

KRT TRIAL MONITOR

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Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

According to my interaction with him, being close to him, Mr. Nuon Chea is a gentle person – an educated person who was a good advice giver. He educated people to be good and that's what my observation is.

- Witness Oeun Tan

I. OVERVIEW

This week, the Trial Chamber continued to hear the testimonies of Witnesses Mr. Sao Sarun and Mr. Khoem Ngorn. Sao Sarun was a District Secretary and, thereafter, Sector Secretary of Sector 105.¹ Khoem Ngorn, on the other hand, worked at the Ministry of Foreign Affairs (**MFA**) after the fall of Phnom Penh in 1975.² The Chamber also heard the testimony of a new witness, Mr. Oeun Tan,³ who once served as Pol Pot's messenger and security guard. All three witnesses concluded their testimonies during the week.

Sao Sarun's experiences from the various positions he occupied during the regime enabled him to provide information on party policies and the leadership structure of DK. During Khoem Ngorn's examination, the Witness testified on his duties in the MFA but indicated that he had limited personal knowledge of details as regards the leadership structure of the MFA and the arrests of persons in the Ministry. Witness Oeun Tan served Pol Pot for nine years; thus, he was able to give some detailed information regarding meetings of the DK leaders and lines of communications between Pol Pot and the other leaders of the CPK.

II. SUMMARY OF WITNESS TESTIMONIES

The Civil Party lawyers tried to obtain information regarding the implementation of CPK policies in Sector 105 from Sao Sarun, whose testimony covered the administrative structure of the sector and its communication lines with the leaders of DK. The second Witness, Khoem Ngorn, admitted having accompanied foreign guests of the MFA to provinces, and was thus examined on his observations of the situation in the countryside and on purges in the MFA. Finally, one of Pol Pot's messengers and bodyguard, Oeun Tan testified on his time accompanying Brother No. 1. Questions posed to the Oeun Tan focused on the meetings the senior leaders convened after the evacuation of Phnom Penh.

A. The Testimony of Sao Sarun

The Witness' testimony was hampered by his failing memory. Parties repeatedly referred to records of Sao Sarun's interview with the OCIJ in order to refresh his memory and for him to clarify contradicting statements.

1. Structure of Sector 105

Sao Sarun, a District Secretary, was officially appointed as the Secretary of Sector 105 (also referred to as Mondulkiri) during the September 1978 Party Congress in Phnom Penh.⁴ He succeeded his deceased superior, Ta Laing. According to the Witness, Sector 105 had four Sector Offices, namely: Office K-11,⁵ Office K-16, Office K-17,⁶ and the Commerce Office. Office K-17 and Office K-11 were located in Phnom Kraol.⁷ He also mentioned an Office 105, which was regarded as a "common office." When asked to be more specific, Sao Sarun merely stated that the code of the office was number 105 in the Mondulkiri area. He denied awareness of the management of the offices, explaining that when Ta Laing was Sector Secretary, Witness himself was only responsible for the district level and as such, business affairs at the sector level was out of his reach. When Judge Jean-Marc Lavergne asked about persons named Mey, Cham, Phak and Lork, Sao Sarun confirmed that he had heard of them, however he denied having known them personally and claimed not to know the reasons behind their disappearance.⁸

The Witness moreover testified on the Sector Committee, which was reportedly composed of at least three members, including a certain Sophea. Sophea became Chairman of Phnom Kraol Security Office after Ta Laing.⁹ Sao Sarun indicated that he did not know why Phnom Kraol Security Center was established, reiterating that he was confined at the district level at that time. The Witness emphasized that the Sector Office and Phnom Kraol Security Office were two different offices; however, he indicated that he was referring to one and the same office in Phnom Kraol when he used the terms "re-correction center" and "security office." Furthermore, when questioned by Civil Party Co-Lawyer, Ms. Ty Srinna, the Witness affirmed that there was a division from the "central military" called Division 920, which was stationed in his district. Witness explained,

From my understanding, the military from the Central Committee were not aware of the geographical location, and that was different for the sector military who lived there, they knew more about the geographical location.

2. Communication Lines

According to Sao Sarun, after Sector Secretary Ta Laing died, Pol Pot instructed him to report on several issues to Office 870 or to Pol Pot directly personally during meetings or through telegrams. The Witness recounted that he sent three telegrams to Office 870 and Pol Pot on the KR's counterstrike against an intense attack in Trang Tem commune. When questioned by International Co-Prosecutor Mr. Dale Lysak about four telegrams Sao Sarun allegedly sent to the leaders in Phnom Penh between January and April 1978, the Witness stated the telegrams were his monthly reports sent to Pol Pot.

Sao Sarun also explained that he received instructions from the leaders in Phnom Penh regarding farming, making people good citizens, strengthening the economy, and resisting Vietnam's invasion. He further mentioned that he received a telegram from Nuon Chea inviting him to attend education sessions, as well as a telegram from Pol Pot directing him to join a meeting in Phnom Penh. When asked about the request Sao Sarun made to Khieu

Samphan for equipment or supplies, the Witness explained that he was only “chit-chatting” with Khieu Samphan about food production.

