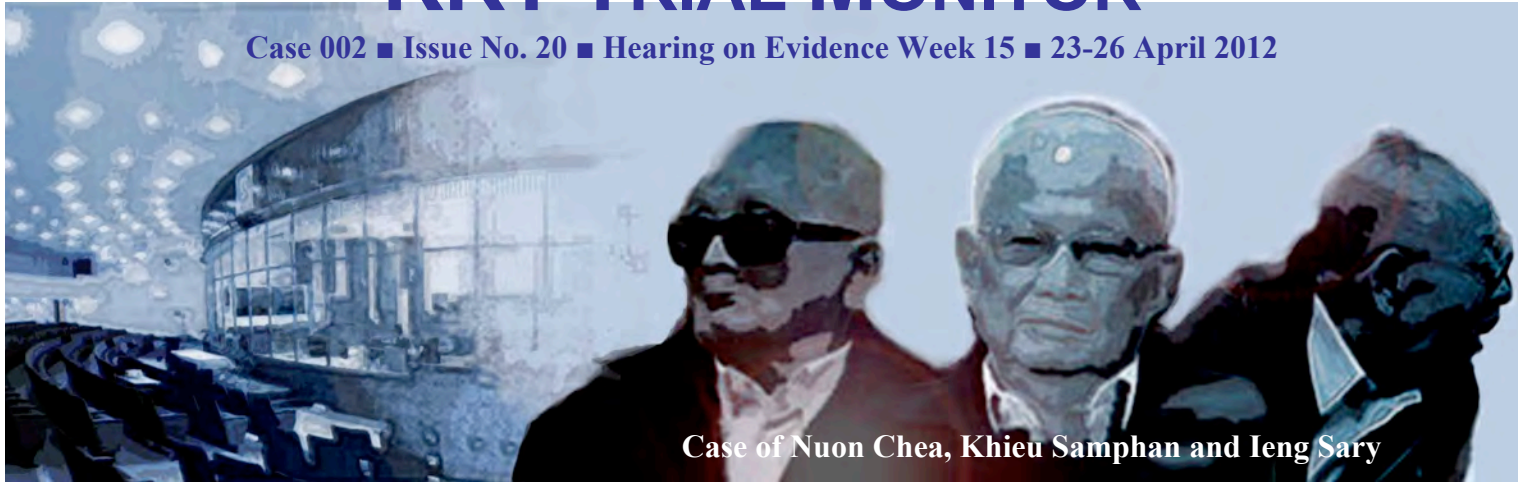


KRT TRIAL MONITOR

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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 was told by the Iron God that I should choose the words very carefully.
That I should consider the word happiness,
and if the question does not make me happy I should not respond.*

- Witness Saloth Ban

I. OVERVIEW

This week, the Trial Chamber heard the testimony of Mr. Saloth Ban, former Secretary General of the Ministry of Foreign Affairs (**MFA**) of Democratic Kampuchea. The OCP, Civil Party Lawyers, the Chamber, and the Ieng Sary Defense questioned the Witness.¹

Saloth Ban was asked questions regarding his background, his relationship with Pol Pot, his familiarity with other Khmer Rouge leaders, and how decisions were made in the Communist Party of Kampuchea. The questions particularly focused on the roles and responsibilities of Accused Ieng Sary concerning the arrest and detention of returning Cambodian intellectuals and MFA personnel. The Witness also testified regarding the administration, communication, and decision-making structures of MFA. He gave testimony regarding Office 870, Boeung Trabek, and Chraing Chamres, an alleged Animal Husbandry and Food Production Office.²

II. SUMMARY OF SALOTH BAN'S TESTIMONY

Saloth Ban (alias "So Hong," "Nitia," "Seng Lita," and "Ka Ma Lai") is a 67 year-old retired soldier. His parents were farmers and he belonged to the peasant class. His father was the older brother of Saloth Sar alias "Pol Pot," but he stated that his relationship to Pol Pot did not influence his class status. He left his parents when he was seven years old and lived with different uncles. At 13, he lived with Pol Pot, who stayed in the same house as Ieng Sary. As a result, he expressed that he respected and loved Ieng Sary the same way he did his uncle.

As for his education, he completed about 10 years of school. He did not go to college and failed his diploma exam. Before the revolutionary movement, he pedaled a "cyclo" at night and worked as a construction worker. The Witness testified that he fled from Phnom Penh to Kratie Province because the Lon Nol administration accused of him of being a traitor. He lived in Kratie from 1966 to 1967. There, he met Sua Va Sy (alias "Doeun").³

In 1968 or 1969, he joined Pol Pot in Rattanakiri Province and became a member of the CPK, with the view of liberating the country from American imperialism. According to him, there were no specific requirements to become a member.

His roles in the movement were diverse. The Witness explained that between 1970 and 1975, he served as Pol Pot's bodyguard, during which time he supervised some 30 members. As a bodyguard, he stayed close and provided protection to Pol Pot and Ieng Sary. He was also a messenger and a cook. He came to Phnom Penh around May 1975 where Chhim Sam Aok alias "Pang" assigned him to be a cleaner at the Ministry of Defense. Upon Ieng Sary's return from abroad, he appointed Saloth Ban Secretary General of the Ministry of Foreign Affairs at age 28. The Witness stated that Ieng Sary appointed him because of the latter's affection for him and for his honesty. In 1977, he also took charge of Chraing Chamres.

