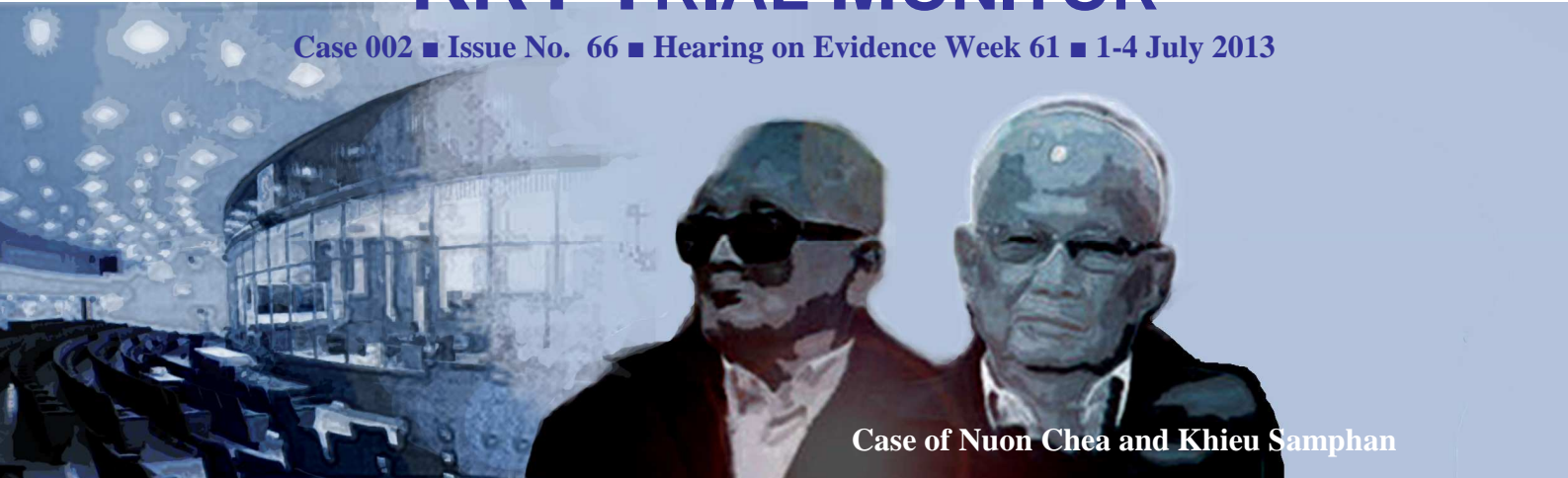


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 66 ■ Hearing on Evidence Week 61 ■ 1-4 July 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

*In fact, it was the feeling of being fed up with engaging in war. The only thing we wanted at the time was peace. So at that time, I could not imagine that something bad would happen."*<sup>1</sup>

- Sum Alatt, Witness

## I. OVERVIEW

This week, the Court managed to hear the testimony of four witnesses over four days. Witnesses Pech Chim, Lev Lam, Ek Hen and Sum Alatt testified primarily on the alleged role of the Co-Accused, the purging of Lon Nol officials, and arrests of KR cadres. The Parties raised a number of objections during the course of the week, primarily in relation to the leading, repetitive and speculative nature of questions, in addition to questions alleged to fall outside the scope of Case 002/01. The Chamber also sought to limit questions to those strictly within Case 002/01 and exhibited a consistent effort to keep the hearing on schedule. Monitors noted that this strictness might have contributed to some etiquette issues towards the end of the week.

## II. SUMMARY OF CIVIL PARTY AND WITNESS TESTIMONIES

Witnesses Pech Chim, Lev Lam, and Ek Henm were all former KR members during the DK period. Pech Chim was the former Deputy Secretary at Tram Kak District and testified on the disappearance of Lon Nol soldiers and the communication and administrative structure in his District. Lev Lam, a former KR militia, described how he had escorted Lon Nol officials to a site where he believed District KR soldiers later killed them. Ek Hen, who worked at a garment factory in Phnom Penh known as K-9, testified that she had listened to lectures delivered by the Co-Accused during a number of study sessions she attended at Borei Keila. She also recalled how fellow co-workers had been arrested. The fourth and last witness to testify, former Lon Nol soldier Sum Alatt, told the Court that he had attended a meeting in 1975 where Lon Nol officials were gathered and transferred to Tuol Po Chrey allegedly to be killed.

### A. Pech Chim's Testimony (TCW-505)

On Monday, the Chamber heard the testimony of Witness Pech Chim, a former Deputy and District Secretary of Propaganda and Education at Tram Kak, also known as "District 105" during the DK regime.<sup>2</sup> The Witness testified on the administrative structure of the KR,

Krang Ta Chan Security Center, alleged targeting of Lon Nol officials, and Nuon Chea's role as an instructor at cadre education sessions.

## **1. Role of Witness during the DK period**

Before joining the KR on 3 May 1970, Pech Chim worked as a teacher. The Witness explained that he had joined the KR because he was angered by Lon Nol's coup d'état, and wanted Prince Sihanouk restored to power. He explained how the KR gathered interested teachers into the Front movement and sent them into the jungle to study with Angkar. As the Deputy Secretary of District 105, the Witness explained that he was given orders to receive evacuees from Phnom Penh, give them food, and organize them into cooperatives. He informed the Court that he had received the orders during a meeting in Po' Pe Commune, prior to the evacuation of Phnom Penh. Elaborating on his role as Deputy District Secretary, he told the Court how District 105 received the Red Flag award for an abundance of rice output. The award was "similar to a gold medal" and Pech Chim received it personally from Ta Mok at a public ceremony.<sup>3</sup> In addition to his responsibilities as Deputy District Secretary, Pech Chim also served as the District Secretary of Propaganda and Education in District 105.

