

# KRT TRIAL MONITOR

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Case of Nuon Chea, Khieu Samphan and Ieng Sary

Asian International Justice Initiative (AIJI), a project of East-West Center and UC Berkeley War Crimes Studies Center

*I think my job as an advocate here is not to provide some veneer,  
some facade, but to actually ask probing questions.  
And in this instance, I'm confronting the man...  
That's what lawyers do.  
That's what I think is done at all international tribunals.  
And that's exactly what I intend to do.*

- Mr. Michael Karnavas, Ieng Sary's international counsel

## I. OVERVIEW

Rochoem Ton alias "Cheam,"<sup>1</sup> a former high-ranking cadre from the Ministry of Foreign Affairs (**MFA**), continued his testimony this week. He provided details on his decision to join the revolution, the evacuation of Phnom Penh, the interaction between Office 870 and the MFA, the administration of the MFA, and Ieng Sary's powers and duties. The Defense Teams attempted to challenge Rochoem Ton's credibility by confronting him with statements he made in previous interviews, as well as other witnesses' statements, that were inconsistent with his testimony.

After the conclusion of Rochoem Ton's examination on Thursday, the Trial Chamber called another former MFA cadre, Mr. Suong Sikoeun, to the witness stand. Suong Sikoeun's testimony covered several matters, including his early years as a revolutionary, some CPK policies, FUNK and GRUNK, and the roles Ieng Sary and Khieu Samphan played in these organizations.

## II. SUMMARY OF WITNESS TESTIMONY

Rochoem Ton continued his testimony this week with questions from international Prosecutor Mr. Dale Lysak, CPLCL Ms. Elizabeth Simonneau-Fort and Civil Party lawyer Mr. Lor Chunthy, Judge Jean-Marc Lavergne, Nuon Chea counsels Messrs. Son Arun and Andrew Ianuzzi, Ieng Sary international counsel Mr. Michael Karnavas, and Khieu Samphan counsels Messrs. Kong Sam Onn and Arthur Vercken. The second witness, Suong Sikoeun, on the other hand, was examined by national Prosecutor, Mr. Chan Dararasmey.



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## **A. Rochoem Ton's Testimony**

The OCP, Civil Party lawyers and the Bench asked questions to clarify and obtain details on the Witness' testimony last week. The Nuon Chea Defense, on the other hand, focused on historical matters, the issue of political interference, and the reluctance of current government officials to appear as witnesses before the Chamber, with Ianuzzi pointing out that the Witness himself is a member of the CCP. In addition, the Ieng Sary and the Khieu Samphan Teams used previous statements by other people and the Witness to show contradictions and inconsistencies in his testimony. These lines of questioning resulted in a more reluctant and taciturn Witness for most of this week – a noticeable contrast to his forthcoming demeanor last week.

### **1. The Role of the Witness in the CPK**

Rochoem Ton explained that encouragement from his family<sup>2</sup> and the US aerial bombardments hardened his resolve to take part in the revolution.<sup>3</sup> After the arrival of senior leaders in Rattanakiri, he felt even more committed to the cause, he asserted.

During the revolution, Rochoem Ton was reportedly assigned under Pang in the security unit where he served as a messenger and guard in S-71. After the "liberation" of Phnom Penh, he escorted Pol Pot, Son Sen, and So Hong<sup>4</sup> when they entered the city on 20 April 1975. Shortly after, he was appointed head of administration of the MFA. Initially, he said Ieng Sary appointed him; however, after being confronted with records of an interview he gave in 2010,<sup>5</sup> he clarified that it was Pol Pot who gave him the position. Rochoem Ton testified that, as head of administration, he managed guesthouses, kitchen halls, and guest receptions. He was also responsible for Chraing Chamres.<sup>6</sup> Additionally, he admitted delivering messages between Khieu Samphan, who was at Office 870, and Ieng Sary, who was at the MFA, regarding trip arrangements for guests.

The Witness repeatedly denied that he headed MFA security as alleged by So Hong and TCW-694, before finally conceding that, as head of administration, his responsibilities included security, "as everything within that office would be under my charge." Moreover, when confronted with So Hong's testimony, Rochoem Ton admitted that he directed personnel out of the MFA. However, he qualified that he only brought them to a house where people from Office 870 fetched them and he did not know where they went. Karnavas pointed out the assertion of Kaing Guek Eav alias "Duch," the former chairman of S-21, that Rochoem Ton brought people from the MFA directly to S-21. Rochoem Ton denied this.<sup>7</sup> He further denied So Hong's testimony that Pang was his superior in security matters, reiterating that his main superiors were Ieng Sary and So Hong. He qualified however, that he followed Pang when orders related to arrests because "when it came to transportation of people, it was Office 870 who was in charge." Additionally, Karnavas cited passages of Philip Short's book, which refer to Rochoem Ton's role as security chief at the time a visiting academic, Professor Malcolm Caldwell, was murdered in late December 1978. When asked to elaborate on this gruesome event, the Witness recounted that he broke the door of the guesthouse himself and he saw the bodies of the Professor and a soldier from Y-10 (the unit on guard duty). Ieng Sary reportedly ordered him to conduct an investigation, as the MFA was "fully accountable" for the incident "before the organization."

