



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ
Case File/Dossier No. 002/19-09-2007/ECCC/TC

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): 25 / 07 / 2013
ម៉ោង (Time/Heure) : 10 : 00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: SAMPRADA

Before: Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Date: 02 May 2013
Original language(s): Khmer/English/French
Classification: PUBLIC

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 E267/2)

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Jacques VERGÈS
Arthur VERCKEN
Anta GUISSÉ

1. INTRODUCTION

1. Following the testimony of two Civil Parties on 22 October 2012 and 23 November 2012, the Trial Chamber was seised of two related motions seeking reconsideration of its decision not to recall Civil Party TCCP-187 (CHAU Ny) and clarification on the modalities of in-court questioning of Civil Parties and in particular, the permitted scope of Civil Party statements of suffering.¹ Responses were filed to both motions on 12 November 2012 and 17 December 2012, respectively.² The Trial Chamber is further seized of the Co-Prosecutors' Rule 92 motion of 21 February 2013, which submits that the probative value of Civil Party testimony should be assessed by the Trial Chamber in accordance with the same standards as that of witnesses, and not accorded lesser weight merely because Civil Party testimony is not given under oath.³ The KHIEU Samphan and IENG Sary Defence responded to this motion on 4 March 2013.⁴

2. PROCEDURAL HISTORY

2. On 22 October 2012, at the conclusion of her in-court testimony, Civil Party TCCP-169 (YIM Sovann) was granted the opportunity to make a statement pertaining to her suffering during the Democratic Kampuchea ("DK") era. Prior to the hearing of her statement of suffering, the Civil Party Lead Co-Lawyers requested orally that all Civil Parties be permitted to make statements concerning harm suffered throughout the duration of the DK period.⁵ Given the general nature of this motion, the Trial Chamber invited the Lead Co-Lawyers to outline their position in writing, which they did on 16 November 2012.⁶

3. During the hearing on 22 October 2012, the Trial Chamber allowed YIM Sovann to speak on the totality of the suffering she experienced during the DK period, granted an

¹ Civil Party Lead Co-Lawyers' Request for Specification of the Scope of the Civil Parties' In-Court Statements About Their Suffering, E240, 30 October 2012 ("Lead Co-Lawyers' Request"); Application For Reconsideration of the Decision Not to Recall Civil Party TCCP-187, and for Review of the Procedure for Hearing Civil Parties, E250, 7 December 2012 ("KHIEU Samphan Motion").

² Response to "*Demande des co-avocats principaux pour les parties civiles afin de définir l'étendue de la déclaration sur la souffrance des parties civiles déposantes*," E240/1, 12 November 2012 ("KHIEU Samphan Response"); Co-Prosecutors' Response to KHIEU Samphan's "Application for Review of the Decision Not to Recall Civil Party TCCP-187, and to Amend the Procedure for Hearing Civil Parties," 17 December 2012, E250/1 ("Co-Prosecutors' Response").

³ Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, 21 February 2013, E267 ("Rule 92 Submission"), paras 5, 22-23.

⁴ *Réponse aux Ecritures des Co-Procureurs relatives à la valeur probante des dépositions des Parties civiles*, 4 March 2013, E267/1; IENG Sary's Response to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, 4 March 2013, E267/2.

⁵ T., 22 October 2012, p. 2.

⁶ T., 22 October 2012, p.17; *see also* T., 22 October 2012, pp. 2-16 (response of all Defence teams) and Lead Co-Lawyers Request, paras 2-3.

opportunity to all parties to address parts of the statement to which they objected at the end of her statement and further indicated that this practice would be followed until further notice.⁷ In the course of her statement, the Civil Party made reference to her experience of forced labour after her evacuation from Phnom Penh and the execution of her family members in 1978.⁸ The Defence did not object at the time to these portions of her statement.⁹

