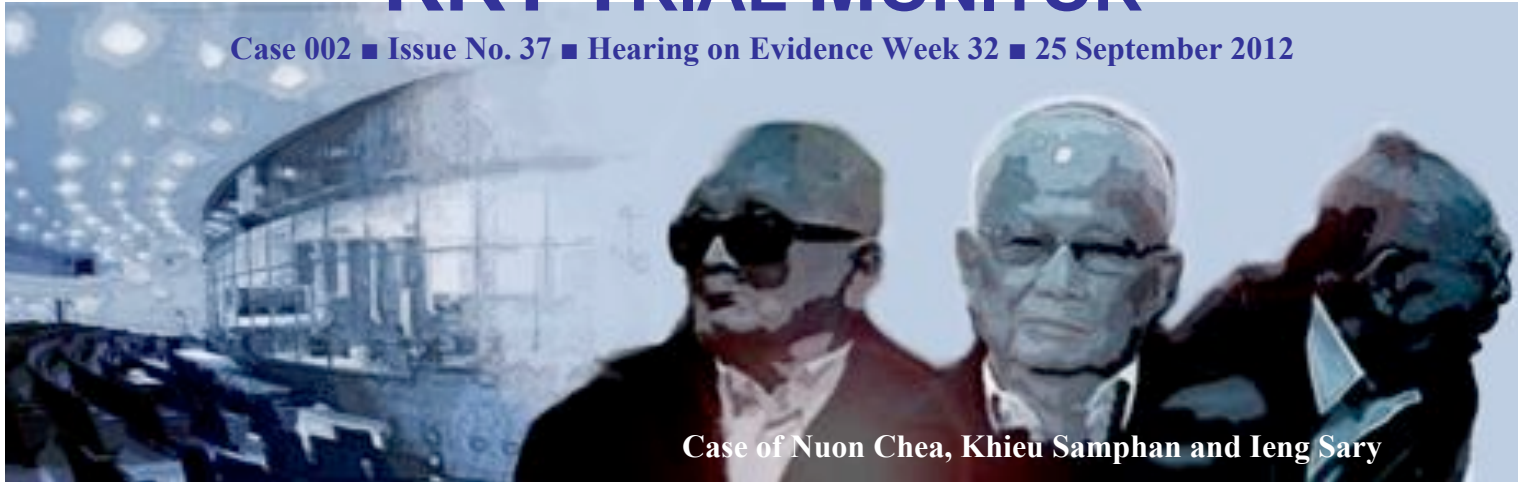


KRT TRIAL MONITOR

Case 002 ■ Issue No. 37 ■ Hearing on Evidence Week 32 ■ 25 September 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

*... at that time, husband and wife
were not supposed to know one another's business.*

- Witness Noem Sem

I. OVERVIEW

The Trial Chamber continued to grapple with adjustments to the schedule due to Ieng Sary's continued ill health and his limited waiver.¹ As a result, only one witness, Ms. Noem Sem (TCW-475), was available to testify this week. A singer and news reader for the Ministry of Information and Propaganda, Noem Sem testified on her role in the party, the administrative structure of her Ministry, Office 870, and the different K offices during Democratic Kampuchea. She concluded her testimony in one day and the Trial Chamber declared a recess for the week. Trial is set to resume on Monday, 1 October 2012.

II. SUMMARY OF NOEM SEM'S TESTIMONY

Noem Sem,² the third female witness in this trial, is a 59 year-old widow from Malai District, Banteay Meanchey Province. Currently a rice farmer, she was a singer during the DK and the wife of Khan Lin alias "Ken". Khan Lin served as Pol Pot's bodyguard and Office 870's chairperson during the waning days of the regime. The Witness provided candid testimony on her experiences in the CPK. However, as a low-level cadre and due to the passage of time, her recollection of some events was limited. As she had only limited interactions with the Accused, she was unable to recall details on the structure of the DK regime during her testimony.

A. Background and Role during the Revolution

Noem Sem was originally from Peam Commune, Kampong Tralach District, Kampong Chhnang Province. She recounted how she fled to the jungle with her sisters in 1968 from fear of arrest after the village chief got hold of a letter from their brother, who was in the revolution. Initially a medical trainee in Aoral Mountain at Kampong Speu, she was reassigned to the movement's art group, where she performed songs to educate people on the revolutionary cause. She was then transferred to S-6, the art group for the Center, which was in Sector 304 in Kampong Thom.

