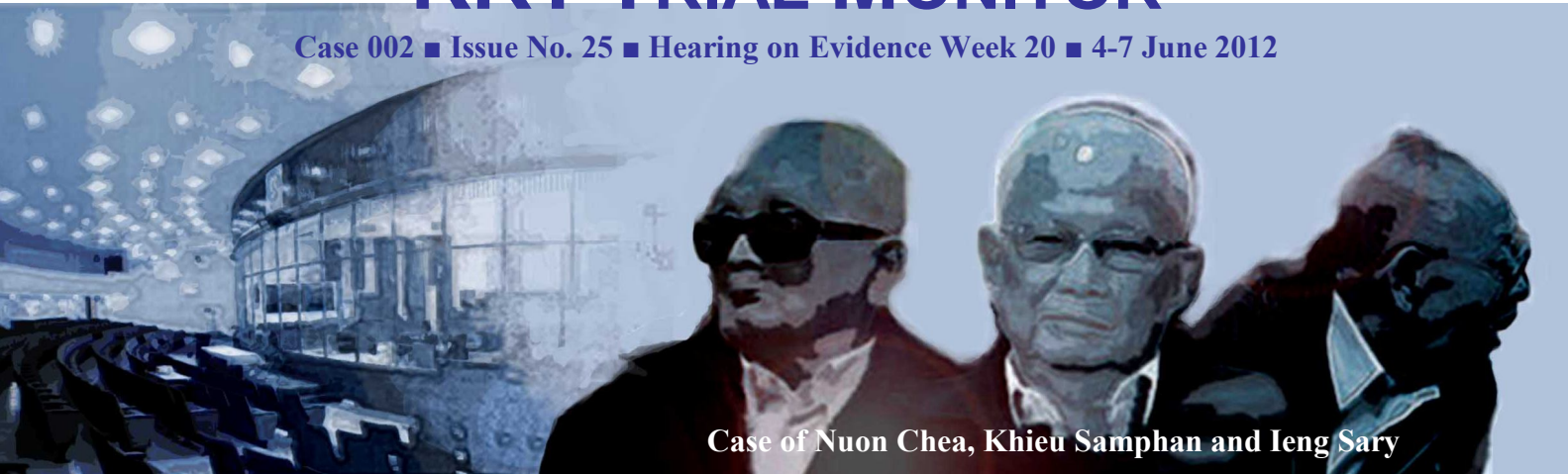


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 25 ■ Hearing on Evidence Week 20 ■ 4-7 June 2012



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

International Co-Prosecutor Dale Lysak: *Can you identify for us any district secretary other than yourself who was not arrested, killed or disappeared in 1977?*

Witness Sao Sarun: *There is none.*

## I. OVERVIEW

This week, the Trial Chamber heard the testimony of three witnesses: Messrs. Sar Kimlomouth, Sao Sarun, and Khoem Ngorn. On Monday, 4 June, international Co-Prosecutor Mr. Tarik Abdulhak continued the examination of Witness Sar Kimlomouth, the Deputy Director of the Foreign Commerce Bank. The Civil Party Lawyers, Ms. Sin Soworn and Mr. Barnabé Nekuie, then followed and concluded with their questions that same day. Counsels for Khieu Samphan, Mr. Kong Sam Onn and, thereafter, Mr. Arthur Vercken, initiated the examination of Witness Sar Kimlomouth on Tuesday, followed by counsels for Nuon Chea, Messrs. Son Arun and Jasper Pauw. The Ieng Sary Defense, on the other hand, did not examine the Witness. Sar Kimlomouth concluded his testimony after answering Judge Jean-Marc Lavergne's question on the link between Khieu Samphan and the alias "Hem."

In the afternoon of 5 June 2012, national Co-Prosecutor Mr. Seng Bunkheang began the examination of Sao Sarun, who served as sector secretary of Sector 105 (also referred to as Mondulhiri province). On Wednesday, 6 June 2012, international Co-Prosecutor Mr. Dale Lysak took over questioning Sao Sarun until Thursday, when the Chamber decided to call Witness Khoem Ngorn, and conduct alternate examinations of the two witnesses due to Sao Sarun's frail health. Khoem Ngorn worked at the Ministry of Foreign Affairs (**MFA**) after the liberation of Phnom Penh in 1975, and was tasked with accompanying foreign guests on visits to the provinces. Witness Khoem Ngorn was first examined by national Co-Prosecutor Mr. Dararasmey Chan, followed by international Co-Prosecutor Mr. Vincent de Wilde D'Estmael.

## II. SUMMARY OF TESTIMONIES

Sar Kimlomouth testified from Monday to Tuesday morning. The OCP primarily aimed to establish the chain of command between Khieu Samphan and the Commerce Committee, while the Khieu Samphan Defense Team attempted to show that the responses of the

Witness did not come from his personal contemporary knowledge of Democratic Kampuchea but merely from documents that the Office of the Co-Investigating Judges showed him during his interview. Sao Sarun, on the other hand, testified from Tuesday afternoon until Thursday morning on his duties during the DK, party policies, and his interaction with the leaders of DK. Finally, Khoem Ngorn testified on Thursday about his participation in the revolution prior to 1975 and his duties at the MFA after the liberation of Phnom Penh in 1975.

