provided for our treatment except for the rabbit pellets. When my brother was sick, he did not want to go to the hospital, because usually when people were sick and went to the hospital, they died quicker than if they stayed at home. Because when we went to the hospital, the food ration that we received while we worked would be cut off. ... For those people who went to the hospital, their food ration would be cut off.

In addition to Mr. Ny’s family, the civil party recalled, there were a large number of families at the Chak Tom cooperative, indicating that there were “hundreds of people.” These people were housed in three rows of house, he said, but “later on, the houses were still there but people were no longer living in those houses. I did not know what happened to them.”

Mr. Mohan noted that in his previous testimony, Mr. Ny had said that he was told to change his capitalist, feudalist ways. He asked why this was so. The civil party responded:

The Khmer Rouge would use this same language for every “April 17” person. They did not want us to do the things we normally did. ... At every place, people would be made to live in the cooperative and no one could escape. That was part of the Communist Party of Kampuchea [CPK] policy; ... no one could contest such policy.

The president interjected at this point, reminding Mr. Mohan that the scope of his examination should always be within the evacuation period both in terms of substance and time frame. This prompted Mr. Mohan to turn back to the issue of Mr. Ny hiding his Khmer Krom identity, asking whether he knew whether anyone else revealed their identity as a Khmer Krom. Mr. Ny denied this, stating that “none of us” would do so.

Mr. Mohan asked whether Mr. Ny ever had a chance to disobey the orders of the Khmer Rouge or escape. Mr. Ny denied this, explaining, “At the time, I did not have the courage to disobey the orders by the Party. Whatever order it was, I had to respect [it].” As for other people, the civil party said, “I didn’t see anyone escape.”

Finally, Mr. Mohan asked whether, there was anything else the civil party wished to tell the Court in relation to Mr. Ny’s period at Chak Tom. “At that cooperative, a lot of people died of food shortages and starvation,” Mr. Ny simply replied.

### ***Further Details on Civil Party's Departure from Phnom Penh***

Taking the floor for the prosecution, Mr. Abdulhak directed the civil party back to the time of his departure from Phnom Penh. The prosecutor sought to clarify when the first time was that Mr. Ny heard an announcement that he had to leave the city. The civil party responded, "I heard this announcement after April 17. I didn't hear it during the same day of April 17." Was his family ordered to leave on April 18, or some days later? Mr. Abdulhak asked. "It was about two or three days afterward," Mr. Ny replied.

Pressed for details about the fate of Mr. Ny's neighbors, the civil party said:

Upon having heard that the Khmer Rouge asked us to leave Phnom Penh, people in the city panicked and had to find ways to get out of the city. That happened to every family including mine. We could not be reluctant to leave the city because we had to leave the city by order.

Were the elderly permitted to stay? Mr. Abdulhak asked. Mr. Ny responded, "I didn't check at homes when I left Phnom Penh, but by the time I reached National Road 2, I saw the elderly and sick people who were lying on the roads, and no one could help them."

As for soldiers or officials of the Lon Nol government, Mr. Ny said, "On April 17, I saw a few Lon Nol soldiers congratulate the victory by the Khmer Rouge. However, by the time I left Phnom Penh, I never saw any of the Lon Nol soldiers again." That is, he said, when pressed, when travelling from Phnom Penh to Takeo, he never saw any Lon Nol soldiers again.

"I didn't hear any bombs being dropped" on Phnom Penh by American war planes, Mr. Ny said next, "but I did hear some gunfire." During the days following the evacuation, as there was no bombardment, Mr. Abdulhak asked, was the civil party ever asked to return to Phnom Penh? Mr. Ny denied this, explaining, "I received no news. I did not receive any news concerning the

bombs dropped or I never knew anything about whether we would be allowed to return to Phnom Penh, but my family and I were attempting to go to our hometown, to Kampuchea Krom."