4. On 23 November 2012, Civil Party TCCP-187 (CHAU Ny) sought permission to question the Accused KHIEU Samphan concerning the circumstances of his uncle's disappearance, which he alleged followed a letter sent by the Accused on 17 April 1975, urging the Civil Party's uncle to return to Phnom Penh.¹⁰ The KHIEU Samphan Defence objected to this request.¹¹ The Trial Chamber declined CHAU Ny's request to question the Accused directly but nonetheless authorised the Civil Party to question the Accused through the Trial Chamber President. The Accused indicated that he did not wish to respond to any questions at that stage but that he might do so at the end of the presentation of all the evidence.¹² The KHIEU Samphan Defence's request to further question CHAU Ny was denied by the Chamber on grounds that the Accused had exercised his right to remain silent on this issue.¹³ The KHIEU Samphan motion seeks reconsideration of this decision, as well as a general review of the procedure for the hearing of Civil Parties.¹⁴

3. SUBMISSIONS

3.1. Permitted scope of Civil Party statements of suffering

5. The Lead Co-Lawyers submit that the Civil Parties' right to express their suffering is inherent in their status as Civil Parties, and serves to highlight the human impact of the crimes at issue.¹⁵ Suffering is the result of cumulative trauma and cannot be readily sub-divided and selected as a result solely of crimes forming part of Case 002/01. It is therefore unnecessary and impracticable to require Civil Parties to speak only to the harm they suffered in consequence of the crimes at issue in Case 002/01.¹⁶ Further, statements of suffering by Civil Parties do not constitute evidence prejudicial to the Accused and the impact of these statements is limited to enabling the Chamber to assess the gravity of crimes. They also

⁷ T., 22 October 2012, pp. 17-18.

⁸ T., 22 October 2012, pp. 19-20.

⁹ T., 22 October 2012, pp. 22-25.

¹⁰ T., 23 November 2012, p. 95.

¹¹ T., 23 November 2012, pp. 91-92.

¹² T., 23 November 2012, pp. 94, 98.

¹³ T., 23 November 2012, p. 105.

¹⁴ KHIEU Samphan Motion, para. 25.

¹⁵ Lead Co-Lawyers' Request, para. 10.

¹⁶ Lead Co-Lawyers Request, paras 12-14; T., 22 October 2012, pp. 4-6.

permit Civil Parties to express grief and suffering on behalf of all victims, thereby contributing to justice and national reconciliation.¹⁷ The Lead Co-Lawyers therefore request that the Trial Chamber declare that Civil Parties may, at the conclusion of their testimony, speak regarding the entirety of the suffering they experienced during the DK period.¹⁸ They further request the Trial Chamber to disallow in-court comments by the other parties regarding these statements on suffering, or at a minimum to direct that these comments be made only after the Civil Parties have left the courtroom, in order to shield the Civil Parties from comments that may offend their dignity or cause psychological distress.¹⁹ The Co-Prosecutors agree that a compartmentalization of suffering between Case 002/01 and the rest of Case 002 would be artificial, especially as Civil Party applications were deemed admissible on the basis of the entirety of the Case 002 Closing Order. The Co-Prosecutors further note that the purpose of these statements is confined to victim impact and there is accordingly no need to limit their scope.²⁰

6. In response, the KHIEU Samphan Defence submit that the facts relied upon by YIM Sovann to describe the harm she suffered fall squarely outside the scope of the present trial.²¹ In describing this harm, the Civil Party impermissibly introduced facts that are irrelevant to Case 002/01, in relation to which the Accused has had no opportunity to present a defence.²² While acknowledging that the mental suffering experienced by a Civil Party may be cumulative and therefore difficult to segment, this is not true of physical harm, which is necessarily the result of a specific event.²³ The KHIEU Samphan Defence submit that it is impermissible for Civil Parties to testify about matters that are not part of Case 002/01, as these facts will not be debated or subjected to adversarial argument and can therefore only compromise the fairness of proceedings.²⁴ While agreeing that a properly-conducted and fair trial may have an impact on national reconciliation, the latter cannot be used as a pretext for violating basic fair trial principles.²⁵ It requests the Chamber to reject the request and to order the parties to respect the limits that follow from the severance of proceedings as ordered by the Chamber, on grounds that these limits would need to be revisited if the Chamber were to

¹⁷ Lead Co-Lawyers Request, paras 16, 19-20.