The Witness was part of a performing troupe, which accompanied Ieng Sary, Khieu Samphan, Ieng Thirith, Suong Sikoeun,³ and Tiv Ol on a diplomatic trip to 13 countries in early 1974. On Ieng Sary's instructions, she proceeded to Hanoi after the tour and worked as a singer for the FUNK radio station. Although she was not certain, she named Ieng Thirith and a certain Sou as possible persons in charge of the station.

In May 1975, after the liberation of Phnom Penh, she proceeded to the city with Ieng Thirith, where she worked under the DK Ministry of Information and Propaganda. Similar to her duties in Hanoi, she served as a performer and news reader for the DK's radio station on her arrival in Phnom Penh. She frequently read articles on subjects such as the defeat of the Lon Nol regime and American imperialists, and articles that encouraged people to build canals and dams.

In August 1975, their superiors arranged for her marriage with Lin alias "Ken," Pol Pot's bodyguard. After the wedding, she initially continued her duties in the Ministry of Information and Propaganda, but in 1976, she stopped working and moved to K-8 to look after her child. She remained in this unit for the most part of the DK regime, staying for a month at K-11 when she was hospitalized, and one night at K-7 when she visited her husband. The Witness said this precipitated repeated questioning from her husband, who told her that she was implicated by the confessions. She would have been taken away, the Witness added, if not for Pol Pot's intervention. She affirmed the truth of an earlier interview,⁴ where she divulged her precarious situation after Hu Nim's arrest, to wit:

Lin threatened me every day, asking me what Hu Nim had said and what education Hu Nim had given me, telling me that I was involved; I had been implicated in the answers. I knew that if I would be caught I would die. In fact, Lin wanted me to be arrested to protect himself, but Pol Pot did not allow this.

However, it appears that she stayed with her husband following this event and even after the fall of the regime.

B. Administrative Structure

The Witness provided limited testimony on the administrative structure of the Ministry of Information and Propaganda and the structures under Office 870's supervision.

1. Ministry of Information and Propaganda

According to Noem Sem, Hu Nim headed the Ministry of Information and Propaganda at the start of the DK. Sao alias "Trea" was the chair for the performance art group and also wrote songs for the party. However, she was unable to provide further information on the administrative structure of this Ministry.

2. Office 870 and the K Offices

The Witness affirmed that K-8, K-7, and K-11 were under the supervision of Office 870, stating that, "all K offices were under 870." She described K-8, as the place she lived in during most of the DK, as a vegetable growing unit that supplied their own unit and an unnamed market for foreigners. Wives and children of bodyguards worked there, but curiously, Noem Sem said that, due to her health, she did not work in K-8 and she only took care of her child. She lived there with the family of another bodyguard while her husband stayed in K-1.

Noem Sem disclosed that Offices K-1 and K-3 were locations where Nuon Chea, Pol Pot, and Khieu Samphan stayed, moving often between the two locations. While foraging for vegetables, she saw the wives of Nuon Chea and Khieu Samphan in K-1.

When asked about her husband's role in the regime, Noem Sem said that she knew Lin was Pol Pot's bodyguard or messenger at the time of their marriage, but she does not know the specific duties he performed. She also said her husband went to K-7 during the DK, but she does not know what he did there or what the unit's function was. Upon Pang's arrest in 1978, Lin assumed his position as head of Office 870 or S-71, but she was unsure if these codes referred to the same unit.

C. CPK Policies

Noem Sem was unable to recall the contents of the CPK announcements or political lines she read over the radio, stating that she "did not pay any particular attention" to these matters. She was unable to recall most of the terms read to her by the OCP, such as "great leap forward," "class struggle," or "party strategy." However, her testimony touched upon a few CPK policies in relation to her personal experience during the DK.

1. Arranged Marriages

The Witness admitted that her marriage to Lin⁵ was arranged by "Angkar." To her, the term "Angkar" referred to "the leadership." Her husband's superior proposed the marriage to her superior, Hu Nim. When her opinion on the union was sought, she acceded, replying that, "it depended on Angkar," so Hu Nim agreed to the marriage. Leaders and a few party members attended the wedding ceremony instead of their families. There was no religious ritual during the wedding, instead the couple wore their typical black clothes, recited their biographies, held hands, and made their "commitment to work hard." Another couple, Sao and his wife, were also married in the same ceremony.

