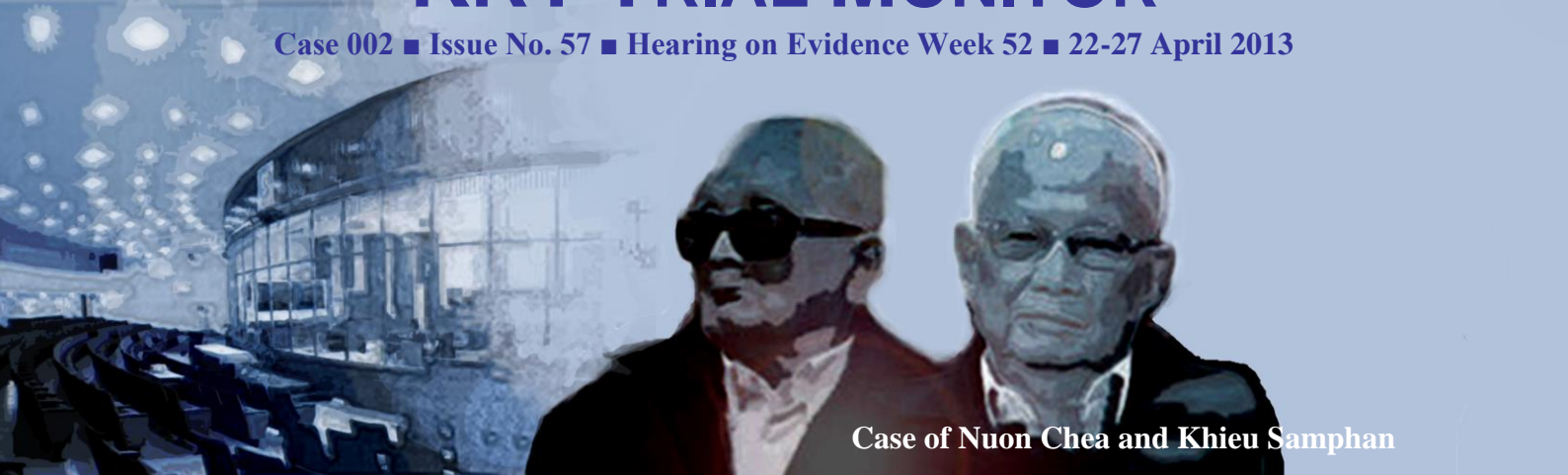


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 57 ■ Hearing on Evidence Week 52 ■ 22-27 April 2013



Case of Nuon Chea and Khieu Samphan

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

*“It is true that I was afraid. At that time, if we were found out to be connected to people who had been previously arrested, including our superiors, then we had reason to be fearful because families or subordinates of the people who had been arrested would also be the subject for further arrests.*

- Ros Suy, Witness<sup>1</sup>

## I. OVERVIEW

Following a weeklong adjournment for Khmer New Year celebrations, proceedings resumed to hear the testimony of three witnesses: Chhouk Rin, Chuon Thi, and Ros Suy. Proceedings were interrupted almost as soon as they began on Monday morning, when the first witness, Chhouk Rin, refused to provide testimony without first receiving medical care from the Trial Chamber. Because of this, the morning sessions were extremely challenging as the Court attempted to extract testimony. However, the Witness became much more cooperative after the lunch adjournment, and he remained cooperative through the conclusion of his testimony on Tuesday.

A number of familiar legal and procedural issues were raised again this week in Court, including the Prosecution’s use of questions outside the scope of Case 002/01, and the use of leading questions to examine an uncooperative witness. Witness Chhouk Rin’s reluctance to answer questions also raised the issue of the rights and duties of witnesses at the ECCC. Parties to the proceedings also disputed the correct procedure for the order of questioning, as the Trial Chamber heard the first witnesses proposed by the Defense Teams in Case 002 this week.

## II. SUMMARY OF WITNESS TESTIMONIES

The Court heard testimony from three witnesses this week: Chhouk Rin, Chuon Thi, and Ros Suy. All three testified about the reporting structure during DK, and the roles of the Accused. Chhouk Rin and Chuon Thi were former Khmer Rouge military commanders, while Ros Suy was in charge of KR warehouses during the DK period.

### A. Testimony of Chhouk Rin

On Monday, Chhouk Rin, alias Sok, a 60-year old farmer serving life sentence in Prey Sar prison started his testimony.<sup>2</sup> He testified at length about his own role and responsibilities

within the CPK, the liberation and evacuation of Kampot City, military structure and policies of the CPK, and the roles of the Accused and senior military leaders.

## **1. Witness Role and Responsibilities in Khmer Rouge**

According to Chhouk Rin, he had once been a monk, but felt compelled to join the resistance because of the call from Prince Norodom Sihanouk to oppose the Lon Nol regime and the U.S. bombardment. The Witness stated that the bombings had affected “every district” in Kampot Province, leaving large craters and destroying pagodas, including the one in his hometown. Chhouk Rin explained that some monks had been killed by the bombs. This compelled the other monks to join the resistance army. In 1971, Chhouk Rin served as a combatant in Kampong Trach District, and by 1973, had risen to commander of his platoon. The Witness described being under the direct supervision of Chou Chet, secretary of the Southwest zone. Chhouk Rin recalled fighting in the battlefields against Lon Nol forces all over Kampot Province until the end of the civil war in 1975.

The Witness testified that he was subsequently promoted to deputy commander of a newly established battalion 59 under the supervision of Phat, head of the regiment. At that time, they used the term “political commissar” or “commissar” rather than commander. Battalion 59 was an artillery unit, and Chhouk Rin was trained to operate heavy U.S. arsenal in Kampong Ampil, and later Kep. He recalled that his battalion had undergone training for one month before they were able to use the weapons effectively. After fighting intensified on the Cambodian-Vietnamese border, Chhouk Rin moved to the ground unit at the border and was also sent to Division 703 (Svey Rieng) for several months under the command of Ren.

