



Trial Chamber Decision on Civil Party Testimony
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The Trial Chamber has ruled on several contested matters related to Civil Party testimony in Case 002/01 at the Extraordinary Chambers in the Courts of Cambodia, deciding that Civil Parties may offer final statements of suffering related to the entirety of the Khmer Rouge period and that the Chamber will use the same approach for evaluating the weight and probative value of both Civil Party and witness evidence.¹

Permitted Scope of Civil Party Statements of Suffering

The Civil Party Lead Co-Lawyers have consistently sought permission for Civil Parties testifying in Case 002/01 to make final statements about the harm they suffered throughout the entire Khmer Rouge era and not merely harm related to the severed charges in the Case 002/01 mini-trial.² The Lead Co-Lawyers argue that this right is “inherent” in Civil Party status and that trauma over a period of years “cannot be readily sub-divided and selected” to a limited number of experiences, making it “impracticable to require Civil Parties to speak only to the harm they suffered in consequence of the crimes at issue in Case 002/01.” In their view there is no prejudice to the accused because such statements do not provide evidence of acts or conduct of the accused; moreover, this practice “permit[s] Civil Parties to express grief and suffering on behalf of all victims, thereby contributing to justice and national reconciliation.”³

The Prosecution supported the request; however, the Khieu Samphan Defense argued that if Civil Parties testify about topics outside the scope of Case 002/01, for example the impact of forced labor, “these facts will not be debated or subjected to adversarial argument and can therefore only compromise the fairness of proceedings.”⁴

The Trial Chamber dismissed these concerns, noting that it had “distinguished at all time between testimony on the facts at issue, which is confined to the scope of Case 002/01 and subject to adversarial argument, and general statements of suffering, which the Civil Party can freely make at the conclusion of their testimony.”⁵ To protect the defendants’ right to a fair trial, the Trial Chamber has provided the opportunity for defense objections to statements of suffering after the Civil Party has left the courtroom, required the Civil Party Lead Co-Lawyers to help ensure that Civil Parties only testify about matters relevant to Case 002/01, and asked the Lead Co-Lawyers to help Civil Parties prepare their statements of suffering “so as to discourage new allegations being made against the Accused at that stage.”⁶

¹ Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure Concerning Civil Parties’

Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 AND
² See Expert Commentary on Legal Filings: *Trial Chamber Case 002 Severance Decision Upholds Status Quo* (Apr 30, 2013), at <http://www.cambodiatribunal.org/commentary/expert-commentary-legal-filings>.

³ Civil Party Decision, *supra* note 1, ¶ 5.

⁴ *Id.* ¶ 6.

⁵ *Id.* ¶ 14.

⁶ *Id.* ¶ 17.

This latter direction came about in response to the final statement of suffering of Civil Party Chau Ny (TCCP-187), during which he unexpectedly sought to question defendant Khieu Samphan, alleging that his uncle had disappeared after Khieu sent a letter requesting his return to Phnom Penh. Because Khieu Samphan invoked his right to silence, the Trial Chamber did not grant Defense counsel the opportunity to cross examine Chau Ny,⁷ and the Defense requested that he be recalled for questioning. Neither the Prosecutors nor the Civil Parties opposed the Defense request, and it has now been granted by the Trial Chamber, which ruled:

Civil Party statements of suffering cannot become a pretext to introduce new facts or to make allegations against the Accused that have not been subject to adversarial argument. Where a Civil Party statement of suffering does introduce new factual allegations, particularly if considered inculpatory to the Accused, an opportunity for adversarial challenge in relation to those allegations shall be given to the Defence and may warrant the recall of the Civil Party for further examination.⁸

Probative Value and Weight of Civil Party Testimony

With regard to the probative value and weight of Civil Party testimony generally, the Prosecution sought a declaration from the Trial Chamber that it “is to be assessed on a case-by-case basis at the conclusion of the trial and is not considered to possess an inherently lesser value [than ordinary witnesses] merely because it is not given under oath.” The Khieu Samphan Defense agreed that the credibility of Civil Parties who testify should be assessed on a case-by-case basis but argued that the Court should not “indiscriminately apply[] the same standards to the testimonies of witnesses and of Civil Parties.” In its view, “being a party to the proceedings, whether as Prosecution, Defence or civil party, necessarily entails partiality, yet this partiality does not automatically discount the credibility and veracity of the statements and positions of each of the parties.”⁹

Nevertheless, the Trial Chamber ruled that it would follow the same approach for evaluating the testimony of both witnesses and Civil Parties:

[W]hen assessing the evidence for the verdict, the weight to be given to Civil Party testimony will be assessed on a case-by-case basis in light of the credibility of that testimony, and upon a reasoned assessment of this evidence any doubt as to guilt will be interpreted in the Accused's favour.”¹⁰

⁷ See Application for Reconsideration of the Decision Not to Recall Civil Party TCCP-187, and for Review of the Procedure for Hearing Civil Parties, ¶¶ 5-7 (Dec. 7. 2012) (alleging that this incident violated Khieu Samphan’s right to effective representation).

⁸ Civil Party Decision, *supra* note 1, ¶ 19.

⁹ *Id.* ¶¶ 11-12; Reply to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, ¶ 14-17 (Mar. 4, 2013).

¹⁰ Civil Party Decision, *supra* note 1, ¶¶ 21-22, disposition.