## **2. Targeting of Lon Nol Officials**

In relation to the purging of Lon Nol military officials during the DK Regime, Pech Chim described how the wives of former Lon Nol soldiers protested that their husbands had disappeared and were "removed by Angkar."<sup>4</sup> Probed further on the issue by counsel for Nuon Chea, Victor Koppe, the Witness confirmed that he had never personally been involved in targeting Lon Nol officials or had ever witnessed any executions. Pech Chim explained that information about the issue was spread through rumors. He said, "it was not talked about in the open, and if we did talk in the open then we would also be taken away."<sup>5</sup> He claimed not to know the difference between the re-education of civilians and soldiers, adding that he had only heard about civilian re-education. However, he acknowledged that he knew of soldiers who had disappeared and stated that he did not know what had happened to them.

## **3. Communication and Administrative Structure**

Referring to the Witness' OCIJ statement, Prosecutor Raynor asked Pech Chim to confirm whether it was standard practice for the Sector to consult with the District before sending final instructions for implementation on issues of failed re-education. The Witness clarified that the District merely reported to the Sector, and would abide by whatever instructions were issued. In relation to arrests, Pech Chim added that the District did not receive any instructions from the Sector to arrest people, but was forced to stand aside when the Sector came to make arrests. Despite receiving orders to the contrary, the Witness testified that he had filed requests or verbal reports through the District Party Committee to request the release of some people he believed to be innocent.<sup>6</sup> Pech Chim also recalled that the Sector Secretary, Ta Soung had scolded him after he had released a person called "Won" who was accused of being a traitor. The Witness explained that he had worked closely with Won and believed that he had not committed any crimes against Angkar.

## **4. Civilian Education and Re-Education**

When Koppe asked the Witness about the meaning of the term "education" and "re-education" during the DK period, Pech Chim explained that the terms "education" and "learning" could be used interchangeably, but "re-education" meant that a person would be refashioned.<sup>7</sup> To avoid any wrongdoings or mistakes, the Witness stated that people were

initially required to attend study sessions, during which they were instructed how to do "good" and "right" things both physically and mentally. When a person committed wrongdoings, that person would be re-educated. If successful, the person would be allowed to reintegrate into society to undertake normal tasks. Pressed further on what happened if a person failed in re-education, the Witness stated that the person would be re-educated again and again until he could refashion himself.

## **5. Krang Ta Chan Security Center**

During his testimony, the Witness estimated that the Party (either at Sector or District level) had established Krang Ta Chan Security Center as early as 1972. However, he told the Court he had only learned about its existence in 1973 through an upper echelon party contact. According to the Witness, the purpose of the Security Center was to reeducate "bad" people and turn them into "good" ones.<sup>8</sup> Pech Chim was unable to provide detailed information on the definition of bad people or why people were sent to Krang Ta Chan, aside from a general understanding that those people were opponents of the regime. Although the Witness testified that he had never personally sent a person to the Security Center, he did confirm that he was occasionally asked by upper echelon officials from the Sector level to report on detained people if re-education was unsuccessful. When this occurred, he stated that he investigated the cases and reported to the Sector level, but was not involved in the decision-making process. He conceded that although he could not refuse orders from the Sector to detain selected people, he had been able to effect the release of some detainees based on good reports.

## **6. Role of the Accused Nuon Chea**

The Witness testified that he only met Nuon Chea once during a study session for District level cadres held at Borei Keila. Pech Chim explained that Nuon Chea had lectured attendees over the three-week-long session, which he estimated was held in either December 1975 or 1976. Pressed by the Defense on how he knew it was in fact Nuon Chea, the Witness recalled that he was never introduced by name, but he knew him as Nuon Chea, or Brother Number Two.<sup>9</sup>

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

During his testimony, the Witness made several statements that contradicted his previous OCIJ interview, including comments he had made on the identification of enemies, the necessity of reporting people to Krang Ta Chan, and the process of detaining people. Monitors also noted that he often gave general responses to specific questions and was prompted by the President on a number of occasions to speed up his answers following extended periods of silence. After exercising his right against self-incrimination pursuant to IR 28, the Witness later attempted to have his duty counsel respond on his behalf when Koppe asked how he knew civilians and soldiers were treated differently in re-education (see section III.A).

## **B. Lev Lam's Testimony (TCW-386)**

On Tuesday, Witness Lev Lam, a KR militiaman prior to 17 April 1975, took the stand.<sup>10</sup> The Witness' testimony focused on the arrival of 17<sup>th</sup> April evacuees to his commune in Kampong Tralach Leu District and the treatment of Lon Nol officials.

## **1. Experience in Militia Prior to 1975**

Lev Lam recalled that from 1972 to 1975, he served as a member of the militia in Kampong Chnang Province. During that period, he was assigned to Svay Chouk Commune where he planted rice, potatoes, and harvested palm fruits. Lev Lam testified that he had two superiors while at Svay Chouk Commune, a Commune Chief named Nan, and the Chief of District 12 Committee, Sruon. He explained that Nan would assign duties to the militiamen after she received orders from Sruon. The Witness was unaware of other more senior KR officers except the Chief of his Sector, named Ta Sarun. Although the exact date remained unclear from the Witness' testimony, at some point in 1975 Lev Lam was reassigned to the commune mobile unit.

## **2. Arrival of Evacuees after 17 April 1975**

Lev Lam recounted that one-week after 17 April 1975, approximately 200-300 evacuee families from Kampong Chnang and Phnom Penh arrived at his commune. They were placed at Trang Sangkae village and forced to live under the houses of the villagers or under the shades of trees. The Witness recalled that a family of farmers from Kampong Chnang had taken refuge at his house. Although the Witness claimed that he did not engage much with the family, he explained that he received information about them from his father. When Civil Party Lawyer Beini Ye questioned him about the interaction between the "base people" and the "new people" in the village, Lev Lam maintained that the local villagers felt sympathy for the newcomers and sometimes provided them with food. The situation in the village was crowded at the time, as there were only 150 houses in the village and each of the hundreds of incoming families comprised of four to six family members.