3. Implementation of CPK Policy

In his testimony, Sao Sarun denied witnessing any forced marriages. According to the Witness, as Sector 105’s Secretary, he had no right to force anyone into marriage, as permission from a couple’s parents was always required. CPLCL Elisabeth Simonneau-Fort, however presented “Civil Party statements” D22/1433 and D22/1175 from two Civil Parties who averred in these statements that they were forced into marriage. One of them averred that he saw 18 other couples who were similarly forced to marry. According to one of the Civil Parties, although each person ostensibly consented to getting married, the reality was, anyone who disobeyed the order to marry was arrested. Simonneau-Fort read these statements to Sao Sarun and then asked him if they refreshed his memory about forced marriages. He maintained that he was unaware of forced marriages.

The Witness similarly denied having seen or heard of the forced transfer of people into his sector, notwithstanding a Civil Party statement indicating that he or she had been evacuated, sent to Mondulkiri, and then subsequently transferred to the Cambodian-Vietnamese border. Sao Sarun insisted that he had never witnessed such transfers into Mondulkiri.

4. Party Congress of 1978

The Witness testified that he attended a Party Congress in September 1978 in Borei Keila, Phnom Penh, held shortly before the Vietnamese invasion. The Congress was a general assembly with representatives from different sectors across the country and members of the military. Hundreds of people, including Pol Pot, Nuon Chea, Khieu Samphan, Ieng Sary, Ieng Thirith, and Son Sen reportedly attended this 10-day Congress. According to the Witness, he was able to identify the leaders because each was called to the stage.

During the 1978 Party Congress, Nuon Chea gave presentations on “the management of people, good management of the people to provide houses to the people and to provide food to the people,” recounted Sao Sarun. He also confirmed that matters such as the re-opening of markets, the re-circulation of money, and the return of people to Phnom Penh were also considered. He was, however, unaware if these policies were ever implemented, as he left Phnom Penh as soon as the Congress ended. He commented that the re-opening of monasteries was not mentioned during any of the sessions.

According to Witness, Pol Pot also announced the end of arrests during the Congress. No one was allowed to make arrests or commit killings without prior instruction from the Central Committee, on the ground that the party had already achieved the elimination of all enemies in Cambodia. Moreover, the leadership reportedly instructed the attendees to disseminate this new policy to their respective sectors and districts. Nevertheless, the leadership instructed the attendees to punish those who were still regarded as enemies for having joined the CIA, the KGB and the Viet Cong. Sao Sarun stated that, while he did not know what inspired this change in party policy, he held meetings as instructed when he returned to Sector 105, to disseminate what he learned during the Congress. When asked by Lysak if there were arrests of alleged traitors or enemies in Mondulkiri after the 1978 Congress, Sao Sarun replied, “No, there was not. After September 1978, no one was arrested.”

Also while in Phnom Penh during the Congress, Pol Pot reportedly asked Sao Sarun to read a confession implicating him along with two other persons. The Witness denied having committed any wrongdoing and insisted that he had no knowledge of the reason why confessor accused him of committing crimes. Sao Sarun said he could not remember the details of the confession; only that he had been implicated.

5. U.S. Bombardment of Cambodia

Sao Sarun recalled personally witnessing the bombing by the Americans from 1970 to 1975. He said that many pagodas, including the one in Chin Min Village, were destroyed. The Americans reportedly used B-52 planes, as well as helicopters to drop bombs all over Mondulkiri. The bombs demolished paddies and plantations, and 11 of his family members were injured, indicated Sao Sarun. Many others died because of the bombing. In some villages, he described, very few survived the onslaught. People fled from their provinces but the forest was no refuge, because the thicker the forest was, the more bombs were dropped. The Witness said he did not know what the reason behind the U.S. bombing.

6. Demeanor and Credibility of the Witness

Throughout his examination, the Witness was careful not to implicate himself, insisting that, during his two months as a sector secretary, no arrests, forced marriages, or forced transfers were implemented at all, notwithstanding allegations from Civil Party lawyers to the contrary. Sao Sarun moreover denied being reluctant to testify against himself; instead, he often cited his poor health when he was unable to remember events in the past.

B. The Testimony of Khoem Ngorn

Khoem Ngorn was a former combatant who also served as a messenger in Takeo Province. He was later transferred to Phnom Penh to work at the MFA and was tasked with accompanying the Ministry's foreign guests. Khoem Ngorn testified that he did not have personal knowledge of matters such as the evacuation of Takeo Province and purges at the MFA; he also gave statements that contradicted with the record of his OCIJ interview.

1. Takeo Province

Khoem Ngorn resumed his testimony on Monday, 11 June. Civil Party Co-Lawyer, Mr. Lor Chunthy, asked him about his time as a soldier in Takeo Province before the fall of Phnom Penh and what he meant when he testified the previous week that people were "evacuated out of Takeo province, moving backward." Khoem Ngorn reiterated that he did not witness the evacuation and did not explain what he meant when he said "moving backward." Instead, he indicated that he had only heard that people were arrested and loaded onto trucks from his friend, Thoeun.