Rochoem Ton testified that shortly thereafter, in January 1979, Pol Pot assigned him to escort Prince Sihanouk and his family out of Phnom Penh in the wake of the Vietnamese invasion.

## 2. Administrative and Communication Structures

The Witness provided details on the MFA and described an intimate connection between Office 870 and the Ministry.

### a. Office 870

Rochoem Ton testified that Office 870 held an active role in the administration of the MFA. The Ministry obtained information on the country's situation from the office because "870 devised the political, as well as other administrative affairs of the nation." When Ieng Sary was not in the country, Office 870 reportedly managed the MFA's "main tasks". Rochoem Ton also revealed that, although So Hong was ostensibly in charge of the MFA during Ieng Sary's absence, the latter still made decisions through Office 870. Notably, Office 870 appeared to be a communication hub: So Hong contacted Ieng Sary through Office 870, and Ieng Sary used the same office to communicate with the MFA. The Witness added that Office K-7 was a branch office of Office 870 where messages and requests from the zones were relayed before delivery to Office 870. Moreover, another unit, Y-10, was a military unit attached to Office 870 that arrested personnel from the MFA.

When Rochoem Ton was asked who was responsible for Office 870, he replied: "if Pol Pot was in place, Pol Pot would be the one in charge, or Om Nuon Chea or Om Khieu Samphan; the three of them." He also confirmed that Pang was the chairman of 870, upon prodding by Karnavas.

### b. Ministry of Foreign Affairs

According to Rochoem Ton, Ieng Sary was the Chairman of the MFA (or B-1). So Hong, his immediate superior, was the MFA's general secretary and office chairman. He confirmed the various sections of the MFA listed in a document presented to him: (i) Propaganda and Education Unit, (ii) Office, (iii) Farming Sector, (iv) Political Sector, (v) Protocol Office, (vi) Governing Secretariat, and (vii) Civil Aviation. He admitted that he headed the "Office" or the Administration Section and that within this office there was the "Secrecy Sector," which implemented confidential tasks. He moreover identified Ieng Sary and So Hong as the head and the deputy head of the Political Section, respectively. Thiounn Prasith, Rochoem Ton said, was in charge of the Governing Secretariat that facilitated the MFA's incoming and outgoing documents.

In response to Ianuzzi's queries, Rochoem Ton also confirmed that Keat Chhon, alias "Mut" was a senior cadre who was responsible for writing speeches, taking part in negotiations, and keeping records of the meetings in the MFA. Hor Narmong, he indicated, was in charge of Boeng Trabek in late 1978.

**Meetings and Study Sessions within the MFA.** The Witness testified that, as head of the MFA, Ieng Sary chaired the important meetings at the Ministry and communicated the "collective political line of Angkar" to the cadres. As the head of administration, Rochoem Ton reportedly had brief daily meetings with Ieng Sary, which sometimes included So Hong. He also gave oral or written reports to Ieng Sary when there were visiting delegations.

According to the Witness, the MFA conducted monthly meetings for its cadres to discuss "lessons learned." Criticism sessions on the other hand, were held once every three months, with intellectuals and leaders holding separate sessions from other workers like kitchen staff. Ieng Sary reportedly provided his comments to cadres<sup>8</sup> during these criticism sessions. The Witness stated that he attended various study sessions conducted on a regular basis, as well as general meetings where specific topics were discussed.

Rochoem Ton indicated that in January 1977, a three-day “Cell Congress” headed by Brother Van as secretary and So Hong as deputy secretary, was held at the MFA. He attended this congress with several other members such as Comrades Roeun and Ven. During the congress, the American imperialists, the CIA, the KGB, and the Vietnamese were reportedly identified as enemies. See (Discussion II.A.6. below)

### **c. Other CPK Leaders**

The Witness clarified that Vorn Vet was the chief of the Special Zone, while Son Sen was in charge of the military.<sup>9</sup> Koy Thuon was appointed as Secretary of Commerce after liberation, but he “mysteriously disappeared,” Rochoem Ton indicated. Moreover, he confirmed that Ta Mok, whom he described as a “bad person,” headed the Southwest Zone.

### **3. Roles of the Accused in Democratic Kampuchea**

According to Rochoem Ton, Pol Pot, Nuon Chea, Vorn Vet, Ieng Sary, and Son Sen were members of the Standing Committee. He testified that Ieng Sary told him that Khieu Samphan was not a member of the Standing Committee.

On Kong Sam Onn’s questioning, the Witness stated that after the 1970 coup d’etat, Khieu Samphan, a man he not only “respected” but also “adored,” became the commander-in-chief of the FUNK military and “controlled the work of the Front.” On 17 April 1975, Khieu Samphan reportedly announced the liberation of Phnom Penh to the entire nation through a radio broadcast. Rochoem Ton also reiterated that Khieu Samphan took over Doeun’s functions in Office 870.