#### **A. The Testimony of Witness Sar Kimlomouth**

Abdulahak began Monday's session by focusing on the role of Accused Khieu Samphan relative to the Commerce Committee. Based on his reading of DK documents that Abdulhak showed to Sar Kimlomouth, the Witness surmised that Orn and Van Rith (the Chair of the Commerce Committee after Sua Vasi alias "Doeun"<sup>1</sup> disappeared) were inferior to Vorn Vet and Khieu Samphan. The Witness qualified this assessment, however, stating that the Commerce Committee was separate from the Foreign Commerce Bank, of which he was the Deputy Director. Accordingly, the Witness stated that he did not really know firsthand of the affairs of the Commerce Committee.

In an effort to show the chain of command among Commerce Committee Chairman Van Rith, Khieu Samphan, alias "Hem," and Vorn Vet, Abdulhak presented the Witness with six financial ledgers from January 1978 to October 1978. Since the ledgers were similar documents covering different months, Abdulhak asked the Witness to read out the handwritten notations only on the first and last ledger. All three documents were signed by Van Rith, and two had annotations "Sent to Brother Hem and Vorn." On one document, Van Rith noted, "Have already sent copies to Brother Hem." The Witness clarified that he had only seen the ledgers when the Co-Investigating Judges showed them to him during the investigation stage of Case 002. He clarified that his signature on the testimony only meant that he had simply read the documents at that time.

Another document Abdulhak brought to the Witness's attention was the handwritten minutes from a 2 December 1978 meeting, which the Witness and Ieng Sary, Minister of Foreign Affairs at the time, had attended. The Witness did not remember the meeting; however, after looking at the document, he said he found it strange that Ieng Sary was at the meeting because the subject of the meeting was a commercial matter that had nothing to do with foreign affairs. These minutes were reportedly sent to Hem and Van (presumably referring to Ieng Sary, whose alias was "Van"). The Witness did not know why the documents would have been sent to Hem and Van.

#### **1. The Civil Parties' Examination of The Witness**

During the afternoon sessions on Monday, Civil Party Co-Lawyers, particularly, Ms. Sin Soworn and Mr. Barnabé Nekuie, examined Witness Sar Kimlomouth. Sin Soworn asked Witness about his activities before 1975, during the liberation of Phnom Penh, and his duties during the Democratic Kampuchea. Nekuie primarily focused on the work of Witness during the regime.

##### **a. The Witness Before and During the "Liberation" of Phnom Penh**

Before the liberation of Phnom Penh, the Witness was the chief of the loan unit at a private bank. He indicated that he donated personal funds to the revolutionary movement and attended meetings, but stressed that there was no mention of the communist party at that time. He additionally stated that he knew Van Rith before the liberation of Phnom Penh because he had been Van Rith's professor. Sar Kimlomouth revealed that he studied at Sisowath School with Pol Pot, Ieng Sary, Ieng Thirith, and Khieu Samphan. Additionally, he

recalled that he also taught at the same school with Ieng Sary, Khieu Samphan, and Ieng Thirith.

The Witness told Sin Soworn that, when Phnom Penh was evacuated, he and his family left Phnom Penh and went to Kien Svay. There was no cooperative yet and he and his family were neither considered “new” nor “old” people. According to Sar Kimlouth, the cooperative was established around three weeks later and it was composed of intellectuals, factory workers, peasants and “base people.” He stressed that the peasants were not poor, and they had cows and buffalos, which were put to use in the cooperative. The Witness described a marriage ceremony he observed while he was at the cooperative as lacking in traditional music. While he noted that the couple’s family was not fully in attendance, he stated that it was not a forced marriage. The Witness further stressed that he only knew about his cooperative and did not know about any others.

#### **b. Role of the Witness During the DK Regime**

According to the Witness, he did not know who issued the order for him to leave the cooperative and go to Phnom Penh. The Chief of the cooperative merely informed him that he had to go to Phnom Penh, without telling him the reason behind his transfer. The Witness did not know who issued the original order. The Chief was only relying on an order from above. The Deputy Chief of the cooperative took him from Kien Svay to Phnom Penh by motorcycle and the Witness said that when arrived in the capital, Orn, the Chief of Industry (and someone who the Witness had previously studied with) reportedly allowed him to stay in his (Orn’s) own house. The Witness stated that, in Phnom Penh, he met Doeun, the Chief of the Commerce Committee. He said he did not know that Doeun was also the Chief of Office 870.