2. House No. 7, Ministry of Foreign Affairs

The Witness gave further testimony on his duties at House No. 7 of the MFA. When International Prosecutor Vincent de Wilde D'Estmael asked him who the highest-ranking MFA official who accompanied the foreign delegations was, the Witness replied that Hong, the head of the office, accompanied the guests. "According to what Phoeng (deputy head of the office) said, Khieu Samphan was probably accompanying those guests as well," Khoem Ngorn revealed. He stated that they brought their guests straight from Phnom Penh to their destination without making any stops; thus, they did not have the opportunity to discuss any details with their guests. On one occasion, while the Witness was accompanying Chinese

guests to Takeo province, he reportedly went to meet his cousin at a cooperative and he was informed that his cousin's sister was "smashed."

3. Purges at the Ministry of Foreign Affairs

De Wilde D'Estmael asked the Witness if there had been any "purges" at the Ministry of Foreign Affairs. In response, the Witness indicated that while he did not know anything about arrests, he knew that "people were removed from one place to another and they [were never] seen again." He stated that Chroeng, his colleague and friend at the MFA, was moved to another location; the Witness never heard from Chroeng after his removal. He said he suspected that it was Hong who issued the orders for Chroeng's arrest. However, he did not know if Hong had, in turn, received instructions from a superior or if Hong ordered the arrest on his own initiative. When asked what happened to people like Chroeng who had been identified as enemies or traitors, Khoem Ngorn did not answer the question. He merely stated that he and his colleagues were anxious after Chroeng's removal, because "when one person was removed after being involved in politics, then others would also be taken away."

When it was the Civil Party lawyers' turn to examine the Witness, international counsel Mr. Barnabé Nekuie asked about purges at B-1.¹⁰ Initially, Khoem Ngorn denied knowledge of arrests at B-1 because he lived in House No. 7 and had "no idea" about what happened in other places. In response to this denial, Nekuie read an excerpt from Khoem Ngorn's statement to the OCIJ where he admitted that a female acquaintance, Thy, told him about the arrests of people at other departments of the MFA. Khoem Ngorn then agreed that a certain Thy had in fact, informed him of such arrests, but he was unable to recall details. Nekuie did not dwell on the matter any further.

4. Removal to Ta Kmao

Khoem Ngorn testified that he when worked at House No. 7, a certain Phoeung criticized him for "moral misconduct" because he was seen "chit-chat[ting]" with some women. As a result, he was sent to be "tempered" at Ta Kmao for three months in 1976, and his superior Hong had ordered his removal. While at Ta Kmao, he grew vegetables, and was made to write his biography three times. He mentioned that there were about 20 people from various ministries and the countryside with him at Ta Kmao. Like him, the others were also accused of some wrongdoing. When de Wilde D'Estmael asked if any of the people at Ta Kmao were taken away, the Witness replied that no one disappeared while he was there. The OCP noted the discrepancy of the Witness' testimony with the statement he gave the OCIJ, where he had stated, "they were all shot, except me." However, the Witness did not address this discrepancy and de Wilde D'Estmael did not pursue the issue.

Lor Chunthy asked Khoem Ngorn to clarify if the real reason behind his tempering in Ta Kmao was his finding out during a meeting in Takeo Province that his cousin's wife had been "smashed." The Witness neither admitted nor denied this, and stated that he was transferred to Ta Kmao about three months after his visit to Takeo.

5. Hun Sen's Presence at the Meetings of Senior Leaders of the Khmer Rouge

During the Nuon Chea Defense's examination, International counsel for Nuon Chea, Mr. Michiel Pestman, read an excerpt from Khoem Ngorn's interview with the Documentation Center of Cambodia (DC-Cam), wherein he stated that he saw incumbent Prime Minister Hun Sen at high-level meetings of Khmer Rouge leaders Son Sen, Ieng Sary, Noun Chea, and Pol Pot. The Witness vehemently denied this, saying:

No, I don't think I have answered it this way; I never knew of this. I don't know about this. I don't know. Believe me or not, but I do not say this. It is different from what I experienced. Because I am illiterate, someone may have written this for me. I don't know.

President Nil Nonn asked Pestman to proceed to another question since Khoem Ngorn had stated that he had no knowledge of this matter. Notwithstanding the President's instructions, Pestman asked the Witness if he was afraid of testifying on Hun Sen's involvement in meetings during the Khmer Rouge period. The President directed the Witness not to answer the question because it was "not relevant." Pestman argued that the question was relevant to find out what was discussed at these meetings where his client was allegedly present. However, Pestman was not allowed to proceed. He expressed his disappointment saying:

Mr. President, I don't see any point continuing now. You are preventing us from exercising our client's right to cross-examine this witness, asking important questions. I'm very sorry, that's all I have to say.

C. The Testimony of Oeun Tan

Oeun Tan was Pol Pot's messenger and security guard from 1970 to 1979. The Witness provided some information on the interactions and meetings of the leaders of DK but was unable to provide details on the contents of the messages that he delivered or the subjects of the meetings.

1. Duties in the Revolutionary Movement

Witness Oeun Tan testified that Kong Deng, the secretary of his district in Rattanakiri Province, introduced him to the revolutionary movement in 1968. Tan described himself as a farmer from the Kachok minority who had very limited options, so he seized the opportunity to learn to read and write. He explained:

As a minority, I did not know anything. I was able only to do the labor work. So when I heard of the revolution, I felt that I wanted to know about the revolution and I wanted to learn because I thought by joining the revolution, I would be able to learn. At the present, the ethnic-minority people will know how to read and write if they go to school so...my answer to your question is that I joined the revolution because I wanted to study so... that I know how to read and write.