A. Office 870

Questioned by all Parties about Office 870 throughout the week, Saloth Ban repeatedly confirmed that Office 870, which was also referred to as the office of the leaders or the office of Angkar, changed locations in response to the chaotic milieu at the time. Prior to the "liberation" of Phnom Penh, Saloth Ban said Office 870 was known as Office 100 and was located in Rattanakiri Province. He recalled that the party did not hold meetings often when the office was in Rattanakiri.⁴ In 1967 or early 1968, the Witness said he saw Pang working in the area. A few years later, in 1970, he recalled having met his uncle Pol Pot and his wife, Son Sen, Ieng Sary, Ieng Thirith, and Nuon Chea in Rattanakiri. Saloth Ban indicated that he did not see Khieu Samphan.

Steung Chinit, near Kampong Thom and Kampong Cham Provinces. According to the Witness, the Central Office relocated from Rattanakiri to Steung Chinit, near Kampong Thom and Kampong Cham Provinces after the coup d'état by Lon Nol in 1970. He mentioned that Pol Pot and Nuon Chea stayed in this area during this period. There were two main offices in the Central Office: Office S-21 and Office S-70. Office S-21 was along the Chinit River and was the resting area for the leaders. Office S-70, which was a day's walk away, was for study sessions.

Udong, Kampong Speu Province. The Central Office reportedly moved from Steung Chinit to Udong in Kompong Speu Province. Pol Pot was in charge of the office in Udong and zone leaders were called for meetings at his behest. These meetings were small and involved only two or so individuals. While Saloth Ban denied knowledge of the subject of the meetings, he speculated that the leaders could have been making plans to attack Phnom Penh at the time.

Peam Commune, Kompong Chhang Province. It did not take long before the Central Office was transferred to Peam Commune in Kompong Chhang Province, recalled the Witness. He described the office headed by Pol Pot as merely a hut in the jungle. Saloth Ban said he saw Nuon Chea in the area but did not elaborate. He also remembered having interacted with Khieu Samphan while the latter was making an inventory of ammunitions. He clarified however that Khieu Samphan was not in charge of military affairs but had only helped him with this task because he was illiterate. Saloth Ban mentioned the conduct of a meeting in the Central Office but he was not aware of its agenda. During the evacuation of Phnom Penh, the leaders left him alone to guard the hut that was the Central Office and the ammunitions stored there.

Phnom Penh. After the fall of Phnom Penh, Office 870 relocated to K-1 at the riverfront in Phnom Penh. Pang, the chairman of Office 870, reportedly had the authority to manage all the ministries in DK. Saloth Ban explained that K-1 was split into various offices, including a mobile office called K-2, which he believed was supervised by Doeun.⁵ When Doeun disappeared, Khieu Samphan took charge of managing K-2's staff.⁶

According to the Witness, Pang disappeared shortly before the Vietnamese arrived (in January 1979). While he said he did not know who replaced Pang specifically, he indicated that Pol Pot, Nuon Chea and other leaders exercised authority in Office 870.

B. Ministry of Foreign Affairs

Saloth Ban testified that he rose from cleaner to Secretary General of the Ministry of Foreign Affairs when it became operational upon Ieng Sary's return to Cambodia. He insisted that his position was merely titular, because he was more of a facilitator and a coordinator between the intellectual and peasant groups. He described his duties as being in charge of the "psychological factor" and the "livelihood" of people working at the MFA. Saloth Ban explained that being in charge of "psychological" issues meant that he did what it took to enable personnel to "live as nationals, to defend the nation, and to build it." He also mentioned living by the 12 morals of the CPK in order to build clean spirits. Ieng Sary informed him that his main duty was to see that "everybody was in agreement." The Witness repeatedly stressed that he was confined to overseeing the functioning of the Ministry. He did not have any responsibilities regarding "intellectuals" within or outside the MFA, as that was Ieng Sary's responsibility.

He admitted that he was in charge of the day-to-day activities of the MFA when Ieng Sary was away on missions abroad, but he emphasized that he did not have authority to decide on any matter. He also testified that he received telephone calls from Pang, who gave brief and general instructions, mainly relating to "avoiding conflict and maintaining solidarity." He did not elaborate further on this topic.

In addition, Saloth Ban narrated that he escorted guests, including diplomats, around twice a year to the countryside. He particularly remembered a delegation from Laos in 1977, which prompted international Co-Prosecutor, Mr. Vincent de Wilde d'Estmael, to show him three photographs of the Laotian delegation's visit. In the first photograph, the Witness identified Ieng Sary, Nuon Chea, and Khieu Samphan. In the second picture, he again identified Khieu Samphan. When asked about the third picture, Saloth Ban said it was taken at House Number One, and recognized Ieng Sary, Khieu Samphan, Ieng Thirith, and Yun Yat.⁷

1. Functions and Structure of the Ministry

Ieng Sary reportedly became Deputy Prime Minister for Foreign Affairs when the ministry became operational in 1975, two to three months after the "liberation" of Phnom Penh. The Witness described the MFA as "not actually a proper office," and people were assigned tasks based on their "practical skills". Even when the MFA became more organized in 1978 to 1979, the staff still had no clear and specific designations.

Saloth Ban explained that the Ministry had two sections: the first dealt with intellectuals, and the second, dealt with economics, production, and livelihood. While the Witness said he was unaware of the technical details concerning the section charged to deal with "intellectuals," he was able to describe the second section as composed of peasants who outnumbered the intellectuals working at the Ministry. He also admitted that he coordinated between the intellectuals and the peasants so that they were not "in conflict."

