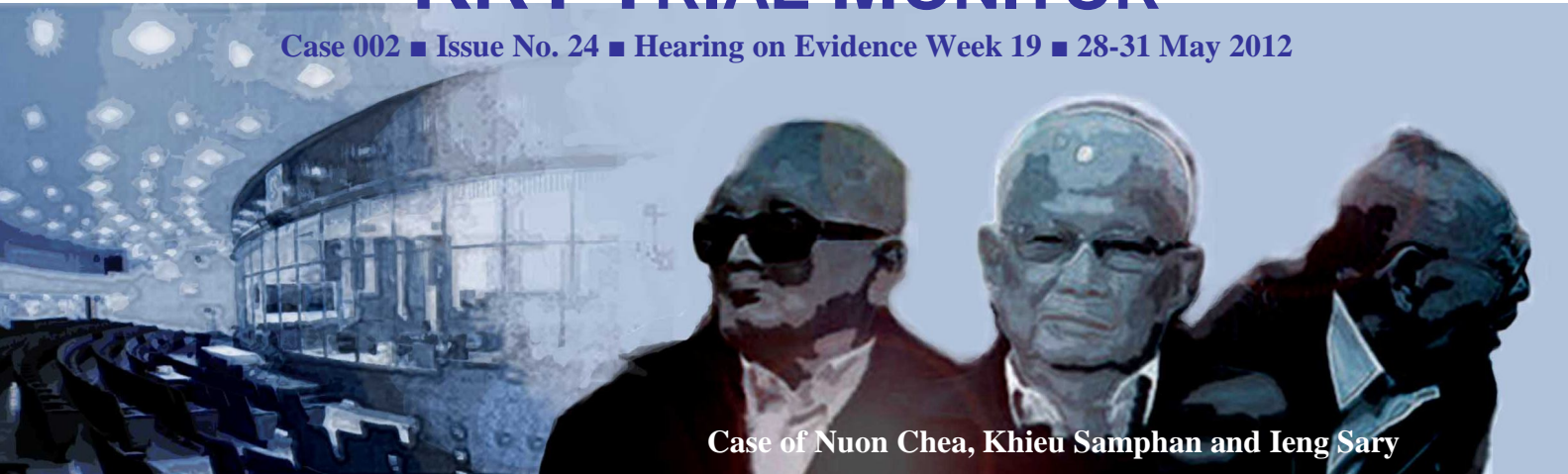


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Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

*The secrecy was too high, the discipline was too firm,
and as I said, I had to be given the tasks from other people and
I had to render the orders and I had no opportunity to be close to them (DK leaders).*

- Witness Ny Kan

I. OVERVIEW

After abbreviated proceedings last week due to Ieng Sary's illness, trial was back in full swing this week with testimonies from two witnesses. The first, TCW 487, Mr. Ny Kan, finally appeared before the Trial Chamber and started his testimony on Monday morning after waiting in the holding room last week. Ny Kan is a former cadre and the brother of KR leader Son Sen.¹ He testified on his experience as a propagandist of the revolution, the administration and communication structures in the West Zone, the "liberation" of Phnom Penh on 17 April 1975, and work at the Ministry of Foreign Affairs (**MFA**).

With Ny Kan's testimony finishing earlier than anticipated, the next witness, Mr. Sar Kimlomouth,² was called to the stand on Wednesday afternoon for the Prosecution's examination. From his testimony, Sar Kimlomouth, a banker in DK, contributed to the CPK movement in the 1960s and was part of the masses evacuated from Phnom Penh on 17 April 1975. After a year in a cooperative, Angkar reportedly appointed him to serve as the deputy director of the State Bank. His position allowed him insights on commercial matters during the regime. His testimony will continue next week with more questions from the Prosecution.

II. SUMMARY OF WITNESS TESTIMONIES

Ny Kan (alias "Kan," "Kin" or "Sath"), 69 years old, is currently an advisor to the Ministry of National Defense. He was connected to the CPK both by ideology and by blood. He is the brother of Son Sen, the Deputy Prime Minister for Defense during DK. His other brother, Ny Chun, was for a time, the DK ambassador to Korea. However, he insisted that he does not know Son Sen's position or the details of the latter's work in the DK regime, due to the CPK's principle of secrecy. Nevertheless, the Witness was able to relate his personal experience during the regime. He was questioned on Monday by OCP counsels Messrs. Dararasmey Chan and Vincent de Wilde D'Estmael, followed by Civil Party counsels Messrs. Lor Chunthy and Barnabé Nekuie on Tuesday. On Wednesday, after a few questions from Judge Jean-Marc Lavergne, the Defense Teams took the floor, starting with Nuon Chea defense counsels Messrs. Son Arun and Michiel Pestman. After an exchange with Pestman, the

Chamber handed the floor to the national counsel for Ieng Sary, Mr. Ang Udom, who was followed by counsels for Khieu Samphan, Mr. Kong Sam Onn and Ms. Anta Guisse, to conclude Ny Kan's examination.

The next witness, Mr. Sar Kimlouth, on the other hand, supported the revolution through financial contributions. When the KR took power, he was tasked with establishing the State Bank to facilitate trade between the regime and allied countries. Sar Kimlouth took the stand on Wednesday afternoon and all of Thursday. National Co-Prosecutor, Mr. Veng Huot and international Co-Prosecutor, Mr. Tarik Abdulkhak conducted his examination.

A. Ny Kan's Testimony

The Witness Ny Kan was born in Tra Vinh District, Kampuchea Krom³ to middle class farmers. He left his hometown at the age of 15 to attend Sisowath Junior High School in Phnom Penh. After completing his education in 1965, he taught at a primary school in Siem Reap Province for a year. He said he was introduced to the underground movement by a certain Seng in Siem Reap, and he was convinced to join with the encouragement of his older brother Son Sen. It appears that Ny Kan joined the movement between 1967 and 1970. He worked in the propaganda unit of the party during the revolution. Later in the DK regime, he was transferred to the Protocol Department of the MFA and played the role of guide for visiting foreign delegates.

1. Roles of the Witness in the CPK

The Witness related that he joined the revolution to fight the American invaders and the Lon Nol government, a common sentiment reportedly held by the youth of that day. As he was literate and outspoken, he worked for the propaganda unit where his task was to "proselytize the masses." He said the essence of propaganda was to ensure that people were "self-reliant and had self-mastery," and were "united to go to the battlefield." Although he never saw any issue of the *Revolutionary Flag*, he said Seng shared excerpts from this magazine with him for propaganda work. He recalled that fundamentally, the *Revolutionary Flag* urged members to constantly be on the offensive and to be self-reliant. It also addressed rice production, the livelihood of base people, the promotion of health care and enhanced solidarity between the new and the base people.

The Witness said he stayed in Siem Reap to conduct propaganda work for the underground movement, although his actual activities and the chronology of events were unclear. It appeared that from 1967 to 1968, he was a part of a mobile unit equipped with a portable printing machine. According to Ny Kan, the upper echelon conceptualized the propaganda, which sectors produced and distributed to encourage people to provide food supplies to combatants in the front. In addition, de Wilde D'Estmael quoted from a book by Philip Short that in 1968, Ny Kan "spent 3 months in a hut, not allowed to go out even to use the latrine, ostensibly for security reasons, but really to temper him and to prove loyalty to the party". Ny Kan denied the tempering, but stated that he was hiding in the jungle as the movement gained momentum because "teachers who were interested in this movement could not remain in the public when their intention was known to the Lon Nol people."