However, Oeun Tan indicated that he did not have the lessons he expected: "I was in the jungle; there were no school books. Those who knew better taught us. We used charcoal to write on bamboo sticks."

According to the Witness, Phai, his "unit chief," allowed him to become a messenger. In 1970, he, together with Pol Pot and Pang, moved to Kampong Cham Province, where he continued his work as a messenger. Since he was illiterate, he said he did not know the contents of the letters he delivered. While the Witness admitted having heard of "mobile children units," he denied having delivered messages to such units. He also denied delivering messages about the marriage of disabled persons. In the same year, Pang reportedly assigned Oeun Tan as one of Pol Pot's security guards. He served in this capacity, accompanying Pol Pot to different meetings in the zones, sectors, and districts, until the Vietnamese came in 1979.

When asked about the “liberation” of Phnom Penh, he revealed that Pol Pot, Nuon Chea, Khieu Samphan, and Pang left for Phnom Penh around two weeks after the capital’s evacuation.¹¹ Oeun Tan said that he followed the leadership to Phnom Penh from Kampong Cham Province around the middle of May 1975. On the way to the capital, the Witness said he saw many people walking on the road with their children. Upon reaching the city, he said it was very quiet and empty because the people had already left. Assigned by Pang as the head of Pol Pot’s contingency of 10 security guards, Oeun Tan was stationed at Pol Pot’s house at K-1, which was already in full operation when he arrived. Together with the other guards, he reportedly took care of the senior leader’s wellbeing, and helped in growing vegetables, preparing food, and doing laundry.

2. Interaction with the Leaders of Democratic Kampuchea

The Witness stated that he saw Nuon Chea, Khieu Samphan, and leng Sary for the first time at meetings in 1970 while he was serving as Pol Pot’s security guard. The leadership reportedly conducted meetings three or four times each month. He further explained that, since security guards had to stay 20 meters away from the leaders, he did not hear their conversations. He also indicated that while he did not know Nuon Chea and Khieu Samphan’s roles, he was aware that leng Sary was in charge of the MFA and that all of them were part of the leadership. From his interactions with Nuon Chea, he described KR’s alleged Brother No. 2 as a gentle and educated person who gave him good counsel.

Oeun Tan testified that Pol Pot, Nuon Chea, Khieu Samphan, and Pang worked at K-1 office. leng Sary and leng Thirth reportedly joined them for meetings organized and chaired by Pol Pot. Bigger meetings with representatives from districts, sectors, and zones were also convened at K-1. He recalled that he delivered the invitation letters sent by Pang to K-7,¹² which dispatched them to where the attendees were located. Oeun Tan stated that Nuon Chea, Khieu Samphan, and leng Sary attended every meeting, while leng Thirth only attended some of them. The Witness stated that, several times a year, Pol Pot convened a meeting at the Olympic Stadium in Phnom Penh, attended by 100 to 200 persons dressed in military uniforms. Unlike other senior leaders who did not always participate in these meetings, Son Sen was always present, according to the Witness.

a. Working with Pang

According to Oeun Tan, Office K-1 used telegrams to communicate and he named Pang as responsible for its telegram section. He received telegrams from Pang’s messengers and delivered them to Pol Pot. On some occasions, he had to deliver telegrams two to three times a day. When international Co-Prosecutor Mr. Tarik Abdulhak asked Oeun Tan if Pol Pot ordered him to take telegrams anywhere else, the Witness answered, “Yes, I used to also take them to... Nuon Chea.”

At K-1, Pang reportedly conducted regular meetings where he reminded his staff not to engage in immoral conduct. Oeun Tan testified that when Pang disappeared,¹³ he tried to find his missing superior but his efforts were in vain. He added that, since he was Pang’s subordinate, he was afraid that we would be next to disappear. Oeun Tan testified, “[b]esides Pang’s disappearance at either K-1 or at other units, I did not see any others who disappeared.” Witness, however, confirmed that he heard of arrests of people accused of treason. Among those arrested were Ket Thor alias “Sem,” the former Chairman of K1. When the Prosecution confronted him with the statement a potential witness, TCW-620, Oeun Tan denied ever having removed subordinates because of misdeeds. According to him, only Pang had the authority to effect transfers and arrests.

b. Pol Pot's Health

When asked about the condition of Pol Pot's health while Oeun Tan was guarding the KR leader, the Witness said he never saw Pol Pot seriously ill. Although there were times when Pol Pot was indeed sick, the Witness said he always recovered quickly after taking medication. CPLCL inquired if the Witness was aware of any period when Pol Pot was so ill that Nuon Chea had to take over for him, the Witness answered, "I just want to emphasize that I don't know anything about this."

III. LEGAL AND PROCEDURAL ISSUES

Contradicting with its own previously established practice, the Trial Chamber allowed the use of statements of potential witnesses this week as bases for the questions Parties asked witnesses presently testifying before the Chamber. The Court also allowed the Nuon Chea Defense to use a document that was available only in English during their examination, rather than insist that the document be translated into the three languages of the Court first.