The Witness admitted that he was the Deputy Director of the Foreign Commerce Bank beginning in 1976, but he did not receive orders from any specific person, except through documents from messengers. He reiterated that the bank itself was merely a symbolic bank and that only two people worked there. There were no transactions, and no records of profits losses were made. When asked when his busiest time of work was, the Witness said there was so little activity in the bank that he had had time to raise chickens and plant vegetables.

Sar Kimlouth indicated that it was not his principal task to keep records on exports and imports. When Sin Soworn asked whether he saw any records on the importation of arms or weapons, the Witness stated that he did not and, if ever there were such transactions, he could not have handled them because they were State-to-State undertakings. Additionally, he recalled that the bank had relationships with many countries, but the Commerce Committee established these relationships, not the bank. He additionally asserted that there was no money in the bank because the Commerce Committee handled monetary transactions. He did not know whether DK traded in gold or diamonds. The Witness further stated that there must have been other currencies that were used in trading because the Yuan was not strong enough at that time. When Nekuie asked the Witness whether or not the Foreign Commerce Bank met international banking standards, he said that it did not because it had no accounting system and that it was not a bank as commonly understood.

Since he spoke French, the Witness said he was sometimes asked to accompany foreign delegations to the provinces to act as interpreter. However, he did not say who asked him to perform this task. As regards supplies, Sar Kimlouth said he did not notice the depletion of food reserves because he and the delegates were far from the cooperatives and no one came to tell them about it.

## 2. Examination of the Witness by the Defense Teams

On Tuesday, the Chamber gave the Defense Teams half a day to question Sar Kimlomouth. Khieu Samphan's counsels questioned the Witness first, followed by counsels for Nuon Chea. The leng Sary Defense declined to examine the Witness.

### a. Examination by the Khieu Samphan Defense

Throughout his line of questioning, Kong Sam Onn aimed to demonstrate that there was no clear link between the Witness and his client Khieu Samphan. Sar Kimlomouth confirmed that he and Khieu Samphan never discussed the resistance movement, and that he did not have communications with Khieu Samphan after 1970.

In terms of the role of Witness prior to 1974, the Witness asserted that he did not have a role or a status within the Communist Party. He considered himself to have been *saman chun*, or a sympathizer to the revolutionary cause; however, he indicated that a *saman chun* was not always considered to be an active member.

According to Sar Kimlomouth, when he arrived in Phnom Penh after leaving the cooperative in Kien Svay, Vorn Vet told him that they needed a representative with knowledge in banking to meet with a Chinese delegation that had brought its own banking representative.

When the DK's State Bank was established, it had no structure, and received neither guidance nor advice from the upper echelon, the Witness recalled. He asserted that he was not even sure if the Bank's General Director — known to him as a certain Mey— was even a real person. He also indicated that, in a meeting between Cambodian representatives and Chinese delegates, he provided guidance in order to facilitate understanding of technical terms. He moreover gave occasional recommendations on the matter of exports to officials of the Commerce Committee; however, he only contributed what he could, based on the little theory he knew.

When pressed by Kong Sam Onn about a statement the Witness made to the OCIJ about “assuming” that Hem was superior to Orn, the Witness stated that he came to this conclusion after seeing documents the OCIJ presented to him. The Witness additionally said that he came to the conclusion that Vorn Vet was subordinate to Hem as the Chairman of the Commerce Committee only through the documents provided to him by the OCIJ. He emphasized that he did not have prior knowledge of this hierarchy. The Witness indicated that while he was the Deputy Director of the Foreign Commerce Bank, he had “no communication with Hem... the Bank did not report to [Hem], nor did [Hem] contact the Bank, nor did [the Witness] meet him in person.”

Vercken asked whether Sar Kimlomouth ever thought Hem was his direct supervisor during the DK regime. The Witness stated that he never thought this, but had believed that Khieu Samphan might have been a leader in the upper level. The Witness was unsure as to whether or not Hem was his superior and stated that he heard through an announcement that Khieu Samphan was the Prime Minister at the time. However, it was unclear whether Khieu Samphan also oversaw the Bank. Finally, Vercken asked whether the Witness was familiar with Khieu Samphan's handwriting or signature, and the Witness replied that he was not.

## **b. Examination by the Nuon Chea Defense**

Nuon Chea's national counsel, Son Arun, focused on historical events before 1975, but Prosecution and the Civil Party Lawyers both objected to these questions; the objections were sustained by the Trial Chamber on the ground that this line of questioning was outside the scope of the Closing Order. As President Nil Nonn explained,

The facts you mentioned cannot be found by the Bench in the Closing Order. There was no mentioning of the Dien Bien Phu war as part of the facts in the Closing Order. You are also reminded again to be mindful in your questioning to the witness. No party can draw experience from personal knowledge to be used in the courtroom. Otherwise, you should better serve as a witness, not a party to the proceedings because if you rely on your knowledge of the facts, you should treat yourself as a witness.