After Siem Reap, he continued his work in propaganda in Sector 15, a Special Zone, then a "hot battle zone" located northwest of Phnom Penh and near Oudong. He said he arrived in the area in late 1974. However, de Wilde again produced an excerpt from Short's book that quoted Ny Kan divulging that he was in the Special Zone with Son Sen as early as 1973 and built trenches inside termite mounds as a refuge against bombs. Ny Kan explained that he did not remember the details clearly anymore but ventured that these events could have occurred in late 1973 or early 1974. When Sector 15 was integrated into Sector 32 of the

West Zone after the war, the Witness reportedly held education sessions for communes and worked at the propaganda committee level. He focused on educating people on farming and self-reliance.

a. Ministry of Foreign Affairs

In late 1977 or early 1978, Ny Kan was transferred to the MFA, where he served until the end of the regime. He said he was transferred to the MFA because he could read and write. Pestman, on the other hand, tried to ask questions that aimed to reveal that Ny Kan's transfer was caused by alleged "women issues." De Wilde, meanwhile, quoted an Ieng Sary interview with Steve Heder where the KR leader said that Ny Kan was transferred to the MFA because he was suspected of being a CIA spy. In the interview, Ieng Sary reportedly recounted that Ny Kan was appointed as the MFA's Director of Protocol. However, the Witness tried to downplay this, stating that he was never formally appointed to this position. After consultation with his duty counsel, he clarified that in reality, he did not oversee everything happening in the department and therefore could not have been its director.

Reception of foreign delegations. Another task assigned to the Witness was the reception of foreign delegations.⁴ According to him, he was only responsible for receiving low ranking visitors, taking them to Angkor Wat and preparing their accommodations. He admitted later in his testimony that he accompanied Ieng Sary with certain delegations but he did not elaborate on this matter. He denied attending banquets for foreign delegations, stating that he only helped to arrange chairs and do other minor tasks at a few events. He also denied any relation between the protocol service and security matters for guests.

Ny Kan affirmed having received delegations from Belgium, Japan, China and Yugoslavia. He said Angkor Wat was the prime destination but was reluctant to confirm whether he brought guests to other regions and cooperatives in the country. Even after being confronted with documents stating visits to dam sites, pharmaceutical factories, and rubber factories, he remained disinclined to give more details on the places visited. Moreover, together with Keat Chhon alias "Mut," Ny Kan reportedly served as guide to journalist Elizabeth Becker and academic Malcolm Caldwell during their tour around Cambodia late in 1978.⁵

2. Administrative and Communication Structures in the CPK

Ny Kan's testimony also covered the administrative and communication structures in the West Zone and the MFA.

a. Administrative and Communication Structures in the West Zone

Ny Kan identified the sectors comprising the West Zone, namely: Sector 31 (today's Kampong Chhnang Province), Sector 32 (now, Kampong Speu Province), and Sector 37 (now, Koh Kong Province). After the end of the war in 1975, Sector 15 (the outer Phnom Penh area, then part of the Special Zone) was merged with Sector 32 and included in the West Zone. According to the Witness, each sector normally consisted of and oversaw three districts. Sector secretaries automatically became members of the zone committee. In the same manner, sector committees were comprised of the persons responsible at the district level, following a hierarchical administrative structure.

Leaders of the West Zone. Ny Kan identified Comrade Sy⁶ as the Secretary of the West Zone, but insisted that he did not know Sy's real name. As to the members of the zone committee, he remembered Comrade Pal, the Deputy Secretary of the Zone and the Chairman of Sector 32, and Comrade Sarun, the Chairman of Sector 31. He could not, however, recall the chairman of Sector 37. His supervisor at Sector 32 was Ta (Uncle) Pal and later, Pronh. When asked about other people at the sector, he said he could only

remember a few, such as Cheng An, the person in charge of the sector military in Sector 15 and the second-in-command in Sector 32; Keo, the person in charge of the supplies unit; and Ta Neou, the person in charge of the front in Ang Snuol District.

Meetings and Training Sessions. Ny Kan stated that he attended political trainings held by Pal. Sy's training sessions, which were open to the public, were attended by around 300 to 500, including the Witness. People from different levels, including those from the communes, attended these assemblies. He also remembered Nuon Chea having attended on one occasion.

Participants in these trainings were invited to join common groups, and then smaller sessions were conducted where people discussed whether or not they could implement the policy. The people educated at zone level then imparted their knowledge in sessions at the sector levels. He remembered that in late 1974 or early 1975, the sessions shifted from fighting American imperialists to concerns on production, efforts in irrigation systems and producing three crops per year. Additionally, zone secretaries also held zone assemblies regularly but he could not remember how often or what they discussed other than that they were informed about the people who tried to thwart the revolution. He did not elaborate further on this subject.

Communications and reporting. According to Ny Kan, people implemented tasks according to hierarchy, "the sector would render orders to the lower levels, and so on and so forth." There were no telephones at that time, and at the base, only the military used telegrams for communication. During wartime, people primarily communicated through messengers who travelled on foot and later on bicycle or motorbike and who, as de Wilde cited from Ny Kan's interview with Philip Short, transported messages hidden in bottles of *prahoc* or in bamboo tubes to avoid discovery by the Sihanouk police. Ny Kan also related that he submitted written reports addressed to the sector chief on the results of rice production, or security matters in the village, and made suggestions or requests for things such as salt.

b. Administrative and Communication Structure in the Ministry of Foreign Affairs

Ny Kan stated that he did not know much about the structure of the MFA as he was only assigned to a small office where he was put in charge of protocol. However, he stated that the administrative and working procedures of this organization reflected the structure in other organizations.

Leaders and personnel. Ny Kan testified that he was under Cheam's direct supervision in the MFA, who in turn, was under Saloth Ban alias "So Hong"⁷ in the MFA hierarchy. The latter was directly under Ieng Sary and replaced the Minister during his absences. Son Arun confronted the Witness with a document showing the organizational structure of the MFA, where the Witness was identified as the Director of Protocol, his name appearing on the same level as Cheam and just under Ieng Sary's. Notwithstanding this, Ny Kan continued to deny this role and insisted that Cheam was his superior. When asked about meetings with Ieng Sary, Ny Kan stated that he did not meet with the Accused frequently; he usually saw Ieng Sary when welcoming foreign delegations, some of whom they accompanied together.

Ny Kan also affirmed his familiarity with Long Norin alias "Rith" (Ieng Sary's former aide),⁸ Cham Prasidh (presently, Minister of Trade and Commerce), and Keat Chhon alias "Mut" (presently, Minister of Economy and Finance). He testified that Cham Prasidh and Keat Chhon served as interpreters during important events.