¹⁸ Lead Co-Lawyers Request, para. 15.

¹⁹ Lead Co-Lawyers Request, paras 22-24.

²⁰ T., 22 October 2012, pp. 6-8.

²¹ KHIEU Samphan Response, para. 4.

²² KHIEU Samphan Response, para. 16; T., 22 October 2012, p. 11.

²³ KHIEU Samphan Response, para. 17.

²⁴ KHIEU Samphan Response, para. 20.

²⁵ Khieu Samphan Response, para. 22.

grant the Lead Co-Lawyers' Request.²⁶ The IENG Sary Defence concurred that suffering stemming from crimes beyond the scope of Case 002/01 is irrelevant.²⁷

7. Although the NUON Chea Defence acknowledge that compartmentalizing suffering is difficult, it notes that the Defence confronts the same challenge in restricting the scope of those contextual issues it considers relevant following the Severance Order.²⁸ The NUON Chea Defence therefore submits that "if the Civil Parties are going to be given the leeway to talk about everything that's happened to them, allegedly, then [the Accused] should be given, as parties to the proceedings, [...] equal leeway."²⁹

3.2. Request to recall TCCP-187 and to alter the order of questioning Civil Parties

8. The KHIEU Samphan Defence seek to recall Civil Party CHAU Ny (TCCP-187) to enable the Defence to question him on the allegations made against the Accused during his statement of suffering.³⁰ The Defence alleges that although the Accused chose to exercise his right to silence, the Accused's rights were nonetheless violated.³¹ The Civil Party's statements pertained directly to the Accused's alleged acts and conduct. This line of questioning could not have been anticipated by the Defence either from the Civil Party's testimony at trial or his Civil Party victim information form, and no opportunity was later afforded to the Defence to question the Civil Party on these new allegations.³² The KHIEU Samphan Defence also request alteration of the order in which Civil Parties are questioned, so as to permit the Defence to question Civil Parties at the conclusion of their testimony, including in relation to their statements of suffering.³³ Allowing the Defence to comment on the Civil Party's testimony only after the Civil Party leaves the witness stand, as requested by the Lead Co-Lawyers, is inconsistent with the adversarial nature of proceedings.³⁴ In the alternative, and should the Chamber not agree to recall Civil Party CHAU Ny, the Defence seek a declaration that the Civil Party's statement of suffering is inadmissible pursuant to Internal Rule 87(2),

²⁶ Khieu Samphan Response, p. 5; T., 22 October 2012, pp. 11-13; *see also* Severance Order Pursuant to Internal Rule 89ter, 22 September 2011, E124 and Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites Within the Scope of Trial in Case 002/01 (E163) and Deadline For Submission of Applicable Law Portion of Closing Briefs, E163/5, 8 October 2012.

²⁷ T., 22 October 2012, p. 14.

²⁸ T., 22 October 2012, pp. 9-10.

²⁹ T., 22 October 2012, p. 10.

³⁰ KHIEU Samphan Motion, paras 1, 9.

³¹ KHIEU Samphan Motion, paras 3-17.

³² KHIEU Samphan Motion, paras 10-13.

³³ KHIEU Samphan Motion, paras 18-25.

³⁴ KHIEU Samphan Motion, para. 15.

according to which the Chamber may only base decisions on evidence that has been put before the Chamber and subjected to examination.³⁵

9. The Co-Prosecutors support the request to recall Civil Party CHAU Ny, on grounds that the information contained in his statement of suffering merited further questioning by the parties and is in the interests of justice.³⁶ However, the Co-Prosecutors oppose the request to alter the sequence of Civil Party questioning, on grounds that it is unnecessary in order to protect the fair trial rights of the Accused.³⁷ The current order is within the purview of the President's prerogative to determine these matters under the Internal Rules.³⁸ The Trial Chamber should allow the parties to further examine Civil Parties where their statement of suffering raise issues the party or parties believe merits further exploration, but the Co-Prosecutors submit that no violation of the Accused's rights occurred in this instance.³⁹