Significantly, when de Wilde asked the Witness if Ieng Sary exercised full control of the MFA, the Witness answered, "(y)es, we had to have permission from Mr. Ieng Sary. However, if Mr. Pang was present there, Mr. Pang could decide without informing Mr. Ieng Sary." Saloth Ban said that they were instructed by Ieng Sary to provide Pang with whatever he required. The MFA had no authority to unilaterally recruit staff, whether intellectuals or peasants. It was Pang who recruited staff and he likewise had the "authority to take them away." The Witness also said Pang chose people with "pure" biographies for the MFA. Moreover, he indicated that the MFA was not in charge of receiving foreign delegates, as this was also Pang's responsibility. He denied knowledge of the details of the communication structure between the MFA and the DK embassies outside the country. Saloth Ban further maintained throughout the week that he did not know who acted as Pang's superior.

While the MFA had no control over recruitment and reception of foreign delegates, it was nevertheless responsible for the "state market," recalled the Witness. The "state market" was where products from other ministries and offices subordinate to the MFA were collected to serve guests visiting the country. When it became fully operational, the MFA had 100-300 personnel working for the state market. Bank notes were not used because transactions were done through trading.

2. Self-Criticism Meetings

According to Saloth Ban, Ieng Sary only attended major monthly meetings. During these meetings, Ieng Sary neither talked about positions of members in the party or in the Standing Committee nor about party decisions. Instead, Ieng Sary discussed "enemies." When the OCP asked him to elaborate, the Witness talked about siding with the devil and the need to change if anyone had done wrong. Saloth Ban said members had to reflect and self-criticize because if they did not control themselves, then they would not be able to manage the country. He believed however, that there were no disciplinary measures at the Ministry: erring members were not arrested but were merely transferred from one office to another, sent to plantations or assigned to fix electrical connections.

Notably, Saloth Ban confirmed having seen confessions from S-21 at the MFA. He recalled that Ieng Sary had the confessions of Koy Thuon read out in a meeting of middle to upper cadres. He clarified that the word "meeting" did not refer to an investigation but to study sessions where comrades were advised to consider the issues and not to worry that a superior was arrested. They were told to tell the truth. Thus, the Witness explained, there was no investigation. Rather, a meeting involved studying the 12 morals adhered to by the party. When Judge Jean-Marc Lavergne asked if Ieng Sary explained why the confessions were read, Saloth Ban recounted that after reading Koy Thuon's confession, Ieng Sary asked everybody whether they had any connections with Koy Thuon. Saloth Ban interpreted this to mean that Ieng Sary was encouraging them to express themselves. In response to queries whether it was necessary to investigate who were affiliated with Koy Thuon, and if there were confessions that implicated personnel of the MFA, Saloth Ban admitted, "I myself was also worried. I believe everyone else was also afraid." He claimed however, that persons implicated in confessions continued to work in the Ministry and he denied knowledge of whether they needed to answer the accusations against them.

C. Arrests and Security Centers

The OCP asked the Witness numerous questions about Pang, his relation to the MFA, and corollarily, to Ieng Sary.

According to Saloth Ban, one to two months before the arrival of the Vietnamese, Pang came twice to the Ministry of Foreign Affairs to “take” persons who returned from overseas. On other occasions, Pang sent someone to take persons from the MFA who bore letters of instruction signed by Pang.⁸ The Witness stated that around 20 persons were taken but he did not know where they went. “When the person was taken away from the Foreign Affairs, the person never returned,” he narrated. He stated that he did not know whether they were arrested or executed.

Saloth Ban explained further that Pang only came to the Ministry when Ieng Sary was not present. He said Ieng Sary knew about the arrests only after Pang effectuated them. The OCP tried to establish how much Ieng Sary knew about the fact that people were being taken. They read the Witness his testimony from his interview with the OCIJ, part of which stated:

Among those who came to look for people was Pang. When cadres and members of staff of the Foreign Ministry disappeared, Mr. Ieng Sary was also aware of it. However he never said anything about that. He himself was afraid, and I was also afraid.

The Witness affirmed his prior statement to the OCIJ, but clarified that Ieng Sary’s knowledge came only after cadres and Ministry staff had already disappeared. Upon clarification by President Nil Nonn, the Witness’ responses were inconsistent: on some occasions, he said Ieng Sary did not know; at other times, he claimed that Ieng Sary became aware only after people were taken away. The Witness followed up with:

So I was of the view that he knew about it, he could have asked people at the upper level about that. But he could not say that to me, who also wanted to know about it.

When President Nil Nonn asked Saloth Ban if Ieng Sary, in his capacity as Deputy Prime Minister, knew about the arrests, and what he felt about it, Saloth Ban said, “I did not know how he felt, but I can notice that he was sad, so was I. Everyone was sad, so the situation at the office was very very sad.”

Interestingly, among the intellectuals hired to work for the MFA were Mr. Keat Chhon (current Minister of Economy and Finance) and Mr. Cham Prasidh (current Minister of Commerce). Saloth Ban confirmed that he remembered they were “implicated” during the regime. OJIC records read to the Witness indicated that Ieng Sary reportedly told Pol Pot that the arrest of these two persons would have resulted in the abolition of the Ministry.

1. Returning Cambodians and Diplomats

On Monday, Saloth Ban mentioned that, on the way to a mission to the United States with Ieng Sary, they stopped over in Paris to meet Cambodian residents there. When he was asked again on Wednesday regarding this event, Saloth Ban stated, “Those people wanted to come back home.” According to him, Ieng Sary told them they should wait; however the Cambodians wanted to go, no matter how hard it would be. He could not recall how many Cambodians came back.

