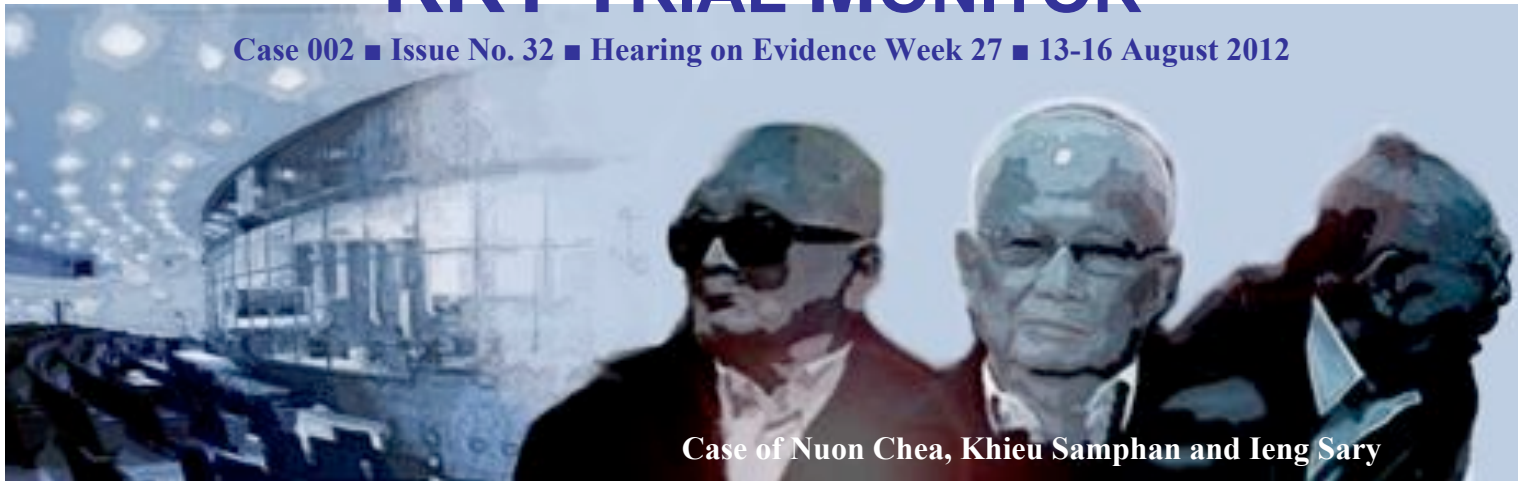


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Case of Nuon Chea, Khieu Samphan and Ieng Sary

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

*...Let me apologize to the Cambodians who lost their children or parents.
What I am saying here is the truth.
And I personally lost some of my relatives, aunts and uncles.
And for those brothers in their capacity as leaders,
they also lost relatives and family members.*

- Witness Suong Sikoeun

I. OVERVIEW

After the suspension of Monday's hearing caused by Ieng Sary's poor health, trial resumed on Tuesday with the conclusion of the testimony of Mr. Ong Thong Hoeung, an intellectual who returned to Cambodia during DK and found himself performing manual labor in re-education camps to "refashion" himself. Next, the Chamber called Mr. Suong Sikoeun, the director of information and propaganda of the Minister of Foreign Affairs (**MFA**), to resume his testimony. Suong Sikoeun expounded on the MFA, FUNK and GRUNK, and Pol Pot's role in DK. Giving due consideration to his frail health, the Trial Chamber limited his examination to half-day sessions. To manage the time efficiently, reserve witness Ms. Sa Siek (TCW-609), a cadre who worked at the Ministry of Propaganda during the regime, commenced her testimony. Sa Siek focused on the evacuation of Phnom Penh, the structure of the Ministry of Propaganda, and DK radio broadcasts.

Procedural issues arose during the hearing on Wednesday, when the Trial Chamber issued unclear rulings on the introduction of documents to witnesses. While the issue remained unresolved at the end of the week, the Trial Chamber indicated that it would address the issue further in a trial management meeting scheduled on 17 August 2012.

II. SUMMARY OF WITNESS TESTIMONIES

The three witnesses this week provided detailed testimony on their experiences and recollections during the DK regime.

A. Ong Thong Hoeung's Testimony

Ong Thong Hoeung was an intellectual residing in France who answered the call of patriotism and returned to Cambodia in 1976 to help rebuild the country. Upon arrival, he was held in re-education camps where he was subjected to manual labor. After the regime fell, he worked at the Tuol Sleng Genocide Museum for two months helping with archival

tasks, as well as translation of S-21 documents. Subsequently, he proceeded to a refugee camp in Thailand where he met historian Stephen Heder. On his return to Europe, he worked with other researchers and historians by translating DK documents.

In 2003, the Witness published his book, *J'ai cru aux Khmers Rouges (I Believed in the Khmer Rouge)*, based partly on the journal he reportedly kept during the height of the CPK's power. Ieng Sary's international counsel, Mr. Michael Karnavas, tried to cast doubt on the existence of the journal by inquiring why it was not confiscated when cadres searched his belongings on his arrival in 1976.¹ Karnavas also attempted to highlight inconsistencies in the Witness' testimony. In contrast, Khieu Samphan's international counsel Ms. Anta Guissé used the Witness' statements to reinforce Khieu Samphan's assertion that he was merely a figurehead and did not hold real power in Democratic Kampuchea.