## **2. Combat against Lon Nol Soldiers prior to Liberation of Kampot City**

According to Chhouk Rin, combat between Lon Nol and KR soldiers intensified between 1973 and 1975, when the final attack on Phnom Penh occurred. The witness stated that, at that time KR soldiers were not known as CPK, but as “soldiers of the liberation.”<sup>3</sup> When asked which areas were under KR control in Kampot Province in 1973 to 1974, Chhouk Rin explained that the army had liberated “many districts” including Kep City, Kampong Trach and Tuk Meas and Tani districts. He confirmed that, as early as 1971, it was common knowledge that those cities occupied by the KR were called “Liberated Zones,” while those not yet under KR control were considered to be “occupied by enemies.”<sup>4</sup>

In response to questioning by Prosecutor Keith Raynor, the Witness stated that soldiers were ordered to “be careful” not to target civilians. Raynor inquired as to whether there was any way the Liberation Front could have been shelling Kampot in 1974, using for example, mortars or shoulder-held rocket-propelled grenades. Chhouk Rin, explained that the Liberation Front did not have heavy weapons, with the exception of 120 and 80 millimeter artillery and B-40 rockets. Pressed by the Prosecutor to explain how the army had acquired the weapons, Chhouk Rin replied:

Khmer Rouge soldiers at that time did not have many kinds of weapons, and we saved our ammunition. ... This was very different from Lon Nol soldiers ... they had the assistance from the Americans. ... We fired only if we were certain that a location must be a military base. ... So, the shelling or firing of hundreds of shells into the city was not true.<sup>5</sup>

When Raynor sought Chhouk Rin’s opinion about reports that roughly 8,000 refugees had fled Kampot between March and April 1974, the Witness denied having any knowledge of that, and stressed that he was only a “low-ranking soldier.”<sup>6</sup> In relation to the liberation of Kampot city, Chhouk Rin recalled that the “decisive battle” happened on 16 April, one day

before the fall of Phnom Penh. Chhouk Rin testified that, as the Liberation Front took over Kampot City, he was ordered to move to the front battlefield, so he knew little “about what happened at the rear.”<sup>7</sup> As for what happened to captured Lon Nol soldiers, he said, “we found it difficult to identify who would be who, because everyone was already disarmed and, or had surrendered their weapons and we can’t – we couldn’t say exactly who would be soldiers. They all were like civilians.”<sup>8</sup>

### **3. Evacuation of Kampot City**

Chhouk Rin recalled receiving instructions immediately after the fall of Kampot City to tell people to leave the city. He added that he did not receive any instructions on what to do if civilians refused to leave Kampot. When asked if anyone did refuse to leave, Chhouk Rin said, “everyone had to leave. No one opposed this.”<sup>9</sup> Explaining why it was necessary to evacuate the city, the Witness confirmed that Ta Mok had told him markets and cities were no longer necessary, because people would be evacuated to the rural areas in order to build the rural economy. He explained that, after soldiers instructed people to leave, they arranged their belongings and left the city, which later became “quiet.”<sup>10</sup> When questioned about where the people were going, and what would happen to them, Chhouk Rin said, “[It] was the sole responsibility of those in charge of civilian management...and it had nothing to do with the soldiers.”<sup>11</sup>

### **4. Structure of CPK**

The Witness answered a number of questions about the structure of the CPK. He was more knowledgeable about some matters than others. His testimony covered the operations of the Standing and Central Committee, CPK military structure, and Policy.

#### **a. Standing and Central Committee**

The Witness was unable to explain the difference between the Standing Committee and Central Committee. However, he confirmed a number of similarities between the two Committees, including the fact that membership was comprised of only Party members, and both required that certain provinces and districts endorse committee decisions. Chhouk Rin claimed that, as early as 1973 or 1974, he knew that Pol Pot was the Secretary of the CPK, and that Nuon Chea was the Deputy Secretary. He recalled that both of them were present during the first study session he attended in Phnom Penh, but he could not remember all the other participants.<sup>12</sup> He also confirmed that Sam Bit was the head of the Standing Committee in Kampot Province.

#### **b. Military Structure**

Chhouk Rin testified about a number of meetings and study sessions convened to discuss military matters. According to the Witness, Pol Pot, Nuon Chea, Ta Mok and Son Sen all attended one such meeting, convened shortly after the General Assembly in 1978 to discuss internal security with military commanders. Chhouk Rin also recalled that, during study sessions he attended, only Ta Mok dared to interject when Pol Pot was presenting. Chhouk Rin described Ta Mok as “very powerful,” and referred to the notorious slogan, “there was only the hat above Mok’s head.” Elaborating on the meaning of the slogan, he explained that Ta Mok was able to give orders to anyone, “[S]oldiers in the Southwest, soldiers in the East, listen to him (sic). So this is what I mean by the term ‘powerful.’”<sup>13</sup> Describing Ta Mok as sometimes “good” and sometimes “cruel,” the Witness recalled that cadres who failed follow his orders properly were gunned down. However, the Witness clarified that he was not aware of Ta Mok’s role in zones other than the Southwest Zone.

The Witness also confirmed the names of a number of military leaders in the Southwest Zone and in the East Zone. He testified that Kang Chap was the senior leader in Kampot in the Southwest Zone, but was later replaced by Sam Bit. He recalled that when Kang Chap was in charge of the Southwest Zone, all military units in the province were gathered to create several new divisions, which later came under the sole supervision of the Provincial Division, rather than under Takeo or Kampot Province.<sup>14</sup> In the East Zone, Chhouk Rin stated that Ren, Ta Mok's son-in-law, was the commander based in Svay Rieng Province. When asked by counsel for Nuon Chea, Son Arun, whether Sou Met became the chief of the General Staff after 1979, Chhouk Rin responded that the question was his "personal business," and added that it "was very hard at that time to be aware of the role—ranks of the other KR soldiers" because they did not attach symbols to their uniforms.<sup>15</sup>

According to Chhouk Rin's description of the structure of the CPK army, it consisted of divisions, brigades, regiments, battalions and companies. A division consisted of roughly three to four brigades, a regiment had roughly 100 soldiers and consisted of three battalions, and within a battalion, there were three or four companies and an artillery unit of 105 and 80-millimeter arsenals.