Further, de Wilde referred to a statement Saloth Ban gave to the OCIJ in 2007 regarding the diplomats who were brought back to the country and detained in S-21, particularly Messrs. Huot Sambath, Meak Touch alias “Kem,” Toch Kam Doeun, and In Lorn alias “Nat.” In the records, Saloth Ban admitted that he knew the aforementioned names, except Huot Sambath’s. However, he did not know where these persons were transferred. He told the OCIJ: “[t]he decision was taken by the Standing Committee. It was Mr. Pang’s group from the Central Committee 870 that brought those persons. Pang was directly in touch with Mr. Ieng Sary.” When asked to confirm this statement, Saloth Ban said,

I would like to remove the phrase regarding the decision made by the Standing Committee. Maybe at that time, I was confused and my health was not good. I would like to remove that sentence that the Standing Committee made the decision. I did not know who made decisions. I saw the arrival of Pang’s group and I believe Ieng Sary did not know as well.

2. Boeng Trabek

According to the Witness, he became aware of Boeng Trabek when he accompanied Ieng Sary to the re-education center. This first visit was approximately half a month before the Vietnamese came, and he and Ieng Sary went to warn that the Vietnamese were coming. Saloth Ban said Boeng Trabek was where Pang kept the intellectuals, who had mostly returned from overseas. The Witness recalled that the people in Boeng Trabek warmly welcomed him and Ieng Sary. He also said they seemed happy because they thought they would be “freed.”

The Witness described the people in Boeng Trabek as renowned intellectuals, some of whom were eminent professors. He said he particularly remembered that Mr. Hor Namhong (currently, Minister of Foreign Affairs and International Corporations) was in Boeng Trabek, but he did not elaborate further. He said he recalled Mr. Khoun David the most, because other repatriated intellectuals had described Mr. Khoun David as the “professor of professors.” Upon hearing this, he told Pol Pot, who had asked him to check if Khoun David deserved his reputation as a very smart person, and had directed him to encourage the latter to work for the CPK. Khoun David did not work for the CPK. Saloth Ban said he did not know what became of the professor, but he admitted that the latter was no longer in Boeng Trabek when he returned. According to the Witness, he felt that it was inappropriate for these intellectuals to be in Boeng Trabek. Saloth Ban said he went to Boeng Trabek twice with Ieng Sary and twice by himself. The last time he went was to evacuate intellectuals.

3. Chraing Chamres

National Civil Party Lawyer, Ms. Chet Vanly, questioned Saloth Ban about Chraing Chamres. The Witness testified that it was located in the North of Phnom Pehn, near the national road. Although uncertain as to when it was established, he said it was in the area of Zone 304 and became a part of the MFA in 1977. Ieng Sary appointed him to supervise Chraing Chamres in late 1977, together with Cheam and Ta Chien, who was the Chairman of the Office. Saloth Ban supervised 70-100 people tasked to grow rice, crops, and fish. There were no intellectuals in Chraing Chamres. Saloth Ban explained that people were not free to move around. Everyone had to be self-reliant and eat collectively. He recalled convening self-criticism meetings regularly, but no substantial mistakes were identified and no one was accused of being a spy.

He confirmed that he and Ieng Sary took foreign visitors to Chraing Chamres a few times before 1977. Reportedly, Ieng Sary rarely went there after the Witness took charge of the place, because Ieng Sary was busy traveling overseas.

D. K-1⁹ and the Leaders of the CPK

According to the Witness, leaders of the CPK stayed in K-1. He recalled that he saw the leadership having a meeting in K-1 but he did not know the meeting's agenda. He said that as a mere combatant, he had never attended a meeting of the Central Committee.

The Witness stated that he knew of and went to K-1 because his wife worked there as cook for a time. He explained that the kitchen was outside the compound of the K-1 Office and the guards did not screen him if he went there to visit his wife. However, they checked him when he needed to go to the K-1 office to deliver letters from Ieng Sary.

While most of the testimony during the week concerned Ieng Sary, the Parties also asked the Witness regarding the role of the other Accused. On Monday, Saloth Ban confirmed a previous statement he gave to the OCIJ, wherein he said, "[t]his means that Pol Pot could not make decisions alone. To the best of my knowledge, it was Pol Pot (who) was in charge of policy and Brother Nuon Chea of administrative organization." On Thursday, Ieng Sary's international counsel Mr. Michael Karnavas asked the Witness what made him believe that Pol Pot was in charge of politics and Nuon Chea of appointments. It appeared that Saloth Ban arrived at this conclusion because Pang had told him that Pol Pot had wanted Hu Yun as his (Pol Pot's) Secretary. Somehow, as this did not come to fruition, Saloth Ban concluded that Pol Pot could not make decisions by himself. Saloth Ban maintained this position, saying that he saw Ta Mok oppose Pol Pot and that collectivism had more weight than individual decisions. Karnavas then sought to establish that this reference to Ta Mok's opposition occurred after the DK period by asking the Witness if he was citing the incident between Pol Pot and Ta Mok in 1996-1997, after Son Sen and his family were murdered, presumably upon Pol Pot's orders. The Witness agreed with Karnavas.