## **3. Purging of Lon Nol Soldiers**

The Witness recalled that the evacuees who had arrived from Kampong Chnang and Phnom Penh were required to submit personal biographies to the Village Chiefs. These biographies would be collected by Nan and subsequently submitted to Sruon, but Lev Lam testified he did not know what happened to the documents afterwards. Confirming statements he had made to the OCIJ, the Witness told the Court how the evacuees were separated into two categories: "farmers and non-ordinary people such as Lon Nol's civil servants, military, and capitalists."<sup>11</sup> During a meeting, Nan explained to the Witness that the farmers would be set aside and put to work. In relation to Lon Nol soldiers, he said there was "no need to ask about the soldiers because soldiers were considered as belonging to the opposition group."<sup>12</sup> The Witness told the Court how his Village Chief had told him about the existence of a policy to purge 100 families out of the 200-300 that had arrived. Confirming his earlier statements to the OCIJ, the Witness told the Court that Sruon ordered the final decision to purge the enemies and capitalists. He had learned this after overhearing a conversation between Nan and the District Committee Chief in the militia unit office.

At some time in June 1975, the Village Chief told the Witness to escort a group of 20 adults and children by foot and oxcart to a site located three to four kilometers from Trang Sangkae Village. The Village Chief told Lev Lam that the people were "Svay Trang," the alias for Lon Nol's militia, and they were to be transferred to a new location. The Witness recalled that once they arrived, District soldiers bound the hands of ten people from the group and took them away. Afterwards, he heard a low voice counting down from three, but did not see anything personally. However, the Witness stated that he had heard accounts from other people that the people had been killed with clubs, ox axles, or bamboo staffs. Approximately six or seven years later when the Witness returned to the place he had left the people, he saw 20 pits filled with skeletons. He estimated that each pit contained approximately 20-30 skulls. The Defense offered an alternative explanation for the skeletons, referring to the fact

that Damrey Srot Prison, which was established in 1976, was also situated nearby the location where the pits of skeletons were located. However, Counsel Son Arun was prevented from raising the issue because the Chamber ruled that it was outside the scope of Case 002/01 (see section III.C).

#### **4. Witness Demeanor and Credibility**

The credibility of the Witness' and his account of events was consistently challenged by the Defense. Under cross-examination, the Witness admitted that he had not personally witnessed some of the testimony he had provided to the OCIJ investigators. Lev Lam was also unable to provide any explanation about how the biography screening process for Lon Nol officials, soldiers, and capitalists was conducted during questioning.

#### **C. Ek Hen's Testimony (TCW-164)**

Ek Hen was the third witness to testify this week.<sup>13</sup> A former member of the Women's Combatant Unit and worker at KR's garment factory during the DK period; the Witness testified primarily on the study sessions she attended where the Co-Accused were present. She also described how people from her factory were arrested, particularly those who were alleged to have connections with the East and North Zone networks.

##### **1. Movements Before 17 April 1975 and Recruitment to KR**

Ek Hen began her testimony by recounting how she was recruited into the KR. The Witness explained that she joined the revolution in 1973, at just 16 years of age. In late 1974, after several months of grueling manual labor assisting to build a dam at Boeng Kak, the Witness requested to be transferred to a Women's Combatant Unit in the East Zone. Explaining her decision, the Witness stated "If I die[d], it was better than building the dam."<sup>14</sup> The Women's Combatant Unit was established by Sao Phem, who Ek Hen described as the Zone Committee. However, it was Sao Phem's subordinates who ultimately trained and managed the unit.<sup>15</sup> The Witness was assigned to the 3rd group of Company 13 in Sector 203. According to the Witness, she was still completing the six-month military training when Phnom Penh fell, so she never engaged in any combat or received training about policies on how to deal with captured Lon Nol Soldiers. After 17 April 1975, the Women's Combatant Unit was demobilized and turned into a Mobile Unit. The members of the unit were sent to Phnom Penh for one week to clean up the damage, then reassigned to Kampong Saom to work in the salt fields. After doing what she described as hard manual labor in the salt fields, Ek Hen was later sent to work at Unit K-9 in Phnom Penh.

##### **2. Work Experience at K-9 Garment Factory**

Ek Hen told the Court that she worked to sew clothes at a garment factory called Unit K-9 located in Phnom Penh, at the present-day O'Russey market. The Witness testified that Unit K-9 was part of Office 870 during the DK period. According to the Witness, working days were long at K-9, and she told the Court how she started work at 4:00am and finished at 9:00pm. The Witness stated that workers at K-9 survived on food they grew themselves, including vegetables and pigs. The Witness did recall that after a visit from Khieu Samphan, the quality of the food that was provided to the K-9 workers improved.

##### **3. Study Sessions at Borei Keila**

While working at K-9, the Witness recalled that she attended a number of study sessions during which both Nuon Chea and Khieu Samphan gave lectures. The sessions were held at Borei Keila in 1976 and again in 1978. The study sessions were also known as self-criticism

meetings and the Witness recalled that Khieu Samphan and Nuon Chea each lectured for half a day to a crowd of around 500 cadres. Ek Hen recalled that the study sessions focused on continuing the revolutionary struggle, meeting quotas, national unity, and discussing Vietnamese and North Zone “traitors.”<sup>16</sup> According to the Witness, after the lecture sessions were completed, the rest of the day was dedicated to self-criticism and criticism of others.

#### **4. Internal Purgings**

During examination by the Prosecution, the Witness confirmed statements she had made to the OCIJ that a number of people in her unit had been arrested, including the Chairman of K-9, Keo, who she personally saw arrested. The Witness stated that those who were arrested had been accused of having relations with the North and East Zone network. According to the Witness, the leaders were taken first, followed by the deputies and other party members. The Witness told the Court how the arrests resulted in great fear amongst the workers. In total, Ek Hen recalled the disappearance of four people from her workplace but testified that she had not witnessed all the arrests personally.