A. Use of Statements of other Witnesses as Basis for Questions

On Tuesday, Nuon Chea's international counsel, Mr. Jasper Pauw, requested leave to confront Sao Sarun with the written statement of Witness TCW-307, another potential witness. Pauw reasoned that the statement was relevant to Sao Sarun's testimony, as the subject was within Sao Sarun's knowledge, and was therefore helpful in ascertaining the truth. Pauw added that this method, which the Prosecution employed the previous week, could draw out very useful information from the Witness. Moreover, Counsel assured the Chamber that he would use the pseudonym "TCW-307," and stressed that the Defense would miss an opportunity to confront Sao Sarun with TCW-307's statements if they had to wait for Witness TCW-307 to appear before the Chamber first. Neither the OCP nor the Civil Party lawyers objected.

Revising its previous ruling, the Trial Chamber agreed to allow the Nuon Chea Defense to use TCW-307's statement to confront Sao Sarun. The Chamber emphasized that the potential witness' pseudonym must be used, and any references to the latter's name must be redacted before showing the document on screen. Pauw proposed that he would simply read the relevant parts and invited the other Parties to check if he did so accurately. The Trial Chamber acquiesced to Pauw's proposal.

On Wednesday, the Trial Chamber allowed Abdulhak to use the statements of another potential witness during his examination of Oeun Tan, including a statement of TCW-620, another potential witness, provided that TCW-620's identity would not be publicly disclosed.

B. Revisiting Testimonies Given during Another Parties' Examination of a Witness

On Tuesday, 12 June, Pauw attempted to revisit Sao Sarun's testimony from Thursday, 7 June, when Lysak had inquired who was present in the meeting in Phnom Penh that he had attended a few months after Ta Laing's death. According to Sao Sarun, only Pol Pot was in attendance in the meeting. Lysak refreshed Sao Sarun's memory by reading the statement he gave the OCIJ, wherein he stated that Khieu Samphan, Son Sen, and Noun Chea were also present at the meeting. The Witness confirmed the truth of his previous statement.¹⁴ When Pauw revisited this matter, Counsel omitted mention of Sao Sarun's recollection of the presence at the meeting of KR leaders apart from Pol Pot. The Prosecution objected, on the ground that Pauw misrepresented Sao Sarun's testimony. Pauw replied that he should be permitted to establish what the Witness initially remembered (and not what he said after

Lysak refreshed his memory). The President ruled in favor of the Prosecution, not on the ground they raised, but because Pauw's questions were repetitious.

The reason behind this ruling is a potential source of confusion, particularly since Parties would be likely to ask witnesses about their testimony during other Parties' examination, in order to challenge the witnesses' credibility and to check the consistency and veracity of their testimony. Necessarily, some questions would be repetitive, as Parties may utilize this strategy for the aforementioned purposes.

The following morning, Wednesday, 13 June, Ieng Sary's international counsel, Mr. Michael Karnavas, sought clarification on the Chamber's ruling on this matter. He requested guidance on "how and to what extent [Parties] can use testimony that is elicited from either side for the purposes of clarifying or even impeaching." He expressed "strong reservations" to being curtailed from revisiting testimony that is elicited from a witness by another Party. In response, Judge Silvia Cartwright stated that the Chamber was unclear about Karnavas' inquiry, and requested him to submit a written memorandum to the Senior Legal Officer to avoid having to spend time on the matter. She assured him that the Chamber would address his request for clarification.

C. Use of Published Articles as Evidence

During Pauw's examination of Sao Sarun on Tuesday, Counsel encountered difficulty when he referred to *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea: Cambodian Accountability in Comparative Perspective*, a publication by Dr. Stephen Heder. While the Trial Chamber allowed him to use it towards the afternoon's first session, the Judges requested clarification on the nature of the document in the second session. Pauw explained that the document could be found in the ECCC's shared materials drive but he was unaware if the document had been included in other Parties' Document Lists. He further argued that since the article was a scholarly piece of work freely available in public libraries, it should be admissible in court.

While Lysak confirmed that the OCP submitted excerpts of the article, he was uncertain if other Parties had submitted the entire article. The OCP stated that it was nevertheless necessary for all the Parties to receive notice of use of documents to allow them to review the material.

President Nil Nonn reminded Pauw to identify the number and title of each document he wanted to use. Additionally, the President asked that counsel always indicate whether or not a document had previously been put before the Chamber:

Counsel Pauw, the Chamber reminds you once again, as the Chamber has been reminding your Defense Team several times, that you should follow the instructions regarding the request to refer to documents to be used to confront with witnesses or civil parties. Counsel should first indicate whether the document has been put before the Chamber or whether the document can be found in the list of the proposed documents of any party.

Judge Jean-Marc Lavergne explained that a document available in the public domain is not exempt from this ruling. The Chamber then ruled that all documents have to comply with rules 87.3¹⁵ and 87.4¹⁶ of the Internal Rules.