As regards Khieu Samphan, Witness said that he was not aware of the role of the Accused from 1975-1979. Upon further examination, Witness said that Khieu Samphan was in charge of "collecting forces;" he assumed Khieu Samphan was responsible for Office 870. When de Wilde asked Saloth Ban to delineate Khieu Samphan's role in Office 870 vis-à-vis Pang's, Witness said the responsibilities of the two leaders were not clearly distinguished. He did say, however that, Khieu Samphan always worked inside the office, while Pang was usually on the streets riding his motorbike. The Witness remembered seeing Khieu Samphan at the MFA, but it was only to talk about air tickets or gather information for speeches. Pang, he recalled, sought instructions from Pol Pot regarding plans for the offices.

Saloth Ban also explained his understanding of "Angkar." On Thursday morning, when Judge Lavergne asked if Pol Pot was the head of Angkar, Saloth Ban answered that Pol Pot was an individual in Angkar: "one of the needles in the ocean." He said he did not know if Nuon Chea was also a needle in the ocean, but said that Ieng Sary was a member of Angkar. Saloth Ban, however, said that Judge Lavergne should ask the Accused themselves, and clarified as follows: "I only express what Angkar means. Angkar, once again, is the democratic centralism and it is a collective responsibility whereby an individual has to be responsible for his or her own act." On Thursday afternoon, however, Saloth Ban admitted Pol Pot never explained the extent of his authority, the decisions he and other persons in the CPK made, or how they reached decisions. The Witness also said that Pol Pot did not explain who or what Angkar meant.

The Witness said he did not receive documents from the Standing Committee or attend any Standing Committee meeting. Saloth Ban said that no one officially told him who the members of the Central or Standing Committees were. He also said that Pang never disclosed whether or not he had attended Central Committee meetings. The Witness revealed that he made his own conclusions about the membership of these important CPK

organs from what he saw while they were in the jungle, by observing the major meetings that were convened, and through what he heard from people. The Witness said there was a rumor that Pang would become a member of the Standing Committee but he did not know if this was true.

E. CPK Enemies

Witness Saloth Ban admitted that he did not clearly understand the views of the CPK and its leadership, despite having lived with his uncle Pol Pot. Nevertheless, he described his uncle's views as "peaceful." He also discussed that the CPK valued those who adhered to its 12 moral principles, who were thus regarded as "clean." The "enemy class," on the other hand, referred to those who destroyed the nation and the nation's heritage. Saloth Ban expounded more on "enemies" in this manner:

The main enemy was the enemy who intends to destroy the world, and the other one who actually destroys the environment, that are the land, the soil, the wind, and the fire. This morning I touched upon briefly the issue that we all tend to forget about case 000, and they are only now working on Case 001 and Case 002.¹⁰

As regards Buddhists, Saloth Ban said they were not considered enemies, neither were they forcibly defrocked. The Witness described a milieu of U.S. planes targeting people wearing the orange-colored robes of monks that prompted the monks to disrobe. "...Therefore they joined the resistance," he concluded.

F. Commerce in Democratic Kampuchea

Saloth Ban said that between 1970 and 1973, commerce functioned "normally" and DK used bank notes printed by the Lon Nol administration. From 1973 to 1975, however, the use of bank notes declined until they were abolished. Private ownership was likewise eliminated, not out of mere desire but to defeat the enemy. The CPK needed to negate individualism, as "the situation itself demanded for that necessity," explained the Witness. Members had to sacrifice their "flesh and sweat and blood" to be self-reliant. Saloth Ban stated, a "collective regime is a centralized democracy" but he could not recall when this principle was established.

The Witness proceeded to deny knowledge of cooperatives and explained that starvation generally existed during wartime. Starvation, he indicated was also due to the failure to implement the Party's policies in certain areas. He also mentioned that there was a policy to provide sufficient food to the people and that before someone was accused of violating this policy, the matter had to go through seven levels of hierarchy before a decision could be made. Further, Saloth Ban claimed that he did not know the punishment for disobedience of policies on food, prompting de Wilde to cite his prior statement to the OCIJ, saying that a cadre caught giving rice porridge to eat was executed. Saloth Ban said that this policy was a new one, and that it was not implemented due to the arrival of the Vietnamese. He stated that he did not know the old policy.

III. LEGAL AND PROCEDURAL ISSUES

Saloth Ban's testimony was fraught with issues relating to the identification of documentary evidence and the rights of a witness. Moreover, the Parties raised various objections to questions throughout the week, including the persistent issue of leading questions, as well as asking questions without laying the predicate or specifying the timeframe sought to be covered.

A. Identification of Evidence

Questions on the procedure of putting documents before a witness re-emerged a number of times, notwithstanding the Trial Chamber's ruling that, when a witness states that he had never seen the document being presented prior to giving testimony, the document must be removed from the witness' sight and the Parties may no longer refer to it in their questions. In any case, the Parties may still ask the witness questions regarding the subject matter of the document.¹¹ On the other hand, the witness may be examined about a document and its contents if he had seen it previously, either during the DK regime or during the OCIJ's investigation.

One of instances that precipitated discussions on the issue this week was de Wilde's use of a lengthy document Saloth Ban said he had not seen before. The OCP then referred to OCIJ records, which showed that the document had in fact been shown to the Witness. Karnavas objected and urged de Wilde remove the document pursuant to the Chamber's ruling. The Chamber overruled the objection, stating that this situation is different because there is sufficient reason to believe that the Witness had seen this document during the OCIJ's investigation. The President concluded that the issue at bar was whether the Witness had seen the entire document or just some of its parts. The Chamber instructed the Witness to come to court early the following day to examine the documents the OCP wanted to present. Notwithstanding spending some time examining the documents as the Chamber directed, Saloth Ban firmly maintained that he had never seen them. He elaborated that the OCIJ only showed one or two pages, which were in a different format from the document before him and that he had not affixed his thumbprint on it.