#### **5. Role of the Co-Accused and Policy of Internal Enemies**

In relation to the 1976 and 1978 study sessions at Borei Keila, the Witness was asked to provide further details about the lectures she claimed were given by Khieu Samphan and Nuon Chea. Ek Hen said the 1976 study session focused on work attitude, effectiveness and the conservation of food, rather than political topics. The 1978 study session, which she attested in her OCIJ interview had been chaired by Nuon Chea, dealt with the topics of internal and external enemies and advised workers to avoid traitorous networks. Treason in the North Zone and the subsequent arrest of Koy Thuon, *alias* Koy Khuon, were presented during the sessions as examples of internal enemies. The Witness also told the Court that she heard about the arrest of Pang, former Chairman of Office 870 in late 1976, although later claimed that she heard it during the second study session in 1978.<sup>17</sup>

Although the Witness initially confirmed to the Prosecution that the 1976 study session was chaired by Khieu Samphan and the second by Nuon Chea, under cross-examination by Arthur Vercken, she contradicted her earlier assertion and appeared to be confused about which of the Co-Accused had chaired which meeting and whether treason was covered during the 1976 session.<sup>18</sup> Ultimately, she conceded that the events had taken place a long time ago, and it was possible that her memory was better during the 2008 OCIJ interview. However, she maintained that she had attended two study sessions in Borei Keila during the DK period. During the first session, the Witness stated, there was no discussion about traitors. However, the second session had discussed the treachery of North Zone cadres. The Witness also stated that she saw Khieu Samphan on at least two occasions at K-9 when he conducted site inspections. Ek Hen recounted a specific incident where Khieu Samphan had visited the workers at lunch to build rapport, and had shared her spoon in order to sample the food they were eating.

#### **6. Witness Demeanor and Credibility**

Some areas of Ek Hen’s testimony were unclear, particularly in relation to which of the Co-Accused had chaired the study sessions she attended and which topics were covered in which session. Further contradictions in her testimony were revealed under cross-examination, including whether she learned about Pang’s arrest at a study session in 1978 or earlier. However, the Witness acknowledged inconsistencies between her testimony and her OCIJ statement directly, conceding that her memory may have faltered since that time. Moreover, she consistently maintained a number of facts that she appeared to be sure of.

## **D. Sum Alatt's Testimony (TCW-689)**

From Wednesday to Thursday this week, the Chamber heard the Testimony of Sum Alatt, *alias* Chhong Lat, a former Corporal in the Lon Nol Military.<sup>19</sup> Both the Prosecution and the Defense had requested the Witness, however the Chamber ruled that since the Prosecution had made the request first, they would commence questioning. The Witness testified on the surrender of Lon Nol forces in Pursat, the gathering of Lon Nol officials in Pursat Town Hall, and the alleged purging at Tuol Po Chrey. He also described participating in a meeting organized by the Ministry of Education in 1980 to collect data on KR atrocities.

### **1. Career in Lon Nol's Military Forces**

Sum Alatt began his testimony by recounting his role in the Lon Nol military prior to 17 April 1975. After finishing his education in 1972 at 19 years of age, the Witness joined the Lon Nol army in Pursat. After earning the rank of Corporal, he was assigned to work at the Provincial General Staff Office. Counsel Son Arun challenged the Witness about the existence of the office, and suggested that the Provincial General Staff Office had only existed at the capital at the time he spoke of. Sum Alatt explained that the Governor of Pursat was both a military and civilian leader in that area and accordingly, had his own Staff Office and military units that reported directly to him. In 1973, Sum Alatt recalled that he was sent to Kravanh battlefield to take charge of military operations there. Describing the Kravanh battlefield as the fiercest in the country, he recounted leading one thousand refugees to Leach in Pursat province to escape the fighting.

### **2. KR Victory in Pursat on 17 April 1975**

The Witness stated that in April 1975, he was sent to Svay Daunkeo in Pursat Province to lead the technical team of an artillery unit. On 17 April 1975, after heavy fighting, Sum Alatt described how KR forces took control of Pursat town. He recalled hearing a national radio broadcast from Lon Nol General Staff representative, Brigadier General Meas Chun, ordering all Lon Nol units to "surrender, raise white flags, and lay down weapons."<sup>20</sup> After the announcement, the Witness explained that the atmosphere was jovial and described seeing many Lon Nol soldiers and KR soldiers joined together dancing to celebrate. However, the next morning, the Witness testified that the mood had changed drastically and recalled that as they retreated to National Road 5, KR forces fired indiscriminately at both civilians and soldiers, "spraying human and animal targets."<sup>21</sup>

After escaping the bullets, the Witness described walking to Bakan, where the KR rounded up 500 soldiers, residents, and civil servants at the Bakan District Office for a meeting. According to Sum Alatt, the purpose of the meeting was to inform attendees about political indoctrination and the evacuation of the city. The Witness recalled that he snuck out of the meeting before it ended because he felt that the KR did not trust them after they had fired on the soldiers at National Road 5. The Witness then travelled to his family in Svay Loung, recalling that he had stopped to "float" his military uniform down the Pursat River. He said he had done this because if the KR found the uniform in his house he would be dead.<sup>22</sup>

### **3. Pursat Town Hall Meeting for Lon Nol Officials**

On or about 25 April 1975, he traveled to Pursat Town Hall to attend a gathering of former Lon Nol officials which he had heard by word of mouth. When Vercken asked the Witness why he would risk attending the meeting after going through such great lengths to hide his identity, Sum Alatt simply responded that curiosity got the best of him. The meeting, presided by Ta Sot, was held over two days and discussed issues related to reconciliation policy, nation building, and placing trust in Angkar. Sum Alatt claimed that in Pursat, Lon