2. Arrests and Disappearances

When Noem Sem was asked if she knew of any arrests in K-8, she recalled that Yorn, the person who looked after the storehouse in K-8, disappeared. However, she did not personally see him brought away. She also heard that Pang, the head of Office 870, was accused of being a traitor and arrested, followed by his associate Phum. She also learned of the arrest of her superiors Hu Nim and Sao, who were accused of being CIA agents, which also caused her husband to question her on her connection with these leaders (See II.A. above).

3. Principle of Secrecy

According to Noem Sem, "(w)hen it comes to keeping secrets, it was about keeping things to yourself and not allowing others to know." When asked if her husband discussed his role in the investigation of suspected traitors, she said that, "he never told me about this because, at that time, husband and wife were not supposed to know of one another's business."

D. Interactions with the Accused

Noem Sem only provided limited testimony relating to the three Accused. She recalled that, prior to the DK, she saw Nuon Chea once when the leader gave a lecture during a political study session. She also said that Ieng Sary and Khieu Samphan gave speeches during their visits to foreign countries, but she could not recall their content. During the DK, Noem Sem

saw Nuon Chea in K-3⁶ having a meal with Khieu Samphan and Pol Pot. However, she did not know of Nuon Chea's relationship with Office 870.

III. LEGAL AND PROCEDURAL ISSUES

The usual issues during testimony were present during the hearing, with allegations of irregularity in the conduct of investigations before the OCIJ brought again to the Chamber's attention.

1. Conduct of OCIJ Investigation

In his questions, Ieng Sary's international defense counsel, Mr. Michael Karnavas, emphasized procedural lapses during the course of Noem Sem's OCIJ interview. He quoted a portion of the interview where the investigator prodded the Witness to divulge the names of persons who worked with Lin, mentioning an unrecorded morning interview: "(w)hat are the names? Auntie told me this morning. You told me a lot this morning." Noem Sem admitted that she provided the investigators with information in the morning of 18 July 2009 before her answers were tape-recorded in the afternoon.

As in previous weeks, this highlights the Defense Teams' assertion of irregularities in the conduct of the OCIJ investigation.⁷ Similar to this Witness, it appeared that previous witnesses Oeun Tan and Norng Sophang also gave unrecorded interviews prior to their taped interviews, matters that the Ieng Sary Defense raised in written submissions.⁸ While the Chamber has yet to rule on these submissions, it has already ruled in favor of the presumption of regularity of the OCIJ investigations, stating in open court that questions relating to the OCIJ's methods of investigation should have been raised during the investigative phase.⁹ This is in accordance with Internal Rule 76 (7), which provides that, "the Closing Order shall cure any procedural defects in the judicial investigation. No issues concerning such procedural defects may be raised before the Trial Chamber or the Supreme Court Chamber."

2. Scope of the Trial and Relevance of Questions

Nuon Chea's international counsel, Mr. Andrew Iannuzzi, brought up the issue of the scope of permissible questions for this trial phase after the OCP focused several questions on the Witness' arranged marriage, arguing that the Witness was called to give testimony on the DK structure. International Prosecutor Vincent De Wilde replied that questions on the circumstances of Noem Sem's marriage to her husband and their relations was relevant for the administrative structure. The Trial Chamber allowed further questions on this area, stating that the testimony was related to the personality of the Witness and the work of Office 870. Nevertheless, the Chamber reminded the court that the issue of forced marriage was excluded in the present Case 002/01 trial phase.

A similar issue surfaced again during CPLCL Elizabeth Simonneau-Fort's questioning, with Iannuzzi objecting that general questions on marriage and child care during the DK is outside the scope of the present trial phase. Simonneau-Fort countered that the question was related to structure, and how people lived in the various DK structures was relevant. Interestingly, while the Trial Chamber stated that the question was "of the least relevance to the facts alleged against the Accused," it still allowed the Witness to respond "if it is within her knowledge."

During Iannuzzi's examination, he asked if the Witness was familiar with the government's K-5 project in the 1980's.¹⁰ This prompted an objection from de Wilde, who stated that questions relating to demographics were already ruled by the Chamber as irrelevant to matters in the

Closing Order. In response, Ianuzzi reasoned that his question was relevant to the death toll alleged against the regime as tens of thousands died as a result of the K5 project. The Chamber, however, sustained the objection, deeming the question irrelevant to the facts on trial before the court.