10. The Lead Co-Lawyers communicated to the Trial Chamber Senior Legal Officer on 18 December 2012 that they did not object to the recall of CHAU Ny, provided that the scope of questioning by the KHIEU Samphan Defence is limited to matters raised in CHAU Ny's statement of suffering concerning his late uncle.⁴⁰

3.3. Probative value and weight of Civil Party testimony

11. In response to in-court discussion on 24 January 2013 regarding the weight to be accorded to Civil Party testimony, the Co-Prosecutors filed a Rule 92 submission requesting a declaration that the weight and probative value of Civil Party testimony 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 merely because it is not given under oath.⁴¹

12. In response, the KHIEU Samphan Defence submit that it is erroneous to assert that there is no real difference between the testimony of Civil Parties and witnesses.⁴² Although the

³⁵ KHIEU Samphan Motion, para. 16.

³⁶ Co-Prosecutors' Response, para. 3.

³⁷ Co-Prosecutors' Response, para. 4.

³⁸ Co-Prosecutors' Response, para. 6.

³⁹ Co-Prosecutors' Response, paras 5, 8.

⁴⁰ Email Lead Co-Lawyers to Trial Chamber Senior Legal Officer, 18 December 2012.

⁴¹ Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony, 21 February 2013, E 267 ("Co-Prosecutors' Submission"), paras 1-2, 13,14, 20-23 (referring to the notion of *intime conviction* prevailing in the French Civil Law system, upon which the Cambodian Civil Law system is based, which requires trial judges to independently assess evidence and to arrive at a decision).

⁴² "Reply to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony," E267/1, 20 March 2013 ("Rule 92 Submission Response"), paras 2-3 (submitting that the Co-Prosecutors confuse the roles of the different parties to proceedings by conflating the roles of witnesses and Civil Parties); *see also* "IENG Sary's Response to Co-Prosecutors' Rule 92 Submission Regarding Civil Party Testimony," E267/2, 4 March 2013 (submitting, amongst other things, that testimony not given under oath should have less weight and probative value than testimony given under oath).

KHIEU Samphan Defence does not dispute that the weight to be given to Civil Party testimony should be assessed on a case-by-case basis in light of the credibility of that testimony, they do object to abolishing the distinction between the various parties to the proceedings and to “indiscriminately applying the same standards to the testimonies of witnesses and of Civil Parties.”⁴³

4. FINDINGS

4.1. Legal framework

13. Civil Party participation before the ECCC enables victims to participate as parties within the criminal trial of an Accused in support of the Prosecution, and in order to seek collective and moral reparations for harm attributable to the crimes for which an Accused is convicted.⁴⁴ The Trial Chamber has therefore granted Civil Parties an opportunity to make statements regarding their suffering and has allowed questions to be put to the Accused through the President of the Chamber in both Case 001 and Case 002/01.⁴⁵ This is subject to the Chamber’s overriding obligation to ensure the fairness of proceedings.

4.2. Proper scope of Civil Party statements of suffering and modalities of questioning

14. While the Chamber has, in practice, allowed Civil Parties to express their suffering during the DK era in general, it has also reminded the parties of the limited scope of all testimony following the severance of proceedings in Case 002.⁴⁶ The Trial Chamber has 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.⁴⁷

15. In their statements of suffering, the Trial Chamber has not generally required Civil Parties to differentiate between harm suffered in consequence of facts within the scope of Case 002/01, and overall harm suffered during the DK period, at least where this does not infringe the Accused’s right to a fair trial. Contrary to what is suggested by the NUON Chea Defence, Civil Parties have never in this context been given “the leeway to talk about

⁴³ Rule 92 Submission Response, paras 15-16.

⁴⁴ *KAING Guek Eav*, Trial Chamber Judgement, E188, 26 July 2010, para. 660.