### **c. Communication Structure**

With regard to the communication structure, Chhouk Rin testified that he was only able to communicate directly with persons at the division level. It was "impossible" to communicate directly with the top leaders, the Witness explained. The only way to report and receive instructions from the senior leaders was during study sessions he attended. Even communication with his direct commander was "limited" because he was afraid of making mistakes. For example, when Ta Mok was not satisfied with reports, he would reportedly take out his gun and shoot at cadres. When Koppe asked whether the witness was able to make direct contact with persons in higher rank than his commander, Chhouk Rin answered that it was "imperative" to adhere to the military hierarchy in the CPK, and he could not overstep it.

## **5. CPK Policy**

In relation to CPK policy, the Witness confirmed statements he made to the OCIJ about how he had realized, during study sessions he attended, that all plans were devised and ordered by the senior leaders of the CPK. His testimony about his specific knowledge of various CPK policies was wide-ranging, covering forced evacuation, KR training materials, internal enemies and purges, treatment of soldiers, conversion of monks, and recruitment practices for the KR Youth League.

### **a. Forced Evacuation**

Referring back to the statement Chhouk Rin had provided to the OCIJ, Prosecutor Raynor questioned the witness about a meeting chaired by Ta Mok one month before the fall of Phnom Penh. The Witness confirmed that Ta Mok had told him that people across the country were required to evacuate to rural areas to build the rural economy. The entire evacuation process would take two days, according to Ta Mok. The witness reported that, "Ta Mok talked only about Kampot Province, but of course, that practice was carried out throughout the country, and of course, that practice was the agreement of the leaders."<sup>16</sup> Pressed further on the issue, Chhouk Rin denied having joined other meetings where this was discussed.

## **b. Training on the Revolutionary Flag Number 7**

During the Party's General Assembly in 1976 in Phnom Penh, Chhouk Rin recalled that between 500 and 600 civilians and soldiers attended study sessions. Officials distributed the *Revolutionary Flag Number 7 (Flag)* to all participants to use as study materials. The sessions addressed the reconstruction of the country, rice policy of three tons per hectare, and elimination of the "enemy borrowing from within."<sup>17</sup> During the sessions, attendees were supposed to discuss and study the issues in the *Flag*, however they tried to avoid discussing the arrest of cadres in order to prevent creating "an atmosphere of mistrust within the team."<sup>18</sup> Chhouk Rin also recalled that Pol Pot and Nuon Chea provided lectures during the sessions. Pol Pot reportedly chaired several sessions related to the *Flag*.

Chhouk Rin stated that the *Flag* was issued by the CPK in 1976. He confirmed his previous statement to the OCIJ that it was written by Pol Pot, Nuon Chea and Ieng Sary. Chhouk Rin recalled that the *Flag* categorized various wrongdoers accused of being "enemies" or those who refused "to follow the Party line." He remarked that even people who broke a plow, a hoe or even a spoon would be perceived as enemies. When Raynor asked him to explain the phrase "get rid of" used in the *Flag*, Chhouk Rin stated that those who failed to follow orders, or failed to complete their assigned tasks would be "declared as enemies."

## **c. Enemies, Internal Enemies, and Purges**

Although he claimed never to have received instructions in relation to "17 April people", Chhouk Rin confirmed that the term referred to city dwellers, Lon Nol soldiers and later, people from the liberated zones or areas previously under Lon Nol control. He stated that "17 April people" were not considered to be enemies of the CPK, however he did mention that during a study session in Phnom Penh in 1978, a guideline was made warning KR soldiers to be mindful of "17 April people" and people from the former Lon Nol government, because they could be spies.

Both the OCP and Defense probed the Witness in relation to a "special circumstance" meeting he attended that was chaired by Pol Pot, Nuon Chea, Ta Mok and Son Sen around the same time as the General Assembly meeting in 1978. The Prosecution read aloud comments the Witness had made to the OCIJ wherein he stated that the senior leaders, including about 40 to 50 division and regimental commanders, had attended this meeting. The Witness testified that, during the meeting, plans to purge the East Zone were discussed, and Son Sen expressed a "need to have some backup soldiers to support the plan to purge some people" in the East Zone.<sup>19</sup> Chhouk Rin recalled that the issue of internal security became "dire" after the meeting due to "internal disputes" in the Party. Purges reportedly began to escalate in Kampot and the East Zone at that point.

The Witness recounted that Southwest Zone troops were sent to attack and suppress the East Zone troops in accordance with Standing Committee orders. When those senior soldiers returned, some were arrested and sent to Phnom Penh, Kampot Security Center, and the East Zone, accused of being "the strings of traitors." When asked whether Pol Pot, Nuon Chea and Ta Mok made the decision to purge these high-level military commanders, Chhouk Rin confirmed, "the arrests could never have been made without the decisions of these people." Challenged over whether this was "pure speculation," Chhouk Rin responded that it was an observation from "the conduct of military commanders." He explained that once the arrests were made, Ta Mok would report to Pol Pot concerning any additional suspected individuals. Later, Pol Pot would issue decisions that were relayed by Ta Mok and Nuon Chea, and subsequently implemented. Chhouk Rin testified that decisions to purge were made by either the Standing Committee or the Central Committee because "the plans of the leadership were to create internal security and defend the country." He gave



examples of a number of arrests he knew about, including Kong Chap *alias* Ta Chin, a Kampot military commander who was transferred and arrested in Kandal Province in the North; Chou Chet, a military commander in the Southwest Zone; and another senior commander Sek from the Kampot General Staff who was replaced by Saroeun from Kampong Speu and later arrested. Chhouk Rin proclaimed that soldiers lived in “constant fear” that their military commanders would be arrested, and they too would be arrested as part of the “strings of traitors.”