Disappearances and arrests. Ny Kan was repeatedly questioned whether he had witnessed any disappearances at the MFA but he denied having seen or heard anything, claiming that he was new in the Ministry and as such, he could not have noticed if somebody was missing. He also remained reluctant to give information on the removal of diplomats. In an OCIJ interview, he stated that the arrests and reshuffles of diplomats was decided by the leadership, but when questioned by Guisse, he admitted that he had not attended any meetings or read minutes of meetings when these matters were decided; his statement was based on his own assumption.

Children at the MFA. When the OCP asked the Witness about his duties in relation to children at the MFA, he answered that in his free time he taught English to about 50 children. Other personnel taught the children reading, writing, mathematics and ideology. Ny Kan denied children received or accompanied visitors; he said this was a task assigned to the youth.

3. CPK Policies and Statute

The Witness, a former KR cadre, described CPK policies as positive ones, aimed at uniting the people, rather than ones that espoused distinctions and renounced certain classes.

a. Principle of Self-Reliance and Self-Mastery

Apart from instructing people on farming and building canals to achieve three rice harvests per year, Ny Kan was also responsible for convincing people to support the movement. The main goal, according to him, was to improve production and ensure self-reliance, both for people and for the front. In doing his work, the Witness stated that he simply received the information from his superior and passed it on to people without having a choice on the message to communicate. He noted that people often found the topics difficult to understand.

b. Class Enemies

Ny Kan asserted that the CPK desperately needed people to give support, so there was no class determination that considered some people as enemies. As a person in charge of propaganda, he admitted that he heard about the “class struggle” but he said it was not a primary issue. Since according to Ny Kan, the CPK endeavored to promote livelihood and to win the war, the focus was reuniting the country.

c. Cooperatives

The Witness stated that there was no cooperative during the war. In Sector 15, what existed were production groups, which he described as a low-level group for sharing of crops and production. He mentioned that “Angkar Loeu”⁹ ordered the establishment of the cooperatives, with the view of implementing policies of the party, and again, to ensure that people were self-reliant. He maintained that cooperatives were not fully established when the Vietnamese attacked DK.

Ny Kan he admitted that while he spread the two or three tons per hectare target as part of the DK propaganda, majority were not able to reach this goal. He lamented that poor harvests resulted from lack of fertile land and agricultural techniques. In addition, the people had to feed themselves and at the same time supply the soldiers. “The harvest was not sufficient to feed the people,” he said.

d. Religion

When Ny Kan was asked whether people were allowed worship in pagodas after 1975, he explained that while there were no bans on religious practice, pagodas all across Cambodia were destroyed by aerial bombardments. The army took refuge in the pagodas and monks became soldiers. He explained further that when there were no monks, as there was then no pagoda to which to go. He asserted that monks joined the revolution voluntarily as part of the popular mass movement, citing a song that to be “the best son of the country,” one has to join the revolution.

e. Self-criticism

Self-criticism sessions, according to the Witness, were short meetings convened in “each branch” for the purpose of giving members the opportunity to discuss what they have done and, after receiving comments from others, see what needs to be improved. Minutes of meetings, which noted down good points, flagged problems hindering the performance of members, and summed up comments by parties, were taken and submitted to the upper echelon. The Witness stated that people did not fear the sessions *per se*, but rather, they were worried or concerned that they had done something inappropriate, especially if others witnessed their acts that were subject to criticism. When talking about himself, Ny Kan admitted that, when he was in Sector 15, he was afraid that he would not be able to implement the plan to ensure that people planted enough rice to feed everyone.

f. Internal Purges in the West Zone

The Witness asserted that he only heard of arrests or purges of cadres in the West Zone through the grapevine. In Sector 32, he did not know about the disappearance of people but heard that people were transferred to other positions. He further said that he did not recognize the names the OCP read out to him.

g. CPK Statute

Ny Kan testified that he was acquainted with the CPK Statute but his knowledge was limited because he did not have access to its entirety and he studied it briefly. He noted that the complete version of the Statute was not externally publicized. Notwithstanding this disclaimer, the OCP asked the Witness to clarify some terms contained in the statute.

“Defend the revolution and country and build the country.” The Witness explained that the CPK principle “defend revolution and country and build the country” meant attacking imperialists, promoting the living condition of people and protecting the country’s sovereignty. According to Ny Kan, external and internal forces or enemies, referred to ‘struggle forces’, Lon Nol forces and the Americans.

Party discipline. Ny Kan testified that discipline is related to two CPK matters: “internal party affair” and “popular mass affair.” The first meant that people like himself and others were not allowed to know how the party manages itself. On the other hand, “popular mass affair” meant that as a person who worked in propaganda, he needed to disseminate policies carefully to the masses in a simple manner that could be easily understood. The CPK wanted to instill punctuality, observance of work hours, economy, and the production of surplus for personal consumption and sharing with friends. The Witness further explained that people must have “moral conduct,” that is, they must not engage in womanizing and theft. If there was any problem, he recalled, people reported to the competent authority and the wrongdoer had to apologize.

Pure and clean biography. Ny Kan indicated that that “pure” meant that one must not have committed any misconduct and directs questions only to persons tasked with disseminating information to lower levels. Moreover, one who has a “pure and clean biography” must manage the distribution of food and other supplies for the masses efficiently and appropriately. The Witness further averred that one must not exploit other people or misuse another’s properties, avoid abuse alcohol, or commit any immoral act. He mentioned that there was a party unit tasked to examine the biographies of members.

Good class pedigree. Based on Ny Kan’s understanding, “people with good class pedigree” meant that they do not possess private properties and have good performance records.

Absolute duty to maintain party secrecy. Duties of party members included adherence to the rule of secrecy, which Ny Kan explained as minding one’s own business and not going beyond the boundaries of one’s responsibility. He agreed with de Wilde that it was normal during the time for people to fear transgressing the rule of secrecy or disclosing information to the public. In the course of his testimony, he often ascribed his lack of knowledge to the principle of secrecy.

4. Forced Evacuation

Having been present in the areas that were evacuated by the KR, the Witness was able to provide some information on the evacuations in Oudong in 1974 and in Phnom Penh in 1975.

a. Evacuation of Oudong in March 1974

National Prosecutor, Mr. Dararasmey Chan, asked the Witness about the “liberation” of Oudong. The Witness testified that after Oudong’s liberation, the army joined the people to farm and dig dikes to implement the policy of self-reliance and self-mastery. When asked if Oudong was evacuated, he initially replied that it was not. Later, he amended his answer, explaining that as war intensified, “people were evacuated back and forth.” People were reportedly evacuated for security reasons, away from the areas where fighting took place. Such evacuations were, according to the testimony, temporary, and people were brought back when the situation normalized because, he explained, these people in the “rear” were responsible for supplying the front forces with ammunition, food and other supplies needed to wage the war. People injured at the front were also evacuated to the “rear.”

b. Evacuation of Phnom Penh on 17 April 1975

The Witness testified that he entered Phnom Penh on 17 April 1975, together with a special force division that fought to liberate the city. He explained that he followed the troops because he needed to spread party propaganda. Upon entering the city, he put up banners alerting the people that the city is in danger of aerial bombardments, with a general appeal for people to evacuate the city and return to their hometowns. Asked if the banners had been prepared in advance, he clarified that the banners were prepared only after the city had been liberated.