3. Speculative Questions

During his examination, Ianuzzi raised Cheam’s retraction¹¹ and asked the Witness if she has any idea why Cheam “would do such a thing.” However, this was met with an objection from the OCP, who argued that the question invited the Witness to speculate, which was inappropriate. Ianuzzi countered that he believed the question was highly relevant because Rochoem Ton, a person known to the Witness and a public figure in her area, was clearly influenced by Foreign Affairs Minister Hor Namhong to recant his testimony. The objection was sustained and the Witness was instructed not to respond.

IV. TRIAL MANAGEMENT

Ieng Sary’s ill health continued to provide a challenge for the Trial Chamber in its management of the trial schedule, with only one hearing day conducted this week.

A. Attendance

Attendance of the Accused: Only Khieu Samphan and Nuon Chea were present during the day’s proceedings, with the latter participating in the proceedings remotely from his holding cell after the second session. Ieng Sary was still absent from the courtroom due to his continued hospital confinement, but he has waived his presence in the proceedings for the testimony of Noem Sem.

Attendance of Counsels: All the parties were represented by their counsels, with the noted absence of Khieu Samphan’s international counsel due to a personal commitment.

Attendance by Civil Parties: The seats reserved for Civil Parties were fully occupied during the entire trial day.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Tuesday 27/08/12	250 people from Prey Veng Province and 20 foreign visitors	100 people from Takeo Province and 10 foreign visitors

B. Time Management

Ieng Sary’s illness has necessitated his confinement at the Khmer-Soviet Friendship hospital since 7 September 2012. Although he has manifested his willingness to waive his right to be present in the proceedings for certain witnesses and civil parties,¹² the availability of these witnesses on short notice continued to pose a challenge for the Trial Chamber. Only Noem Sem was available to provide her testimony this week. While the OCP and the CPLCL were given the whole day to question the Witness, they wrapped up their examination earlier than scheduled. The Defense Teams, on the other hand, only had a few questions, which took less than one session. Thus, without a reserve witness, the Trial Chamber was constrained to declare the adjournment of proceedings for the rest of the week.

C. Courtroom Etiquette

The propriety of rephrasing testimony for a counsel’s examination was raised this week. In his question on the CPK policy on forced marriages, de Wilde asked the Witness: “So, if I understood properly regarding this marriage, it is the party that organized everything, is that so?” This prompted an objection from Karnavas, who protested that the question was “rather leading and subjective” as it was not in the testimony of the Witness. Karnavas further asserted that the “gentleman has a habit of asking questions where there are facts that are assumed in the questions which are not in evidence,” without going into specifics. However, before the Trial Chamber could rule on the objection, de Wilde opted to rephrase the question, obviating the need for further arguments on the issue.

Later in the day, Ianuzzi objected to de Wilde’s restatement that “Nuon Chea ran political training sessions” instead of the Witness’s actual words that Nuon Chea “came to give (a) lecture” during a training session. Ianuzzi stated that the opposing counsel was “characterizing the evidence,” to which de Wilde retorted that this was “fretting over words,” and not the core of his question, which intended to know if the Witness saw Nuon Chea again during the DK. In this instance, the Chamber found the objection unfounded, without elaborating on the permissible boundaries in rephrasing witness statements.

D. Translation and Technical Issues

Technical challenges marked the start of this week’s sole trial day. The curtains opened and the participants entered the courtroom at around 9:02 in the morning, but it soon became apparent that the judges were not yet ready to enter the courtroom. After a minute, the people were instructed to resume their seats, and the video stream was turned off. The video monitors were reopened after a few minutes, and the trial formally started.