D. Witness Protection and the Role of Duty Counsel

On Thursday, while Khieu Samphan's international counsel, Mr. Arthur Vercken, was examining Oeun Tan, the latter requested permission to consult with the duty counsel, because he was having difficulty answering questions, particularly on inconsistencies in his testimony. Karnavas objected, saying there was no need for Witness to consult the duty counsel for this purpose, and the Chamber sustained his objection. The President reminded Oeun Tan that the duty counsel's role was to advise him whether he was at risk of incriminating himself by answering particular questions.

The Chamber's ruling is consistent with Internal Rule 28.9,¹⁷ a reading of which indicates that the duty counsel's participation is required only when "an issue of self-incrimination arises in the course of the proceedings."

E. Oral Submissions

On Tuesday, Pauw requested that the Chamber grant him two minutes to make an oral submission, which he assured the Chamber was directly relevant to Witness Sao Sarun's testimony. When the President disallowed his request, Pauw argued that the Chamber should be informed of his Team's concern relative to Witness Sao Sarun. The President held that the request fell within the ambit of Internal Rule 92, which provides that Parties may make written submissions until the closing statements.

The issue arose again on Wednesday morning when Karnavas requested the Chamber to clarify its ruling prohibiting the Nuon Chea Defense from revisiting the testimony Sao Sarun gave during the OCP's examination (See III B). Pestman expressed support for Karnavas' request and inquired about an email he sent on 24 April 2012 asking a senior legal counsel for a list of publications for the Judges. The Chamber interrupted Pestman, saying:

...if counsels are of the opinion that they would raise some issues concerning this particular witness, then the Chamber will entertain such a request. However, if you have any other matters to be addressed, then we recommend that you have it written in writing, and the Chamber will rule on your application in due course. Any other matters that are not relevant to the subject matter of today's hearing concerning this TCW-488 will not be entertained.

Pestman stated he was merely requesting clarification on when the Chamber will address their request. The Chamber said that it will rule upon the request in due course and instructed a court officer to bring in the Witness Oeun Tan.

According to Internal Rule 85.1, the President, in consultation with the other Judges, has discretion to exclude proceedings that "unnecessarily delay the trial and are not conducive to ascertaining the truth." However, it is quite interesting that, while the Chamber advised Pestman on Wednesday that only issues concerning a witness currently testifying would be entertained, Pauw was not allowed to make an oral submission related to the witness he was examining the day before. Thus, clearer guidelines on this matter would certainly benefit the proceedings.

F. Unrecorded OCIJ Interview

In the course of Vercken's examination of Witness' Oeun Tan, it came to light that the records of the OCIJ interview conducted on 9 October 2008 (D107/2R) contained references to an interview that was conducted the day before, 8 October 2008. There were, however, no written or audio recordings of the 8 October 2008 interview. Karnavas raised the issue

again when he examined Witness Oeun Tan. The witness confirmed having given an interview to the OCIJ on 8 October 2008. Abdulhak subsequently indicated that there is a need to verify the transcripts of OCIJ interview but the Chamber decided not to rule on this matter and advised the Parties to instead file written submissions.

G. Use of Documents Not Put Before the Chamber

On Tuesday, Pauw requested leave to show Sao Sarun, a publication from the Documentation Center of Cambodia, entitled *Khmer Rouge Purges in the Mondulkiri Highlands*, which purportedly contains statements from persons who lived in the same area as the Witness. The President asked Counsel to indicate whether the document had been put before the Chamber in accordance with the Internal Rules. The President reminded the Parties of the Trial Chamber's instructions on 24 May 2012, which provides that, documents must be classified as "E3" or put before the Chamber according to Internal Rule 87. Pauw noted for the record that this was a violation of his client's right to confront the Witness and then manifested that the document was in fact "mentioned in the Prosecution's submission and can be found in Document No. E109/4.19." Lysak confirmed that the document was indeed included in Prosecution's annexes and the OCP would not object, as long as the questions related directly to the witness' knowledge and did not invite him to speculate.

In response, the President stated that regardless of whether or not documents had been annexed, Parties must make sure that the documents were classified as "E3" category and allowed Pauw to use the document and proceed examining Sao Sarun.

H. Use of Documents Not Translated to Other Languages

The use of the document referred to in the previous section, *Khmer Rouge Purges in the Mondulkiri Highlands*, caused another debate when the Chamber asked Pauw whether the document was also available in Khmer and French. Pauw responded in the negative and proposed that it could nevertheless be translated into Khmer and French while he was reading it. Pauw supported his proposal with several reasons¹⁸ but the President stopped him, saying that he did not answer the question and advised him not to explain. After that, Pauw responded that the document was available only in English, and asked for leave to proceed using the document. The Chamber allowed him to read out a short portion of the document so that it was translated and used as the basis of questioning to the Witness.

I. Use of Civil Party Applications to Test Credibility of the Witness

On Tuesday, while international Lead Co-Lawyer, Ms. Elisabeth Simonneau-Fort was examining Witness Sao Sarun, national counsel for Nuon Chea, Mr. Son Arun, objected to her line of questioning, on the ground that third-party statements could not be used to impeach a witness. Karnavas supported this argument, adding that Simonneau-Fort was using unsworn statements of persons who may never appear to testify. He expressed concern that the Chamber might be tempted to give weight to these statements.