International counsel Jasper Pauw, followed-up by asking a number of questions related to documents the OCIJ presented to the Witness during the investigation phase of Case 002. Pauw inquired whether these documents helped the Witness understand the structure of the Democratic Kampuchea regime. The Witness stated that, while the documents helped him to a certain degree, they did not provide detailed information. When Pauw asked Sar Kimlomouth for the basis of his assertion that Cambodia did not export un-milled rice in large quantities, the Witness said it was merely his personal assumption, not based on statistics or on documents. Although Pauw intended to continue using documents in his examination, when shown a particular document, the Witness stated that he had not seen it before. Consequently, President Nil Nonn instructed the removal of the document. However, the President assured Pauw that he may continue his line of questioning, provided that he did not refer to the contents of the document. Pauw refused to ask any more questions without the document in front of the Witness and instead chose to conclude his examination.

## **3. Examination by the Trial Chamber through Judge Lavergne**

Judge Lavergne asked the Witness whether there were any objective reasons to doubt that Khieu Samphan is the person identified as "Hem." The Witness responded that this was a complicated issue because there could have been many other persons named "Hem" who were unknown to him. Witness nevertheless pointed out that, everyone now knows that Hem is Khieu Samphan; he just could not prove this with a document.

## **B. The Testimony of Witness Sao Sarun**

The Witness, Mr. Sao Sarun, is 80 years old. Although a "revolutionary biography" the OCP presented showed that he had an alias, "Bai," the Witness said that he was known only as Sao Sarun. The Witness' poor eyesight prevented him from seeing the red light on the microphone that signaled his turn to speak during the proceedings. Moreover, Sao Sarun stated that his memory had suffered due to an illness. As such, his memory had to be frequently refreshed through the use of his previous statements to the OCIJ.

### **1. The Role of Witness Before and During the DK Regime**

According to Sao Sarun, he joined the revolution in 1954. While he had minimal lessons on the party's political lines, he admitted having attended two to three-day training sessions in the village. At that time, his role was to educate the people about the revolution on principles such as self-sustenance. After 1970, he became the deputy secretary of a commune in Mondulkiri and was responsible for its economic affairs. At the time, the Witness was also a member of the village militia.

From 1971 to 1978, he was appointed secretary of Pech Chenda District. His duties were to manage the people and to ensure that they had enough food and shelter. He also had the power to appoint commune secretaries in his district. He emphasized that, as the district secretary, he did not have the power to arrest anyone. Additionally, he was in charge of economic affairs for Pech Chenda and Or Raing districts. He was also part of the “foreign committee” in 1974. His knowledge of the Jarai dialect led to his appointment and he was tasked with communicating with people in the region who spoke this dialect. In 1975, he was a sector member in charge of health and was responsible for hospitals and housing in the sector. This duty included having to making sure that the hospitals were clean.

After the death in 1978 of Ta Laing, the sector secretary and Sao Sarun’s superior, Pol Pot appointed him sector secretary. He stated that he tried to turn down the job, but Pol Pot insisted. As a result, Sao Sarun served as sector secretary for two months, until the Vietnamese invaded Cambodia in 1979.

## **2. Administrative Structure of the DK Regime**

Initially, the Witness was in charge of a district, then subsequently, a sector. He was thus able to describe in some detail the administrative structure of his area of responsibility, Sector 105. During his testimony, Sao Sarun used “Sector 105” and “Mondulkiri” interchangeably. Sector 105, he described, was composed of five districts: Koh Nhek, Chhbar, Pech Chenda, Or Raing, and Keo Semar. Pech Chenda was made up of four communes: Krang Tes, Bou Sra, Tos Svay and Kao Khlei. He further explained that Pech Chenda and Keo Semar shared borders with Vietnam. According to Sao Sarun, the commune secretaries reported to the district secretaries, who, in turn reported to the sector secretary. An official, who may or may not be a party member, oversaw each commune. There were approximately 3,400 residents in the Pech Chenda District.

Sao Sarun recalled that there was a security or correction center attached to the sector office. Sector 105 also had a commerce office, known as K-16. The Witness further stated that in late 1975, Military Division 920 was in Koh Nhek District, Mondulkiri. There were stations in other districts as well.

The Witness testified that there was one sector hospital in Sector 105. Each district had a smaller district hospital. Medicine and medical equipment for all these hospitals came from Phnom Penh and there was sufficient equipment and supply during the DK regime. Malaria was the major disease in the region at that time and there were also cases of tuberculosis.

## **3. Interaction with the Leaders of DK**

The Witness revealed that he participated in several meetings where the leaders of the DK regime were present, including two meetings in Kampong Thom. The first meeting took place between 1970 and 1975. He did not specify the year it occurred and he concurred when the OCP asserted that this meeting took place in 1971. During this meeting, Sao Sarun recalled, Pol Pot made presentations about fighting American Imperialists. The second meeting, on the other hand, was conducted in 1972. According to the Witness, he saw Nuon Chea and Pol Pot at the meeting but did not see Khieu Samphan. At that time, the Witness was unaware of Nuon Chea’s role in DK. Sao Sarun narrated that during the meeting, Nuon Chea gave a presentation about fighting American imperialists.