The prosecutor asked whether the civil party saw any Khmer Rouge soldiers assisting civilians as they were en route from the city. Mr. Ny denied this, stating, "I didn't see any of the Lon Nol soldiers assisting any of the evacuees." Mr. Abdulhak clarified that his question concerned Khmer Rouge, not Lon Nol, troops. Mr. Ny replied, "No Khmer Rouge soldier assisted us or provided us with any food or assistance. We altogether, the evacuees, had to be on our own."

At this point, the court experienced a power failure lasting about one minute and causing computers and

air-conditioning to switch off, although the audio transmission remained live. Mr. Abdulhak continued on undeterred, asking Mr. Ny whether the train he boarded was a passenger or freight train. Mr. Ny said that he “did not take notice whether the cars were meant for freight or for passengers, however, the car that we were on had no goods inside. It was packed with people only.”

While on the train car, Mr. Ny said:

I did not ask other passengers any questions. We were very quiet and patient. We only listened to the orders. We waited until the next station where we would be allowed to stop and leave the train. Other people who shared the same car did not ask us any questions. ...

I still remember very clearly, indeed, I learned from what I was told at Takeo, I had to be very careful when speaking, because I speak with a dialect. I am originally from the Khmer Krom, so the way I speak is not the same as the way ordinary Cambodians speak, so if I speak, people can identify me as originally from the Khmer Krom.

The prosecutor sought the civil party’s clarification whether he was forced to travel or were doing so voluntarily. Mr. Ny said, “I believe that they were passengers like our family,” and confirmed, when asked, that he meant that he thought they too were forced to travel to Battambang. Mr. Abdulhak also pressed the civil party for details about the identity of the people on the train. The civil party described that “there was a mixture of people on the train. There were elderly people, young children and men and women.”

Mr. Ny then testified, “After leaving the train to be received by the ox-carts, I never saw what happened again at the train station.” The prosecutor sought to clarify for the record whether the civil party had a choice of where to go, upon disembarking from the train at Battambang. The civil party denied this and explained, “At that time, there was no choice. The ox-carts were at the ready to take us.” He also estimated, when invited by Mr. Abdulhak to do so, that there were “several thousand” people on the train. Some were transported to his location, Mr. Ny added, “while others were transported elsewhere.” Asked whether the Khmer Rouge were guarding people, Mr. Ny responded, “In the train, there were some people wearing black clothes who were walking past us every now and then.”

### ***Khmer Rouge Policy of Discrimination against the Khmer Krom***

Picking up the examination, Judge Jean-Marc Lavergne requested that the civil party clarify his testimony about his fear that he would be killed as a Khmer Krom, and whether this fear appeared as soon as he left Phnom Penh or at a later stage. Mr. Ny replied:

Immediately after the liberation, I did not know that the Khmer Rouge would incriminate against the Khmer Krom. Only later, when I was transferred, was I fearful that I would be incriminated as a Khmer Krom. ...

Based on what I saw and what I observed, the Khmer Rouge people, when they

were in the forest, did not discriminate against any race or ethnic minority. But once they took complete control of Phnom Penh, I realized that the Khmer Rouge discriminated against people.

Mr. Ny confirmed that he did not attend any meetings which could allow him to understand why the Khmer Rouge discriminated against the Khmer Krom. How then, the judge pressed, did the civil party know that the Khmer Krom were discriminated against? Mr. Ny said:

Even while I was in Takeo, and I was advised to hide my background, I was still suspicious about that. Then, only after 1979, when I went to look for my great-uncle and other relatives who died at Tuol Sleng<sup>12</sup> and read the Khmer Rouge regulations, I am unsure whether it was article 8 or 9, it stated ... “Don’t say that you are the Khmer Krom that you could be spared.” That’s how I saw it there.



The judge also asked Mr. Ny to confirm that his brother was in the military and what his reaction was to the circumstances of the evacuation. The civil party clarified that his brother did not serve in the military; he worked in a bank. Judge Lavergne apologized, noting it was his mistake.

