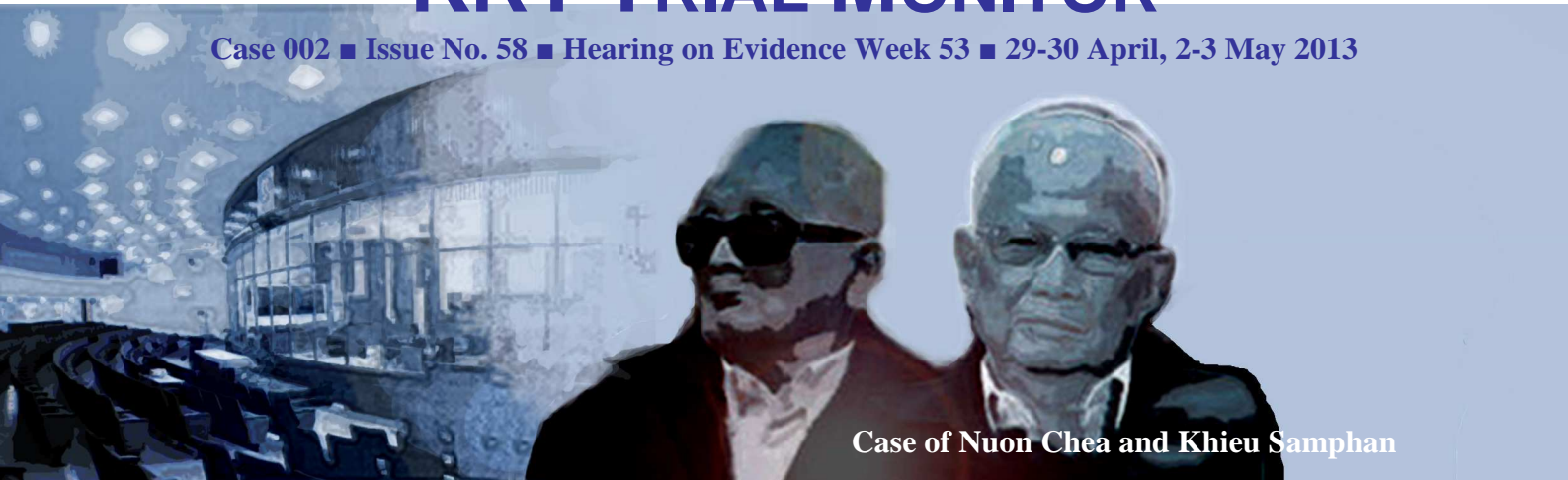


KRT TRIAL MONITOR

Case 002 ■ Issue No. 58 ■ Hearing on Evidence Week 53 ■ 29-30 April, 2-3 May 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

*Indeed, I will be willing to offer my gift to this court
so that the world will never end up having such a disaster again,
when the outside world was turning a blind eye
to what was happening in the country.*

- Civil Party Sar Sarin

I. OVERVIEW

This week, the Chamber heard one Civil Party and two witnesses. Civil Party Sar Sarin described his experience as an art performer before the DK era and a driver during the regime. Sar Sarin did not give a full testimony, as he refused to testify further unless provided with personal security. The witnesses, Ung Chhat and Lim Sat, testified mostly on what they observed during the “liberation” of Pursat and the execution of Lon Nol soldiers at Tuol Po Chrey.

Aside from being confronted with the Civil Party’s request for protective measures, the Chamber and the Parties also dealt with concerns regarding the use of OCIJ statements as basis for questioning, badgering of a witness, and the scope of Case 002/01.

II. SUMMARY OF CIVIL PARTY AND WITNESS TESTIMONIES

Civil Party Sar Sarin, was excused from the Court after testifying for only one morning because he refused to continue testifying unless given personal security. The Witnesses Ung Chhat and Lim Sat gave their full testimonies. Both were particularly questioned on similar matters: the liberation of Pursat, the gathering of Lon Nol soldiers at the Pursat Provincial Hall, and the execution at Tuol Po Chrey.

A. Sar Sarin’s Testimony

Civil Party Sar Sarin (TCCP 186) gave an abbreviated testimony on Monday.¹ The Civil Party, after eagerly answering questions from the Civil Party Lawyers, became anxious right at the start of the OCP’s examination. He sought intervention from the Cambodian government and the United Nations to ensure his safety by providing “protective measures.” After hearing the positions of the Parties, President Nil Nonn explained that the Chamber was not in the position to grant his request and concluded Sar Sarin’s testimony.

1. Roles of the Civil Party Prior to 17 April 1975

The Civil Party testified that he joined the revolution at 13 years old. He was attached to the arts group of the Propaganda Team from 1971-1972. He stated that songs were a method to educate people about the CPK and its political line. Thus, he traveled from place to place to disseminate Party information. According to Sar Sarin, before performances started, he read out propaganda material. He noted that people liked his reading, as he was the youngest one in the team.