About a month after the “liberation” of Phnom Penh in 1975, the Witness was present at a well-attended, three-day meeting in Phnom Penh at the Cambodian-Soviet Friendly School. At that meeting, representatives from every region, as well as military representatives, were

present. The Witness testified that Nuon Chea made a presentation on rebuilding the country, closing the market, and reopening the market in the future. Pol Pot presented on issues relating to building irrigation plans and canals throughout the country to help rice farming.

As previously indicated, Sao Sarun met with Pol Pot in 1978 regarding his replacement of Ta Laing as sector secretary. Son Sen and Nuon Chea were reportedly present as well at this meeting, which was held at an office behind the Royal Palace. A few months later, he was called to Phnom Penh with five other cadres for another meeting at the office located behind the Royal Palace with mostly military leaders from Sector 105 or Division 920. According to Sao Sarun, Pol Pot, Son Sen, Nuon Chea, and Khieu Samphan attended the meeting and discussed matters concerning “managing the forces,” principles of self-sufficiency, and strengthening the border. The Witness said that he not only talked about economic matters with Khieu Samphan, he also requested materials and supplies, including salt and clothes for the people. Sao Sarun moreover said that he informed Khieu Samphan about the shortages in Sector 105. The Witness testified that he raised all these issues with Khieu Samphan, whom he believed was the Head of State at that time.

The Witness confirmed that he attended two political training sessions in Phnom Penh from 1975 to 1978: once in Borei Keila and the other time in a location between Borei Keila and the Russian Federation Boulevard.<sup>2</sup> Each session lasted around 12 days. At these sessions, the Witness testified that Nuon Chea gave a presentation on economic matters and led discussions on leading and encouraging people to do farming to avoid famine. Sao Sarun added that the meeting’s organizers read out the names of Pol Pot, Khieu Samphan, Ieng Sary and Ieng Thirith who were then also present at these sessions.

The Witness testified that he communicated with the leaders of DK by means of telegrams. According to Sao Sarun, at least once every two weeks, he wrote telegrams by hand and gave them to an encoder. He received responses from various sources: M870, Pol Pol, and Nuon Chea. M870, as testified by the Witness, referred to the central committee, consisting of Pol Pot, Nuon Chea, Khieu Samphan, Son Sen and Ta Mok. Thus, he answered in the affirmative when Lysak asked as follows:

When you were asked about this telegram by the OCIJ, they asked: telegram 47 addressed respective brothers M870, what did that mean? The answer you gave: M870 referred to the Central Committee consisted of Pol Pot, Nuon Chea, Khieu Samphan, Son Sen and Ta Mok.

When Lysak specifically asked Witness, “...when you addressed a telegram to Office 870, who did you understand you were sending this telegram to?” Witness replied, “Office 870 was the Office of Pol Pot.”

Lysak referenced three specific telegrams during the proceedings, all of which were correspondence between the Witness and Pol Pot. In the first telegram, the Witness requested instructions from Pol Pot regarding an incident where a boat carrying gasoline and diesel caught fire. The second was a request for instructions the Witness sent to Pol Pot concerning the re-arming of the people, following a previous disarming. The third was another request for instructions following investigations about Soth, the chairman of the repair factory, who had allegedly committed immoral acts with a woman despite being a married man.

#### **4. Party Policies**

Prior to 1975, there were mutual-assistance groups called “solidarity groups” within the region. The Witness described “solidarity groups” as “a kind of mutual assistance groups.” Despite being in solidarity groups from 1971 to 1975, people ate separately. Cooperatives, the Witness revealed, were established in Mondulkiri around 1977. He differentiated these two systems by saying that people living in cooperatives ate communally, in groups of 20 to 30. The sectors communicated instructions on the amount of rations in cooperatives.

During a three-day meeting Sao Sarun attended in the capital in 1975, the participants discussed the matter of abolishing private property. Property, including cattle, was to be put to communal use in the cooperative. The Witness, however, did not state whether this was carried out in his sector. Sao Sarun further testified that, as far as he knows, personal currency notes were not collected in his sector. He stated that there were no markets in the region even before 1975 because of the constant bombardment by the Americans. Thus, there was no market to be closed after the liberation of Phnom Penh. He also stated that people in Mondulkiri were not divided into groups who enjoyed different rights.

Sao Sarun testified that Pol Pot also gave instructions on marriage during the three-day meeting in Phnom Penh. Wedding ceremonies could be performed, either for individual couples or for multiple couples at a time. Approval from the parents, the consent of the bride and groom, and approval from Angkar was required in order for a couple to marry. At the marriage ceremony, the couple would make a resolution that they would love each other and commit to each other. The Witness added that married couples were allowed to live together.