Nol's military and civilian government was still partially functioning. The Witness told the Court that approximately 500 former Lon Nol military and civilian officials attended the gathering, about 200 of whom he had identified as soldiers. He recalled that some of the soldiers were still in uniform, but the majority wore civilian clothes. Koppe challenged the Witness' account of the meeting and claimed that his testimony was inconsistent with the testimony of Witness Ung Chhat's (see section 6 below).<sup>23</sup> Although the Witness claimed to know 10 to 20 of the other attendees personally, the Witness could only name one fellow soldier named Leng Kang in addition to two childhood friends. When asked whether Leng Kang was alive, the Witness answered, "[h]e already went to an education session at Tuol Po Chrey. That's my answer."<sup>24</sup>

According to the Witness, the Lon Nol officials at the meeting were told they would be taken to Tuol Po Chrey for reconciliation with Angkar. Sum Alatt described the atmosphere as joyous. Personally, he felt tired of war and only wanted peace. He said, "I could not imagine anything bad would happen, I was optimistic...that we would consolidate ourselves."<sup>25</sup> After the meeting concluded, the Witness recalled that 13 to 15 trucks drove the officials away from the meeting. He estimated that each truck carried approximately 50-60 people. According to Sum Alatt, people were so enthusiastic to meet Angkar that the trucks filled quickly and he was unable to climb aboard. Left behind with 60 others, he remembered that he chased the trucks, but was told to wait for the next trip. However, after two hours, the trucks had still not returned, so the Witness returned home to his family.

#### **4. Purging at Tuol Po Chrey**

Sum Alatt testified that he did not personally witness people being killed at Tuol Po Chrey, but heard about it three days later when two childhood friends named Phat and Duong, who had boarded the trucks, told him about their escape. According to the Witness, his friends told him that approximately one-kilometer from Tuol Po Chrey, the KR had tied up the soldiers under the pretense it was required in order to meet Angkar and executed them. After speaking to his two friends about their escape, the Witness never saw them or any of the other people who boarded the trucks again. He later heard from villagers that his friends had been arrested by the KR and executed. The Witness also confirmed that he personally saw bulldozers heading to that area, which he believed were being sent to bury the bodies.

#### **5. Witness Involvement in Evidence Presentation for Ministry of Education in 1980**

After the fall of the DK regime in 1979, the Witness worked as a teacher in the Ministry of Education. In 1980, he was summoned to Phnom Penh by the government along with five other teachers who had also witnessed crimes in Pursat. Together, the group learned how to gather documents and present evidence of KR crimes alleged to have occurred in Pursat. Sum Alatt told the Court that he and the other members of the estimated that 2000 people had been killed at Tuol Po Chrey, based on his own account and interviews he had conducted with the Chief of Vey Luong Commune during the DK period, Seng Chuon and others after the fall of the DK.

#### **6. Witness' Demeanor and Responsibility**

Sum Alatt appeared to maintain a calm demeanor when answering questions despite being subjected to sustained cross-examination from both Defense teams. Several aspects of the Witness' testimony were contradicted by the account provided by Witness Ung Chhat who testified before the Chamber on 29 April 2013. As Victor Koppe pointed out during his cross-examination, Ung Chhat's testimony differed from the Witness in relation to a number of facts including the number of trucks which carried the Lon Nol soldiers, the place the meeting took place and whether the heads of two former Lon Nol commanders of Tuol Po Chrey Pel and



Roeun, were placed on stakes at the entry gates of the killing site.<sup>26</sup> Despite being presented with Ung Chhat's account of the events, Sum Alatt stood by the majority of the statements he made in his 2008 OCIJ interview. However, the Defense also revealed several minor inconsistencies between his testimony and his OCIJ statement. A further issue noted by monitors was the fact that the Witness was unable to supply the name or rank of more than three people at the meeting he estimated that 500 had attended.

### **III. Legal and Procedural Issues**

Legal and procedural issues this week focused on the relevance of questions, speculation, and questions outside the scope of Case 002/01. The limited role of a duty counsel was raised once again this week, as the bench instructed Pech Chim's Duty Counsel to consult with the Witness only when he sought advice on potentially self-incriminating questions.<sup>27</sup> The Chamber also allowed the Prosecution's request to admit new evidence despite the fact that the requirements of IR 87.4 had not been satisfied, raising an ongoing issue of equality between the Parties.<sup>28</sup>

#### **A. Right Against Self-Incrimination and Role of Duty Counsel**

Witness Pech Chim attempted to exercise his right against self-incrimination on two occasions throughout his testimony. On the first occasion, Koppe had asked the Witness if he personally had been involved in executions or killing of enemies. Before the Witness answered, Duty Counsel Mam Rithea intervened, claiming that the question could incriminate the Witness. The President warned the Duty Counsel to consult with the Witness before responding on his behalf, adding he was not there as defense counsel. Again, during the same session, Koppe asked the Witness what the difference was between the re-education of civilians and the re-education of Lon Nol soldiers as well as how he knew the difference. The Witness responded that he could not answer the question and looked to his Duty Counsel to assist him. The President reiterated that the Duty Counsel could not help the Witness respond to questions, but was there only to advise him on how to respond in ways that avoided self-incrimination.