The president then adjourned the hearing for the mid-afternoon break, noting the court would take a shorter than usual break so they could resume the hearing. Seeing Mr. Ianuzzi on his feet, however, he permitted the defense counsel to proceed first. Mr. Ianuzzi noted that neither he nor any of his colleagues in the defense teams had any questions for Mr. Ny. The president sought confirmation of this with the other defense counsel directly. Mr. Udom confirmed this and suggested that the parties continue without a break as his team did not have any questions for him. Mr. Sam Onn also confirmed that he had no questions.

As such, the president decided that the court would continue without the mid-afternoon break and gave the civil party the opportunity to express his statement of suffering.

### ***Controversy in the Courtroom as Civil Party Attempts to Question Khieu Samphan***

Having been given the floor, Mr. Ny stated, “Mr. President, I would like to put a proposition to Mr. President and the prosecution and some questions for Khieu Samphan,” looking sternly in Mr. Samphan’s direction as he did so. “One of my uncles had some connections with Khieu Samphan,” he added.

The Trial Chamber judges conferred briefly at this point, with the president resting his chin on his hand for a moment before permitting International Co-Counsel for Khieu Samphan Anta

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<sup>12</sup> The civil party added that he had gone to Tuol Sleng to ascertain the fate of his family members.

Guissé to speak. She said she believed it was important for civil parties to express themselves and their suffering but that it was inappropriate for them to refer directly to one of the accused persons like this. “The contours of this trial are perfectly clear,” she went on, and the civil party should be reminded of the Court’s governing rules.

Mr. Mohan responded that while this was unprecedented, there was no preclusion of such an action in the Internal Rules, and urged the court to permit it to happen. Noting Mr. Udom was on his feet, the president noted that he preferred to permit one side to finish all their statements before he gave the floor to the other side, although he allowed Mr. Udom to speak anyway. Mr. Udom said that the civil party did have the right to make a statement but that the Court had to also consider the rights of the accused, and that in the case of Mr. Samphan, he had exercised his right to remain silent.

Mr. Abdulhak said that the Office of the Co-Prosecutors (OCP) supported the civil party lawyer’s request in this case: there was no prohibition on this; it was for the Court to weigh the probative value of any statements given in Court; and the accused were permitted to comment on the statements of civil parties. Finally, he noted that as he understood it, Mr. Samphan had not exercised his right to remain silent but had chosen to remain silent for the moment and might speak at some later point in the proceedings.

The president then addressed Mr. Samphan directly, asking whether he was maintaining his right to remain silent. Standing up, Khieu Samphan replied:

I made my interventions in the past, and as I recall, I reserved my right to make comments on the paragraphs that Mr. President required me to make comments [on]. Nonetheless, I clearly stated that I wished not to respond to any questions posed to me. I need to wait for all the presentation for all the evidence and by the conclusion of the trial, I will eventually respond to all the questions. This is my position. I am grateful, Mr. President.

The president noted that since it was clear that the issue related to the accused’s right not to respond, which was clearly expressed, there was no need to give the floor to the civil party to put questions to him. However, this prompted Judge Lavergne to rise immediately and walk over to the president, prompting all the Trial Chamber judges to huddle in deliberation, with Judge Lavergne gesturing emphatically. After resuming their seats, the president clarified that Mr. Ny could put questions, through the president, who would decide whether the question would be redirected to Mr. Samphan.

***Civil Party Requests Khieu Samphan Divulge Execution Site of the Civil Party’s Relative***

The civil party said, speaking animatedly and looking at Mr. Samphan, that the questions he had for Khieu Samphan were “nothing of a revenge nature.” Unobstructed, he stated the questions as follows:

On April 17, 1975, that is, at the liberation, Khieu Samphan wrote a letter of invitation to my uncle, that is Chau Sav, to return to Phnom Penh, and I want to know the reason why. Did Khieu Samphan eventually meet with my uncle?