The Witness testified that religion was not prohibited in Mondulkiri during the DK regime. However, the people were not allowed to organize big events. They were also told to put more effort in farming rather than performing certain religious beliefs. Buddhist pagodas were built in Mondulkiri in around 1963. There were three pagodas in 1975 but these were closed down after April 1975. American bombardment caused not only the destruction of houses and pagodas but also the flight of monks from the area, the Witness recalled. From 1970 onwards, bombs were dropped in the region at all hours of the day and night. Sao Sarun further stated that he did not know why pagodas were not rebuilt during the DK regime. He added that people who practiced a tribal custom of animal sacrifice were instructed to reduce the number of sacrifices because of the difficult economic situation.

According to Sao Sarun, self-criticism meetings were held in Sector 105 during the DK regime. They were conducted once every 6 months, in groups of 8 to 10 at the sector level. At district levels, district secretaries and sub-district secretaries attended these meetings. During self-criticism sessions, the Witness said attendees were to be good, be loyal to the people, and not to have any “impact on the interests of the people.” He stated that while participants criticized themselves, no disciplinary action was taken after the meetings.

The Witness stated that, on 17 April 1975, he was in Pech Chenda and was not aware of the plan and details of evacuation of people from cities and provincial towns.

#### **5. Killings and Disappearances**

Sau Sarun confirmed the fact that every district secretary (excluding himself) died, disappeared or was arrested sometime in the year 1977. Sao Sarun testified that he did not know why this happened. Ma La, Sao Sarun’s predecessor in Pech Chenda, was taken to the sector office and disappeared in 1977. Mey, a member of the sector committee, also disappeared in 1977. A certain district secretary named Svay allegedly shot two people



dead before hanging himself in the rice field. The victims were Ky, the district secretary of Or Raing, and Dan, a member of the Pech Chenda district committee. Both victims were Sao Sarun's brothers-in-law. There was another incident involving Ta Laing, (who Sao Sarun replaced as sector secretary) and Khamphoun, the person in charge of K-16, the sector commerce office. The Witness said he was told that Khamphoun killed Ta Lang with the use of car parts before fatally shooting himself.

As revealed by a telegram Sao Sarun reportedly sent Pol Pot, there was an incident where a boat carrying gasoline and diesel caught fire. Three men, including a man called Lin, were working on the boat at that time. The Witness was then showed a list of S-21 prisoners, which included Lin's name. However, the Witness claimed that Lin is still alive today.

The Witness testified he did not have authority to decide whether or not to release a detainee imprisoned for betrayal of the party (e.g. accusations of collaboration with the aggressor), because he needed instructions from higher authority to release a suspected traitor. He stated that there were a few people in detention when he became the sector secretary. He questioned and released them after seeking approval from the upper echelon. Sao Sarun also stated that no one who was questioned was smashed.

### **C. The Testimony of Khoem Ngorn**

The final witness of the week, Khoem Ngorn, is a 57-year old former combatant who also served as a messenger in Takeo Province. He was later transferred to Phnom Penh to work at the MFA, and was tasked with accompanying foreign guests of the Ministry. Khoem Ngorn stated that he was illiterate. During the course of his testimony, the Witness had difficulty recalling dates.

#### **1. Recruitment and Responsibilities before the CPK came into Power**

Dararasmey Chan began his examination with questions on Khoem Ngorn's personal background and recruitment to the revolutionary movement. The Witness recalled that he left home to join the revolutionary movement at the age of 15 or 16. He stated that he merely followed his friends and volunteered to join the army; he did not understand the rationale behind the movement. As a soldier, he was assigned to different communes and districts in Takeo province. The Witness stated that, when he was given duties as a messenger in Takeo province, he did not interact with high-level cadres. He was instructed to be punctual in delivering messages. When asked what the sanctions were for failure to follow instructions, Witness replied, "They called me for re-education. They sometimes suspended me for a day or so and, during that period, they would re-educate me." As regards political training, the Witness revealed that combatants were given "moral and other behavioral advice" during these sessions. He further explained that he was not allowed to visit his family or to practice any religious ceremonies. The Witness stated that he wanted to leave the movement, since there were many instructions; however, he did not do so because he was afraid that his family would be "intimidated."

Khoem Ngorn recalled that Takeo was evacuated prior to 1975. He described the evacuation as small-scale and said that he did not know where the people were transferred.

#### **2. Role During the DK Regime**

Around half a month after the liberation of Phnom Penh, Khoem Ngorn was transferred to the capital and, upon completion of the training session, he was designated to the work at the MFA, where he accompanied foreign guests to provinces. The Witness stated that he was instructed not to talk to the guests about politics and he was not allowed to move around

freely. He testified that he did not know who the Minister of Foreign Affairs was, nor the sections of the Ministry; he only knew a certain Hong, who made him write a biography when he came to the MFA.