In relation to purification of the military, Chhouk Rin claimed that this was conducted from the very beginning (April 1975). Chhouk Rin recalled that many senior commanders in his unit were arrested, often by fellow comrades. He added that, “purges were carried out every now and then,” and even KR cadres themselves “were terrified by this ordeal.”<sup>20</sup> When Raynor asked if it was Sam Bit who ordered the arrests in 1975, the Witness confirmed that many military commanders of battalions, companies, and regiments, including his former superior were arrested. Chhouk Rin claimed that he did not understand the reason behind the arrests, nor how those military commanders were accused of being spies. He also stated that when he attended the study sessions in Phnom Penh, he dared not ask questions about the arrests, in particular the disappearance of his former commander.

#### **d. Treatment of Soldiers**

According to Chhouk Rin, soldiers had dual roles—defending the country and farming. The witness recalled being required to carry gun while he collected small plants to make fertilizer for the rice fields. The witness also remarked that soldiers did not get enough decent food, but he noted that civilians received even less. “Everyone had to work hard physically and mentally,” he said.

#### **e. Converting Monks to Become Soldiers**

Chhouk Rin testified that, in 1973, all the soldiers in his unit were former monks. He recalled that all the monks in the village had been defrocked and conscripted—a policy implemented in Kampot Province under Kong Chap’s supervision. He explained that he did not know about the policy in other provinces, but he confirmed that Nuon Chea knew of the policy as implemented where the witness was assigned.

#### **f. Recruitment for the Youth League**

Chhouk Rin testified that membership of the Youth League was restricted to “core people” or “progressive people.” Core people referred to those with a good background or who came from poor peasant families and “progressive” people referred to those who worked hard and expressed commitment. Before membership was approved for “progressive people,” a committee including the Provincial governor or district committee was required to evaluate their character and performance.

### **6. Roles of the Accused**

Chhouk Rin recalled hearing broadcasts throughout the time of the DK regime, which named Nuon Chea as the President of the People’s Representative Assembly. He remembered lectures given by Nuon Chea on the contents of the *Flag*, particularly in relation to wrongdoing, mistakes, and enemies. He also mentioned that Nuon Chea had discussed purges and issues from the *Flag* during the “special meeting.” After this time, the Witness began to notice more arrests and disappearances of senior military commanders in Kampot Province. He later backtracked on this comment, claiming that in fact he had never heard Nuon Chea talk about the East zone purges, only Pol Pot. However, he was adamant that

Nuon Chea had been present during discussions, and he remarked that Nuon Chea must have known and understood the plan well.

As for Khieu Samphan, Chhouk Rin recalled being told by his superior that Khieu Samphan was an intellectual who did not belong to the KR clique. He added that he had never heard of Khieu Samphan giving military orders, and emphasized Khieu Samphan's absence in CPK meetings. He described Khieu Samphan as a "person of great honesty and loyalty."<sup>21</sup>

## **7. Witness Demeanor and Credibility**

Initially, Chhouk Rin was uncooperative with the court, refusing to respond to questions until the Trial Chamber agreed to support him with medical treatment. Before his testimony began, he spoke at length about his attempt to withdraw as a Witness, and his various health issues. When the Chamber and the Prosecution informed him they had no authority to grant his request, Chhouk Rin compared the Trial Chamber to his experience under the KR, and remarked that he was being treated like an "animal" (see III.A and IV.C). However, following the lunch break, during which time the Witness was assessed by two court physicians, Chhouk Rin appeared to cooperate, responding to questions from all parties. He appeared to be candid about factual events, but he became confused in relation to the order. For example, initially he claimed to have joined the General Assembly in 1978 in Phnom Penh. However during questioning by Koppe, he repeatedly stated that this occurred in 1976.

### **B. Chuon Thi's Testimony**

Mr. Chuon Thi, *alias* Auv, is a 68-year-old farmer currently residing at Ang Long. At the time he joined the revolution, he was 25 years old and had finished lower secondary schooling. The witness was proposed by the Nuon Chea's Defense Team.<sup>22</sup>

#### **1. Military Career**

Chuon Thi initially served as an ordinary KR soldier in Division 1, Battalion 302 and Regiment 35, but he later became commander of his battalion in Regiment 15. Between 1970 and 1975 he was mainly involved in fighting against the Lon Nol troops, and he personally experienced the US bombing of Cambodia. During the liberation of Phnom Penh on the 17 April 1975, he and his company were stationed at the intersection of National Road 3 and National Road 4, which is close to the court and Pochentong Airport, tasked with construction work.<sup>23</sup> Following the fall of Phnom Penh, he and his company were ordered to move to other places. First they moved for some farming and construction work to Pochentong. Then they were stationed at Banteay Longvek, which was division one's headquarters. Between 1975 and 1976, he became a commander of a battalion in Division 1, Regiment 15. Between 1975 and 1978, the Witness explained that he was not involved in any battles or training. He stated that weapons were stored in warehouses, and he, along with others, were busy harvesting rice to support themselves.

#### **2. Military Structure and Communication**

The Witness claimed he had never met any of the senior leaders, with the exception of Pol Pot who he met on 4 June 1978 during a meeting with other military staff. At the time, Vietnamese troops had entered Cambodia, and Pol Pot had given orders to mobilize a battalion of 1000 troops to fight them in the East Zone. The meeting lasted one day. It reportedly addressed a number of topics, including national security and rebuilding the country. He also met with Son Sen on a number of occasions to discuss strategic plans.

Regarding military structure in 1978, prior to his meeting with Pol Pot, the Witness testified that there was only Division 1 in the East Zone. All the other divisions were fighting either at the islands or forests, the witness testified. He recalled that Ta Sroh was the commander of Division 1. The commander of his own Regiment, number 15, was a man called Rom. The Witness stated that if he wanted to communicate with his superiors, he was required to write a report to the head of his regiment, who would then forward it to the head of the division. Instructions and orders followed a similar fashion, from division to regiment to battalion. Communications about plans were not permitted with “outsiders.”