During these performances, he talked about the history of the former resistance and Khmer heroes. The core objective was to tell the people about the Front, which was Chaired by Former King Norodom Sihanouk, with Khieu Samphan, Hu Nim,² Hou Yun,³ among its members. The Front would unite the royal family and all members of the society without racial and religious discrimination.

Sar Sarin recalled that the Khmer Rouge was so convincing in getting people to join the army through traditional folk songs such as Trot that even monks defrocked randomly. He added that, "After 1975, all monks were to be defrocked absolutely." He, however, did not explain how this was done. He added that people were encouraged to join the army so that women would love them. Aside from telling people how brave soldiers were, he also said that, regardless of how many soldiers died, there would be no shortage of people who wanted to become soldiers. The Civil Party added that the songs also encouraged hatred of feudalism, intellectuals, and the feudal-capitalist class.

The Civil Party said that he joined the military with more than a hundred youth after the US troops withdrew from Cambodia in 1973. He underwent three months of tactical training in fighting against Lon Nol soldiers. He, however, clarified that he was not allowed to engage in fighting; instead he was tasked to collect food supplies from villages and transport them to the soldiers. He recounted that, after the liberation in 1975, he stopped delivering food to the Khmer Rouge and, instead, brought them to Lon Nol soldiers who were detained in a pagoda.

2. Roles of Civil Party after 17 April 1975

The Civil Party said that he came to Phnom Penh in September or October 1975. Trees and houses on the way to the city were burned down from recent fighting; Phnom Penh itself was very quiet. He was brought to K-7 and tasked to clear bushes and plant vegetables along the river to prepare the place for them to stay in. Later on, Sar Sarin was recruited to work at K-12, the Driving Unit in the Chamkar Morn area. K-12 office, he said, was subordinate to Office 870.⁴ Aside from looking for and fixing cars that were abandoned by evacuees, in the evenings, the Civil Party was trained to drive cars. Thus, later on, he was assigned transport garbage, trainees, and visitors around Phnom Penh.

a. Transporting Trainees

He recalled that he transported trainees who were leaders of sectors and zones to visit model locations. He explained that the CPK gave "honorary flags" to three model districts that met development targets, such as producing three tones of rice per hectare. Describing the living conditions in the areas he visited, Sar Sarin said, "People were very active. They were cultivating crops. They were playing music. People were working very happily." Although he never had the chance to see any dining hall, he said, "we knew the eating condition at that time was not good."

b. Driving for Foreign Delegates

The Civil Party also recalled separate visits of delegations from several countries, including Yugoslavia, Burma, Laos and China. “I took a lot of foreign visitors. Every week, there were several foreigners visiting Cambodia.” Together with Khieu Samphan and Pol Pot, other leaders such as Ieng Sary, Vorn Veth, Cheng On, and Mey Prang, and Ieng Thirith, joined in greeting the guests. Chinese delegations were the longest visitors. They stayed in Cambodia for 16 days, while the others only stayed for a few days. The Civil Party also stated that the itinerary for visitors usually included a dinner party, a visit to Tonle Bassac Theater to see art performances, a visit to the Royal Palace, and finally, a trip to Angkor Wat. “At that time, Uncle Khieu Samphan would normally join the delegation to Siem Reap,” he added. In the evening, some visitors were taken to the markets, “because Burmese liked to shop until they dropped. We could see that Ne Win (the Prime Minister) also liked to do that,” Sar Sarin remarked.

At one point, the Civil Party spoke about his surprise when he was told Khieu Samphan paid his respect to Buddha at the Royal Palace when the Accused took the Burmese delegations there. He recalled that a colleague said, “Look, even Uncle Hem paid homage to Buddha! They joked like that because at that time, there was no religion.”

Based on his recollection, Ieng Sary held sessions at B-1 (Ministry of Foreign Affairs) where the former Accused instructed them on how to receive foreign guests. They were told that the Mercedes Benzes and Peugeots were the ideal vehicles for greeting and transporting guests. They were also instructed to go to the sewing house to have new uniforms made. “We had a blue pair of pants and a white shirt... I was rather happy at that time to wear different clothes. Having an opportunity to wear a new outfit gave me a smile.”

The Civil Party indicated that from introductions during meetings, radio broadcasts and magazines, he learned about the leaders of the DK. He said Khieu Samphan was the Chairman of the State Presidium; Nuon Chea was the President of the People’s Representative Assembly; Ieng Sary was Minister of Foreign Affairs; and Son Sen was Deputy Prime Minister and Minister of National Defense.

3. Study Sessions for Cadres

Apart from attending sessions chaired by Pum (phonetic), his immediate supervisor, Sar Sarin also attended a three to four day session at Borei Keila with 500 to 600 participants from K1 to K30 offices. He revealed that Khieu Samphan lectured in the morning and Nuon Chea in the afternoon. Aside from speaking about life view, the sessions discussed the main victories of the Party. According to Sar Sarin, the “great old victory” was the liberation of Phnom Penh in 17 April 1975. The new victories included building dams, dykes, canals, and rice paddy fields that look like checkerboards. Sar Sarin also said they had to commit to “eliminate or smash the enemies burrowing from within. These enemies could no longer hide.”