### **III. LEGAL AND PROCEDURAL ISSUES**

During the week, the Trial Chamber reminded Parties to ask only relevant questions within the scope of the Closing Order. The Trial Chamber also endeavored to ensure that Parties observed its previous ruling to retrieve documents from witnesses once the witness indicated that he or she did not recognize the document. The Trial Chamber also dealt with observed discrepancies between written and audio records of witness interviews with the OCIJ.

#### **A. Issues not Covered in the Closing Order**

The Closing Order is the “final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, whether Indictment or Dismissal Order.”<sup>3</sup> It is key to ensuring that the trial is contained within a set of confines and “the Trial Chamber’s judgment is limited to the facts set out in the Indictment... [making it] of critical importance in setting the scope of the trial.”<sup>4</sup> Throughout the week, asking questions beyond the scope of the Closing Order was a recurring issue. On Tuesday, both Abdulhak and the CPLCL Ms. Elisabeth Simonneau-Fort objected Son Arun’s line of questioning during Sar Kimlomouth’s examination. Simonneau-Fort stated that Son Arun was “giving his historical perspective without providing documents.” Son Arun responded that his facts were indeed, “based on historical documents.” The Chamber ruled Son Arun was not allowed to raise his assertions because they were not contained in the Closing Order. (See also II.3.B)

On Wednesday, Ieng Sary’s international counsel, Mr. Michael Karnavas, objected to Lysak’s question to Witness Sao Sarun about the Democratic Kampuchea’s inability or refusal to rebuild pagodas. Karnavas claimed this was not in the Closing Order. The President disagreed with Karnavas and allowed Lysak to proceed with his examination.

On Thursday, Son Arun objected to the questions on the experience of a third party Dararasmey Chan put to Sao Sarun. He argued that Sao Sarun did not personally witness these events. The President sustained the objection and warned the Prosecutor to stick to the facts outlined in the Closing Order.

In the preceding hearings, the Trial Chamber referred to its Severance Order dated 22 September 2011<sup>5</sup> to determine the relevance of questions and arguments of Parties, and statements of the Accused. Unlike the Closing Order, which pertains to the entirety of Case 002, the Severance Order has limited this first trial to cover only (i) the structure of Democratic Kampuchea; (ii) roles of each Accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned; (iii) role of each Accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication throughout the temporal period with which the ECCC is concerned; (iv) policies of Democratic Kampuchea on the issues raised in the Indictment; (v) factual allegations described in the Indictment as population movement phases 1 and 2; and (vi) crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2). By citing the Severance Order during the previous hearings on evidence, the Chamber has contained the proceedings to topics within Case 002’s first trial. It is unclear whether the Chamber’s reference this week to the Closing Order instead of the Severance Order signifies willingness to consider matters beyond the ambit of the Severance Order, as long as it is within the wider purview of the Closing Order.

## **B. Use of Documents**

During the week, the International counsels for Noun Chea disagreed with the Bench over the removal of documents when witnesses say they have not seen them before, notwithstanding the inclusion of these documents in the Parties' Documents Lists. On Tuesday, Pauw, objected when the President ordered a document removed after Witness Sar Kimlomouth stated that he was not familiar with the document. Pauw argued that he wanted to use the document in order for the Witness to shed light on the export of rice. Karnavas, supported Pauw's objection stating, "Nothing prevents a Party from posing questions about the content of the document." The President agreed, stating that nothing "prevent[ed] counsel from asking the questions;" he was merely instructing the removal of the document in accordance with the established practice of the Chamber. Pauw thus ended his examination, arguing that removing the document poses serious limitation on the manner Parties question witnesses, and that, he had "not heard in the past months a principle why documents that have not been seen by the witness cannot be used." The President simply referred him to an earlier decision of the Chamber and moved on.

Another issue during the questioning of Sar Kimlomouth was the use of documents that he had only seen during his interview with the OCIJ but not during the regime. Three issues related to these documents were observed during the course of examination: (i) the Witness may not remember that he had already seen a certain document; (ii) in some cases, the Witness had only seen a portion of the document; and (iii) the understanding of the facts on the part of the Witness came from the documents and not from his own memory. Sar Kimlomouth, however, was careful in pointing out which answers were based on his own knowledge, on mere presumptions, or on documents shown during the OCIJ interview.

## **C. Request for Record of Interview to Compare with Translation**

During the OCP's examination of Sao Sarun, they often relied on records of Sao Sarun's interview with the OCIJ to refresh his memory. This was necessary, as the Witness repeatedly said that his memory deteriorated after he fell ill. Vercken, raised the observation that his Team found discrepancies between the record of Sao Sarun's interview and the notes his Team made from the audio recording of the interview. Vercken clarified that the alias of his client was clearly indicated in the audio recording but was not specified in the record of the interview as read during the Sao Sarun's examination. International Counsel for Nuon Chea, Mr. Michiel Pestman, also made a request for transcripts of the audio recording interview of the Witness to allow them to determine discrepancies in the records. Judge Jean-Marc Lavergne stated that the Chamber has no objections to such requests but asked the requesting Parties to file a written submission and indicate particular portions of the interview that need transcription and translation.