### **3. CPK Policies**

The Witness stated that due to his low rank, he only knew of two CPK policies: defense and rebuilding of the country. He referred again to the meeting attended by Pol Pot, where he spoke military structures and internal and external enemies. The Witness also recalled that, during the meeting, Pol Pot warning them to be careful about spies from the CIA and KGB, and to exercise caution with the “Yuon,” because they wanted to annex Cambodia into an Indochina Federation. According to the Witness, Pol Pot also told the participants that Cambodia was a big country, and “arranged marriages” were necessary to increase the population and defend the country. The Witness testified that he was among those married during this period, but claimed it was a marriage of love, and the arrangement was to support people who loved each other to get married, not to force them. Addressing the dissemination of CPK policies, the Witness explained how the *Revolutionary Flag* was issued monthly and distributed to the soldiers. After 17 April 1975, he stated that several radio stations broadcast it to the whole country, including in the countryside via loudspeakers.

### **4. The Liberation of Phnom Penh**

On 17 April 1975, the Witness was stationed with his company at the intersection of National Road 3 and 4. He was ordered to attack Phnom Penh from the Ra Samraong (railway station north of Pochentong) area. His company reportedly did not receive any orders regarding the evacuation, and in any event, the witness stated that he was not of sufficient rank to be involved in this. He described seeing people leaving with the military, but remarked that they seemed “happy,” and laughed together. Upon further questioning by the CPLs, the Witness explained that he saw people of all kinds and ages. According to him, they seemed happy. He maintained the conclusion that “everything seemed fine” even in the face of horrific accounts, read to him by the CPLs.

### **5. Witness Demeanor and Credibility**

There were minor inconsistencies in the testimony of the Witness. For example, he was unclear as to whether he ever met Nuon Chea, and his military career different from the account provided to the OCIJ. He also gave short answers and at times indicated he had limited knowledge, which may have reflected his previous statement to the OCIJ that he did not wish to participate in the proceedings.

### **C. Ros Suy’s Testimony**

Witness Ros Suy, a 60-year-old farmer residing in Kandal Province, took the stand on Thursday as a Witness proposed by the Defense Team for Khieu Samphan.<sup>24</sup> He testified mainly in relation to his work as the chief of a KR warehouse unit in Phnom Penh, the arrest of people who worked there and study sessions he attended.



## **1. Involvement in Khmer Rouge**

The witness described how he joined the Vietnamese troops in 1970, but later defected due to “mistreatment.” In 1973, he joined the KR. Between 1973 and 1975, he was assigned as the chief of a small economic unit in charge of supplying food to the KR army at the front line. After the fall of Phnom Penh on 17 April 1975, he was appointed as the chief of a warehouse unit in Phnom Penh at Kampong Teuk Kok in front of Psar Thmei. Later in 1976, he was reassigned to another warehouse at Kilometer No. 6, where he worked until 1979. As the chief of the warehouse, the Witness answered to a committee comprised of three supervisors: Roeung, Teng, and Chuon. Further, a man called Van Rith was in charge of the commerce. Ros Suy described his main responsibilities at the warehouse, including the transportation of goods from foreign countries for distribution, and the preparation of goods, particularly rice and rubber, for export. But he himself had no knowledge about the origin of the foreign products. He just remembers that they had to unload these goods from a train. He recalled that when goods were required to be distributed, relevant documents were issued from K-25. He denied ever having worked with the commerce committee, and had no knowledge of S-21 or the K1, K3 and K7 offices. However, he confirmed having involvement, albeit minimal, with the industrial committee in order to transport goods between warehouses.

## **2. The Evacuation of Phnom Penh**

At the time of the evacuation of Phnom Penh, the Witness was still stationed at Takeo Province, and was ordered to move with his company to Phnom Penh. On the way, he saw many of the evacuated people in the countryside. To him the evacuees did not seem happy. Some were crying in the street, some (especially the elderly) appeared not to be able to walk and were pushed in vehicles that had run out of gasoline by family members. He also observed people trying to exchange their clothes for food. There did not appear to be any system to take care of the evacuated people, and the Witness observed that the evacuees were fearful to help each other.

## **3. The Implementation of Policy to Purge the Lines**

The Witness recalled people in the warehouse began to be arrested after 1976. He did not recall any violence being used during the arrests. Recalling the procedure for an arrest, he said that national security made contact with the head of the warehouse and ordered them to hand over a specific person. The arrested person was then told that they had to attend a meeting at a specific time and place. People usually knew that they were being arrested, particularly when they were called from work. They were told to be at a specific time and place for the “meeting”, after which they were picked up and disappeared. Ros Suy described a situation “full of fear and mistrust” in the warehouse where people were scared to talk to others. If an arrested person made a confession and implicated others, more people were then arrested. Some of those arrested came back, while others disappeared.

## **4. Roles of the Accused’s**

Ros Suy explained to the Court that his low rank prevented him from knowing much about the CPK’s permanent members and the party’s Central Committee. He testified that he learned, through discussions among civilians and soldiers, about the roles of different people, including Pol Pot as the secretary of CPK and the Prime Minister. He claimed to be “sure” that Khieu Samphan was not one of the senior leaders. In support of this contention, the Witness referred to four study sessions he attended, which were led by Khieu Samphan and occasional visits he made to the warehouse. The study sessions focused less on policy and more on technical issues, like how to store and maintain warehouse materials properly.

He noted that, during one session, Khieu Samphan seemed to be very surprised and shocked that the cadres ate gruel due to lack of food. He added that he considered Khieu Samphan to be very social in nature. The Witness remarked that Khieu Samphan did not have a fancy car and wore old shoes. During a study session, Khieu Samphan informed them that, due to a changed situation in Phnom Penh, they were to leave Phnom Penh temporarily and plan an attack against the Vietnamese.

The Witness also spoke about the study sessions that Nuon Chea chaired. In comparison to sessions chaired by Khieu Samphan, Nuon Chea's sessions focused on politics and traitors. They encouraged the participants to investigate fellow workers to identify traitors. Sessions concluded with Nuon Chea reading aloud the names of those "traitors" who had been arrested. He recalled that Nuon Chea had once played a tape of the confession of Koy Thuon at one session held in 1977.