### **4. Evacuation of Phnom Penh**

Rochoem Ton recalled that the evacuation of Phnom Penh was discussed in a meeting at B-5 in early April 1975. Prompted by Judge Lavergne to elaborate, Rochoem Ton indicated that Pol Pot, Nuon Chea and Khieu Samphan were in the meeting and that there was a board with sketches where targets for each zone and division were identified. The plan was to evacuate the people within one week. Vercken followed up with more questions on the meeting, in an effort to draw out the inconsistencies in Rochoem Ton’s statements. For instance, the Witness testified that the location of the meeting was “in the jungle, under a roof without walls,” and that he stood beside a termite mound. In the Witness’ statements to the OCIJ, however, he said that, “the meeting took place in a wooden house, four meters by five and the roof was made of palm leaves...I was standing against the wall, I could listen and hear everything.” Moreover, when asked why the meeting was at B-5 in April when he testified earlier that the command post was already moved to Sdok Taol between January and mid-March, the Witness explained that there might have been a “slight mistake” and the office might have been transferred later.

Rochoem Ton further testified that, he only arrived in Phnom Penh after “liberation.” On his way to the capital, he reportedly saw people leaving the city, some of them barefoot. He recounted seeing a family carrying two sacks of banknotes. When he informed them that bank notes were not used in the liberated zones, “they burst into tears.” Rochoem Ton stated:

Talking about the evacuation, of course, those people who were evacuated must experience hardship. That was needless to say, because those people got used to living a luxurious life. Example, they stay in the air con room, or so, but when they were being evacuated, they sweat all over their bodies. So of course, they endured hardship when they were being evacuated. But when we tried to fight in order to

liberate city, we also endured a lot of hardship. We risk our life in order to liberate city. And people who simply left the city, it was not considered that difficult.

Significantly, the Witness said that he never saw any cadre inflicting violence against the evacuees and Lon Nol's soldiers who raised white flags in surrender because the KR were instructed not to harm them. The evacuees, he explained, were referred to as "new people" or "17 April people" in records at places where "base people" lived. He also identified various strategic locations in the Phnom Penh liberation, such as the Chrouy Changva Bridge, Monivong Bridge, French Embassy, Royal Palace, and the stadium, and named the leaders in some of these locations.

## **5. Establishment of Cooperatives**

Rochoem Ton recalled that, in May 1975, a general meeting was held at the Silver Pagoda in Phnom Penh. During the meeting, the progressive establishment of cooperatives across the country was discussed and the attendees were informed that the national democratic revolution had been accomplished and that they needed to prepare to start the socialist revolution. Thus, everyone would be equal by living together, eating the same food, and wearing the same clothes, the Witness explained.

Communal meals were reportedly a common practice in 1973 at the liberated zones; after 1975, it was implemented all across the country. According to Rochoem Ton, he saw that many of the CPK principles he learned were practiced in the different regions he visited from 1977 to 1978. He admitted however, that while evacuees from the cities were treated well in certain locations, they faced various difficulties in others. He also observed that some people had to farm or build dams but were only fed with rice or watery gruel. Since he believed that people who wanted to destroy the party were responsible for these problems, he raised the matter with Pol Pot and Ieng Sary. Pol Pot advised him to discuss it during criticism meetings. Ieng Sary, on the other hand, reminded him that they were in transition and that he had to be patient, recalled Rochoem Ton.

## **6. Enemies, Arrests, and Executions**

During the MFA's "Cell Congress," (See Discussion II.A.2.b. above) Ieng Sary allegedly presented a statement on the "Kampuchean Revolution Situation," which expounded on internal and external enemies in this manner:

The enemy is deteriorating; the spy network was destroyed. There was no longer a class enemy. However, the American imperialists, and the CIA, and KGB, and Vietnamese still exist. Although they were defeated, but they still struggle to move on. And the other one is the enemies, the peasants and workers who were in our rank. And these (are) also the enemies that needed to be swept clean progressively.

The Witness added that they were instructed to have "high revolutionary vigilance against enemies," resulting in the strict scrutiny of biographies of cadres by the MFA's internal affairs. Rochoem Ton confirmed that a report presented in a Ministry conference in September 1977 revealed that, enemies were "basically smashed and swept cleanly away" but since "the enemy is not yet completely gone from our ministry," they must "continue sweeping cleanly to make our ministry, like each and every one of its units, immaculate." Consequently, the attendees were ordered to eradicate "antagonistic contradictions," which meant sending people "to the labor camp to work and do farming, because keeping them alive means killing the revolution."

Between 1977 and 1978, people from the MFA reportedly disappeared after they were arrested. Rochoem Ton said he never saw these people again. Significantly, he stated that, upon approval by Ieng Sary, MFA department heads were authorized to send ministry cadres who committed minor mistakes to MFA-controlled production sites such as the one in Takhmau for “tempering.”

As regards executions during the regime, the Witness averred that Ta Mok and his cadres in the Southwest executed people from all zones.

## **7. Repatriation of Intellectuals**

Cambodian intellectuals based overseas were repatriated in accordance with CPK policy, Rochoem Ton testified. He added that Ieng Sary believed that the country needed intellectuals because they were equipped to work on tasks relating to foreign affairs and diplomatic relations, which were too complex for peasants who could neither read nor write.