#### **B. Witness Speculation**

Multiple objections were raised this week in relation to speculation from witnesses, particularly during the testimony of Pech Chim and Lev Lam. During the examination of Pech Chim, Koppe attempted to "put to the Witness" on two occasions that military personnel were only sent for re-education and later returned to their homes. Raynor objected to the questions on the basis that they invited speculation and were not based on evidence. Despite protests from Koppe that Raynor had used the exact same approach during his cross-examination of Witness So Socheat, President Nil Nonn asked Koppe to begin with a new question. A further series of objections were raised during Lev Lam's testimony. However, this time, the objections were directed towards the Witness' use of speculative phrases such "it is likely," when he elaborated on the method used to kill the people he escorted to the District soldiers.<sup>29</sup> The President cautioned the Witness after Koppe asked the President to prevent the Witness from speculating in this way. On Tuesday, the Chamber also sustained an objection from the Prosecution to a question from Koppe, which had asked the Witness to comment on whether the people who admitted to being Lon Nol soldiers in their biographies were "unlucky."<sup>30</sup>

#### **C. Questions Outside Scope of Case 002/01**

During the week, both the Parties and the Chamber appeared resolute to keep questioning within the scope of Case 002/01. An example of this was seen when counsel Son Arun

attempted to question Witness Lev Lam on Damrey Srot prison, a facility near the grave pits the Witness encountered between 1981-1982. The President sustained an objection from the Prosecution preventing Son Arun from proceeding with his line of questioning, despite his protests that the prison had been mentioned in the Witness' OCIJ statement and referred to during previous questioning by the parties.<sup>31</sup> The President also preemptively warned Parties when the Chamber considered they had strayed from the scope of Case 002/01, even preventing questions technically within the scope of the first mini-trial, but not in line with the topics the Witness was summoned for. This was particularly evident when the President interrupted Civil Party Lawyer Sin Soworn's questioning on two occasions, and instructed Witness Ek Hen not to answer questions related to her military training or forced marriage.<sup>32</sup> The President also sustained a further objection from Koppe in relation to Civil Party Chet Vanly's attempt to question Witness Sum Alatt on forced marriage.

#### **D. Leading Questions**

Clarifying that his intention was to prepare for a future appeal from the Nuon Chea team, Koppe made a large number of objections on leading and repetitive questions this week. The main objections posed by Koppe targeted the Prosecution's use of OCIJ statements as a basis for questioning. Koppe argued that this essentially confirmed the accuracy of the contents of the document.<sup>33</sup> In response, the Prosecution argued that they had firstly posed open questions to lay the ground before referring to the OCIJ statement. However, the Chamber did not sustain the objections, reminding the Defense counsel that using OCIJ statements as a basis for questioning had been accepted practice at the Trial Chamber for the past two years. The issue of leading questions was raised again during Vercken's examination of Witness Ek Hen. Vercken had attempted to clarify a date referred to by the Witness, but was interrupted by Civil Party Lawyer Christine Martinneau, who objected that Vercken's reference to the Witness' earlier statement was "highly leading." The President did not address whether or not the counsel's question was leading, but rather asked Vercken to move on to other topics because "the Chamber ha[d] heard the line of questioning..."<sup>34</sup>

#### **E. Repetitive Questions**

Prosecutor Lysak also challenged Koppe for repetitive questioning on Tuesday, when he attempted to undermine the Witness' account that former Lon Nol's soldiers and officials were chosen, assembled, and "tricked" into leaving their homes.<sup>35</sup> Lysak argued that Koppe's method of questioning was repetitive and circular. Koppe protested, adding that all his questions were in fact different. The President sustained the Prosecution's objection and pointed out that the Chamber already understood what Koppe was driving at. Moreover, the President added that the probative value of the Witness account was an issue for the Trial Chamber's discretion.

#### **F. Objection on Counsel Arguing Within Question**

During Lev Lam's testimony on Tuesday, Koppe asked the Witness outright whether his account of the purging of former Lon Nol's officials was just a figment of his imagination. This prompted an objection from the Prosecution, claiming that Koppe was essentially masking his argument that the execution never happened within his question. Elaborating on the objection, Prosecutor Lysak stated that Koppe ought to limit his questions to the particularities of the Witness' testimony. The objection was sustained by the Chamber, despite Koppe's argument that he was trying to confirm precisely what the Prosecution was objecting to, namely whether or not purging of Lon Nol's officials had actually occurred.

## **G. Prosecution Request to Admit New Evidence Pursuant to Internal Rule 87.4**

At the beginning of Witness Ek Hen's testimony, the Prosecution submitted a request to admit new evidence pursuant to Internal Rule 87.4.<sup>36</sup> The Prosecution sought to use a number of photographs and a 370-page prisoner list from S-21 during the examination of Ek Hen. The Defense teams objected to the Prosecution's request on five grounds: a) the OCP had failed to include the documents in the interface before the deadline,<sup>37</sup> b) the Witness had not been showed the photographs when she was interviewed by DC-Cam in 2013, c) the photographs already had a case 001 file number, indicating they were available to the prosecution all along, d) the photographs were from S-21 and outside the scope of Case 002/01, and e) the Prosecution requested the admission of the documents verbally rather than in writing. Providing an explanation for the late submission, the Prosecution stated that Ek Hen's testimony was heard earlier than was scheduled and accordingly, the Prosecution was unable to apply to admit the material until the previous day.<sup>38</sup>

Following deliberation between the Trial Chamber judges, Judge Cartwright clarified that some of the material had already been entered into evidence and the question really centered around two photographs that had not been put before the Chamber.<sup>39</sup> Although neither Defense counsels had principled objections to the Prosecution's use of the document, their main concern was in relation to the exercise of the Chamber's discretion to admit the evidence despite the Prosecution's failure to comply with IR 87.4. Raising the issue of inequality between the Parties, Vercken argued that the Chamber should not show flexibility in favor of the Prosecution when the documents had been available for a long time and concerned such a key witness. Moreover, Vercken added that the Chamber had always required the Defense to submit such requests in writing. Koppe again reiterated that he expected the Chamber to show the same level of flexibility to the Defense in the same circumstances.

The Chamber ultimately admitted the two photographs, adding that the S-21 list had already been entered into evidence.<sup>40</sup> However, in somewhat of an anti-climax, the Prosecution was unable to use the photographs for identification purposes during the examination because the name of the person was written on the photograph, rendering the identification process meaningless.<sup>41</sup>

## **IV. TRIAL MANAGEMENT**

This week, the Chamber successfully conducted the testimony of four witnesses. The Chamber exerted stringent control over the scope of Parties' questioning throughout the week. Some translation and court etiquette issues emerged this week, but overall the Chamber managed the week's proceedings efficiently.