## **5. Witness Demeanor and Credibility**

Monitors noticed some contradictions between the testimony of the Witness and the statements he had made previously to the OCIJ. Inconsistencies were most prominent when the Witness was questioned about whether it was Khieu Samphan or Nuon Chea who played the tape of Koy Thuon's confession. After some clarification, he ultimately confirmed it was Nuon Chea.

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

This week the most prominent legal issue raised was related to the rights and duties of witnesses, given Chhouk Rin's repeated attempts to obtain medical treatment from the Trial Chamber in exchange for his testimony. Throughout the course of the week, the parties raised a number of objections, most concerning "leading questions" and the relevance of questioning to the scope of Case 002/01. The Trial Chamber ruled that leading questions would be decided on a case-by-case basis, particularly in relation to questioning of Chhouk Rin. Moreover, it reaffirmed that questioning the veracity of the Witness' previous OCIJ statements is an acceptable practice. On Wednesday, prior to hearing the first witness called by the Defense team in Case 002, Parties discussed the appropriate order of questioning that would follow. The Trial Chamber ruled, in partial keeping with civil law tradition, that the proposing Defense team would have the last word, and the other Defense team would question the Witness last, following the OCP and CPLCL.

### **A. Rights and Duties of Witnesses**

The issue of the rights and duties of witnesses emerged this week when witness Chhouk Rin refused to respond to questions due to ill health. On Monday morning, upon questioning by the President about whether he had read the report of his interview by OCIJ investigators, Chhouk Rin berated the Trial Chamber for summoning him after he had filed a letter addressed to President Nil Nonn withdrawing as a witness. He claimed he was unable to testify as his poor health prevented him from reading the very documents he was questioned about. Claiming to have been "mistreated" by the Trial Chamber, Chhouk Rin began to describe the living conditions in Prey Sar prison, where he is currently serving a life sentence for the murder of three foreign tourists in 1994. He claimed that poor nutrition had rendered him physically ill, and he would only be able to testify at "full capacity" once he had received medical care from the Trial Chamber, and his health was restored. In response to the apparent attempt by the Witness to barter testimony in exchange for health care, Judge Sylvia Cartwright explained that the Trial Chamber had no authority to provide the medical assistance he requested. She added that the Witness had already spent close to one hour speaking about his health issues, and although breaks were available if required, he should

start responding to the questions unless they tended to incriminate him and not “waste the court’s time.”

Under ECCC Law, unless a witness is exercising her or his right against self-incrimination, s/he has a duty to answer questions truthfully, and may be subject to sanctions under Cambodian law.<sup>25</sup> Moreover, there is no obligation in ECCC Law to provide health care to a Witness,<sup>26</sup> although there is some international jurisprudence supporting an exemption for a Witness to testify should it have a serious detrimental effect on their mental or physical health.<sup>27</sup> President Nil Nonn acknowledged receipt of the Witness’ request to withdraw his consent to testify, however the President explained that the withdrawal was not supported by any reasonable evidence regarding his health situation and the importance of his testimony “superseded” the request. It is also noted that the Witness was assessed to be fit to testify by two Court physicians.

Chhouk Rin’s right not to self-incriminate was also protected during the week, assisted by both his Duty Counsel and Prosecutor Raynor. At one point, Raynor interrupted questioning by Defense counsel for Nuon Chea, Son Arun, who attempted to ask the Witness, “if Noun Chea said that everyone in the party should be responsible, then you are responsible too, right?” Raynor appealed to the Trial Chamber to act upon further instances of potential self-incrimination. The Chamber responded that this was the responsibility of the Duty Counsel. The President also reminded the OCP that they had issued a letter guaranteeing that the Witness would not be prosecuted should he incriminate himself.

## **B. Examination Practices and Standards**

Consistent with previous weeks, objections on questions beyond the scope of Case 002/01 were raised by counsels, and generally sustained by the Chamber, except on questions related to purging, which were allowed in the context of the implementation of CPK policies. Counsel also raised objections to leading questions on a number of occasions. However the Chamber generally permitted Parties to structure their questions in a leading manner (quoting previous OCIJ statements, and asking for a yes or no answer) when examining Witness Chhouk Rin, because he was a less cooperative witness.

### **1. Objections to Questions Beyond the Scope of Case 002/01**

Objections to questions beyond the scope of Case 002/01 continued to be raised throughout the week. With the exception of questions related to purges, the President appeared to maintain a relatively close check on the relevance of parties’ questions. Examples of this were seen during the examination of Chhouk Rin, when the President cautioned the Prosecution to remain within the scope while questioning the Witness about details of the evacuation of Kampot. On Tuesday, the President reminded Son Arun that the war with Vietnam in 1978 fell outside the scope of the trial.<sup>28</sup> During the testimony of Chuon Thi on Wednesday, both Son Arun and Pich Ang, the National CPLCL, were reminded not to stray from the scope of case 002/01 when they pursued questions on the issue of forced marriage.<sup>29</sup>

As noted, however, the Court granted more leeway with respect to questions on purges. Counsel objected to the Prosecution’s questions to Chhouk Rin regarding purges in the East Zone, but was overruled by the Trial Chamber, which apparently was satisfied with the OCPs contention that the questioning was relevant to show the role of the Accused and the existence of the purging policy prior to 1975. Again, on Thursday, Koppe objected to the relevance of the Prosecution’s questions to Ros Suy regarding purges. He was overruled following explanation by Abdulhak that, although the question related to purging, it was

relevant to the implementation of CPK policies, including in the warehouses where the Witness worked.