While he described the situation as “really chaotic,” with people going to different directions, he said he never witnessed any antagonism. Moreover, he claimed, Phnom Penh’s residents were told that they needed to be away only temporarily, but once again Ny Kan did not indicate who gave these assurances. He was asked whether certain sectors of the population of the city, in particular Lon Nol troops and supporters, were singled out, but the Witness replied that there was no segregation and that “no one regarded any other person

as an enemy during that time.” He said he did see the weapons of the defeated Lon Nol soldiers transported on cyclos.

He was then asked how the evacuation was organized and managed – whether the Khmer Rouge forces had provided transport or other logistical support for the people (e.g., water, food, medicine) – Ny Kan responded that apart from instructions to the “base people” to welcome the newcomers and share their food with the evacuees, no other arrangements were made. He also testified that he saw lines of people heading in the direction of Oudong when he left the city later that night to return to Sector 15. Ny Kan also said that the evacuees could make their own decisions about where they wanted to go. However, he admitted that that he had not personally asked the people where they were heading so he could not be sure if they were in fact, en route to their hometowns.

B. Sar Kimlomouth’s Testimony

Mr. Sar Kimlomouth alias “Mi,” 81-years old, was a former banker in the DK regime. The Witness first worked as a professor, and then as a train station employee before entering the field of banking. After six months of training, he was appointed as the head of a private bank’s branch in Sihanoukville. Later, he was sent to France by the bank for further training and on his return, he was appointed as the head of this private bank’s credit unit, where loan documents were analyzed and processed. During the DK regime, the Witness used his expertise in finance to help establish the DK State Bank.

1. Introduction and Role in the Movement prior to the DK Regime

The Witness recounted that a friend (who he did not name) introduced him to the revolutionary movement sometime between 1950 and 1960.¹⁰ They attended secret meetings, during which he learned of problems in society. He contributed to the movement financially by giving part of his salary from his work. When asked if he facilitated loans to KR members as head of the private bank’s credit unit, he replied that KR members did not apply for loans. Confronted by Abdulhak with a passage from Philip Short’s book that alleges that in 1974, “(t)he banker Sar Kim Lomouth served as the movement’s occult treasurer”, the Witness impugned the statement as “total(ly) speculation” and a “baseless assumption” on the part of the author.

2. Evacuation of Phnom Penh

The Witness revealed that he and his family were evacuated to the countryside on 17 April 1975. He recounted that on that fateful day, he was at home and KR soldiers told them that they needed to leave the city “for a few days only.” There was no instruction about property and they were only told to prepare some food.

According to the Witness, there were many people on the road and he did not know where they were going. Soldiers escorted people along the street as they walked out of the city. People brought along whatever means of transport they had, such as bikes, trucks, and motorbikes. There was no medical assistance provided to the evacuees. He narrated that he wanted to return to his hometown in Chhuok District, Kampot Province but his house was near National Road One (presently, Monivong Boulevard) and because there were throngs of people, they were pushed forward and could not turn back. Consequently, they instead proceeded to the direction of Kien Svay.¹¹ The Witness further stated that he and his family left the city by car, but when they settled in Kien Svay, he had to give his car away. He did not, however, elaborate on this matter.

3. Life in Cooperatives

The Witness, together with his family, reportedly first settled in a cooperative in Kien Svay where his relatives lived. Later, they were transferred to another cooperative where he spent one harvest season. He recalled that each family had to do their best to find their own food in the first cooperative in Kien Svay and there were no arrangements for people to have food. There was no distinction between “new people” (17th April evacuees) and the “base people” (peasants from the villages).

Sar Kimlomouth testified that children were separated from adults and everyone had to work: “(y)oung kids would be allowed to stay with parents at night but at day time has to go to work together.” However, he was not sure if this happened elsewhere. He further stated that people were free to stay where they wished in the first cooperative, but this was not the same in the second cooperative.

In the second cooperative, food was sufficient although not plentiful. People from all walks of life (intellectuals, workers and peasants) reportedly lived and worked together and were treated equally. The Witness recounted that everyone was asked to write biographies. He revealed that eventually, he was called to serve the regime in 1976 and he was transferred to Phnom Penh. His family, however, had to stay in the cooperative. He was allowed to visit them for a night or two every two to three weeks, which he managed by cycling to the cooperative.

4. Role during the DK Regime

According to the Witness, “Angkar” instructed him to go to Phnom Penh in early 1976. He observed that the city was very quiet upon his arrival and he was given a place to stay near the Industry Committee. He then met with KR leader Vorn Vet, who asked him to attend a trade meeting between DK and a delegation from China. The Chinese officials they met with advised them that a bank was instrumental in facilitating trade between China and Cambodia. He also remembered that China provided some money to establish the bank.

Since Sar Kimlomouth was the only one familiar with the banking system, he was tasked with spearheading the establishment of DK’s State Bank. In late 1976, Foreign Trade Bank of Cambodia was created and Sar Kimlomouth was appointed as its deputy director. Notwithstanding his position, he testified that he neither knew who the bank’s director was nor was he sure which institution supervised the bank. The bank had no money and had no accounting or finance sections. He described it in this manner:

This bank was a mere empty institution, only when there were foreign delegates, then we would meet with them, otherwise no operation was taking place. If we have to prepare reports, then such reports had to be sent through messengers, the messenger would convey this report to the upper echelon, but we don’t know who upper echelon was. I don’t dare to ask messengers to whom reports were supposed to be sent.

Sar Kimlomouth explained that while the Bank was meant to produce documents expected for normal transactions such as letters of credit, the Commerce Committee actually handled these affairs and had contact with the upper echelon. Despite being the bank’s deputy director, the Witness said he did not sign any bank documents. Instead, he submitted the documents he prepared to the bank’s allegedly unknown director general, who, Sar Kimlomouth stated, may have communicated with overseas banks. He submitted reports in draft form in English addressed to a Central Office (the number of which he could not recall).

The Witness further averred that he only produced freight inventory lists for goods that were exported or imported. He forwarded this list to the upper echelon, who decided the course of trade. Moreover, he said he did not know who made the orders for the traded items because documents were only delivered to him so that he could record them in his inventory. The Witness explained that Cambodia exported beans, rice, and coffee, and imported garments material, steel, and cement.

5. The Commerce Committee during the DK Regime

The Witness revealed that approximately 120 persons worked in the Commerce Committee. The office was divided into two sections: the Foreign Commerce Section and another section he could not recall. The Foreign Commerce Section dealt with export transactions, such as determining the kinds of goods to be exported, contacting the customers and partners, and preparing required documents. He stated that, initially, Seua Vasi, alias "Comrade Doeun"¹² chaired the Commerce Committee.¹³ Doeun, Sar Kimlomouth asserted, was his superior because the Bank was subordinate to the Commerce Committee. Later in his testimony, however, he denied that the Bank was part of the Commerce Committee. Moreover while Sar Kimlomouth said he did not know who acted as Doeun's immediate superior, he knew that Vorn Vet was in charge of the economy and he oversaw both commercial and industrial affairs. After Doeun disappeared, Van Rith, who was then a member of the Commerce Committee, reportedly took his place. The Witness however denied knowledge of the disappearance or transfer of persons in the Commerce Committee.