Rochoem Ton explained that in general, Office 870 managed the repatriated intellectuals and sent them, together with their spouses and children, to Boeng Trabek or Pun Ta Lei. In late 1978, the supervision of Boeng Trabek was transferred from Office 870 to the MFA. The Witness stated that the living conditions at Boeng Trabek were terrible under Office 870 but once the MFA took control over the place, it addressed the food shortage and conditions improved. Rochoem Ton went to Boeng Trabek frequently; Ieng Sary and So Hong went there thrice to conduct study and criticism sessions.

## **8. Demeanor and Credibility**

This week, Rochoem Ton did not exhibit the same openness and ease with which he answered the OCP’s questions last week. He appeared reticent during his examination by Judge Lavergne and the Defense Teams and refused to answer some questions he thought were repetitive. For instance, when Vercken attempted to highlight inconsistencies in the Witness’ testimony, the latter retorted, “it is up to you which version you wish to take” instead of providing an explanation. In at least three instances, the President had to remind the Witness to try to “regain his composure” because the latter was agitated. Additionally, when Karnavas confronted him with his previous denial of any involvement with security matters, the Witness expressed, “I was having problems with memory loss because I was bombarded by questions and I did not have a clear mind when addressing some of the questions.” At the end of Karnavas’ examination, counsel alleged that when Rochoem Ton fled to the border in 1979, he was “involved in the killing of (a) large number of Cambodians to which you were severely criticized by Mr. Ieng Sary and for which now you’re using this as an opportunity to testify the way you are.”

While Rochoem Ton’s testimony revealed important information, the Defense was able to place some doubt to his credibility by uncovering some discrepancies in his testimony. It is thus incumbent on the Bench to determine the weight that it would attach to Rochoem Ton’s testimony upon evaluation of the evidence presented to them in the course of the proceedings.

## **B. Suong Sikoeun’s Testimony**

Suong Sikoeun (alias “Kung” and “Thorn”) is a 76-year-old former cadre from Malai District, Banteay Meanchey Province. Born from a poor peasant family, he joined the Democratic Party at an early age to contribute to efforts he believed would liberate his country. He turned to communist doctrine when he realized that the Democratic Party failed to fulfill his aspirations for social justice. In 1957, Ieng Sary reportedly admitted him as “a secret

member of the resistance.” In the same year, he joined the Marxist-Leninist Circle in Paris.<sup>10</sup> After the Lon Nol coup d’etat in 1970, he became involved in the establishment of FUNK in China. Thereafter, he dedicated himself to the resistance movement, heading FUNK security and also serving as a director of its Information Office. He became a full-rights member of the CPK in 1971.

## **1. FUNK and GRUNK**

According to Suong Sikoeun, the appeal Prince Sihanouk made on 23 March 1970 to free the people from “Lon Nol’s yoke” after the coup d’etat that overthrew the monarchy led to the establishment of the FUNK and the GRUNK. He added that during the time, a “neutral policy” was followed, and leftists and rightists inside and outside Cambodia united to liberate the country from the Lon Nol regime. The tasks between these two organizations were indistinguishable, Suong Sikoeun stated.

Significantly, the Witness named at least 12 GRUNK officials,<sup>11</sup> most of whom were also members of the FUNK’s Political Office. Among those he identified were Keat Chhon, a member of FUNK’s Political Office and the “Minister attached to the Cabinet Ministers of the GRUNK,” and Thiounn Prasith, a reserve member of FUNK’s Political Office and the Minister coordinating GRUNK’s resistance movement. He stated that Keat Chhon and Thiounn Prasith subsequently worked for the MFA in Democratic Kampuchea. The Witness said he did not know if any of these GRUNK officials was arrested during the DK regime.

When asked by the OCP to explain “strategic force” and “tactical force,” Suong Sikoeun stated that, “[t]hese forces were gathered in accordance with the circumstance of the Resistance Movement.” He described “strategic force” as “long-term forces” from the worker and peasant classes, which were “the core forces of the leadership.” “Tactical force,” on the other hand, referred to “Sihanouk forces,” among others. Suong Sikoeun indicated that individuals from the tactical force who were selected by the CPK to become party members were either considered “secondary” or regarded as “long-term forces for the Movement,” as if they were recruited from the strategic force.

### **a. Khmer Information Agency (AKI) and the FUNK Information Office**

Suong Sikoeun testified that he represented the AKI in China and headed the Peking office of the FUNK information Office, which were responsible for broadcasting the movement’s propaganda and activities.<sup>12</sup> He clarified however that, despite the seemingly related functions and personalities involved in the two organizations, the AKI was not related to FUNK and was “not an organization appointed by a political office of the FUNK.”

### **b. FUNK Radio Station**

According to the Witness, the radio station *The Voice of the FUNK* was established as a joint struggle with Laos and Vietnam against a common enemy, the American imperialists. Majority of the staff in the station were CPK members, with the Witness in charge of international news. While he identified Ieng Thirith as the station manager and supervisor of the overseas segment, he refuted the involvement of Ieng Sary and Khieu Samphan in the station’s operation. The Witness further indicated that *The Voice of the FUNK* broadcasted speeches and news from the battlefields and announced the CPK’s victory on 17 April 1975.

## **2. CPK Policies**

Suong Sikoeun testified on various CPK policies in the course of his examination.