### **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.

#### **Judges Attendance:**

Judge Ya Sokhan was not present during the entire week and was replaced by Reserve Judge Thou Mony. There was no announcement regarding the expected duration Judge Ya Sokhan would be absent.

#### **Civil Party Attendance:**

CPLCL Pich Ang was absence from Monday until Wednesday, due to personal reasons.

Monitors observed daily 10 Civil Parties in the courtroom and several Civil Parties following 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 1/7/2013	<ul style="list-style-type: none"> <li>▪ 150 students from Kampong Thom Province</li> <li>▪ 4 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 150 students from Kampong Thom Province</li> <li>▪ 1 foreign observer</li> </ul>
Tuesday 2/7/2013	<ul style="list-style-type: none"> <li>▪ 140 villagers from Takeo Province</li> <li>▪ 7 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 130 villagers from Takeo Province</li> <li>▪ 7 foreign observers</li> </ul>
Wednesday 3/7/2013	<ul style="list-style-type: none"> <li>▪ 200 villagers from Takeo Province</li> <li>▪ 6 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 200 students from Takeo Province</li> <li>▪ 4 Monks</li> <li>▪ 4 foreign observers</li> </ul>
Thursday 4/7/2013	<ul style="list-style-type: none"> <li>▪ 150 villagers from Kandal Province</li> <li>▪ 4 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ 50 students from Kampong Speu Province and 50 students from Phnom Penh</li> <li>▪ 6 foreign observers</li> </ul>

**B. Time Management**

This week, the Trial Chamber held proceedings from Monday to Thursday, and successfully concluded testimony from four witnesses. The Chamber actively enforced strict adherence to time limits throughout the week, and interrupted questioning which was either irrelevant, repetitive or did not address specific topic the Witness was called for. The Chamber also denied extensions of time to both the Civil Parties and the Khieu Samphan Defense. The Chamber also showed intent to maximize the available time, when witness Ek Hen concluded her testimony on Wednesday afternoon, the reserve witness, Sum Alatt, was summoned to be questioned in the last 30 minutes of the day’s hearing.

**C. Courtroom Etiquette**

On Thursday, during the examination of Witness Sum Alatt, the President cut off Vercken’s microphone, claiming that the supplementary twenty minutes he had been granted had expired. When Vercken tried to explain that he was concluding his final question, his microphone was again cut off and the President proceeded to dismiss the Witness and adjourn the hearing.

**D. Translation and Technical Issues**

A number of French translation issues were noted throughout the week, particularly on Wednesday and Thursday.

**E. Time Table**

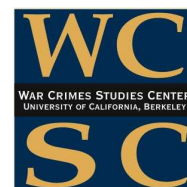
DATE	MORNING SESSION 1	MORNING SESSION 2	AFTERNOON SESSION 1	AFTERNOON SESSION 2	TOTAL HOURS IN SESSION
Monday 01/07/13	9:01-10:30	10:52-12:11	13:32-14:41	15:02-15:41	4 hours and 36 minutes
Tuesday 02/07/13	9:01-10:31	10:53-11:49	13:33-14:41	15:00-16:01	4 hours and 35 minutes
Wednesday 03/07/13	9:04-10:44	11:01-12:20	13:33-14:44	15:02-16:02	5 hours and 10 minutes
Thursday 04/07/13	9:02-10:30	10:52-11:59	13:32-14:38	15:01-16:28	5 hours and 08minutes
Average number of hours in session			4 hours 52 minutes		
Total number of hours this week			19 hours 29 minutes		
Total number of hours, days, weeks at trial			883 hours 12 minutes		
<b>199 TRIAL DAYS OVER 62 WEEKS</b>					

**Unless specified otherwise,**

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* 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.

This issue of **KRT TRIAL MONITOR** was authored by Stephanie Fung, Andrew Grant, Melanie Hyde, Anne Lang, Jessica Mawrence, Aviva Nababan, Kimsan Soy, 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](http://www.eastwestcenter.org) and the [War Crimes Studies Center](http://www.warcrimesstudiescenter.org).

<sup>1</sup> Trial Chamber. Transcript of Trial Proceedings (4 July 2013). E1/218.1 [hereinafter, **4 JULY TRANSCRIPT**]. Lines 11-15. 22.

---

<sup>2</sup> Pech Chim was examined in the following order: President Nil Nonn; International Prosecutor Keith Raynor; Civil Party Lawyer Hong Kim; International Co-Lawyer for Nuon Chea Victor Koppe; National Co-Lawyer for Khieu Samphan Kong Sam Onn.

<sup>3</sup> **1 JULY TRANSCRIPT.** Line 22. 35.

<sup>4</sup> **1 JULY TRANSCRIPT.** Lines 13-14. 55.

<sup>5</sup> **1 JULY TRANSCRIPT.** Lines 14-15. 57.

<sup>6</sup> The Witness named a military official named Som from Krang Ta Chan.

<sup>7</sup> **1 JULY TRANSCRIPT.** Lines 7-15. 64.

<sup>8</sup> **1 JULY TRANSCRIPT.** Lines 1-4. 9.

<sup>9</sup> The whole trip to Borei Keila lasted for one month but the study session only for about three weeks (20 days).

<sup>10</sup> Lev Lam was examined in the following order: President Nil Nonn; International Prosecutor Dale Lysak; National Prosecutor Seng Bungkheang; International Civil Party Lawyer Beini Ye; National Co-Lawyer for Nuon Chea Son Arun; International Co-Lawyer for Nuon Chea Victor Koppe; International Co-Lawyer for Khieu Samphan Arthur Vercken.

<sup>11</sup> Trial Chamber. Transcript of Trial Proceedings (2 July 2013). E1/216.1 [hereinafter, **2 JULY TRANSCRIPT**]. Lines 2-6. 21.