6. Interactions with the Accused

The Witness confirmed his familiarity with Khieu Samphan alias "Hem" in the mid-1960s but denied knowledge of Hem's role in the revolution. He indicated that Khieu Samphan was a parliamentarian during King Sihanouk's regime, and that they only met each other accidentally. He also said he knew nothing of Khieu Samphan's role during DK. Nevertheless, after the OCIJ presented him with Van Rith's DK era reports addressed to Brothers Hem and Vorn (which he said he saw for the first time during his interview with the OCIJ), he agreed that Khieu Samphan must be a superior in the economic sector.

As for Ieng Sary, the Witness merely confirmed that Ieng Sary was the Minister of Foreign Affairs. Although he attended meetings with Ieng Sary when foreign delegations were visiting, they had few interactions because Ieng Sary was not involved in banking. The Witness gave no evidence relating to Nuon Chea.

7. CPK policies

After 1975, Angkar reportedly did not instruct people to set aside their property and contribute them for collective use. The Witness narrated that, in practice however, farmers had given their own property, such as cattle and buffalo, for collective use. His personal contribution, he reiterated, was his car, which he surrendered when he arrived in Kien Svay from Phnom Penh.

On the subject of religion, the Witness stated that there was a pagoda, but that he did not see any monks. No one talked about the monkhood because they were treated as followers of a reactionary religion, the Witness explained.

8. Demeanor

Sar Kimlomouth seemed confident when responding to questions, although he stated that he was just a lower cadre, and claimed he did not or could not remember matters such as communication lines or roles and responsibilities of individuals. As such, a few of his answers appeared to be speculative. He also mentioned that his answers with OCIJ were shorter and simpler, as he was very tired when he was being interviewed.

III. LEGAL AND PROCEDURAL ISSUES

The trial proceeded relatively smoothly this week, with the Chamber exercising its authority to manage proceedings exactly, perhaps more than necessary when it withheld time allotted to the Nuon Chea Defense to question a witness after counsel attempted to challenge some of the Chamber's rulings. A number of issues on the use of documents in court also arose this week, with interesting rulings from the Chamber. As has been the case in previous weeks of trial, various objections on the method of questioning were also raised this week.

A. Exercise of the Court's Authority to Manage Proceedings under Rule 85

The ECCC Internal Rules vest the Trial Chamber with wide discretion to direct the conduct of the proceedings. Under Internal Rule 85, the President, in consultation with other judges, "may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth."¹⁴ However, its power of control is tempered by the need to balance with the fundamental principle that "ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the Parties."¹⁵

1. Limiting a Party's Line of Questioning

At the start of his examination, Pestman attempted to question Ny Kan about the oath he took before he gave his testimony. However, President Nil Nonn quickly intervened and instructed the Witness not to answer. Pestman reasoned that he wanted to ascertain whether the Witness regarded "himself under oath or under threat of a 'miserable and violent' death' if he falsely testifies." The Chamber refused to accept this reasoning, and the President prevented Counsel from rephrasing the question, declaring that there was no need to question the Witness about the oath he took in accordance with ECCC procedure. Forced to abandon this line of questioning, Pestman manifested that he wanted to know if the Witness shared the President's opinion that the "Lord of the Iron Staff was mere superstition."¹⁶

The Chamber also disallowed Pestman's next question, asking whether Ny Kan's transfer to the MFA was due to "women troubles" he allegedly had in Sector 32. The President ruled *motu proprio* that the question was irrelevant because this matter is not contained in the Closing Order. Pestman attempted to demonstrate how his line of questioning was in fact relevant, but the President turned off Pestman's microphone and adjourned the proceedings for the morning break. Thus, Pestman did not have an opportunity to argue the relevance of his line of questioning.

2. Forfeiting a Party's Time to Examine a Witness

The apparent "battle of wills" between the Nuon Chea Defense and the Trial Chamber came to a head during Ny Kan's examination. President Nil Nonn repeatedly advised Pestman to ensure that his questions were relevant. In one instance, the President indicated that if

Pestman kept “moving to questions outside of the substantive questions, the Chamber will take it that you have no further questions and the floor will be given to other counsels.” Pestman assured the Chamber he had other questions, and resumed his questions by attempting to introduce a document. The Chamber did not allow the introduction of the document, as the document had not been put before the Chamber (see III.D below). However, Pestman continued to maintain that they filed a submission on this matter last Monday.¹⁷ The Chamber did not take Pestman’s insistence to use the documents in question well, and warned him that, “(t)ime and again counsel behave in the same way...We already informed you that if you try to obstruct the proceedings and that you have no further substantive questions, the Chamber will proceed with other counsels.” Pestman replied that he had “a serious problem understanding” the Chamber’s decision and attempted to argue his position. In response, the President turned off Pestman’s microphone and explained the procedure for introducing documents to the Chamber. Pestman, in turn, expressed he was “puzzled” and tried elaborate, only to have his microphone muted again. The President, losing patience at this point, announced, “(t)he Chamber takes that you have no further questions, your time has run out, we now proceed to the counsel for leng Sary.” Despite further argument by Pestman, most of which expressed without the benefit of a microphone, the Chamber remained firm in its decision to forfeit the time allotted to the Nuon Chea Defense.

Internal Rule 38 authorizes the Chamber to ensure the proper conduct of proceedings by imposing sanctions to a lawyer under the following conditions:

Rule 38. Misconduct of a Lawyer.

1. The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21 (3) of the Agreement.

While the Chamber has wide discretion to implement its authority to direct the conduct of the proceedings, the Internal Rules provide conditions when the Chamber may consider the acts of a lawyer as constituting misconduct. These help ensure that the Chamber balances its power to control the proceedings with the rights of the Parties. In this case, the Chamber’s sanction against the counsel and its treatment of the Team as a whole raises concern that this may affect Nuon Chea’s right to an effective defense, especially after the Trial Chamber repeatedly denied his counsel’s request to argue their position.

3. Denying a Party the Right to Raise an Issue Orally

After the lunch break on Wednesday, Pestman asked for two minutes of the Chamber’s time, possibly to seek reconsideration for their forfeited time allotment that morning. The Chamber, through the President, denied Pestman’s request and reiterated that the Nuon Chea Defense had already used up their allocated time. Moreover, the President informed Pestman that if the Nuon Chea Defense wanted to make a submission to the Chamber, they had to do it in writing. Similarly, the next day, the President denied the request to speak made by another of Nuon Chea’s international counsels. Mr. Jasper Pauw attempted to raise the issue on the subject of communications between Judge Cartwright and Co-Prosecutor Andrew Cayley. Notably, Mr. Pauw’s microphone was turned off in the middle of his submission and the Chamber refused to give him the floor, instructing him to put his submission in writing.

The requirement for a written submission undoubtedly expedited the proceedings, as it prevented arguments outside the scheduled testimony to take up the time of the Chamber. However, in refusing to even hear the general matter of the submission that the Defense

wanted to make, the question of giving the Accused his full right to effectively mount his defense is raised.