The Parties expressed their diverse opinions in the face of this quandary. Karnavas admitted that the records of the Witness' interview clearly indicated that the OCIJ showed the Witness a document. However, Karnavas argued, that it was unclear which sections of the document the Witness saw. This, Karnavas further commented, signified a poorly conducted investigation. Ms. Elizabeth Simonneau-Fort, international CPLCL, opined that there was ample proof that the Witness had indeed seen the document. She said they cannot disassociate documentary proof from testimonial proof, and wondered why it is not possible to discuss documents in front of the Witness just because he claimed that had not seen the documents. The Witness can look at the document and Parties should be able to ask the Witness what he knows, "but saying that the document cannot be discussed, is depriving us of evidence and that is a pity," Simonneau-Fort added. National counsel for Nuon Chea, Mr. Son Arun, on other hand, urged the Chamber to withdraw the document since the Witness had clearly stated that he does not recognize it. He argued that the Prosecution and CPLCL should not compel the Witness to answer.

President Nil Nonn clarified that the OCIJ's records referred to the documents the OCP was presenting; thus, it was likely that they were shown during the investigation. The President instructed de Wilde to specifically identify which pages have been shown to the Witness, in the event the whole "bunch" was not shown to him. De Wilde acquiesced and identified the OCIJ records, number of the questions, ERN in three languages, and the subject of the questions. Nevertheless, the Witness denied having seen the documents during the investigation phase. Exasperated, de Wilde expressed that he was "going in circles," and was "losing time" before handing over the matter to the Chamber.

The Trial Chamber took over the questioning, but the Witness adamantly maintained that he had not seen the documents. Subsequently, it became clear that the Witness thought that the Chamber was asking if he had written the contested documents and as such, was responsible for what they contained. President Nil Nonn assured Saloth Ban the Bench was not was not trying to make him admit that he wrote the documents, but was only seeking confirmation if he had seen the documents during his interview with the OCIJ. After

spending almost an hour trying to clarify the matter, the Chamber concluded that the Witness does not remember the documents, and instructed the Prosecution to continue their examination of the Witness by asking general questions.

B. Witness Protection: Right Against Self-Incrimination and Role of Duty Counsel

Since the beginning of his testimony on Monday, Saloth Ban had the assistance of a “duty counsel”—a lawyer appointed by the Chamber to ensure that his rights as a witness were protected. After reminding Saloth Ban of his right against self-incrimination, President Nil Nonn reminded the duty counsel to advise Saloth Ban not to respond to questions if his answers would incriminate him.¹²

On Monday afternoon, Saloth Ban’s duty counsel intervened after the OCP asked the Witness who was in charge of the MFA whenever Ieng Sary was on a mission. The duty counsel said that since the question had already been asked, repeating the question might result in the Witness giving a self-incriminating answer. In response, President Nil Nonn advised the duty counsel to ask Saloth Ban whether or not he wished to answer the question. He emphasized that, while it is the role of the duty counsel to discuss the implications of questions with the Witness, the decision to answer or to be silent remains with the Witness. After a brief consultation between Saloth Ban and his duty counsel, the witness requested that de Wilde repeat the question. Saloth Ban responded that he could not recall who presided over meetings in the MFA in Ieng Sary’s absence.

Saloth Ban appeared with a new duty counsel on Tuesday. President Nil Nonn noted the change of counsels and inquired if Witness had any concerns. Saloth Ban said that he had none. When asked the number of times he visited his wife at K-1, Saloth Ban refused to answer on account of a dream he had of the “Iron God,”(a deity in Cambodian mythology),¹³ instructing him not to respond to any questions that did not make him “happy.” The Iron God reportedly told him that the Court was “unjust” as it was not “100% just.” Consequently, Saloth Ban believed that the questions from Monday had already implicated him. He expressed fear of possible prosecution in the future.

The President assured Saloth Ban that none of the questions sought to incriminate him. President Nil Nonn also reminded the Witness of his obligation to cooperate with the Chamber to ascertain the truth, taking into consideration his right to be protected from self-incrimination. Moreover, the President advised Saloth Ban that he is at liberty to consult with his duty counsel before he responds to questions. However, the Chamber cannot consider superstitions and dreams in the conduct of the trial. President Nil Nonn also urged the duty counsel to analyze the questions being put to Witness. Finally, Witness said, “I agree to the statement made by the President, my only suggestion is that, if whatever I say is improper, please make sure I am not implicated.”

C. Referral to Statements of Other Witnesses

On Thursday, Judge Lavergne used Duch’s statements to ask Saloth Ban if he had seen members of GRUNK or FUNK at Chraing Chamres. The Judge also used the testimony of another witness (TCW 729) to ask Saloth Ban about the arrests of allies of Koy Thuon who were allegedly sent to Chraing Chamres. As a result, Karnavas pointed out the Chamber’s ruling that “it is not appropriate to put questions to the witness whose statement has nothing to do with the statement of another witness”.¹⁴ He inquired if this rule applied to the Parties but not to the Chamber, and suggested that the Chamber revise its ruling. Simonneau-Fort, seconded Karnavas’ position and said they would welcome a revision of the ruling because of the importance of cross-referencing statements and documents from other witnesses. International counsel for Nuon Chea, Mr. Michiel Pestman, also expressed similar

sentiments. Immediately after the break, Judge Lavergne clarified that the Chamber was not modifying its previous ruling. The reference to TCW 729's statement was an "unfortunate error" on his part.