### **a. Enemies of CPK**

The enemies of the CPK were of two categories: (i) American imperialists and their henchmen; and (ii) landlords and compradors who aided American imperialists. Compradors who were considered nationalists, however, were not treated as enemies, qualified Suong Sikoeun.

### **b. Principle of Secrecy**

During the revolutionary period, cadres in the resistance frequently moved from one location to another, using different pseudonyms to avoid enemy attention. The Witness stated, "If we could keep secrecy, we had 50% of the victory."

### **c. Evacuation of Phnom Penh**

According to the Witness, the purpose of evacuating people from Phnom Penh was to avoid American bombardments, prevent starvation caused by lack of food supplies in the city, and "to disperse the spy network of the enemy."

## **3. B-20**

Suong Sikoeun identified B-20, a production site in Stueng Trang District where repatriated cadres provisionally stayed before were moved to other locations. He recalled that he stayed in B-20 upon his arrival in 1974. Suong Sikoeun said he did not know who sent him there or who was in charge of the office. A weekly meeting was convened but no intensive trainings were held in this site. He reportedly did not see any other students or intellectuals from overseas.

## **4. Role of Accused**

leng Sary represented the CPK's "internal movement" in North Vietnam and Beijing, and was the FUNK's special envoy to Beijing, testified the Witness. Although he remembered that leng Sary spearheaded political training sessions of the FUNK Political Office in Beijing, he was unaware of the communications of the Accused with people in Beijing and Cambodia because these were confidential matters. In May 1974, Suong Sikoeun reportedly accompanied leng Sary and Khieu Samphan to an important mission to liberated zones in Laos and South Vietnam. Thereafter, the two Accused continued their trip in the liberated zones in Cambodia.

Suong Sikoeun further testified that in early April 1974, Khieu Samphan led a delegation of the FUNK and GRUNK members to visit Yugoslavia, Romania, Albania, Algeria, Mauritania, and Egypt for the purpose of informing these ally countries of the Cambodian resistance movement and the FUNK and GRUNK's position on the Peace Accord. In the same year, he accompanied Khieu Samphan to Africa, Yugoslavia and Romania. At that time, Khieu Samphan was the Deputy Prime Minister and the Commander-in-Chief of FUNK.

### III. LEGAL AND PROCEDURAL ISSUES

This week, the Prosecution objected to questions by the Defense Teams on the ground that they were repetitive, speculative, or irrelevant. The Trial Chamber sustained a number of these objections.

#### A. Confronting a Witness with Contradictory Statements and the Purpose of an Examination

The Ieng Sary and Khieu Samphan Defense Teams attempted to introduce the contradicting statements of Rochoem Ton, two previous witnesses, and two potential witnesses. This proved to be a challenge, as counsels often had to ask Rochoem Ton to elaborate on certain topics more than once in an attempt to obtain clearer and more direct responses. These efforts prompted the OCP to raise several objections that were sustained by the Trial Chamber.<sup>13</sup> On Tuesday for instance, Lysak objected to Karnavas' follow-up question, on the ground that the Witness had already given an answer. Karnavas attempted to clarify that he was asking the Witness to give a "concrete answer," but the President ruled:

Mr. Witness, you do not need to respond to that question you already answered. So there is no need to answer a repetitive question or we might have too many responses which might lead to contradiction and a waste of time.

Karnavas responded by emphasizing that, "contradictions demonstrate the weight given to a witness' testimony; that's the whole purpose of examination." Faced with the same situation the next day, he added that his job as an advocate was to "ask probing questions" and confront a witness with evidence.

Indeed, some of the Chamber's rulings this week had the effect of undermining the purpose of examination and restricted the Defense Teams' attempts to show that Rochoem Ton provided what they considered contradictory statements.

#### B. Trial Chamber's Discretion to Disallow Questions and Comments

On several occasions, the Chamber disallowed questions on its own initiative and ruled on objections without allowing the opposing party to respond. Ianuzzi and Karnavas both argued for an opportunity to address objections before the Chamber rendered its ruling, and to make a record of their disagreement to a ruling. The Prosecution countered that it was "quite proper" for the Chamber not to allow parties to respond when questions objected to are "knowingly improper."

On Tuesday, after the Chamber ruled *motu proprio* that the Witness did not need to respond to the Nuon Chea Defense's question why Keat Chhon refused to appear before the OCIJ, Ianuzzi asked whether objections were allowed to be addressed on the record. President Nil Nonn responded that, "the Chamber exercised its discretion to avoid any unnecessary questions or comments [that] are not trying to ascertain the truth." On Wednesday, Karnavas faced a similar quandary when he attempted to respond to the Prosecution's objection that his question was irrelevant. The President turned off Karnavas' microphone when counsel tried to argue his position.

### **C. Use of Confessions to Question Witness**

Lysak cited the proscription against the use of materials obtained under conditions of torture in objecting to Karnavas' use of contents of a confession by prisoner at S-21 during Rochoem Ton's examination. Karnavas argued that the Prosecution used confessions "when it suits them," and requested the Chamber to issue a sensible and fair ruling. He further indicated that he merely wanted to present evidence that a prisoner's confession had identified Rochoem Ton as the person who brought him (the prisoner) to S-21.