Near the end of the first session, a technical glitch also occurred in the audio equipment, with the translator stating that he was unable to hear the voice of the Prosecutor. Without any announcement over the translation units, the judges of the Bench then stood up and made their exits, signaling the end of the first session. Minor translation errors were also noted, but these did not affect the proceedings substantially.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Tuesday 25/09/12	9:07	10:24-10:44	12:01-13:32	14:37-14:56	16:08	4 hours and 51 minutes
Average number of hours in session				4 hours 51 minutes		
Total number of hours this week				4 hours 51 minutes		
Total number of hours, days, weeks at trial				480 hours 12 minutes		
110 TRIAL DAYS OVER 33 WEEKS						

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

Glossary of Terms

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



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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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¹ In accordance with Internal Rule 81 (1) and Articles 14 (1) and 14 (3) (d) of the International Covenant for Civil and Political Rights, Accused Ieng Sary issued a Limited Waiver, agreeing to waive his direct presence in the courtroom only for 1 civil party and 7 witnesses, including the current witness Noem Sem (TCW-475). He explicitly stated that he is not waiving his right to be present for other witnesses. This necessitated adjustments in the trial schedule, with the Chamber seeking to present witnesses for whom Ieng Sary executed a waiver. See

leng Sary. "Limited Waiver" (18 September 2012). E229. Due to his extended stay in the hospital, he subsequently issued another Limited Waiver for 11 additional witnesses and 7 civil parties. See leng Sary. "Limited Waiver" (1 October 2012). E237.

² Noem Sem was questioned by counsels in the following order: National Prosecutor Chan Dararasmey, International Prosecutor Mr. Vincent de Wilde D'Estmael, Civil Party national counsel Lor Chunthy, CPLCL Elisabeth Simonneau-Fort, Khieu Samphan national counsel Kong Sam Onn, Nuon Chea international counsel Andrew Ianuzzi, and leng Sary international counsel Michael Karnavas.

³ Mr. Suong Sikoeun, an intellectual and an MFA cadre during DK also provided testimony before the Trial Chamber. See CASE 002 KRT TRIAL MONITOR. Issue No. 31, Hearing on Evidence Week 26 (6-9 August 2012). 1-6. CASE 002 KRT TRIAL MONITOR. Issue No. 32, Hearing on Evidence Week 27 (13-16 August 2012). 4-7. CASE 002 KRT TRIAL MONITOR. Issue No. 33, Hearing on Evidence Week 28 (20-23 August 2012). 1-3.

⁴ The interview with Noem Sem, quoted into the record by the OCP, appeared to have been conducted in July 2005 by a member of SOAS or the School of Oriental and African Studies, University of London.

⁵ The Witness said she only knew Lin briefly prior to their marriage; he attended one of their art performances with Pol Pot.

⁶ Noem Sem initially stated during her testimony that she saw Nuon Chea at K-3 during a training session. She later stated that she did not attend any study sessions and she only visited her husband in K-3.

⁷ CASE 002 KRT TRIAL MONITOR. Issue No. 26, Hearing on Evidence Week 21 (11-14 June 2012). 10 -11. CASE 002 KRT TRIAL MONITOR. Issue No. 35, Hearing on Evidence Week 30(3-6 September 2012). 6-7.

⁸ See The Defence for leng Sary. "leng Sary's Request that the Trial Chamber seek Clarification from the OCIJ as to the Existence of any Record Relating to the Questioning of Witness Oeun Tan on 8 October 2008" (29 August 2012). E224. The Defence for leng Sary. "leng Sary's Request that the Trial Chamber Seek Clarification from the OCIJ as to the Questioning of Witness Norng Sophang on 17 February 2009 and Summon the OCIJ Investigators to Give Evidence Regarding the Interview" (27 September 2012). E234.

⁹ See CASE 002 KRT TRIAL MONITOR. Issue No. 35, Hearing on Evidence Week 30 (3-6 September 2012). 7-8.

¹⁰ According to Ianuzzi, the K-5 project involved "landmines and possibly many deaths from malaria in the 1980s." This topic appeared to be in relation to the Nuon Chea Defense Team's assertion that the death toll estimates alleged against the Khmer Rouge during the period of 1975-1979 was caused by other factors such as the K-5 project.

¹¹ Cheam, also known as Rochoem Ton or Phy Phuon, was a former Pol Pot bodyguard and MFA cadre who testified earlier before the Trial Chamber. However, subsequent to this testimony, he issued a written retraction on his statement regarding current Foreign Affairs Minister Hor Namhong's connection with Boeng Trabek. See CASE 002 KRT TRIAL MONITOR. Issue No. 32, Hearing on Evidence Week 27 (13-16 August 2012). 11-12. CASE 002 KRT TRIAL MONITOR. Issue No. 30, Hearing on Evidence Week 25 (30-31 July, 1-2 August 2012). 3.

¹² Ibid, at footnote 1.



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