## **2. Objection Against Leading Questions**

On Monday morning, when Chhouk Rin adamantly refused to answer questions, Prosecutor Raynor requested that the prosecution be allowed to “put to the witness” statements contained in OCIJ interviews.<sup>30</sup> Following Defense objections that such questions were leading and might violate his right to remain silent and to avoid self-incrimination, the Trial Chamber ruled to allow the Prosecutor’s proposed line of questioning. After the lunch break, when the Witness had become much more cooperative answering questions, Koppe re-raised the objection to leading questions. After informing the Parties that the Chamber would rule on objections on “case-by-case” basis, The President observed that, since the Witness seemed to be more inclined to answer questions, Parties were urged to follow the applicable rules about leading questions. Prosecutor Raynor proceeded to rephrase the question to avoid leading the Witness. However, when the same objection was raised again later that day, the President overruled the objection, and allowed the Prosecutor to continue, agreeing that it was established court practice to confront the Witness with his earlier testimony.

## **C. The Order of Witness Examination**

Before the Trial Chamber began hearing the testimony of the Witness Chuon Thi on Tuesday, Defense counsel for Khieu Samphan, Anta Guissé, brought a motion about the appropriate order in which the Parties should examine the witnesses. Citing civil law tradition that the Defense should have the last word, she requested that the Khieu Samphan Defense be permitted question the Witness called by the Nuon Chea Defense last. The motion was supported by Koppe, who suggested that the Defense Team responsible for calling the Witness should commence questioning, while the other Defense team should be permitted to question the Witness last. Both the Prosecution and CPLCL agreed with the motion, but admonished the Khieu Samphan Defense for failing to raise the issue earlier. The President reminded Parties that, although the ECCC was part of Cambodia’s judiciary, its extraordinary nature exempted it from following civil law strictly. He referred in particular to the Trial Chamber’s power under IR 91 to dictate the order in which Parties would examine witnesses.<sup>31</sup> He recalled a previous Trial Chamber ruling that the proposing party should be the first to question the Witness. Following a brief discussion on the division of time between the Defense Teams, questioning of Chuon Thi commenced with the Nuon Chea Defense and concluded with the Khieu Samphan Defense. The questioning of Ros Suy followed the same pattern, namely commencing with questions from the Khieu Samphan Defense, and concluding with the Nuon Chea Defense.

## **IV. TRIAL MANAGEMENT**

This week, the Chamber managed to hear the testimony of three witnesses successfully, although the proceedings were initially delayed by Chhouk Rin’s refusal to cooperate. Nevertheless, the Chamber continued to exert efforts to expedite the proceedings. When Guissé sought to adjourn the proceedings on time on Tuesday, the President urged the Defense to continue past the allotted end time, as it would be easier to conclude Chhouk Rin’s testimony that day, rather than have him return the next day.

## **A. Attendance**

Nuon Chea participated in the proceedings remotely from his holding cell due to ill health. Khieu Samphan was present in the courtroom for the entire week.

**Civil Party Attendance:** Monitors observed 10 Civil Parties following the live proceedings in the courtroom every day. Several others followed the proceedings from the public gallery.

**Parties Attendance:** All Parties were represented in the courtroom throughout the week.

**Attendance by the Public:**

DATE	MORNING	AFTERNOON
Monday 22/04/13	<ul style="list-style-type: none"> <li>▪ 250 people from Chey Sen District, Preah Vihea Province</li> <li>▪ 10 foreigners.</li> </ul>	<ul style="list-style-type: none"> <li>▪ 250 people from Rolea B'ier district, Kompong Chnang Province.</li> <li>▪ 10 foreigners.</li> </ul>
Tuesday 23/04/13	<ul style="list-style-type: none"> <li>▪ 350 villagers from Ta Keo Province</li> <li>▪ 20 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 100 students from Hun Sen Ta Kmao High School, Kandal Province</li> </ul>
Wednesday 24/04/13	<ul style="list-style-type: none"> <li>▪ 350 villagers from Chheb District, Preah Vihear and from Kampong Cham Province</li> <li>▪ 5 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 120 students from Svay Rieng Province</li> </ul>
Thursday 25/04/13	<ul style="list-style-type: none"> <li>▪ 250 students from Kompong Thom Province</li> <li>▪ 10 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ The same students from Kampong Thom Province</li> <li>▪ 5 foreign observers</li> </ul>

**B. Time Management**

This week, the Trial Chamber held proceedings from Monday to Thursday, and successfully concluded testimony from three witnesses. Throughout the week, Trial Chamber and the parties appeared resolute to maintain the schedule and expedite the proceedings. An example of this was observed when the Trial Chamber extended the last session on Tuesday by 40 minutes to ensure the conclusion of Chhouk Rin’s testimony and later on Wednesday, when the President interrupted questioning by CPL Emmanuel Jacomy to remind him of time restrictions.

**C. Courtroom Etiquette**

Several courtroom etiquette issues were raised over the week, particularly regarding the behavior of the President. On Monday, the President rebuked witness Chhouk Rin for insulting the Chamber after he accused the Chamber of treating him “like an animal,” adding that the Witness had only dared to do so because he was already serving a life sentence in prison. On Tuesday afternoon, the President raised his voice and appeared affronted by counsel Guissé’s suggestion that she finish her questioning of Chhouk Rin the following day due to the late hour.

**D. Translation and Technical Issues**

Minor audio system problems persisted during the proceedings, most notably on Tuesday during the testimony of Chhouk Rin. At one point during questioning by LCLCP Simonneau Fort, there was no audible translation in French and the Chamber was forced to wait for interpretation. However no further audio problems were noted during the remainder of the week.