Although the Chamber had already ruled on this issue in January, it nevertheless deliberated on the OCP's objection. After some consideration, the Chamber reiterated its previous ruling that the Convention Against Torture prohibits the use of confessions as evidence.<sup>14</sup> In any case, Parties are allowed to refer to annotations or dates on confessions, the Chamber explained.

### **D. Alleged Discrepancies in the Witness' 2008 OCIJ Interview**

This week, Karnavas attempted to highlight alleged irregularities in the records of Rochoem Ton's second interview with the OCIJ: (i) the duration of the interview was unclear because the written record in English indicates that it finished at "11 p.m." while it appeared that the Khmer version merely stated "11"; (ii) the tape recording of the interview contained only 14 minutes of what was believed to be a full-day's exchange; and (iii) the interview sounded as if Rochoem Ton did not respond to the questions spontaneously and instead merely read out his answers.

The Chamber addressed the first of the alleged irregularities by clarifying that the record of the interview in Khmer (which was the basis of the English translation) indicates that the interview ended at 11 a.m. The Witness confirmed this and stated that he was interviewed from 9 to 11 in the morning.

To address the leng Sary Defense's doubts on the spontaneity of Rochoem Ton's interview, Karnavas proposed to play the 14-minute audio recording in court so that the Chamber can evaluate the manner by which Rochoem Ton answered the questions. In rejecting Karnavas' suggestion, the Chamber, through Judge Silvia Cartwright, explained that, since the interview was in Khmer, the international judges would not be able to understand and evaluate it even if they listened to the audio recording. Judge Cartwright also said that the Chamber needed more time to assess the matter. Karnavas also requested the Chamber to summon the interpreter at the second interview to testify in court. He argued that the interpreter's statement was highly relevant because the Parties' questions were based on summaries of witnesses' statements to the OCIJ. He added that this is necessary because some of the persons the OCIJ interviewed would not testify before the Chamber. The OCP and the Civil Party lawyers countered that the request was inappropriate. CPLCL Elisabeth Simonneau-Fort indicated that Karnavas "seems to be denying the value of the written record of interviews" conducted by the OCIJ, and reminded him that "he could have contested this during the judicial investigation..." and not at this point in the proceedings. The Chamber ruled that it will not summon the interpreter based on an oral request and directed Karnavas to file a written submission if he wanted to pursue the matter.

## **E. Witness's Statements and Observations Outside the Courtroom**

Although Rochoem Ton initially denied following Case 002 proceedings, he later admitted that he observed the OCP's opening statements on 21 November 2011 from the public gallery.

The Internal Rules are silent on whether or not a witness is allowed to monitor the proceedings before giving testimony, as IR 88.2 only prohibits witnesses present in the courtroom from communicating to prevent them from influencing each other. Judge Jean-Marc Lavergne acknowledged this limitation in the IR at the start of the trial on 5 December 2011, when he expressed that "there is no mandatory regulation, only a general duty" for witnesses to desist from observing proceedings, but it was not possible to actually monitor if witnesses are present in the public gallery.<sup>15</sup>

It is unsurprising that the Chamber faced the same challenges in Case 001,<sup>16</sup> as trials of this nature attract and are indeed, deserving of attention. Since it is difficult to prevent witnesses from accessing publicly available resources and observing the proceedings, it is necessary for the Chamber to consistently remind witnesses to tell the truth during their testimony and disclose the sources of their information.

## **F. Extent of Participation of Accused in the Holding Cell and Putting Matters on Record**

On 31 July, Ianuzzi stated for the record that his client, Nuon Chea, "was not "actively participating in the proceedings" while he was in his holding cell on Thursday last week (26 July) and on Monday (30 July). He also indicated that he may discuss the matter again and expressed hope that the Court "appreciates the difficulty" it may present to the Defense in trying to communicate with their client in a "meaningful" way. Counsel did not however, request for any specific remedy and only wanted to make a record of their observations.

Notably, the Nuon Chea Defense raised the same issue in the previous week, during which Judge Cartwright reminded the Defense that was the responsibility of counsel for the particular Accused to inform the Chamber if their client is unable to participate in the proceedings.<sup>17</sup>

## **IV. Trial Management**

This week, the atmosphere in the courtroom became heated as Parties became visibly frustrated in the course of Rochoem Ton's examination. This was exacerbated by persistent interpretation concerns, particularly translation from Khmer to French.

### **A. Attendance**

All three Accused were present in the courtroom at the start of the hearing on Monday. Shortly thereafter, the Chamber allowed Ieng Sary to observe the proceedings remotely from the holding cell on account of the court physician's report that the health of the Accused permitted him to stay in the courtroom for only 30 minutes. Ieng Sary participated from the holding cell for the rest of the week. Also on Monday morning, Son Arun requested Nuon Chea's transfer to the holding cell and asked the court physician to examine his client's medical condition.<sup>18</sup> During the rest of the week, Nuon Chea was at the courtroom for the morning sessions, and was allowed to retire to the holding cell for the afternoon sessions. Khieu Samphan remained in the courtroom throughout the week and actively participated in his defense by taking and providing notes to his counsel during Rochoem Ton's examination.