4. The Chamber's Response to Parties' Objections

In the middle of Pestman's aborted witness examination, de Wilde raised an objection, which the Chamber sustained without giving Pestman a chance to respond. While the Internal Rules are silent on counsel's right to respond to another Party's objection before the Chamber issues a ruling, the Chamber has, on a number of instances, allowed Parties to respond to objections raised by other Parties.

Another instance that highlights the Chamber's treatment of objections by Parties, during the Abdulhak's examination of Sar Kimlomouth, Karnavas submitted that if the OCP would continue to dwell on events that occurred in the 1960s, then King Sihanouk should testify because he is in a good position to divulge information about this time period. In the course of proceedings since the start of the substantive hearings in November 2011, the Chamber has often required the objecting Party to clarify their position if the objection was unclear, allowed the Party whose question was objected to, to make a counter-argument, or immediately ruled on the objection. In this case however, the Chamber abruptly interrupted Karnavas in the middle of his objection, and instructed Abdulhak to proceed with his questions without ruling on Karnavas' objection.

While the President undoubtedly has the prerogative to manage the proceedings, each Party is equally entitled to the courtesy of a ruling on their objections. The issuance of reasoned rulings, whether relating to substantive or procedural issues, benefit the trial because they direct the conduct of the proceedings, and provide the Parties with clear guidelines.

B. Use of a Statement of an Accused to Confront a Witness

On Tuesday, de Wilde sought leave from President Nil Nonn to read a passage of an interview relating to the witness Ny Kan, which Ieng Sary reportedly gave Steve Heder in 1996. Before the particular passage could be read, Karnavas requested for a ruling from the Chamber if the use of a previous statement of an Accused may be used in confronting a Witness. If it is allowed, Karnavas argued, then whenever any witness comes up to testify, a Party would be permitted to use third party statements that refer to the witness, regardless of whether or not the source of the statement would testify before the Chamber. The Chamber allowed the OCP to use Ieng Sary's interview, stating that this case is different from previous rulings as this involves an interview with the Accused and not a witness. The Accused, the President explained, was participating in the proceedings from the holding cell, free to object or to confront the witness. Thus, a witness is allowed to give comments or an explanation to statements made by the Accused.

C. Use of the Statement of a Potential Witness

In the course of national Civil Party lawyer Mr. Lor Chunthy's examination of Ny Kan, he asked the Witness to explain a statement the latter reportedly made that, "certain members of the party continued to destroy the party..." in connection with disappearances in the MFA. It appears that a certain Ong Thong Hoeun gave statements that referred to this comment Ny Kan made.

Ieng Sary's national counsel, Mr. Ang Udom, objected to the question, pointing out that Ong Thong Hoeun is a potential witness in this case. Based on previous rulings of the Chamber, his statement is not subject to comment by the Witness currently testifying before the Chamber. He also reminded the Parties of the required use of a potential witness'

pseudonym to protect the latter's identity. Pich Ang argued that the Civil Party lawyers were simply extracting a portion of Ong Thong Hoeun's statements to refresh the Witness' memory.

After hearing the arguments, the Chamber first reminded the Parties to use pseudonyms of potential witnesses, and then, seemingly overruling the objection, told the Civil Party lawyer to ask the question to the Witness again. However, Lor Chunthy proceeded to ask a different question despite the President's instruction. As a result, the Chamber's ruling remained unclear. If the Chamber indeed overruled the objection, this brings into question the continued applicability of its previous ruling that a statement of potential witnesses may not be used in the examining a current witness.¹⁸

However, it is possible that the previous ruling would not apply to the issue at bar if the Chamber distinguished between asking a witness to comment on a statement made by a potential witness, and confronting a witness with assertions he (the witness) purportedly made to a potential witness, based on the latter's statements. As previously discussed, the Chamber allowed the Witness to comment on an interview given by the Accused, on the ground that the latter has the opportunity to confront the Witness. Perhaps the Chamber had opted for a nuanced direction in this instance because (like Ieng Sary), the Witness himself purportedly made the statement, and thus had the opportunity to comment on it, explain or refute it. Since the Chamber did not make a formal and reasoned ruling on the matter and instead merely allowed the Civil Party lawyer to ask the question objected to, it is unclear if the Chamber had indeed wanted to make this distinction.

An express ruling that would allow Parties to confront a witness with previous statements he made to a potential witness would undoubtedly provide Parties greater latitude examining and testing the credibility of witnesses.

D. Documents Not Put Before the Chamber Not Allowed to be Presented to the Witness

On Wednesday, during his examination of Ny Kan, Pestman attempted to introduce a document that has not been put before the Chamber.¹⁹ Before Pestman could proceed, the President asked if the Nuon Chea Defense had requested or received permission to put the document before the Chamber. Pestman asserted that they had included the document in the court computer interface²⁰ before the weekend and that they filed a *Notice of Impeachment Material for TCW 487*²¹ on Monday afternoon to request the Chamber to allow the use of this document for the purpose of impeaching the Witness. In response, President Nil Nonn reiterated that, according to the established procedure, documents included on the interface are those that have been put or requested to be put before the Chamber. The President reminded Pestman about the Chamber's oral²² and written²³ rulings on the matter and held that the Nuon Chea Defense failed to follow the procedural requirement for the admission of the document as "new evidence" under Internal Rule 87(4). As a result, the Chamber did not allow Pestman to ask the Witness any question based on the document. Pestman continued to argue, stating that he was "puzzled" with the Chamber's ruling. At this point, the President interrupted Pestman by turning off his microphone, concluded that the Nuon Chea Defense had no substantive questions, and declared that their time had run out.

From the exchange, the Chamber appeared to disregard Pestman's assertion that the Nuon Chea Defense filed a submission on the document. However, a reading of the submission reveals that the Team has in fact stood by its position that impeachment materials are not subject to the rules of evidence under Internal Rule 87, which requires documents to be put before the Chamber. The Defense maintained: "Impeachment material [...] is a different category of material. It's not evidence. It's not covered by Rule 87(4)."²⁴ It was only in the

last paragraph that the Nuon Chea Defense asked in the alternative that, should the Chamber sustain its position on the application of Rule 87.4, then the term “not available” in Rule 87.4 must be given a “subjective, purposive interpretation consistent with the realities of this large-scale, complex litigation.”²⁵ According to the Nuon Chea Defense, impeachment material must be considered as “not available” unless it is known for certain that a particular witness will testify in court.²⁶

While there may be merit in their argument, the Nuon Chea Defense has had little success in arguing this issue in previous hearings. They are in compliance with the Trial Chamber’s rulings and continues to assert a position to which the Chamber does not give credence.