D. Recurring Issues on Examination of Witnesses

After a spate of objections, the Trial Chamber reminded the Parties to lay down the predicate – provide the context of their questions – when examining witnesses. This is particularly important when the questions pertain to particular dates or time periods. Other objections to questions that resurfaced this week were raised on the grounds that they were leading, repetitious or speculative.

IV. CIVIL PARTY PARTICIPATION

Approximately 30 Civil Parties attended the proceedings daily, either in the courtroom or the public gallery. Their lawyers asked Saloth Ban about persons who disappeared, were arrested, or killed during the DK regime. The Civil Party lawyers also inquired regarding Boeng Trabek and Chraing Chamres.

Civil Party Lawyers Mr. Chet Vanly and Ms. Elisabeth-Joelle Rabesandratana examined the Witness during the afternoon sessions on Wednesday. Their questions mostly focused on specific claims of Civil Parties and people who reportedly vanished or were sent to S-21. Based on the Witness' testimony however, it appeared that he was unaware of information that was of substantial value to the Civil Parties' claims.

Additionally, the Civil Party lawyers asked Saloth Ban about the situation of repatriated intellectuals in Boeng Trabek and Chraing Chamres. Specifically, the lawyers asked the Witness if he knew of any diplomats at that time. He admitted knowing Mr. Hor Namhong and having heard the names of Hout Sambath and Norodom Monisara (a relative of King Sihanouk). However, he could not offer more information. When asked if he knew person named Chao Seng, the Witness said his knowledge was limited to newspapers he had read, reporting that Chao Seng's name was changed to Chen Suon after the latter's arrest.

As regards Khieu Thirath, Saloth Ban said he knew that she was Ieng Thirith's elder sister, an intellectual and teacher from France. He revealed that Khieu Thirath appeared to have died by strangulation in Office 21 in Takmao Province under Pang's supervision. Saloth Ban also divulged that he had personally brought her body to a pagoda for cremation but he did not say how her remains came into his possession. He further stated that while no disciplinary action was taken against Pang, the latter subsequently disappeared. He did not know if Pang's disappearance was related to Khieu Thirath's death.

The Civil Party lawyers inquired about In Sokan, Heng Un, Cheam (worked with Saloth Ban), Ta Cheang and his wife Sue (chief of Chraing Chamres before Saloth Ban took over), Khim Tun, and Ros Sarin (arrested with Khim Tun). The wife of Ros Sarin¹⁵ and the relatives of Chao Seng¹⁶ are Civil Party complainants. The Witness mostly said he did not know them or that he had heard the names, but did not know them personally. When asked where he took the people being inquired about, Saloth Ban replied that he did not take them anywhere because it was Pang who took them. Saloth Ban clarified that he was not in charge of transferring people but he assisted them in searching for their family members. He explained, "I could not even search for my family members. How could I help others search for their family member?"

V. TRIAL MANAGEMENT

President Nil Nonn conducted this week's proceedings in a patient and steady manner, asked clarifying questions when needed, and managed to resolve contentious situations in a composed manner. When the Witness was non-responsive or wandered off the topic by making religious references, the President, while reminding him to be responsive to the questions, nevertheless managed to reassure the Witness that the Chamber and the duty counsel were safeguarding his rights. This assuaged the Witness' fear of the possibility of prosecution and encouraged him to respond to the Parties' questions. Notably, the Chamber recognized the Witness' continued need for assistance from duty counsel and assigned one to assist him from the start of his testimony this week.

A. Attendance

All the Accused were present throughout the week. As has become a usual occurrence, Ieng Sary requested to participate remotely from the holding cell after the end of the first session and Nuon Chea made the same request after the end of the second session. Khieu Samphan was present for all hearings of the week.

Attendance by the Public. On Monday, approximately 400 villagers from Kampong Thom Province attended the morning session and about 300 students from Chey Voromann VII School from Koeun Svay District attended the afternoon session. On Tuesday, around 300 villagers from Prey Veng Province attended the hearings in the morning. Approximately 300 students from Asia Europe University observed the afternoon sessions. On Wednesday, close to 400 villagers from Kontheak Bopha, Prey Chhor District, Kampong Cham Province traveled to the ECCC to witness the morning proceedings. In the afternoon, around 200 students from Mekong Kampuchea School attended. Finally, on Thursday, the last day of this week's proceedings, around 200 students from Krolanh High School attended the morning session and around 150 villagers from Battambang and Siem Reap, as well as roughly 300 students from the National Institute of Education followed the afternoon session. Throughout the week, a number of independent observers and Civil Parties attended the hearings.

Mr. Dim Sovannarom, Head of the ECCC's Public Affairs Section, gave an interesting introduction with detailed information about the current state of proceedings, the witness of the week, and which Party would ask questions.

B. Technical Difficulties and Translation Issues

The Trial Chamber had originally intended to complete Saloth Ban's testimony by the end of the week so that he could return to his home in the province. However, the audio system malfunctioned and cost a whole session on Tuesday morning. Consequently, the Chamber decided to continue with Saloth Ban's testimony the following week.

Several translation issues also occurred throughout the week. On Tuesday, while de Wilde was asking questions regarding the confessions of Koy Thuon and had read extracts from documents from the OCIJ investigation, Pestman stated that there was a discrepancy between the English and French versions. De Wilde confirmed Pestman's comment. The Khmer and French versions said Witness was aware of the implications against two personnel of the MFA; the English version said Witness was not aware of the matter. Moreover, numbers and years were again confused a few times.