Sar Sarin recalled that before the leaders took the floor, they paid their respects to the Party’s flag and sang a song about freeing themselves from poverty, devoting themselves to saving the country and getting rid of the old regime, and committing to finding the future of the country. At this point of Sar Sarin’s testimony, CPLCL Pich Ang ceded the floor to Prosecutor Keith Raynor. When Raynor tried to pick up where Pich Ang left off by asking Sar Sarin to elaborate on what Khieu Samphan said regarding the smashing of capitalists, Sar Sarin refused to answer unless the Cambodian Government and the international community gave him protection. (See III.A and III.B.)

4. Civil Party Demeanor and Credibility

Civil Party Sar Sarin began his testimony appearing confident and willing to recount the events he experienced immediately before and during the DK. He was able to recall names of heads of sectors and his co-workers, as well as names and functions of foreign visitors.⁵ There were instances when he even volunteered to pursue certain topics. At one point he told Pich Ang, “it is very important... I don’t want to miss this opportunity... I beg you, please,” and proceeded to describe the written slogans he saw during the meeting at Borei Keila, for example, “Long Live the Glorious Victory of the Party!”

However, Sar Sarin immediately requested for intervention from the Cambodian government and the UN when Raynor asked him to confirm the contents of his interview with DC-CAM regarding Khieu Samphan’s speech at Borei Keila.⁶

When my personal risk is secured, then I will proceed to respond to your questions. Indeed, I will be willing to offer my gift to this court so that the world will never end up having such a disaster again when the outside world was turning a blind eye to what was happening in the country.

He went on to say that the Khmer Rouge is not happy that their leaders are on trial. “If they knew that this would be the end of the day, they would never have surrendered and integrated into the Cambodian troops.” He clarified that due to his “conscience as a human being,” he should tell what he heard and saw, “it does not mean I hate Bong Khieu Samphan and Bong Nuon Chea, so I said badly about them.” Thus, he implored the international community to help him.

After considerable debate among the Parties (see III.A. and III.B), with the Sar Sarin insisting that, “without proper security given to me, my testimony should end now,” the President informed him that his testimony had come to an end. Thus, without giving the OCP and the Defense Teams a chance to examine him, as well as omitting to give the customary Civil Party Statement of Suffering, Sar Sarin exited from the courtroom.

B. Ung Chhat’s Testimony

Witness Ung Chhat began his testimony in the last session of Monday after the premature conclusion of Sar Sarin’s testimony.⁷ The former platoon chief testified on his movements prior to 17 April 1975, the evacuation of Pursat, and the executions at Tuol Po Chrey.

1. Movements Prior to 1975

Ung Chhat joined the revolution between 1972 and 1973 in Pursat.⁸ He started as a member of the commune military section in Sector 7. During the time leading to the “liberation” of Pursat, the Witness was a platoon chief, under the command of Ta Khleng.

2. Liberation and Evacuation of Pursat

The Witness recalled that the KR army attacked the town of Pursat through Tuol Po Chrey and completed the liberation of Pursat Province on 19 April 1975. Ung Chhat’s platoon was then summoned to attend a meeting at the Provincial Hall, where they received orders from their superiors Theuy and Sarim (names are phonetic). The Witness’ unit was assigned to remove goods from Pursat Market. The participants of the meeting were also ordered to tell residents to leave their houses and belongings, as they were departing from Pursat temporarily. The order was executed at 7:00 o’clock in the morning of the following day, the 20th of April 1975. Ung Chhat’s troop was in charge of evacuating the population within 100

meters from Pursat market. The Witness claimed that the evacuation was conducted by making announcements through loudspeakers, and he himself was unarmed. The announcement told the residents to go back to their hometown and not to take heavy belongings with them. The evacuees were allowed to bring only clothes, cash and jewelry. The evacuation of the town of Pursat was completed within two days.

3. Pursat Provincial Hall Meeting

The Witness approximated that, three or four days after the liberation of Pursat,⁹ a meeting involving former Lon Nol officials was held at Pursat Provincial Hall. The Witness claimed that he stood guard at the front gate of the Hall, while people in trucks and cars passed through to attend the meeting. The Witness repeatedly maintained that the attendees were not in uniform, but he deduced that at least some of them were military officials because he recognized a Lon Nol military officer named Pel. Ung Chhat did not know Pel's rank, but he was aware that Pel was in charge of Tuol Po Chrey and Po Village Forts prior to 19 April 1975. He estimated that there were 200 people attending the meeting, a number he arrived at from judging the size of room and the fact that the room was full. Ung Chhat could not say what was discussed during the meeting as the door of the Provincial Hall was closed.