In response to this objection, Simonneau-Fort argued that assessing the probative value of evidence was within the Chamber's discretion. The OCP, on the other hand, supported the CPLCL's use of the documents on the ground that, in the Civil Party's applications, the Civil Parties had declared that the information was correct and that they would otherwise be liable under applicable law; thus, "this is like an oath." Lysak further argued that, considering the number of Civil Parties (close to 4,000), not all of them would be able to appear before the Chamber. CPLCL Mr. Pich Ang asserted that, since Internal Rule 23 does not require Civil Parties to take an oath, Civil Parties' statements from their application documents should be permissible as evidence:

I would like to state that civil parties are not obliged to take an oath as already been stipulated by Internal Rule 23 concerning the participation of civil parties. Therefore, the statement of the civil party can be part of the evidence for the Chamber to consider in this regard as the arguments, so that the civil party did not take an oath cannot be taken into account.

After hearing the arguments from the Parties, President Nil Nonn stated that the Chamber would decide on the matter in due course. In the meantime, it allowed Simonneau-Fort to quote passages from documents executed by Civil Parties, with the caution that such documents had "little probative value."

IV. TRIAL MANAGEMENT

This week, the Trial Chamber, mindful of the frail health and old age of Sao Sarun, arranged the conduct of the examination of a reserve witness, Khoem Ngorn, as an alternative. Consequently, the Parties examined Khoem Ngorn when Sao Sarun felt unwell. The Chamber's foresight ensured that no time was wasted. This moreover exhibited the Chamber's due consideration of the needs of its witnesses.

A. Attendance

As in the previous week, leng Sary continued to be absent from the courtroom due to health concerns, after submission of the proper waiver. Nuon Chea, on the other hand, requested leave to participate remotely from the holding cell towards the end of each morning session. Only Khieu Samphan participated in the courtroom throughout the proceedings.

Attendance by the Public. On Monday, there were approximately 300 villagers from Trobe commune, Trobe District, Kampong Cham Province. There were also around 200 students from the Royal University of Phnom Penh and Khemarak University who attended the morning sessions. In the afternoon, students from Royal University of Law and Economics observed the proceedings.

On Tuesday, there were around 800 people, including students from Hun Sen Kla Kon High School, Banteay Meanchey Province and villagers from Sras Chik Commune, Phnom Srok District, also in Banteay Meanchey Province. There was also a group of 19 students from College of Charleston, South Carolina, USA.

On Wednesday, close to 500 people were in the public gallery, including 300 villagers from Svay Rieng Province. In the afternoon, 100 students from CUS University attended the sessions.

On Thursday, 300 students from Kravanh District, Pursat province, and another 120 villagers from Mok Kampoul District, Kandal Province were in attendance in the morning session. A number of persons from the US Congressional Staff were also present.

B. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 11/06/12	9:02	10:40-10:54	12:05-13:31	14:31-14:51	15:32	4 hours and 30 minutes

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Tuesday 12/06/12	9:06	10:38-11:01	12:13-13:32	14:43-15:02	16:03	4 hours and 56 minutes
Wednesday 13/06/12	9:04	10:35-10:55	12:04-13:31	14:38-14:58	16:04	4 hours and 53 minutes
Thursday 14/06/12	9:03	10:32-10:47	11:51	-	-	2 hours and 39 minutes
Average number of hours in session			4 hours 15 minutes			
Total number of hours this week			16 hours 58 minutes			
Total number of hours, days, weeks at trial			316 hours 51 minutes			
74 TRIAL DAYS OVER 22 WEEKS						

Unless specified otherwise,

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

Glossary of Terms

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



* 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 Mary Kristerie A. Baleva, Faith Suzette Delos Reyes, Nora Fuchs, Ramu Nachiappan, Pavithra Prakash Nair, Noyel Ry, Kimsan Soy, Chayanich Thamparipattra, 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>, and at the websites of the [East-West Center](#) and the [War Crimes Studies Center](#).

¹ International Co-Prosecutor Mr. Dale Lysak and Civil Party Co-Lawyer, Ms. Ty Srinna examined Sao Sarun on Monday morning. On Tuesday, Witness was questioned by Ty Srinna, CPLCL Ms. Elisabeth Simonneau-Fort, the Bench (through Judge Jean-Marc Lavergne), Nuon Chea's international counsel, Mr. Jasper Pauw, and Khieu Samphan's international counsel, Mr. Arthur Vercken.

² On Monday afternoon, International Prosecutor Vincent de Wilde D'Estmael concluded his examination of Khoem Ngorn and was followed by Civil Party Co-Lawyers Mr. Lor Chunthy and Mr. Barnabé Nekuie. International counsel for Nuon Chea, Mr. Michiel Pestman, thereafter examined the Witness Khoem Ngorn.

³ Witness was questioned on Wednesday by Co-Prosecutor Mr. Veng Hout, international Co-Prosecutor Mr. Tarik Abdulhak, as well as national CPLCL Mr. Pich Ang and co-lawyer Mr. Kim Mengkhy. Thereafter, Judge Lavergne and President Nil Nonn questioned the Witness. On Thursday, Vercken, Mr. Son Arun (national counsel for Nuon Chea) and Michael Karnavas (international counsel for Ieng Sary), examined the Witness.