**Attendance by the Public and Civil Parties.** Majority of attendees from the public were from the provinces. Throughout the week, the public gallery was fully occupied during morning sessions. On Monday, Tuesday and Thursday, approximately 300 people from Kampong Thom, Kratie and Kampong Chhnang Provinces attended the proceedings in the morning session, and roughly 100 people from Kandal and Sihanoukville attended the afternoon session. On Tuesday, around 200 people from Takeo Province observed the trial in the morning, and about 100 people from Kandal Province in the afternoon. Ten Civil Parties were in the courtroom the whole week, and a few more observed the proceedings from the public gallery.

## **B. Schedule**

In general, the hearings this week proceeded according to schedule. However, Vercken pointed out that the Defense Teams, which were collectively accorded 2.5 days to examine Rochoem Ton, were actually provided less than their scheduled time. He thus requested to proceed with his examination of Rochoem Ton until the third session on Thursday. The Chamber however, did not allow Vercken's request. Consequently, the Defense was left with only two days and one session to complete their examination.

The monitors observed that, the time the Bench used on the first session on Tuesday should have been excluded from the Defense Team's time allocation in order to ensure that they had sufficient time to examine Rochoem Ton.

## **C. Court Etiquette**

On Tuesday, after an objection by the OCP on the ground that it was inappropriate to ask the witness "to speculate on whether other people were mistaken or lying," Karnavas responded that he was "trying to pin him down under oath." The Chamber sustained the objection, with the President reminding Karnavas to avoid "intimidating" terms that was "belittling the dignity of the witness."

The next day, Lysak again objected to Karnavas' way of examining Rochoem Ton and argued that, "counsel's tone is inappropriate, he is being argumentative and badgering the witness." The President cautioned Karnavas:

...[C]ounsel is advised to rephrase the question and refrain from putting questions that (are) trying to intimidate or make the witness lose confidence in his testimony. Whether the statement offered by the witness lacks probity, you can do so by stating in your closing statement.

Karnavas replied that he borrowed some of the language he used from the President and emphasized that, in asking probing questions and confronting the witness, he was only doing his job as leng Sary's defense counsel. After the lunch break, Judge Cartwright reminded that while counsel is entitled to ask probing and challenging questions, "there's no need to use the sort of emotion that sometimes we see on American television dramas." Karnavas thanked the Chamber for its comment but remarked that he did not think that he was being melodramatic.

The propriety of stating matters "for the record" was also raised in relation to the Chamber's rulings that the Nuon Chea Defense's questions relating to incumbent government officials were "irrelevant." Ianuzzi attempted to place on the record their position on this subject. President Nil Nonn admonished the counsel by reminding him that he is not allowed to make "comments" as his use of the floor was limited to asking the witness questions. The President advised that counsel's recourse was to file a written submission under IR 92.

#### D. Translation and Technical Issues

The challenge of conducting trial in three languages came to the fore again this week when some statements were not fully translated in French. This caused disruptions during Vercken’s examination. Aside from interruptions caused by inaccuracies in translation (e.g., confusion between “battlefield” and “military headquarter”), Vercken asserted twice that he did not understand the answer in French, necessitating him to repeat his question for clarification. Vercken argued:

I don’t have translation I can rely on to continue my examination, what you’re doing is you are preventing me from continuing with my examination. Maybe in Khmer you know what was said, but for me, in French, it’s not clear, and I need this clarification. It’s maybe just a question of language, but how do you want me to proceed if I don’t have the exact message?

The President, however, instructed the Witness both times not to respond, ruling that the question was repetitive. When Vercken raised this issue again, the President, showing annoyance, instructed Kong Sam Onn to confirm that the question was answered in Khmer. Visibly frustrated, Vercken, remarked, “fine, well, then, I will continue working without knowing his answer.” Only then did the President direct the Translation Unit to “provide the best service” because translation issues “lead to confusion.” The President also instructed counsel to simplify his questions.

#### E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 30/07/12	9:01	10:31-10:53	12:01-13:30	14:42-15:02	15:55	4 hours and 43 minutes
Tuesday 31/07/12	9:01	10:25-10:53	12:11-13:31	14:31-14:51	16:05	4 hours and 58 minutes
Wednesday 01/07/12	9:02	10:30-10:53	12:04-13:31	14:38-15:02	16:06	4 hours and 50 minutes
Thursday 02/07/12	9:02	10:33-10:52	11:59-13:32	14:40-15:00	16:00	4 hours and 46 minutes
Average number of hours in session				4 hours 49 minutes		
Total number of hours this week				19 hours 17 minutes		
Total number of hours, days, weeks at trial				385 hours 22 minutes		
<b>88 TRIAL DAYS OVER 26 WEEKS</b>						

**Unless specified otherwise,**

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* (Case No. 002/19-09-2007-ECCC) before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings; and
- photos are courtesy of the ECCC.

**Glossary of Terms**

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



\* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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<sup>1</sup> See Asian International Justice Initiative. KRT TRIAL MONITOR [hereinafter, **CASE 002 KRT TRIAL MONITOR**]. Issue No. 29, Hearing on Evidence Week 24 (23-26 July 2012).