⁴⁵ T., 19 August 2009, p. 60; *see also* T., 23 November 2012 (CHAU Ny), pp. 94-95, 104 and Internal Rule 90 (2) (“[a]ll questions shall be asked with the permission of the President. Except for questions asked by the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber and in the order as determined by him”); *see also* Cambodian Code of Criminal Procedure, Article 325 (2) (“all parties may be authorised to question the accused through the presiding Judge, except for the ... Prosecutor and the lawyers”).

⁴⁶ The Chamber has, however, permitted testimony, including that of Civil Parties, to cover issues beyond the scope of Case 002/01, where exceptional circumstances are alleged: *see e.g.* T., 22 October 2012 (YIM Sovann), pp. 17-18; T., 22 October 2012 (CHUM Sokha), pp. 61-62; *see also* T., 22 October 2012, pp. 53, 61; T., 23 August 2012 (EM Oeun), p. 108; T., 7 December 2011 (Roman Yun), p. 50.

⁴⁷ T., 29 August 2012 (EM Oeun), pp. 27-28.

everything that's happened to them," as with the exception of their general statement on suffering, their testimony has been confined to facts relevant to Case 002/01.

16. This practice has been consistently followed in Case 002.⁴⁸ This practice was challenged by the Defence for the first time during the testimony of YIM Sovann, in response to which the Trial Chamber allowed Civil Party YIM Sovann to proceed with her statement of suffering but granting the parties an opportunity to object to parts of the statement considered by them to be prejudicial to the Accused.⁴⁹

17. As a general matter, the Trial Chamber does not consider this practice to be prejudicial to the Accused's right to a fair trial. Firstly, it is only statements of suffering that have been unconstrained by the limits of the severance order and related decisions. Where the Accused's rights are alleged to be violated, the Defence has been granted ample opportunity to object. Secondly, in the interests of the expeditiousness of proceedings, the Trial Chamber has also required the Lead Co-Lawyers to ensure that Civil Parties are asked to testify before the Chamber only in relation to matters relevant to Case 002/01.⁵⁰ The Trial Chamber has further directed the Lead Co-Lawyers to assist Civil Parties in the preparation of their statement of suffering so as to discourage new allegations being made against the Accused at that stage.⁵¹ Sufficient safeguards are therefore in place to ensure full respect for the Accused's rights.

18. The Chamber finds it unnecessary to revisit its practice of permitting statements of suffering in relation to the entirety of the DK period, or to alter the current sequence of questioning of Civil Parties. However, in the interests of the expeditiousness of proceedings, the Chamber urges the Lead Co-Lawyers to ensure that a Civil Party's testimony in relation to facts is confined to matters at issue in Case 002/01 and to ensure that their statements of suffering, whilst not so confined, is limited to the purpose for which they are intended. The

⁴⁸ T., 11 January 2012 (Klan Fit), pp. 87-88 (indicating that the Chamber granted an opportunity to Klan Fit, "as a civil party, to express [his] suffering and harms [he has] incurred during the Democratic Kampuchea period"); *see also* T., 29 August 2012 (EM Oeun), p. 28; The Chamber permitted the Civil Party to voice sufferings and grievance during the period of Democratic Kampuchea from the 17th of April 1975 through the 6th of January 1979 and T., 19 October 2012 (YIM Sovann), p. 74.

⁴⁹ T., 22 October 2012, pp. 2, 8-16 (YIM Sovann); T., 22 October 2012 (CHUM Sokha), p. 104; T., 6 November 2012 (MOM Sam Oeurn), p. 4-5; T., 14 November 2012 (MEAS Saran), p. 87 and 22 November 2012, p. 86-87; T., 23 November 2012 (OR Ry), p. 21 and (CHAU Ny), pp. 41, 91; T., 4 December 2012 (TOENG Sokha), p. 36; T., 5 December 2012 (PECH Srey Pal), pp. 9, 74; T., 5 December 2012 (KIM Vandy), p. 79; 6 December 2012 (KIM Vandy), p. 27; T., 13 December 2012 (Denise AFFONCO), p. 103.