E. Questioning a Witness on Documents he has Personal Knowledge of but has Not Seen Before

The Chamber has ruled orally that if a witness has no knowledge of the document, cannot identify the document, or has not seen the document before, the document must be removed from the witness and the screen, and the witness cannot be asked on the document, but parties may still put questions to the witness regarding the subject matter of the document.²⁷

On Thursday, Abdulhak presented minutes of a Commerce Committee meeting between Cambodian and foreign delegations, which was allegedly attended by the Witness, Sar Kimlomouth. Following the procedure, the President advised the Prosecutor to ask whether the Witness has seen the document before. After reviewing document, the Witness confirmed that while he joined the meeting with the Korean delegation, he said he did not prepare the report Abdulhak was presenting. Abdulhak asked for and was granted leave to display the document on the screen. This prompted an objection from Pestman, who pointed out that the Witness merely talked about the contents of the document but has not answered if he has seen the document before. Abdulhak responded that the objection is “splitting hairs” as a proper foundation was laid regarding the document, and the Witness admitted that the meeting took place and that he attended it. The President allowed the Prosecutor to put further questions to the Witness, providing that this matter has already been ruled upon.

After a while, the Prosecutor presented another Commerce Committee report of a meeting the Witness also attended, and asked if the Witness has seen the document. The Witness only confirmed that a meeting with a delegation from Yugoslavia occurred, and that he acted as the interpreter for the meeting. While the Witness does not appear to have seen the document before, the Chamber allowed the presentation of the document. This led Pestman to object that this is not in line with previous rulings and asked the Chamber for a clarification. Abdulhak submitted that this is consistent with the Chamber’s previous ruling since the Witness recognized the event and its contents.²⁸ He reiterated that a proper foundation has been laid to ask questions.

The President distinguished the issue at bar from the instances where the previous ruling applied: in this case, the Witness has personal knowledge of the contents of the documents, notwithstanding not having seen the documents before. The Chamber pointed out that this particular document was directly related to the truth and the actual activities in which the witness was personally involved. According to the President, moreover, Counsel did not raise the objection in a timely manner. Thus, the Chamber overruled the objection raised by the Nuon Chea Defense.

This new ruling demonstrates that the Trial Chamber is taking a step towards a more liberal view on the use of documents, as the existing ruling that a witness may be questioned only on documents that he has seen before has posed a considerable limitation to the scope of witness examination. This new ruling appears to have taken into consideration the OCP’s

*Request for Clarification on the Use of Documents*²⁹ dated 30 May 2012, seeking to allow more documents to be shown to witnesses during their testimony. The Co-Prosecutors submitted that documentary evidence should be allowed to be introduced to witnesses when “sufficiency of the nexus between a document and the direct knowledge of a witness can justify the use of that document.” The additional purposes for use of documents include: (i) refreshing the memory of a witness; (ii) authenticating a given document *prima facie*; or aiding the Chamber in assessing the weight that should finally be attributed to that document; (iii) corroborating the substance of, or extrapolating from, the substance of the document, based on the witness’ direct knowledge; and (iv) testing the credibility of the witness. Notably, the third purpose (i.e., corroborating or extrapolating from the substance of the document based on the witness’ direct knowledge) now appears to be allowed, pursuant to the Trial Chamber’s current ruling.

IV. TRIAL MANAGEMENT

While the conduct of the trial went smoothly this week, the Chamber struggled to manage time by reminding counsels to be brief and to the point in their objections, and unilaterally instructing witnesses not to answer questions it believes are irrelevant, speculative, leading or repetitive questions. It even went so far as abruptly turning off the microphones of counsels to prevent further discussions, which in turn, prevented Parties from effectively arguing their positions.

A. Attendance

This week, the Accused Khieu Samphan was present in the courtroom the entire day, while Nuon Chea was present only in the mornings and requested to participate remotely from his holding cell after the end of each second session. Due to his health condition, Ieng Sary waived his right to be present in the courtroom the whole week and followed the proceedings remotely from his holding cell from the start of each session.

Attendance by the Public. On Monday, approximately 400 students from various schools and universities, including the Muslim Association in Cambodia, Phumin Phnom Penh, Phumin Nitesas, Santho Mok High School, Western University, Beltie University and Build Bright University, attended the proceedings. On Tuesday, around 500 students from various branches of Beltie University attended the hearings in the morning. Moreover, an estimated 150 villagers from Baset District, Kampong Speu Province attended in the afternoon. On Wednesday, close to 300 villagers visited from Kandal Stueng District, Kandal Province in the morning. When they left after the lunch break, some 200 students from Beltie University took their place in the public gallery. On Thursday, roughly 300 villagers from Puok District, Siem Reap Province observed the trial the entire hearing day. The Public Affairs Section (PAS) staff gave an interesting introduction with detailed information about the current state of the proceedings for the guests.³⁰

Notably, there were about 20 or 30 Civil Parties in the main gallery and inside the courtroom this week. There were also about 20 national and international visitors who observed the hearings.

B. Time Management

Unlike in previous weeks where the Trial Chamber was constrained to adjourn proceedings early or cancel proceedings when a witness was sick or unavailable, the proceedings this week continued unimpeded after the early conclusion of Ny Kan’s testimony, on account of the presence of a reserve witness waiting in the holding room. The Chamber’s preparation of a reserve witness reflected its foresight and efforts to expedite the proceedings.

The Chamber also sought to streamline objections from parties, with President Nil Nonn admonishing counsels to be brief and to immediately state the ground for their objections. Karnavas, however, defended his lengthy statements by saying that he wanted his arguments reflected in the official records for purposes of appeal.

C. Courtroom Etiquette

On Tuesday, Karnavas strongly criticized de Wilde’s examination technique, claiming the latter had not laid a proper foundation for his question and was therefore asking the Witness to speculate. In the heat of his objection, Karnavas exclaimed that what de Wilde had done was “sleazy,” employing “a sneaky way of trying to get information.” The President, in response, advised Karnavas to compose himself and be mindful of his language. While the objection may have some basis,³¹ the use of strong language was unnecessary and inappropriate, especially from one officer of the court to another.

D. Translation and Technical Issues

Despite the long sessions this week, translation and technical issues were minimal. At the start of hearing on Monday, one question did not have a French translation, and had to be repeated. An error in translation may have also occurred when Veng Huot asked Sar Kimlomouth about the time the latter started working at the bank, and the answer in translation was heard as “1993 or 1994.”

During Sar Kimlomouth’s examination, Guisse manifested that her Khmer colleagues noticed that the Witness’ complete answer was not translated in English and French. She clarified that in his answer in Khmer, the Witness said that the OCIJ had shown him only some segments and not the entirety of documents. Later, Guisse manifested that the handwritten portion of a document in its Khmer and English were not reflected in the document’s French version.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 28/5/12	9.06	10.27-10.47	12.02 -3.33	14.29-15.01	16.04	4 hours and 35 minutes
Tuesday 29/5/12	9.04	10.31-10.52	12.07-13.33	14.36-14.59	16.10	4 hours and 56 minutes
Wednesday 30/5/12	8.57	10.36-11.02	12.04-13.29	14.47-15.10	16.04	4 hours and 53 minutes
Thursday 31/5/12	9.01	10.48-11.04	11.58-13.31	14.45-15.01	16.04	4 hours and 58 minutes
Average number of hours in session: 4 hours and 51 minutes						
Total number of hours this week: 19 hours and 24 minutes						
Total number of hours, days, and weeks at trial: 280 hours and 49 minutes						
66 TRIAL DAYS OVER 20 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

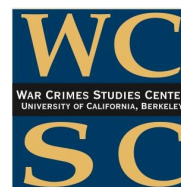
Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	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



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AIJI TRIAL MONITORING



* AIJI is a collaborative project of 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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¹ Son Sen was a senior leader of the KR. He was a full rights member of the CPK Standing Committee and the Deputy Prime Minister for National Defense of the DK Regime. Kaing Guek Eav, alias “Duch” said that Son Sen was the superior he reported to directly on S-21 matters until the latter's relocation in August 15 1977 to the East Zone to oversee the conflict with Vietnam. See Office of the Co-Investigating Judges. Closing Order. (15 September 2010). D427.; Asian International Justice Initiative. KRT Trial Monitor [hereinafter **CASE 002 KRT TRIAL MONITOR**]. Issue No. 17, Hearing on Evidence Week 12 (2-5 April 2012).