After the conclusion of the meeting, the attendees boarded the vehicles and followed Khmer Rouge vehicles northward. Waiting outside the Provincial Hall were bystanders, assumed by the Witness to be relatives of the attendees, who waved at the people on board the vehicles. The Witness claimed to have no direct knowledge of where the people were brought. He only overheard the persons boarding the trucks say to each other that they were going to be re-educated and meet Samdach Sihanouk. Ung Chhat also claimed that his colleague told him that the study session was possibly to ensure that the Lon Nol soldiers could be promoted. The Witness attested that the participants coming out of the Hall looked happy and shook each other's hands. Ung Chhat never met the participants of the meeting again, he only saw that the trucks came back to Pursat empty.

4. The Execution at Tuol Po Chrey

After the Provincial Hall meeting, the Witness asked leave from his commander to visit his home village, Chieb. Riding a borrowed motorcycle, he saw the vehicles of the people he presumed to be Lon Nol soldiers stopping at Po Village. Ung Chhat saw Pel among them. He engaged in small talk with them and the people said they were going to be re-educated at the north bank of the Tonle Sap River. While waiting on KR soldiers manning a checkpoint at Po Village as they checked his *laissez-passer* or travel document, he noticed that the vehicles were lined up and no vehicle was allowed to go through until the previous one that left in the direction of Tuol Po Chrey returned. The returning vehicles were empty.

After staying overnight at his home village, the Witness went back to Pursat Town. On the way, he passed Po Fort village, where he overheard villagers recounting that there were sounds of gunshots the previous day. After some time in Pursat, he asked for leave to return to his village on an extended leave. His request was granted and he remained at Chieb village until KR's defeat in 1979.

At this point, Ung Chhat's account before the court departed from the one he gave to the OCIJ investigators. In the excerpts from Ung Chhat's OCIJ interview that Prosecutor Raynor read before the Court, Ung Chhat stated that he sought for extended leave because he wanted to check the corpses at Tuol Po Chrey to make sure that his two cousins, who were Lon Nol soldiers, were not among the executed. However, when questioned by International CPLCL Elisabeth Simonneau Fort, the Witness stated that he went back because he was

“fed up” and did not want to join his troops when they were reassigned to Moeun District, Battambang.

On the matter of what he actually saw at Tuol Po Chrey, Ung Chhat’s accounts became more contrary and rather confusing. Ung Chhat’s testimony about whether or not he actually saw the corpses at the site shifted throughout the proceedings. When examined by Prosecutor Raynor, the Witness stated that he was with two villagers whose name he did not know. Ung Chhat claimed that he went to the site after the smell of the corpses subsided and he saw bodies in civilian clothes, which were ransacked. However, not long after, Ung Chhat said that he was on an ox cart, going fishing near the Tuol Po Chrey fortress at a location about two kilometers from the execution site, and he only looked at the site from the outside. When examined by Victor Koppe, international counsel for Nuon Chea, the Witness stated that he saw the site only from a distance, and all he could see were mounds of soil where, he deduced, the bodies were buried. These accounts differed from his OCIJ statement, which Raynor read before the Chamber, where the Witness claimed that he went to the execution site with two named persons, and saw “dead bodies on the ground with the heads pointing north.” When confronted with this statement, the Witness said that the description about the state of the corpses in his OCIJ statement was only based on hearsay information from villagers.

During Ung Chhat’s testimony Raynor played three clips from Thet Sambath’s video “One Day at Po Chrey.”¹⁰ It was first played to confirm whether the interviewees said the name “Pel” in the same way as the Witness recalled Lon Nol Commander Pel’s name was said; the Witness replied in the affirmative. The other two instances, played in the middle of the Defense’s questioning time, were to confirm whether the Witness was one of the people Thet Sambath interviewed. The Witness denied that he was in the clips shown and likewise denied knowledge of the other persons shown in the two clips.

5. Witness Demeanor and Credibility

As noted above, Ung Chhat’s courtroom testimony was, at times, inconsistent with the one he gave to the OCIJ. Aside from confusion as to what he himself saw at Tuol Po Chrey after the execution, inconsistencies could also be found in Ung Chhat’s testimony on whether he knew former Lon Nol military officials. For instance, when questioned by National Prosecutor Song Chorvoin on Monday, the Witness claimed that he did not know any Lon Nol soldiers. After the Prosecutor confronted him with his prior testimony to the OCIJ, the Witness admitted that he knew Commander Pel from a regiment at Tuol Po Chrey. Ung Chhat said he came to know Pel before he joined the revolution, when they met in an area where the Witness was a monk.

At one point, Victor Koppe asked the Chamber to review an OCIJ report on the Witness which casted doubt on his credibility. As Koppe explained, the OCIJ investigator was under the impression that the Witness was not entirely forthcoming with regard to his true involvement in the events that transpired at Tuol Po Chrey, although his description of the execution was consistent with that of other witnesses. Counsel viewed this as a ground to exercise more caution in eliciting evidence from the Witness.