## E. Time Table

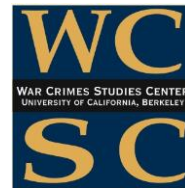
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 22/04/13	9:12	10:40-11:02	12:02-13:36	14:40-15:02	15:47	4 hours and 17 minutes
Tuesday 23/04/13	9:04	10:20-10:42	12:00-13:32	14:34-14:52	16:46	5 hours and 30 minutes
Wednesday 24/04/13	9:04	10:44-11:01	11:59-13:33	14:38-14:59	15:57	4 hours and 45 minutes
Thursday 25/04/13	9:03	10:39-11:01	12:01-13:35	14:35-14:57	16:05	4 hours and 44 minutes
Average number of hours in session				04 hours 49 minutes		
Total number of hours this week				19 hours 16 minutes		
Total number of hours, days, weeks at trial				726 hours 43 minutes		
168 Trial Days Over 53 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



---

<sup>\*</sup> 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 has been funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

This issue of **KRT TRIAL MONITOR** was authored by Chhaya Chhin, Phalla Chhoeun, Pheakdey Chum, Melanie Hyde, Anne Lang, Aviva Nababan, Sarun Sous, Kimsan Soy, Chhayrath Tan, and Penelope Van Tuyl, as part of AIJI's KRT Trial Monitoring and Community Outreach Program. KRT TRIAL MONITOR reports on Case 002 are available at <[www.krtmonitor.org](http://www.krtmonitor.org)>, and at the websites of the [East-West Center](#) and the [War Crimes Studies Center](#).

<sup>1</sup> Trial Chamber. Transcript of Trial Proceedings (25 April 2013). E1/184.1 [hereinafter **25 APRIL TRANSCRIPT**]. Lines 5-9. 87.

<sup>2</sup> Chhuok Rin was examined in the following order: International Prosecutor Keith Raynor; National Prosecutor Song Chorvoin; Civil Party Co-Lawyer Moch Sovannary; International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort; National Co-Lawyer for Nuon Chea Son Arun; International Co-Lawyer for Nuon Chea Victor Koppe; National Co-Lawyer for Khieu Samphan Kong Sam Onn; International Co-Lawyer for Khieu Samphan Anta Guissé.

<sup>3</sup> Trial Chamber. Transcript of Trial Proceedings (22 April 2013). E1/181.1 [hereinafter **22 APRIL TRANSCRIPT**]. Lines 18-20. 76.

<sup>44</sup> 22 APRIL TRANSCRIPT. Lines 11-25. 55.

<sup>5</sup> 22 APRIL TRANSCRIPT. Lines 20-25. 87.

<sup>6</sup> 22 APRIL TRANSCRIPT. Lines 7-14. 88.

<sup>7</sup> 22 APRIL TRANSCRIPT. Lines 10-17. 94.

<sup>8</sup> 22 APRIL TRANSCRIPT. Lines 18-25. 94.

<sup>9</sup> 22 APRIL TRANSCRIPT. Lines 2-4. 94.

<sup>10</sup> 22 APRIL TRANSCRIPT. Lines 8-10. 93.

<sup>11</sup> 22 APRIL TRANSCRIPT. Lines 10-13. 94.

<sup>12</sup> The study sessions were mentioned in "Revolutionary Flag" number 7.

<sup>13</sup> Trial Chamber. Transcript of Trial Proceedings (23 April 2013). E1/182.1 [hereinafter **23 APRIL TRANSCRIPT**]. Lines 15-21. 40.

<sup>14</sup> Division 110, 130 and 150.

<sup>15</sup> 23 APRIL TRANSCRIPT. Lines 11-23. 36.

<sup>16</sup> 22 APRIL TRANSCRIPT. Lines 16-19. 92.

<sup>17</sup> Referring to CIA, KGB and Vietnamese agents.

<sup>18</sup> 22 APRIL TRANSCRIPT. Lines 2-7. 66.

<sup>19</sup> 23 APRIL TRANSCRIPT. Lines 1-2. 49.

<sup>20</sup> 22 APRIL TRANSCRIPT. Lines 21-24. 57.

<sup>21</sup> 23 APRIL TRANSCRIPT. Lines 18-20. 86.

<sup>22</sup> Chuon Thi was examined in the following order: National Co-Lawyer for Nuon Chea Son Arun; National Co-Lawyer for Nuon Chea Victor Koppe; International Prosecutor Dale Lysak; National Civil Party Lead Co-Lawyer: Pich Ang; International Civil Party Co-Lawyer Emmanuel Jacomy; National Co-Lawyer for Khieu Samphan Kong Sam Onn; International Co-Lawyer for Khieu Samphan Anta Guissé,

<sup>23</sup> The Witness could not recall for how long he was doing the construction work on National Road 3.

<sup>24</sup> Ros Suy was examined in the following order: International Co-Lawyer for Khieu Samphan Anta Guissé; National Co-Lawyer for Khieu Samphan Kong Sam Onn; International Prosecutor: Tarik Abdulhak, National Prosecutor Veng Huot; International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort; National Civil Party Lead Co-Lawyer Pich Ang, International Co-Lawyer for Nuon Chea Victor Koppe.

<sup>25</sup> See IR 28 on Right Against Self-Incrimination of Witnesses.

<sup>26</sup> The only support that the Court may provide to the witness seems to be protective one, for further details see IR 29 on Protective Measures.

---

<sup>27</sup> *Prosecutor v. Bagosora*. 98-41-T. ICTR Trial Chamber. “Decision on Prosecutor’s Motion to Allow Witness DBO to Testify by means of Deposition.” (25 August 2004), par. 9, *Prosecutor v. Haradinaj*. IT-04-84-T. ICTY Trial Chamber. “Decision on Prosecutor’s Motion to have Witness 25 Subpoenaed to Testify.” (30 October 2007), Par. 2.

<sup>28</sup> Chhouk Rin testified that the evacuation of Kampot took place one or two months prior to the fall of Phnom Penh on 17 April 1975.

<sup>29</sup> The ruling on Son Arun’s line of questioning was after Khieu Samphan’s national counsel, Kong Sam Onn raised an objection on the relevance. The President proactively stopped the questioning by National CPLCL Pich Ang on the same issue. The Chamber unprecipitated by objection by any Party also stopped Son Arun from pursuing question to Chuon Thi on his statement before the OCIJ investigators that he would rather not be involved in the trial because he considered the Court was useless.

<sup>30</sup> The Co-Prosecutor referred to the witness as “hostile” within the common law understanding of the term.

<sup>31</sup> See IR 91.