## **IV. TRIAL MANAGEMENT**

The Chamber conducted this week's hearings with considerable resolve in ensuring that proceedings are as speedy as possible. To this end, the chamber had a witness on standby, Khoem Ngorn, who was called to the stand whenever Sao Sarun indicated that he was too weak to continue his testimony. During the proceedings, the Chamber intervened in the Parties' examination of the witnesses to warn against repetitive and irrelevant questions.

### **A. Courtroom Etiquette**

Minor concerns on proper court decorum arose when Vercken interrupted Abdulhak's examination on Monday by suggesting that the latter refer to another document which

contained a more accurate record of Sar Kimlomouth’s statement, instead of just referring to a mere summary. Karnavas raised a similar point. The President responded by raising his voice and then muting Vercken’s microphone when he tried to speak. The President then asked Vercken not to interrupt, indicating that he would have his time to ask questions, leaving Vercken to argue in a loud voice without a microphone.

Towards the end of the proceedings on Monday, President Nil Nonn noticed that Pauw was on his feet, and reminded him that the Chamber was not allowing statements at that point. Pauw replied, “I’ll be very brief. Please do not mute my microphone,” and informed the Chamber that the Defense Teams had agreed on the order of examination of the Witness Sar Kimlomouth.

**B. Attendance**

Except for leng Sary, all the Accused were present at the beginning of each of the trial days this week. The previous week, leng Sary had informed his counsel that he was still experiencing dizziness when sitting up for a lengthy period.<sup>6</sup> Thus, the President had instructed the leng Sary Defense to submit a formal waiver of their client’s right to participate directly in the Chamber before the start of proceedings so that leng Sary may participate in the hearing from his holding cell. Towards the end of each morning session during the week, Noun Chea requested leave to participate remotely from his holding cell. As is usual, only Khieu Samphan was present all throughout the proceedings.

**Attendance by the public.** Despite rain showers throughout the week, 1,694 persons came to observe the proceedings during the four days of trial. There were students and villagers from Svay Rieng Province, Kandal Province, Takeo Province, Kampot Province, Pong Tuek High School and Asian Europe University in Phnom Penh.

**C. Timetable**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 04/06/12	9:00	10:30-10:50	11:54-13:30	14:42-15:00	15:43	4 hours 29 minutes
Tuesday 05/06/12	9:00	10:32-10:51	12:11-13:35	14:42-15:01	16:02	5 hours
Wednesday 06/06/12	9:00	10:30-10:50	12:02-13:29	14:31-15:01	16:03	4 hours 46 minutes
Thursday 07/06/12	9:00	10:32-11:00	12:05-13:32	14:44-15:00	16:00	4 hours 49 minutes
Average number of hours in session				4 hours 46 minutes		
Total number of hours this week				19 hours 4 minutes		
Total number of hours, days, weeks at trial				299 hours 53 minutes		
<b>70 TRIAL DAYS OF 21 WEEKS</b>						

**Unless specified otherwise,**

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

**Glossary of Terms**

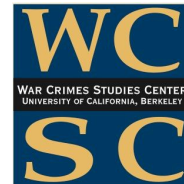
Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
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



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AIJI TRIAL MONITORING



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

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<sup>1</sup> Kaing Guek Eav, alias “Duch”, during his testimony before the TC, had confirmed that Sua Vasi alias “Comrade Doeun” was the “Chairman of Political Office 870, later transferred to the Ministry of Commerce”. See CASE 002 KRT TRIAL MONITOR Issue No. 16, Week 11 of Evidentiary Hearings (26-29 March 2012). 3.

<sup>2</sup> The Closing Order describes Borei Keila as a meeting place, also referred to as K-6. At Borei Keila, Nuon Chea was said to have conducted several mass political trainings where he taught the policies of the CPK to

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Party cadres and workers in Phnom Penh. OCIJ. "Closing Order" (15 September 2010). D427. Paragraphs 59 and 886.

<sup>3</sup> The Internal Rules defines the Closing Order as the "final order made by the Co-Investigating Judges or the Pre-Trial Chamber at the end of the judicial investigation, whether Indictment or Dismissal Order." Extraordinary Chambers in the Courts of Cambodia Internal Rules (Rev. 8), as revised on 3 August 2011. "Glossary". 80.

<sup>4</sup> Clarens, Margarita. *Analysis of the ECCC Closing Order Indicting Kaing Guek Eav (Duch)*. Available at <<http://www.dccam.org>>.

<sup>5</sup> Trial Chamber. "Severance Order" (22 Septmeber 2011). E124. Para. 1; 5. 1; 3.

<sup>6</sup> See CASE 002 KRT TRIAL MONITOR Issue No. 23, Week 18 of Evidentiary Hearings (21,23 May 2012). 2.



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