C. Lim Sat’s Testimony

Lim Sat (TCW 389), a Khmer Rouge soldier from 1971 to 1975, gave his testimony on Thursday and Friday.¹¹ He described the fighting between the KR and Lon Nol forces and the incidents around the time of the “liberation” of Pursat. Lim Sat’s examination particularly focused on a meeting attended by Lon Nol officials soon after the victory of the Khmer Rouge and their subsequent transport to Tuol Po Chrey.

1. Events Prior to 1975

Witness Lim Sat said he joined the revolution in 1971 and engaged in battles against Lon Nol soldiers from 1972 until 1975. They arrested some Lon Nol soldiers, but "did nothing" to them; instead they sent the soldiers to the "rear." In explaining the "rear," the Witness said soldiers were sent to the village, particularly to the head of the district, where the soldiers could be received and the wounded treated.

2. Liberation of Pursat and Execution of Lon Nol Soldiers

Lim Sat recalled that the Khmer Rouge captured Pursat on 17 April 1975 at around 11 o'clock in the morning. "All markets were closed immediately after the Khmer Rouge captured those locations." Following the liberation, all people were evacuated out of the town in approximately three weeks. He stated that he learned from other persons that "if people were kept in the market or the city, there would be infiltrating forces." Additionally, people had to join cooperatives, which were established in 1976.

Witness recalled that, a few days after the liberation in 17 April 1975, Lon Nol soldiers were called to Pursat Provincial Hall. The Witness said he was told the officials were merely going to attend a study session. Afterwards, 10-15 trucks,¹² each able to accommodate around 30-40 persons, brought the Lon Nol officials to Tuol Po Chrey. He explained that he was on guard duty at Kandieng (phonetic) commune, three kilometers from Pursat Provincial Hall and 10 kilometers from Tuol Po Chrey. He observed that two trucks were allowed to leave at a time, with Khmer Rouge soldiers at Tuol Po Chrey communicating via radio to let more trucks pass through. Lim Sat also testified that his unit could hear gunshots in the background while they were communicating with KR soldiers at Tuol Po Chrey. According to the Witness, the execution lasted one day; a few days later, the Zone Committee sent bulldozers to the site.

The Witness estimated that there were around 3,000 Lon Nol officials, all in military uniform, who were brought to Tuol Po Chrey. The Nuon Chea Defense questioned Lim Sat extensively on his estimate. Son Arun inquired how it was mathematically possible to transport 3,000 persons with 10-15 trucks. The Witness, unable to respond to the questions, said that he did not learn math in the pagoda. (See III.D.) Koppe pointed out that the only other witness who testified on this matter said there were approximately 200 officials taken from Pursat Provincial Hall to Tuol Po Chrey and that they were not in uniform. (See II.B.3.)

3. Purging of Internal Enemies After Execution at Tuol Po Chrey

After the execution of Lon Nol soldiers at Tuol Po Chrey, the Witness confirmed that the CPK continued to search for soldiers, students, and teachers of the Lon Nol regime. All people were required to write biographies to disclose their background. Spouses or relatives of those in the Lon Nol army were to be purged. Further on the issue of internal enemies, the Witness also confirmed that Khmer Rouge soldiers in the Northwest Zone were accused of betraying Angkar then brought to Tuol Sleng. He stated that he heard this account from the remaining Northwest Zone troops who fled to Battambang in 1977.

4. Familiarity With the Roles of the Accused

Lim Sat stated that the leaders "include Mr. Khieu Samphan, who was in charge of the military in Cambodia." However, he did not provide basis for this claim and even admitted his lack of familiarity with the functions of the Accused, saying, "I don't know his roles very

well" and that he never met Khieu Samphan. Witness also conceded that he did not know the military functions above the division level or the functions of the Commander-in-Chief.

As regards Nuon Chea, while recounting the subject of meetings held during the DK, the Witness originally testified that Nuon Chea talked for around an hour in a meeting attended by villagers and the Accused said all internal enemies had to be purged. He also testified that he saw Nuon Chea riding in a car in 1979 when the Accused was travelling from Pursat to Battambang. During the course of the Nuon Chea Defense Team's examination, however, Lim Sat admitted that he did not see Nuon Chea at any time other than in 1979. In answer to Koppe's question, "Isn't it true that Mr. Nuon Chea never attended any meeting in Pursat province?" Lim Sat said, "I did not see him at that time." Apparently, the Witness never went to a meeting attended by Nuon Chea and was only relaying what he heard through other persons.

5. Witness Demeanor and Credibility

In the course of Lim Sat's testimony, contradictory statements were notable and there were instances when it was unclear whether the Witness was testifying based on his own experience or recounting hearsay information.