My second question is that the driver of Mr. Chau Sav, in 1979, I met him, in Phnom Penh, and he said that when Chau Sav was evacuated and upon reaching Prek Kdam, there were two soldiers who delivered a letter from Khieu Samphan to him, and the content of that letter stated that Mr. Chau Sav is required to return to Phnom Penh. However, Chau Sav refused. He said that he would only return to Phnom Penh when all the Phnom Penh residents were allowed to return. Subsequently, the two soldiers returned for a second time, inviting him to come to Phnom Penh again. He still refused. From that time onwards, Mr. Chau Sav disappeared.

My question to Mr. Khieu Samphan is: where did he die? This is what I want to know. If I know where he died I can find his skeletal remains so that I can carry out a religious ceremony for his soul.

The president considered this for a moment and then put this question to Mr. Samphan. Ms. Guissé stood to speak, prompting an emphatic response from the president that the question was put to Mr. Samphan and the Chamber wanted to know if Mr. Samphan wished to retain his right to remain silent or if he alternatively knew where Mr. Chau Sav died.

Ms. Guissé attempted to speak again but was cut off by the president. Mr. Samphan then stood, and, gesturing emphatically, addressed the president: “I would like to ask a question to the president. If I respond to this question, does it affect my right to remain silent? If it does not affect my right to remain silent, then I will respond.”

The president responded that the accused had expressed a limited right to remain silent and it was for his discretion whether to respond or to remain silent.

Mr. Samphan stood and responded to the president but this was not transmitted in the English translation. The president asked Mr. Samphan to repeat himself, but Ms. Guissé stood to say something, prompting the president to advise her to remain seated and to tell all parties to remain seated as well as the floor was Mr. Samphan’s alone.

Mr. Ianuzzi nevertheless attempted to seize the floor, however, stating that “we take great exception to --” before being waved away by the president, who pointed emphatically downwards, seemingly to indicate that Mr. Ianuzzi should sit down. Mr. Ianuzzi nevertheless persisted, even though his microphone was cut off, rendering his comments inaudible on the English language audio transmission. However, Judge Cartwright could be heard whispering to the president, “Have him removed if he keeps – won’t be seated.” Judge Lavergne also walked over to speak with Judge Cartwright. The latter repeated her suggestion that Mr. Ianuzzi be removed if he persisted, to which Judge Lavergne responded that “he” was entitled to contact with his lawyers.<sup>13</sup> During this episode, Reserve Judge Claudia Fenz could also be seen waving her hand palm down, indicating that Mr. Ianuzzi should sit down.

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<sup>13</sup> This seemed to be a reference to Khieu Samphan, and Judge Lavergne did then note in his response to Judge Cartwright that his comment did not refer to Nuon Chea.

After the judges returned to their seats, the president again asked Mr. Samphan for his comments, who responded, “I delegate my rights to my defense counsel as my representative, and personally, from the outset, that I eventually will respond to all questions once the hearing on evidence is concluded at the end of this trial. That is all.”

### ***Civil Party Chau Ny’s Statement of Suffering***

The president then advised Mr. Ny that Mr. Samphan expressed his right to remain silent, and asked whether Mr. Ny wished to make his statement of suffering. The civil party took the opportunity to say:

I am greatly disappointed as he declines to respond to my question. Of course, Mr. Khieu Samphan knew my uncle very well! They had meals together, and of course he should know where his skeletal remains are, and he should not refuse to respond to this question. What I want to know is to know where he died so I can take his skeletal remains for the religious ceremony.

For that reason, even though I am here, my suffering still remains because I don’t have the answer. I am here before this court of law and I still cannot get his response as to where my uncle died. I personally don’t have any revenge towards him. I just want him to tell me where he died so that I can get his skeletal remains for the religious ceremony. If he doesn’t know Chau Sav, I can show him the photo of Chau Sav. If you no longer remember the facial expression, I can show you the photo and of course you should not refuse to see it.