Notably, whenever a Cambodian counsel led the examination, interpretation became challenging, as the breaks between questions and answers were too short to ensure complete and accurate translation. On Wednesday, the interpreter did not translate the Witness' request to repeat the question, nor his answer saying that he did not know. Also on Wednesday, Civil Party Lawyer Rabesandratana did not hear the translation of an objection by Karnavas and the objection was not repeated, nor did the President explain to her what the objection was about, which would have been crucial for her to change her line of questioning.

C. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 23/4/12	9.03	10.33-10.53	12.01-13.31	14.41-15.01	16.02	4 hours and 49 minutes
Tuesday 24/4/12	9.01	10.33-10.54	11.10-13.30	14.52-15.11	16.16	4 hours and 15 minutes
Wednesday 25/4/12	9.01	10.38-10.59	12.07-13.31	14.40-15.02	16.18	5 hours and 10 minutes
Thursday 26/4/12	9.02	10.46-11.11	12.03-13.31	14.44-15.04	16.07	4 hours and 52 minutes
Average number of hours in session: 4 hours and 46 minutes						
Total number of hours this week: 19 hours and 6 minutes						
Total number of hours, days, and weeks at trial: 244 hours and 32 minutes						
56 TRIAL DAYS OVER 16 WEEKS						

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)
CIA	Central Intelligence Agency
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)
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



* This issue of KRT Trial Monitor was authored by Mary Kristerie A. Baleva, Nora Fuchs, Faith Suzzette D. Kong, Noyel Ry, Kimsan Soy, Chayanich Thamparipattra and Penelope Van Tuyl as part of AIJI’s KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor reports on Case 002 are available at <www.krtmonitor.org>, <<http://forum.eastwestcenter.org/Khmer-Rouge-Trials/>> and <<http://socrates.berkeley.edu/~warcrime/>>. AIJI is a collaborative project between the East-West Center, in Honolulu, and the University of California, Berkeley War Crimes Studies Center. 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.

¹ Witness was questioned first by Prosecutors Dararasmey Chan and Vincent de Wilde; followed by Civil Party’s Lawyers Chet Vanly and Elisabeth-Joelle Rabesandratana; by President Nil Nonn and Judge Lavergne; and, lastly, by Ieng Sary’s international counsel, Mr. Michael Karnavas.

² See Closing Order. Para. 1097-1100. 278-279.

³ According to Duch, Sua Va Sy was the Chairman of Political Office 870. See Asian International Justice Initiative. KRT Trial Monitor [hereinafter, **CASE 002 KRT TRIAL MONITOR**] Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 3.

⁴ According to Nuon Chea, Office 100 was located in Rattanakiri between 1968-1970. See CASE 002 KRT TRIAL MONITOR. Issue No. 8, Hearing on Evidence Week 3 (10-12 January 2012). 4.

⁵ For more information on the alleged roles of Doeun and Pang in Office 870, see OCIJ. "Closing Order". (15 September 2010). D427 [hereinafter, **CLOSING ORDER**] para. 48-61.

⁶ In Khieu Samphan's comments during the Opening Statements, he denied that he was the head of Office 870. See CASE 002 KRT TRIAL MONITOR. Issue No. 5, Opening Statements (21-23 November 2012). 9.

⁷ According to Duch, Yun Yat, alias "Comrade At" was in-charge of Internal and External Propaganda and Re-education. See CASE 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 3.

⁸ On Thursday afternoon, 26 April 2012, Witness told Karnavas that Pang used to call him through landline telephone to instruct Witness to allow Pang's subordinates to pick up personnel of the MFA.

⁹ Based on paragraph 55 of the Closing Order, K-1 "was a housing compound containing both the residence and working place of Pol Pot, though some witnesses state that K-1 was only the working place of Pol Pot. Furthermore, a number of witnesses state that **Nuon Chea** and **Khieu Samphan** would also reside and/or work at times with Pol Pot at K-1."

¹⁰ Later during the week, particularly on Thursday, 26 April 2012, Karnavas asked Saloth Ban to clarify what he meant by "Case 000." Witness explained that a person cannot reach number 10, 100, and so forth, without starting from 0.

¹¹ CASE 002 KRT TRIAL MONITOR. Issue No. 15, Hearing on Evidence Week (19-21 March 2012). 9.

¹² CASE 002 KRT TRIAL MONITOR, Issue No. 19 (18-20 April 2012).

¹³ Rule 24.1 states, " Before being interviewed by the Co-Investigating Judges or testifying before the Chambers, witness shall take an oath or affirmation in accordance with their religion or beliefs to state the truth." In Cambodian criminal procedure, a witness is required to take an oath before "The Iron God" or, in Khmer, "Nak Ta Dambang Dek", who would punish those who lied.

¹⁴ Trial Chamber. Transcript of Hearing (24 January 2012). E1/32.1. (hereinafter, "24 January Transcript). 45. Lines 16-21.

¹⁵ In its Judgment in Case 001, the Trial Chamber recognized Ms. Ros Chuor Siy, the wife of Mr. Ros Sarin as a Civil Party for the loss of her husband. See Case 001. Trial Chamber. "Judgement" (26 July 2010). E188. Par. 650. 231

¹⁶ Ros Sarin was a former GRUNK official. See, Case 001. Trial Chamber. "Transcript of Proceedings" (19 August 2009). D288/4.65.1 CF001. 73-74; Written Record of Interview of Civil Party. D368/2. 4.



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