Aside from confusion as to whether he personally participated in a meeting attended by Nuon Chea, Lim Sat's testimony on the number of Lon Nol soldiers brought from Pursat Provincial Hall to Tuol Po Chrey was also confusing. Son Arun and Koppe repeatedly tried to point out that 30-40 persons in 10-15 trucks did not total to 3,000 persons. However, the Witness, who was visibly unhappy with the questions put by the Nuon Chea counsels, stood by his account. During questions regarding his age, it became clear that the Witness had difficulties doing computations, with the year of birth he provided not corresponding with the age he claimed to be.¹³ The Witness eventually conceded that he was unsure of his age, although he was certain he was born in the year of monkey. Lim Sat explained that he learned only Khmer literature and Pali at a pagoda.

At the start of his testimony on Thursday, President Nil Nonn noted that the Witness had hearing difficulties and made accommodations by instructing the court officers to adjust the volume of his headset. It is possible that the difficulty in eliciting precise and responsive answers was compounded by his hearing problems.

III. LEGAL AND PROCEDURAL ISSUES

This week, the Chamber dealt with issues related to granting of preventive measures, the use of OCIJ statements as basis for questioning, badgering of a witness, and the scope of Case 002/01.

A. The Protective Measures for Witness or Civil Party who Refused to Testify

When Raynor questioned Sar Sarin on what the Accused presented during the study session at Borei Keila, the Witness declined to answer, citing fear for his security. Pressed by Judge Jean-Marc Lavergne to specify what protective measures he wanted, the Civil Party said,

Perhaps I need four people to give me protection from today until the day I die. I am not able to pay for these close protection officers. I am afraid I cannot afford that. It has to be borne by the state.

Kong Sam Onn, national counsel for Khieu Samphan, supported by Son Arun, reminded the Chamber that Sar Sarin was a Civil Party, thus had no obligation to testify before the Chamber. Kong Sam Onn also said that Sar Sarin already expressed concern over his

personal safety and his preference to testify as a witness rather than as a Civil Party in a letter to the OCP on 6 May 2009. When questioned by the President, Sar Sarin admitted that court officials explained to him that he had the option to testify via remote participation, with distorted audio and video. The Witness rejected the offer because “he would rather to talk openly and frankly.” The President stated that there are other protective measures, and the decision on which one is to be granted is subject to the Trial Chamber’s decision, pursuant to international practice and IR 29.4.e. IR 29.4 provides as follows:

In this respect, the Co-Investigating Judges and the Chambers may make a reasoned order adopting measures to protect the identity of such persons, including:

- a) declaring their contact address to be that of their lawyers or their Victims’ Association, as appropriate, or of the ECCC;
- b) using a pseudonym when referring to the protected person;
- c) authorizing recording of the person’s statements without his or her identity appearing in the case file;
- d) where a Charged Person or Accused requests to be confronted with such a person, technical means may be used that allow remote participation or distortion of the person’s voice and or physical features;
- e) as an exception to the principle of public hearings, that the Chambers may conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means.

The President explained that the documentation provided by the Witness and Expert Support Unit (WESU) prior to the Civil Party’s appearance before the Chamber did not mention any request for protective measure.¹⁴ Furthermore, the form of protection Lim Sat demanded was not within the Trial Chamber’s authority to grant. The President then gave leave to the Civil Party to depart from the Chamber, ending his testimony prematurely.

B. Holding Discussions on Protective Measures in Closed Session

The Chamber adjourned early for lunch on Monday to allow the CPLCLs to explain to Sar Sarin his rights and obligations with respect to protective measures. When proceedings resumed, Simonneau Fort suggested that the matter be discussed in closed session. Raynor concurred, saying this was the acceptable practice applicable in other international tribunals and in common law jurisdiction.

Koppe and counsel for Khieu Samphan, Anta Guissé, opposed this proposal. Koppe maintained that the public had the right to know the legal grounds and standards of adjudication to be applied by the Trial Chamber in deciding whether or not to grant Sar Sarin’s request. Should the Chamber grant Sar Sarin’s request, then the discussion to determine the specific protective measure could be discussed in closed session. Guissé additionally pointed out that this debate started in open session, and the public had the right to know the Chamber’s decision. This issue became insignificant when it became clear that the protective measure the Civil Party demanded was not within the Trial Chamber’s authority to grant, leading the Chamber to conclude Sar Sarin’s testimony.

C. Use of OCIJ Statement for Questioning

During Prosecutor Raynor’s questioning of Ung Chhat, Koppe objected to the Prosecutor’s reading of portions of the Witness’s OCIJ statement for Ung Chhat to confirm. Koppe submitted that since the Prosecutor was touching an area that was highly debatable in Case 002/01, namely what actually transpired at Tuol Po Chrey, it was pertinent to examine the Witness with “open questions.” In response, Raynor argued that asking witnesses to confirm

contents of OCIJ statements is a practice endorsed by the Judges and has been followed by the Parties throughout the past year. The Prosecutor highlighted the difference between civil law and common law jurisdiction. In common law jurisdictions, the jury or judges do not have access to the evidence prior to the trial; in civil law systems, the judges already did. Judge Sylvia Cartwright, on behalf of the Chamber, concurred with the OCP. “The Chamber wishes to emphasize that the fundamental rule as summarized by the Prosecutor remains valid and that this ruling is not in any way a variation of it.” However, Cartwright continued, the Chamber saw the concerns Koppe raised and “invite[d] the Prosecutor to ask more open questions.”

