



**Reflection on Mental Health in ECCC Case 002:
Testimony of Civil Party Sophany Bay and Mental Health Expert Dr. Chhim Sotheara**

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From June 4 to June 6, 2013, the Extraordinary Chambers in the Courts of Cambodia (ECCC) heard from Mrs. Sophany Bay, a Civil Party, and one expert witness, Dr. Chhim Sotheara. Mrs. Bay is a Khmer Rouge survivor living in the United States, who now works as a mental health counselor for Cambodian refugee populations in San Jose, California. Dr. Sotheara is one of the few renowned mental health experts in Cambodia, currently serving as the Executive Director of the Transcultural Psychosocial Organization (TPO). The Court’s questioning of Civil Party Mrs. Bay and the expert witness Dr. Sotheara demonstrated that while the ECCC has begun to acknowledge victims’ mental suffering during the Khmer Rouge, improvements can be made in expert testimony proceedings regarding mental health.

The ECCC expressly acknowledged the mental afflictions during the Khmer Rouge in the questioning of the Civil Party Mrs. Bay. Before addressing questions to Mrs. Bay, President Nil Nonn of the ECCC specifically stated that “as a Civil Party in this Court you are given an opportunity to make a statement of the sufferings inflicted upon you materially, *emotionally*, and physically” during the Democratic Kampuchea period. The Civil Party recounted a powerful story on the exile from Phnom Penh on April 17th and the death of her three children during the Khmer Rouge. While testifying, the Civil Party emphasized her psychological pain. While she described the harsh physical conditions she was forced to endure, the focus of her story was her children – how they were mistreated and abused by the Khmer Rouge soldiers – and how their death impacted her. She spoke of constant nightmares, being unable to speak, becoming confused and forgetful, continually crying, and wanting to die after her children’s death. She further explained that she still retained these symptoms even today; and as a mental health counselor, she knew that her symptoms are not unique – she sees the same symptoms amongst her clients and the Cambodian refugee community.

While the description of the emotional suffering was moving and brought tears to the audience, the National Co-Lawyer for Nuon Chea’s defense, Mr. Son Arun, used her testimony to question the accuracy of her testimony and her psychological state. Regarding her constant nightmares and depression, the Co-Lawyer asked how she could serve others with their mental health when her own mental health was not sound and her memory did “not serve her well”—implying whether she actually remembered everything correctly. Before the Civil Party could answer, the Civil Party Lawyer objected and contended that the Civil Party had not mentioned anything about memory loss at all and that the Defense Lawyer should not assume such facts. The Court sustained the Civil Party’s objection.

Despite the Court’s acknowledgement of Mrs. Bay’s psychological sufferings, the expert witness hearing of Dr. Sotheara revealed weaknesses in the skills of court personnel and the processes necessary for an effective use of expert testimony in mental health. Dr. Sotheara’s expert

testimony did not appear to achieve the desired goal of clarifying the extent or degree of the psychological impact that the Khmer Rouge regime had on the Cambodian population. First, the Civil Party lawyers and the Prosecution did not question Dr. Sotheara in a way that effectively utilized his expertise in clarifying and explaining the clinical perspective of the Civil Parties' testimonies on psychological suffering under the Khmer Rouge. Second, the Civil Party lawyers and Prosecution could have laid a more solid foundation of Dr. Sotheara's clinical expertise. Finally, there was confusion in the translation of specialized vocabulary that is common to the mental health profession.

In questioning the witness, the lawyers briefly talked about the victims that Dr. Sotheara interacted with through his work with the TPO and the symptoms of various psychological conditions that manifest in Khmer Rouge survivors (such as Post-Traumatic Stress Disorder [PTSD], depression, anxiety, and paranoia). In addition, the Civil Party Lawyers asked about specific situations and the degree to which trauma consequently resulted. Mr. Victor Koppe, the Defense for Nuon Chea, objected frequently, claiming that the Civil Party Lawyers did not attempt to establish a proper foundation in terms of the expert's clinical expertise. In his view, the Civil Party Lawyers proceeded to inquire on specific scenarios that the expert may or may not have had an adequate basis to testify. This demonstrated some confusion among the lawyers concerning the scope of Dr. Sotheara's testimony. The Civil Party lawyers questioned Dr. Sotheara about his personal clinical experience with patients, not as a scholar who should be testifying about the vast and clear body of literature regarding Khmer Rouge's effect on mental health in Cambodia. While the former certainly pulls from a large pool of information and narrative, the latter is probably most effective because it is based on established, published evidence that is much more vast and clear.