⁴ Witness Sao Sarun was the secretary of Pech Chenda district from 1971 to 1978. He was Sector Secretary of Sector 105 for two months, until the Vietnamese invaded Cambodia. See CASE 002 KRT TRIAL MONITOR. Issue No. 24, Hearing on Evidence Week 19 (4-7 June 2012). 6.

⁵ "K-11 was located approximately 1 kilometre Northeast of Phnom Kraol prison, and served as both a detention centre and as the military office." OCIJ. "Closing Order" (15 September 2010). D427 [hereinafter, **CLOSING ORDER**]. Paragraph 626.

⁶ "K-17 consisted of a two storey building with wooden walls and a zinc roof and functioned as both the Office of the Secretary of Sector 105 and, briefly as a detention centre itself." **CLOSING ORDER**. Paragraph 626.

⁷ "Phnom Kraol was located in Koh Nhek District, Sre Sangkum Subdistrict, Mondulkiri Province. Phnom Kraol was a Sector 105 Security Office containing Phnom Kraol Prison and related to the nearby Sector 105 Office K-11 and to the Sector 105 Secretary, headquartered Office K-17. Applying the CPK's system of identifying administrative boundaries, Phnom Kraol was located in Sector 105 also known as Mondulkiri Sector. The security centre already existed in 1975. Mondulkiri was under the control of the Northeast Zone until the end of 1976 when it became autonomous and thereafter reported directly to the CPK Centre." **CLOSING ORDER**. Paragraphs 625 and 626.

⁸ "Successive secretaries of Sector 105 were based at K-17, including Ham alias Laing later alias Chhan (died under unclear circumstance in 1977), and in September 1978 [REDACTED]. After Laing's death, the sector was extensively purged, with some of those arrested being sent to Phnom Kraol. Deputy secretaries included Sau Kim An alias Mey (arrested on 8 December 1977) Cham, Phak and Lork." **CLOSING ORDER**. Paragraph 628.

⁹ According to the Closing Order, Phnom Kraol was under military control. The sector military comprised two battalions, known as Battalion 1 and Battalion 2. Battalion 2 had a contingent in the Phnom Kraol, with Leng as the commander of battalion until his arrest in February 1978. **CLOSING ORDER**. Paragraph 630.

¹⁰ The Closing Order indicates that "B-1" refers to the Ministry of Foreign Affairs. See Closing Order. Paras. 389 and 1005.

¹¹ However, while being questioned by Mr. Arthur Vercken the following day, Witness affirmed that Khieu Samphan was not in this group of persons who left for Phnom Penh.

¹² "K-7 was a messenger unit through which written communications addressed to "Committee 870" or "Office 870" were routed before being directed to Pol Pot at K-1 as well as to the members of Committee 870 or its appropriate member depending on thematic responsibility. **CLOSING ORDER**. Paragraph 57.

¹³ According to Witness Saloth Ban, Pang disappeared shortly before the Vietnamese arrived in January 1979. See CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15, (23-26 April 2012). 3.

¹⁴ "A few months later, [Sao Sarun] was called to Phnom Penh with five other cadres for another meeting at the office located behind the Royal Palace with mostly military leaders from Sector 105 or Division 920. According to Sao Sarun, Pol Pot, Son Sen, Nuon Chea, and Khieu Samphan attended the meeting and discussed matters concerning "managing the forces," principles of self-sufficiency, and strengthening the border." CASE 002 KRT TRIAL MONITOR. Issue No. 25, Hearing on Evidence Week 19, (4-7 June 2012). 7.

¹⁵ "The Chamber bases its decision on evidence from the case file provided it has been put before it by a party or if the Chamber itself has put it before the parties. Evidence from the case file is considered put before the Chamber or the parties if its content has been summarised, read out, or appropriately identified in court. The Chamber may reject a request for evidence where it finds that it is: I. irrelevant or repetitious; II. impossible to

obtain within a reasonable time; III. unsuitable to prove the facts it purports to prove; IV. not allowed under the law; or V. intended to prolong proceedings or is frivolous.” Extraordinary Chambers in the Courts of Cambodia Internal Rules (Rev. 8), as revised on 3 August 2011 [hereinafter, **INTERNAL RULES**]. Rule 87(3).

¹⁶ “During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth. Any party making such request shall do so by a reasoned submission. The Chamber will determine the merit of any such request in accordance with the criteria set out in Rule 87(3) above. The requesting party must also satisfy the Chamber that the requested testimony or evidence was not available before the opening of the trial. **INTERNAL RULES**. Rule 87(4).

¹⁷ “If an issue of self-incrimination arises in the course of the proceedings, the Co-Investigating Judges or the Chambers shall, unless the witness waives that right, suspend the taking of the testimony and provide the witness with a lawyer. Such waiver shall be recorded in accordance with Rule 25. **INTERNAL RULES**. Rule 28.9.

¹⁸ Pauw gave the following reasons in support of his request: (i) the OCP does not object; (ii) it is relevant as it is related directly to the role of Mr. Sao Sarun; (iii) Civil Parties also relied on documents that were not translated into all languages; (iv) they would have a more “pleasant experience” if he were allowed to read the document and ask the questions based on this document and; (v) the document is not controversial in any way.