<sup>12</sup> **2 JULY TRANSCRIPT.** Lines 12-16. 21.

<sup>13</sup> Ek Hen was examined in the following order: President Nil Nonn; National Prosecutor Song Chorvoin; International Prosecutor Keith Raynor; National Civil Party Lawyer Sin Soworn; International Civil Party Lawyer Christine Martinneau; International Co-Lawyer for Nuon Chea Victor Koppe; International Co-Lawyer for Khieu Samphan Arthur Vercken.

<sup>14</sup> Trial Chamber. Transcript of Trial Proceedings (3 July 2013). E1/217.1 [hereinafter, **3 JULY TRANSCRIPT**]. Lines 23-24. 53.

<sup>15</sup> **3 JULY TRANSCRIPT** refers to Sao Phem as So Phim.

<sup>16</sup> **3 JULY TRANSCRIPT.** Lines 1-4. 51.

<sup>17</sup> In her OCIJ statement, Ek Hen testified that she was made aware of the arrest of Pang in late 1976 when it was revealed Pang was consorting with the Vietnamese (referred to as Yuon). During her testimony in front of the court, however, Ek Hen insisted that she heard the term traitor for the first time during the second study session, which she had told the court was not until 1978.

<sup>18</sup> **3 JULY TRANSCRIPT.** Lines 9-11. 79.

<sup>19</sup> Sum Alatt was examined in the following order: President Nil Nonn; Deputy International Co Prosecutor William Smith; National Civil Party Lawyer Chet Vanly; ILCPL Simonneau Fort; National Co-Lawyer for Nuon Chea Son Arun; International Co-Lawyer for Nuon Chea Victor Koppe; International Co-Lawyer for Khieu Samphan Arthur Vercken.

<sup>20</sup> **4 JULY TRANSCRIPT.** Lines 13-15. 7.

<sup>21</sup> **4 JULY TRANSCRIPT.** Lines 24-25. 6.

<sup>22</sup> During his testimony, the Witness told counsel Vercken that he floated his uniform down the Pursat river. However, this was inconsistent with his OCIJ interview, where he stated that he was forced to turn it into KR soldiers in exchange for civilian clothes.

<sup>23</sup> See CASE 002 KRT TRIAL MONITOR, Issue 58, Hearing on Evidence Week 53 (29 April-3 March 2013).

<sup>24</sup> **4 JULY TRANSCRIPT.** Lines 19-20. 80.

<sup>25</sup> **4 JULY TRANSCRIPT.** Lines 14-15. 22.

<sup>26</sup> This was contrary to the account provided by Witness Ung Chhat.

<sup>27</sup> Witness So Socheat's testimony two weeks ago also raised the issue of the role of duty counsel, as her Duty Counsel had similarly attempted to defend her when she presented an unorthodox concluding statement. See CASE 002 KRT TRIAL MONITOR, Issue 63, Hearing on Evidence Week 58 (10- 14 June 2013).

<sup>28</sup> See Internal Rules of the Extraordinary Chambers In The Courts of Cambodia, Revision 8, as revised on 3 August 2011.

<sup>29</sup> Lev Lam had stated in his OCIJ statement that the people he escorted to meet the District soldiers had been bludgeoned to death. See **2 JULY TRANSCRIPT.** Lines 14-15. 30.

<sup>30</sup> **2 JULY TRANSCRIPT.** Lines 15-18. 62.

<sup>31</sup> The President added that the topic of discussion was the killing of 17 April people who were former Lon Nol's military personnel or public servants at the Chrok Sangkay village execution site. Son Arun abruptly stated that he did not understand the President's explanation and promptly handed over the floor to his international counterpart.

<sup>32</sup> The ruling was preceded by objection from Khieu Samphan's National Counsel Kong Sam Onn. **3 JULY TRANSCRIPT.** Lines 12-15. 56.

<sup>33</sup> **2 JULY TRANSCRIPT.** Lines 2-4. 31.

<sup>34</sup> **3 JULY TRANSCRIPT.** Lines 4-6. 95.

<sup>35</sup> **2 JULY TRANSCRIPT.** Lines 7-9. 49.

<sup>36</sup> The rule governs the admittance of evidence at trial stage, which is subject to the Chamber's decision and may be rejected if the proposed evidence is: a) irrelevant or repetitious, b) impossible to obtain within a reasonable

---

time, c) unsuitable to prove the facts it purports to prove, or d) is intended to prolong the proceedings or is otherwise frivolous.

<sup>37</sup> Nuon Chea's counsel pointed out that the Defense had already been flexible to accept the Prosecution's use of the documents despite their failure to include them in the interface by the 12.00 pm deadline on Tuesday.

<sup>38</sup> Prosecutor Song Chorvoin responded that the OCP had only received the photos from DC-CAM at 17.30 on the previous day. Song Chorvoin also reminded the Chamber that Ek Hen was originally scheduled to testify on July 25, and because his testimony was earlier than scheduled, the OCP could complete the application before the day of the testimony.

<sup>39</sup> Judge Cartwright confirmed with both Koppe and Verkcen that they had no principled objections to the Prosecution's use of the photographs and the S-21 prisoner list in their examination. See **3 JULY TRANSCRIPT**. Lines 17-19. 11.

<sup>40</sup> President Nil Nonn ruled that as the list of S-21 prisoners was already used at prior stages of the trial, its use was again allowed during Witness examination. The President also explained that although the Rule 87.4 criteria for new evidence was not satisfied with regards to the two photos, in the spirit of flexibility, the Chamber allowed them to be used as the Witness was ready to testify.

<sup>41</sup> As the Prosecution sought to confirm with Ek Hen that one of the names present was that of her brother, who perished at S-21, Koppe pointed out that the name of the person was actually written on the photograph. Judge Cartwright on behalf of the Chamber sustained the Koppe's objection, stating that the evidence then had little value and the Prosecution could not rely on it for identification purposes.