D. Badgering of the Witness

On Friday, Prosecutor Lysak objected to Koppe’s prolonged questioning of Lim Sat on the number of people who participated in the Pursat Provincial Town Meeting and the number of trucks used to transport them to Tuol Po Chrey. The Prosecutor viewed the questions as not only repetitive, but also amounted to badgering of the Witness. Lysak said Koppe was insisting the Witness engage in basic multiplication exercises, when the Witness already indicated that he was not educated in mathematics. Koppe explained that he had to pursue his point, as the Witness’ testimony was the only citation in paragraph 708 of the Closing Order, which says, “It was estimated that approximately 3,000 were gathered in the compound to attend this meeting.” The President sustained Lysak’s objection and agreed with the Prosecutor that many witnesses already provided evidence on the topic at issue.

E. Questions Outside the Scope of Case 002/01

Objection to questions outside the scope of Case 002/01 continued this week, particularly during Civil Party Lawyer Beini Ye’s examination of Lim Sat on Thursday. Ye tried to question the Witness on the fate of Phnom Penh evacuees in Tkuol (phonetic) Security Center when he was incarcerated there in September 1976. Koppe and Guissé objected on the ground that classification of prisoners and security centers are not within the scope of Case 002/01. The President sustained the objection. Later, when national counsel for Nuon Chea, Son Arun, started questioning the Witness on events in Tkuol Security Center, both Ye and Simonneau Fort objected, citing the same reason posed by Son Arun’s international counterpart. The objections were also sustained by the Chamber, with the President saying, “since you started this, you make sure that you are not straying away.”

IV. TRIAL MANAGEMENT

This week, the Chamber called to the stand one Civil Party and two witnesses. The testimony of Civil Party Sar Sarin ended abruptly when he sought for protective measures. Witnesses Ung Chhat and Lim Sat succeeded in giving their full testimonies.

A. Attendance

Due to health concerns, Nuon Chea observed the proceedings from the holding cell throughout the week. Khieu Samphan was present in the courtroom during all the sessions.

Civil Party Attendance: More than 30 Civil Parties from different provinces attended the proceedings daily, either in the courtroom or in the public gallery.

Parties Attendance: All Parties were properly represented during the week, although Kong Sam Onn, national counsel for Khieu Samphan, was absent on Thursday.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 29/4/2013	<ul style="list-style-type: none"> 350 students and teachers from Hun Sen Takmao High School, Kandal Province 20 students organized by Youth Resource Development Program (YRDP) 7 foreign observers 	<ul style="list-style-type: none"> 20 students organized by YRDP 5 foreign observers
Tuesday 30/4/2013	<ul style="list-style-type: none"> 500 students from Hun Sen Siery Pheap High School, Takmao, Kandal Province 4 foreign observers 	<ul style="list-style-type: none"> 300 students from Chey Vorman VII High School, Kandal Province 3 foreign observers
Thursday 2/5/2013	<ul style="list-style-type: none"> 170 villagers from Phreas Sdach district, Prey Veng Province 2 foreign observers 1 monk 	<ul style="list-style-type: none"> 170 villagers from Phreas Sdach district, Prey Veng Province 1 foreign observer 1 monk
Friday 3/5/2013	<ul style="list-style-type: none"> 500 villagers from Kirivong District, Takeo Province 1 foreign observer 	(No court proceedings.)

B. Time Management

Time management was quite satisfactory this week. The President intervened when irrelevant questions were asked and cautioned Parties from making belated objections. Nonetheless, the Chamber afforded the Parties sufficient time to discuss issues and conduct their examinations, notably scheduling proceedings on Friday to allow the Defense Teams to question Witness Lim Sat. No proceedings were held on Wednesday in observance of the International Labor Day.

C. Translation and Technical Issues

There were some minor translation and technical issues during the week. This was possibly because the speakers, particularly Civil Party Sar Sarin and Witness Ung Chhat, at times talked too fast for the translators to follow.

On Tuesday morning, Koppe noted that the English rendition of Simonneau Fort's question indicated that the Witness was "arrested," when the French-speaking CPLCL meant "stay." Additionally, a question by the Simonneau Fort which was translated into English as, "How many guards were guarding to control the meeting at Pursat?" was translated into Khmer as "How many people were inside the hall?"

During Lim Sat's testimony, there was some confusion with regard to military sections, e.g. squad, platoon, company, battalion, and brigade. It is unclear if the terms were used interchangeable because of difficulty in dealing with technical military terms or the Witness himself was mixing up the terms.