While there is a huge body of statistical information collected from Cambodia on trauma-related mental health, and some of it has been accepted as evidence in the Court, the Civil Party lawyers ignored such evidence in their questioning. The Civil Party Lawyers and Prosecution did not appear to question Dr. Sotheara's clinical knowledge to produce hard numbers and facts – quantitative data that would have supported previous testimonies about psychological hardship during the Khmer Rouge. Instead, the questions for Dr. Sotheara required qualitative answers, which from an expert, were not as strong as the accounts from the victims themselves. Dr. Sotheara's answers regarding psychological impacts that occurred from certain situations were usually not supported by other studies, but just Dr. Sotheara's narrative. Dr. Sotheara did not mention established statistical evidence on Cambodian mental health after the Khmer Rouge, because he was not asked about it. In the end, the Civil Party Lawyers and Prosecution did not point to any specific studies that Dr. Sotheara had worked on to produce hard, quantifiable data concerning the mental health of the Khmer Rouge victims.

Furthermore, the Civil Party lawyers and the Prosecution did not establish a baseline with mental health. They did not ask questions such as "How do psychiatrists assess symptoms of anxiety related to traumatic experience?", "What is the Diagnostic and Statistical Manual of Mental Disorders (DSM) and how is it used?", and "What are some of the outcomes from studies done in Cambodia and/or in Cambodian refugees?" to facilitate the Court's understanding of the expert testimony. The specific questions on Dr. Sotheara's clinical experience did not appear to provide the necessary background knowledge on mental health.

Mr. Koppe, the International Co-Lawyer for Nuon Chea, vied for more time for questioning Dr. Sotheara on his potential bias against the Defense, qualifications, studies, and methodologies in his research. Both the Defense and the Prosecution were allowed more time to question Dr. Sotheara the next day. On June 6th, the Prosecution took a different line of questioning by referring to some of Dr. Sotheara's studies. However, the cross examination of Mr. Koppe undermined this testimony. Dr. Sotheara was forced to say that he was not a doctor in the academic sense, because he had not received his PhD yet, and was in the process of receiving his doctorate degree. In his questioning, Mr. Koppe kept referring to statistics that undermined the psychological impact of the Khmer Rouge on Cambodians. The Prosecution and Civil Party lawyers failed to object, and Dr. Sotheara did not correct Mr. Koppe's use of the statistics either. Mr. Koppe also attacked Dr. Sotheara's neutrality as an expert witness, because he was also a victim of the Khmer Rouge. This showed that perhaps other experts, like Dr. Joop de Jong or Dr. James Beohnlein may have been a better expert witness, because there would have been no possibility of bias.

Before adjourning the Court on June 5th (after the Prosecution's examination of Dr. Sotheara), the President asked Dr. Sotheara to refrain from switching to English during his testimony. In a discussion with Dr. Sotheara before his testimony, Dr. Sotheara had expressed his decision to use English for some psychiatry vocabulary because he felt that his testimony in Case 001 was distorted by the translators' misuse of words. Dr. Sotheara was not sure whether the translators had some background knowledge about mental health for his expert testimony in Case 002 and did not want to risk his testimony being misunderstood again.

Although the court recognized the victims' psychological suffering in the Civil Party hearings, the questioning of the expert highlighted key areas for improvement. The purpose of the expert testimony of Dr. Sotheara was to clarify the nature of the mental trauma that resulted from the atrocities of the Khmer Rouge period. Unfortunately, the Civil Party lawyers and the Prosecution questioned Dr. Sotheara more along the lines of a lay witness – asking him for narratives, not numbers, and assumptions, not facts – and when Dr. Sotheara was being cross-examined on his qualifications, the Civil Party Lawyers and the Prosecution could not adequately prevent an attack on his credibility or rehabilitate his testimony. In retrospect, the scope of Dr. Sotheara's testimony could have been better defined and the lawyers could have utilized the established literature on the effects of the Khmer Rouge on mental health in Cambodia.

To respect and incorporate the emotional sufferings of victims in the search for justice in international courts, lawyers should be trained to effectively question expert psychiatrists and clinicians and learn the language of psychiatry and psychology to better use the expert's knowledge. Lawyers should also be educated to establish the expert's credibility and rehabilitate the expert's testimony when it becomes confusing or weak. Expert witnesses—especially those who do not have much experience in a court—should also be allowed an information session or even a meeting with their lawyers for general questions. Furthermore, translators in international courts should study specialized vocabulary in psychiatry and psychology for better communication when hearing from a mental health expert. Background education on mental health and psychiatry for Court Judges and lawyers would facilitate the understanding of mental health expert testimony as well.

The Court's questioning of Civil Party Mrs. Bay and the expert witness Dr. Sotheara demonstrated that while the ECCC has made important strides in acknowledging victims' mental health, there is much room for improvement in addressing the psychiatric community's value to the international criminal justice enterprise. It is important for international criminal courts to recognize the staggering increase in the prevalence of mental health disorders in post-conflict settings and the enormous impact that skewed statistics have on individual and societal functions. To incorporate psychological sufferings in the quest for justice, international criminal courts must improve the skills of their court staff and processes during the expert testimony in mental health.

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