After the civil party left the courtroom, the president gave the floor to the parties to make comments concerning the statement of suffering. Ms. Guissé stood. The president advised, before she could speak, that this time was for making observations concerning the statement of suffering and Mr. Ny’s general testimony, and that “all other matters would not be allowed.”

### ***“Extreme Violation of the Rights of the Defense”***

Ms. Guissé responded that her comments were about Mr. Ny’s statement of suffering, and that while it was a statement, it also contained elements which did not fall within the framework of Case 002/1. She also sought to publicly “express my astonishment, indeed shock, at the procedure that was followed today in the Chamber. It’s not just a matter for the civil party to talk about his suffering but to bring probative evidence into his statement,” and that this issue raised a problem for the rights of the defense, since once a civil party was making his statement of suffering, the defense was “bound and gagged” as it could not “come back on issues of probative evidence.”





Moreover, Ms. Guissé added, the issues Mr. Ny raised “took my client directly to task” and, concluded emphatically, there was a “very significant procedural issue” here that she wished the Chamber to decide upon. This practice would mean that the defense’s rights would be curtailed and this was an “extreme violation of the rights of the defense.” She said it was “particularly regretful” that Mr. Samphan was the only accused person in the room by virtue of his better health and was then taken to task. She added that the civil party was talking about issues that were not part of his particular suffering but of probative evidence.

Mr. Sam Onn added that the civil party’s question about his uncle was not part of the story of the Case 002/1 trial segment, the court was not obliged to look for this body, and there was no evidence to show that Mr. Samphan was responsible for the civil party’s uncle’s death or to prove that Mr. Samphan wrote that letter; therefore, the matter he raised was “baseless.”

The Trial Chamber judges again huddled in deliberated, with Judges Cartwright, Lavergne and Ottara each speaking and gesturing animatedly. After several minutes, Judge Lavergne responded on behalf of the bench:

Let me begin with an observation. The civil party was given the floor to express himself on the subject of his suffering, and I believe that it was clear for everybody that part of the suffering that he wanted to air concerning his uncle, Mr. Chau Sav, someone who disappeared during the evacuation of Phnom Penh, and that what he was bringing up was perfectly relevant to this part of the case.

Now, we are working in a civil law framework as well, and as far as I am aware, the civil parties are parties, they are allowed to ask questions, and the accused are also entitled to exercise their right to remain silent. I do not see in what way the rights of the defense have been breached.

If the civil party’s statement was going to bring up issues about which the defense might have wanted to ask questions, then indeed we might have heard a request from you to that effect and we might have given you the floor. But I do not see the interest in the procedure and I hope that I have been clear on that.

Ms. Guissé asked whether this meant that when civil parties bring up in their statements new facts that have not been referred to, such as was the case today, the defense would, in future, be entitled to ask questions of the civil party. Judge Lavergne said that the accused was never denied that right and that “if it appears necessary in seeking the truth, then I think such questions are fully authorized and perfectly acceptable.”

Ms. Guissé duly requested leave from the president to ask further questions of Mr. Ny. After a short deliberation with his colleagues, the president said that the Chamber did not wish to continue with this as the civil party had already been excused, and the accused had already expressed his right to remain silent.

The president therefore adjourned the hearing for the day. While the judges were filing out of the courtroom, however, Mr. Ianuzzi spoke into his microphone, “Your Honors, is it not the case that

all the parties get to make a comment on the suffering? And I have a question about that last ruling: was it the Chamber's ruling, or was it Judge Cartwright's ruling?" Nevertheless, as the judges continued to leave, Mr. Ianuzzi promised to ask this again next time the Court convened.

Hearings in Case 002/1 will resume at 9 a.m. on Tuesday, December 4, 2012, when the Chamber will hear a new civil party, TCCP 188.