D. Time Table

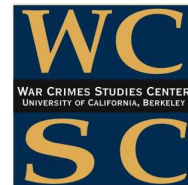
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 29/04/13	9:06	10:27-10:50	11:49-13:50	14:38-15:05	16:02	4 hours and 5 minutes
Tuesday 30/04/13	9:03	10:41-11:02	12:00-13:31	14:47-15:02	15:22	4 hours and 12 minutes
Thursday 02/05/13	9:00	10:28-10:51	12:00-13:50	14:28-14:56	16:02	4 hours and 21 minutes
Friday 03/05/13	9:01	10:27-10:52	11:53	-	-	2 hours and 27 minutes
Average number of hours in session				3 hours 46 minutes		
Total number of hours this week				15 hours 5 minutes		
Total number of hours, days, weeks at trial				741 hours 48 minutes		
172 TRIAL DAYS OVER 54 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



* 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 TCCP Sar Sarin was examined in the following order: President Nil Nonn; National Civil Party Lawyer Ven Pov; National Lead Co-Lawyer Pich Ang; and International Co-Prosecutor Keith Raynor.

² Hu Nim worked with Son Sen and Khieu Samphan in preparation for the invasion and occupation of Phnom Penh in April 1975. He was later appointed as Minister for Propaganda. OCIJ. “Closing Order” (15 September 2010). D427 [hereinafter, **CLOSING ORDER**]. Paras. 63 and 1155.

³ Hou Yun was involved with Hu Nim and Khieu Samphan in appealing to Phnom Penh residents and monks to “rise up and smash the enemy” prior to the city’s liberation. CLOSING ORDER, para. 1130.

⁴ According to the Closing Order, the term “Office 870” or “Organization’s Office” was used to refer to Political Office 870 and Office S-71, as well as other entities associated with these two offices. Political Office 870 was headed by Seua Vasi alias “Doeun” and was responsible for matters relating to policy; Office S-71 or the Government Office was headed by Chhim Sam Aok alias “Pang” and was responsible for administrative tasks. The Closing Order also indicates that Khieu Samphan was also assigned to work in Political Office 870. CLOSING ORDER. Paras. 50-51.

⁵ These included Prime Minister Ne Win from Burma and Vice Premier Chen Yonggui from China.

⁶ In the interview with DC-Cam, Sar Sarin said that Khieu Samphan spoke about the need to “stand on the revolutionary line and follow the poor peasant model,” “totally eliminate stances of private property,” “totally smash and uproot capitalists, feudalists, landowners and other exploiting classes in Democratic Kampuchea (DK),” and “purge the Vietnamese.”

⁷ Ung Chhat was examined in the following order: President Nil Nonn; National Co-Prosecutor Song Chorvoin, International Co-Prosecutor Keith Raynor; National Civil Party Lawyer Chen Vanly; International Lead Co-Lawyer Elisabeth Simonneau-Fort; and International Co-Lawyer for Nuon Chea, Victor Koppe.

⁸ National Prosecutor Song Chorvoin quoted a portion of the Witness’ OCIJ Statement, which stated he had joined the KR Army in 1971, however this discrepancy was not pursued further during the Witness examination.

⁹ In the portion of Witness’ OCIJ interview report read by international counsel for Nuon Chea, Victor Koppe, the Witness stated that the meeting occurred 10 days after liberation, but during his courtroom testimony, he opined that it could not have been that long after the liberation.

¹⁰ The video was put before the Chamber by the OCP in January of this year. It consisted of interviews with former soldiers and villagers from the area surrounding Tuol Po Chrey execution site, who explained how victims were transported to the site under the pretense of meeting Prince Sihanouk or Angkar and were then bound together, then shot. See **CASE 002 KRT TRIAL MONITOR**, Issue 50, Hearing on Evidence Week 45 (21-24 January 2013).

¹¹ Ung Chhat was examined in the following order: President Nil Nonn; National Co-Prosecutor Song Chorvoin, International Co-Prosecutor Keith Raynor; National Civil Party Lawyer Chen Vanly; International Lead Co-Lawyer Elisabeth Simonneau-Fort; and International Co-Lawyer for Nuon Chea, Victor Koppe.

¹² In his OCIJ statement, referenced by Prosecutor Seng Bunkheang, Witness Lim Sat stated that 30-40 trucks were used to transport the officials to Tuol Po Chrey.

¹³ In the Witness’ three OCIJ interviews, he cited two different years. In the first interview, the Witness stated that he was born in 1965 and in the second and third, 1955.

¹⁴ WESU issued a statement on the issue of Witness and Civil Party Protection, which clarified that Civil Parties could voice their concern on their need for protection to the ECCC via Victim Support Section (VSS), Civil Party Lawyer, or the OCIJ and the ECCC’s Chambers. This request would be forwarded to the WESU, and whether or not any protective measure would be granted is subject to the decision of the Co-Investigative Judges or The Chambers. Lobwein, Wendy. “Protective measures in the ECCC proceedings” (May 2 2013). *Extraordinary Chambers in the Courts of Cambodia*. Accessed on 11 May 2013, <http://www.eccc.gov.kh/en/blog/2013/05/02/protective-measures-eccc-proceedings>.