⁵⁰ Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011, E141, 22 November 2011, pp. 2, 4.

⁵¹ T., 19 October 2012, p. 106; T., 22 October 2012, pp. 23-24.

Defence shall continue to be afforded an opportunity to make comments once the Civil Party left the courtroom.⁵²

4.3. Alleged violation of the Accused's fair trial rights and request to recall TCCP-187

19. The Trial Chamber agrees with the KHIEU Samphan Defence that 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. The Trial Chamber further agrees with the Defence that the allegations made by the Civil Party against the Accused on 23 November 2012 could not have been anticipated either from his Victim Information Form or otherwise.⁵³

20. The Chamber thus considers it to be in the interests of justice to recall CHAU Ny but limits the questioning of the Civil Party upon recall to those portions of his statement of suffering that the Accused has yet to be afforded an opportunity to respond.

4.4. Probative value and weight of Civil Party testimony

21. In Case 001, the Trial Chamber noted that Civil Parties are exempt from taking the oath but “may testify and have their statements put before the Chamber and assessed as evidence where relevant and probative”, and acknowledged the distinctive features of Civil Party participation at trial.⁵⁴ The Chamber also noted that despite the conceptual differences reflected in the various language versions of Internal Rule 87(1), it “has adopted a common approach that has evaluated, in all circumstances the sufficiency of evidence”, and that “upon a reasoned assessment of evidence any doubt as to guilt was accordingly interpreted in the Accused's favour”.⁵⁵ Throughout the Case 001 Trial Judgement, the Chamber thus utilized the testimony of both Civil Parties and witnesses in support of particular findings, as appropriate.

⁵² T., 6 November 2012 (MOM Sam Oeurn), p. 70; T., 23 November 2012 (OR Ry), p. 39; T., 5 December 2012 (PECH Srey Pal), p.77; T., 6 December 2012 (KIM Vandy), p. 29; T., 13 December 2012 (Denise AFFONCO), p. 107.

⁵³ D22/253 (Victim information form), Part B (“Information about alleged crime(s)”; cf. T., 23 November 2012, p. 95.

⁵⁴ *KAING Guek Eav*, Trial Chamber Judgement, E188, 26 July 2010, paras 52-53 (further observing that “the ECCC legal framework distinguishes between the survivors [of S-21 and S-24] who testified as witnesses and the survivors who were joined as Civil Parties and also provided evidence before the Chamber. Pursuant to Internal Rule 23(6), upon joining as a Civil Party, a victim becomes a party to the proceedings. These survivors were accordingly no longer questioned as witnesses and were exempted by the Internal Rules from the requirement to testify under an oath or affirmation”).

⁵⁵ *KAING Guek Eav*, Trial Chamber Judgement, E188, 26 July 2010, para. 45.

22. The Trial Chamber indicates that in the current case it will follow the same approach in exercising its duty to independently and appropriately weigh all evidence presented and to safeguard the fairness of trial proceedings. Therefore 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. As no specific relief is requested by the Co-Prosecutors at this stage, the Trial Chamber will accordingly take account of the above submissions of the parties in the verdict.

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER

GRANTS the Lead Co-Lawyer's request to permit statements of suffering pertaining to the entirety of the Democratic Kampuchea period;

AFFIRMS that the Chamber will continue the current sequence of questioning of Civil Parties and its practice of allowing the Defence to comment on statements of suffering after the departure of the Civil Party from the courtroom but directs the Lead Co-Lawyers to structure the questioning of Civil Parties in a manner that differentiates between testimony on facts and statements pertaining to suffering; and

GRANTS the KHIEU Samphan request to recall Civil Party CHAU Ny (TCCP-187), at a date and time to be announced, in relation to the new allegations made against the Accused KHIEU Samphan during the Civil Party's statement of suffering.

DECLARES that when 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.

Phnom Penh, 02 May 2013
President of the Trial Chamber



NI NOLA