² The spelling of the witness' name in this Report was adopted from the press release given by the ECCC. Alternatively, his name was spelled in some publications as Sar Kim Lomouth.

³ In Khmer, Tra Vinh District is called "Preah Trapeang." Kampuchea Krom refers to the South region of Vietnam historically believed to belong to Cambodia and where a large number of people of Khmer origin reside.

⁴ There were several groups within the MFA who were assigned to receive and accompany visitors. He had three young people to assist him, but he did not have a deputy.

⁵ Prior to the Vietnamese invasion in December 1978, Ny Kan received the journalists Elisabeth Becker and Richard Dudman, and British academic Malcolm Caldwell and provided a 10-day tour around the country. Ny Kan said the visitors made numerous requests, including a visit to the country side, cooperatives, and worksites, and to meet with Pol Pot, Ieng Sary, Son Sn and others, but not all requests were being granted. Keat Chhon and Ny Kan jointly reported to the upper echelon to pass on these requests. The visit ended in tragedy when Prof. Caldwell was killed inside his hotel room by assailants on the last night of their visit. See also Becker, Elizabeth. *When the War was Over: Cambodia and the Khmer Rouge Revolution, Revised Edition*. New York: Public Affairs (1998).

⁶ "Sy" was the alias of Chou Chet, Secretary of the West Zone Secretary and a member of the Central Committee.

⁷ Saloth Ban testified before the Trial Chamber from 23 April to 3 May 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April); and CASE 002 KRT TRIAL MONITOR. Issue No. 21, Hearing on Evidence Week 16 (30 April, 2-3 May 2012).

⁸ Long Norin testified via video-link before the Trial Chamber on 7, 8, 14, and 15 December 2011. See CASE 002 KRT TRIAL MONITOR. Issue No. 6, Hearing on Evidence Week 1 (5-9 December 2011); CASE 002 KRT TRIAL MONITOR. Issue No. 7, Hearing on Evidence Week 2 (13-15 December 2011).

⁹ "Angkar Loeu" refers to "upper organization" or "upper echelon" in Khmer.

¹⁰ From his testimony, the actual dates of the Witness' early involvement in the movement are unclear.

¹¹ Kien Svay is a district in Kandal Province located East of Phnom Penh. While only around 20km from Phnom Penh, the Witness and his family only arrived in the area the next day, due to the volume of people on the road. The Witness stated that he had relatives in that district.

¹² According to Duch, Sua Va Sy was the Chairman of Political Office 870. See CASE 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 3.

¹³ The Witness stated that the Commerce Committee was first located near Psar Chas but was later transferred to the Military National Defense Compound on Russian Blvd.

¹⁴ ECCC. Internal Rules (Rev. 8), as revised on 3 August 2011 [hereinafter, **INTERNAL RULES**]. Rule 85(1). "The President of the Chamber shall preside over the proceedings, and facilitate interventions by the other judges. He or she shall guarantee the free exercise of defence rights. In consultation with the other judges, the President may exclude any proceedings that unnecessarily delay the trial, and are not conducive to ascertaining the truth."

¹⁵ Internal Rules, Rule 21(1)(a). "ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties. They shall guarantee separation between those for prosecuting and those responsible for adjudication;"

¹⁶ Pestman's statement appears to refer to President Nil Nonn's statement on 24 April 2012 during the examination of Witness Saloth Ban. Witnesses belonging to the Buddhist faith take their oath before the statue of the Iron God ("Lokta Dambong Daek" in Khmer) prior to their testimonies. On 24 April 2012, Saloth Ban refused to answer some questions, stating that in his dream, the Iron God told him not to answer questions that do not make him happy, and that the Court is not 100% just. Instructing the Witness to answer, the President stated that, "your dream is a superstition and it cannot be used in a court of law." See Trial Chamber. Transcript of Trial Proceedings Trial Day 55 (24 April 2012). E1/67.1. 6-7.

¹⁷ See Nuon Chea Defense Team. "Notice of Impeachment Material for TCW 487" (28 May 2012) [hereinafter, **NOTICE OF IMPEACHMENT MATERIAL**]. E206.

¹⁸ AIJI CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012). 10.

¹⁹ Internal Rule. 87.2. Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination.

²⁰ Zylab is the ECCC's computer interface that contains electronic copies of documents.

²¹ **NOTICE OF IMPEACHMENT MATERIAL**. E206.

²² See AIJI CASE 002 KRT TRIAL MONITOR. Issue No. 23, Hearing on Evidence Week 18 (21, 23 May 2012). 4-5; CASE 002 KRT TRIAL MONITOR. Issue No. 17, Hearing on Evidence Week 12 (2-5 April 2012). 11-12.

²³ Trial Chamber. "Directions regarding documents sought for impeachment" (24 May 2012). E199.

²⁴ **NOTICE OF IMPEACHMENT MATERIAL**. E206. 3. 2-3.

²⁵ Ibid.

²⁶ Ibid.

²⁷ See CASE 002 KRT TRIAL MONITOR. Issue No. 15, Hearing on Evidence Week 10 (19-21 March 2012). 10; Transcript of Trial Proceedings (21 March 2012). E1/52.1. 62.

²⁸ Although not cited, Prosecutor Abdulhak may be referring to the Trial Chamber ruling that allowed Duch to comment on a document he said he has not seen before but has sufficient familiarity with as an S-21 document. See Transcript of Trial Proceedings (29 March 2012). E1/56.1. 72-75, as cited in Office of the Co-Prosecutors.

“Co-Prosecutors’ Request for Clarification Regarding the Use of Documents During Witness Testimony” (30 May 2012). E201.

²⁹ Ibid.

³⁰ For the students, the PAS also held a question and answer session.

³¹ De Wilde had read the Witness a telegram, which bore the signature of a certain “Kan.” He was asked if he drafted the telegram. The Witness responded that he could not remember. De Wilde continued, first drawing the Witness’s attention to a line before the signature that stated that the telegram had been sent to Office 870 and posed the question, “regardless of the author of this telegram...what is Office 870? Was the telegram destined for that Office?” Considering that the Witness had stated that he was not sure if he had drafted the telegram, the question was inviting the Witness to speculate.



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