<sup>2</sup> Rochoem Ton related that he was inspired by his father and uncle, both of whom were part of the Issarak movement and fought against the colonial power in the 1950s. He was 16 years old and the military uniforms caught his attention. Moreover, as a member of an ethnic minority, he saw that joining to the Khmer Rouge was a good opportunity, since he thought the revolutionaries received an education.

<sup>3</sup> According to the Witness, American bombardments in his area began in 1962 and intensified around 1969, leaving five villages in Rattanakiri destroyed. Initially, the bombs were dropped adjacent to the Cambodia-Vietnam border but later went deeper (up to 30 kilometers) into Cambodian territory. The bombing not only resulted in the destruction of rice fields and cattle, but more significantly, in the death of many people, including Rochoem Ton's relatives.

<sup>4</sup> So Hong was the alias of Saloth Ban, Pol Pot's nephew who became the second-in-command at the MFA during DK. He testified before the Trial Chamber in Case 002 from 23 April to 2 May 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012/July). CASE 002 KRT TRIAL MONITOR. Issue No. 21, Hearing on Evidence Week 16 (30 April, 2-3 May 2012).

<sup>5</sup> The Witness gave this interview to the Documentation Center of Cambodia in 2010. However, he stated that he does not remember giving this interview.

<sup>6</sup> Cheam said that Chaing Chamres was initially part of Koy Thuon's office but it was later transferred to B-1. He denied that it was a re-education facility, describing it as a place where MFA staff went to on weekends to cultivate crops, raise poultry and fish, and get palm tree juice. According to the Closing Order, Chaing Chamres, with code-names M-1 or Office 1, was an Animal Husbandry and Food Production Office where returnees tended animals, fished, and cultivated vegetables. It was initially under the control of the Ministry of Commerce but was later transferred to B-1 in late 1976, possibly after Koy Thuon's arrest. See OCIJ. Closing Order (15 September 2010). D427. par.1097.278.

<sup>7</sup> Karnavas tried to contradict Rochoem Ton's denial with a confession executed by a prisoner in S-21, stating that Rochoem Ton brought him to S-21. However, the Chamber disallowed the use of the confession. See Discussion III.C. above.

<sup>8</sup> The OCP showed Rochoem Ton a record of his self-criticism and Ieng Sary's comment that he was "loyal, never secret" but was "too independent-minded."

<sup>9</sup> According to the Witness, Met, Thien, Pit, Sareun, and San were under Son Sen's supervision.

<sup>10</sup> The Witness said he was accepted by Khieu Samphan as a member of the Marxist-Leninist Circle in Paris on the strength of a letter by Ieng Sary. The Circle was founded by Ieng Sary with Tou Samouth and Keng Vannsak, and received massive support from students in European countries. He opined that the Circle was a movement to prepare for the formation of a party; by studying the Marxist-Leninist doctrines, they could qualify as communists.

<sup>11</sup> These GRUNK officials were: (i) Sarin Chhak, GRUNK Minister of Foreign Affairs; (ii) Huot Sambath, Minister (unknown department); (iii) Chan Yourann, Minister of Education; (iv) Chea San, Minister of Justice; (v) Keat Chhon, Minister; Minister attached to the GRUNK Cabinet of Ministers (vi) Thiounn Prasith, Minister coordinating the GRUNK resistance movement; (vii) Van Piny, Deputy Prime Minister of Foreign Affairs; (viii) Isoup Ganthly, *Charge d' affaires*; (ix) Chau Seng, Minister in-charge for special missions; (x) General Duong Sam Ol, Minister in-charge of weaponry; (xi) Thiounn Mumm, Minister of Finance; and (xii) In Sokan, GRUNK (and FUNK) representative to France.

<sup>12</sup> The Witness stated that AKI broadcast information from the movement and diplomatic activities, and gathered support from abroad against the American imperialists. In a similar vein, the FUNK Information Office was an organization broadcasting information from the battlefield, internal battlefields, diplomatic activities, and supported FUNK and GRUNK. The Witness recounted that his group (unclear if AKI or Information Office) prepared texts edited by the FUNK Political Office and these were released as bulletins to the France Mission Office of the FUNK in Paris. King Sihanouk decided the content that was to be published and no CPK leader was involved in these activities.

<sup>13</sup> The President sustained most of the OCP's objections without prior deliberation with the other Judges. See IR 85.

<sup>14</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 9. Hearing on Evidence Week 4 (16-20 January 2012). 10-11.

<sup>15</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 6. Hearing on Evidence Week 1. (5-9 December 2011). 8-9.

<sup>16</sup> AIJI. *Lessons Learned from the 'Duch' Trial* (December 2009). 35-36. Available at <<http://www.krtmonitor.org>>, last accessed on 15 August 2012.

<sup>17</sup> Trial Chamber. Transcript of Trial Proceedings (26 July 2012). E1/07.1. 54. See CASE 002 KRT TRIAL MONITOR. Issue No. 29. Hearing on Evidence Week 24 (23-26 July 2012). 12.

<sup>18</sup> The President reminded Nuon Chea's counsel that the court has a medical doctor on duty to ensure that the Accused's condition was checked and he does not need to make this request in the middle in the hearing unless his client is in a very grave condition, to avoid interruption of the proceedings.