1. Witness' Interactions with FUNK Leaders

During Ong Thong Hoeung's examination by Karnavas, the Witness explained that his OCIJ statement on the "substantial influence" Ieng Sary had on Prince Sihanouk was based on findings of "observers and commentators." He admitted that he did not have a close relationship with Ieng Sary or Prince Sihanouk: he never talked to Ieng Sary personally and his interaction with Sihanouk was limited to a courtesy call he made with other Cambodian expatriates when the Prince visited France to urge students to assist in the struggle against the Lon Nol administration. Ieng Sary made the same appeal, the Witness added.

2. Return to Cambodia during DK

When probed about why Ong Thong Hoeung stayed in France for 11 years despite his declarations of nationalism and his desire to return to Cambodia, the Witness pleaded personal reasons for his failure to return. He emphasized that, "later on when I believed in the advice or instructions by Ieng Sary, I returned to Cambodia, amongst many other Cambodian students." Upon his return, he found himself detained in one re-education camp after another.

a. K-15

Ong Thong Heoung confirmed the following details from a description of K-15 he wrote in his book:

The former Khmer Soviet Friendship Technical Institute had transformed into a unit for people arriving from abroad like us. It bore the name K-15. As with all units reserved for intellectuals, it was under the direct supervision of the Central Committee of the Party.

He recalled that a certain individual named Phum was in charge of K-15. He moreover acknowledged that his conclusion that the Central Committee directly supervised K-15 was based on other people's observations, which he discovered when he started researching for his book.

b. Boeng Trabek (B-32)

The Witness reiterated that he stayed at Boeng Trabek twice, first in 1976 and then in late 1978. He remembered that the conditions were not as severe during his second stay because the regulations were not as strict and there was sufficient food. Karnavas sought to clarify the identity of "Cheap," who Ong Thong Hong named in his book as the person who escorted him and other repatriates to Boeng Trabek in 1978 on instructions from Ieng Sary. The Witness described Cheap as So Hong's close aid and admitted that he was not sure of

the name because he only met Cheap twice. He conceded that he might have misheard and that the aide's name might have been Cheam.

Ong Thong Hong also confirmed that Hor Namhong² was appointed as a "team leader" in B-32 twice. He clarified that he was present only when Ieng Sary appointed Hor Namhong the second time. At that time, Ieng Sary assured them that, "Cambodia was facing severe problems with Vietnam but eventually Cambodia will conquer the war."

3. Role of the Accused in DK

The Witness identified Ieng Sary as the head of the MFA and confirmed that the Accused was present during the appointment of B-30 and B-32 "team leaders" in Boeng Trabek.

As regards Khieu Samphan, Ong Thong Hoeung confirmed that he and his wife never saw the President of the State Presidium in Boeng Trabek. Nevertheless, he made references to Khieu Samphan in his book *I Believed in the Khmer Rouge*. In one passage, he wrote that former associates in the Marxist-Leninist Circle described Khieu Samphan as "a follower for whom the hierarchy was always right." He also wrote that a certain Bunroeun stated that Khieu Samphan was "...not even a member of the political office of the Communist Party of Kampuchea; he's only the eighth in rank in the Party." Further, Ong Thong Hoeung wrote of a meeting in Chaktomuk Hall reportedly presided by Pol Pot in this manner:

...my friends went and said that Khieu Samphan came and he was amongst others and he was not greeted like a dignitary, no reserved seat for him. So, those coming from overseas were wondering, because he was a head of state and how come nobody came to greet him?

4. Work at the Tuol Sleng Genocide Museum

The Witness affirmed that for about two months in 1979, he worked as an archivist in Tuol Sleng, the former S-21 security center. Karnavas asked him to clarify what led him to work at S-21: whether he came across a confession used to wrap food or whether he ran into someone who asked him to work at S-21. Ong Thong Hoeung explained –

...I was somewhere around Tuol Tumpung market and I was buying banana cake, and I noticed that one of my friends' name – the name of Kol Dorathy – his name was in that paper that was used to wrap the banana cake. I tried to track down the source where this paper was taken from, and they told us that the paper was taken from Tuol Sleng. So it motivated me to find out as to what happened to my friend. At that time, I did not even notice that there was an existence of S-21 (*sic*).

He further recalled that when he arrived in S-21, he was introduced to the person in charge of the place and it was then that he learned that S-21 needed people "to work in the archives because it was during the period when they started the preparation for the people's trial." Thus, while working in S-21, he became involved in organizing files and translating confessions to French in preparation for Pol Pot and Ieng Sary's trial *in absentia* in August 1979.

5. Interview with Stephen Heder and Work with Other Researchers

According to Ong Thong Hoeung, in November 1979, he went to the Khao I Dang Refugee Camp in Thailand, where he was interviewed by the scholar, Stephen Heder. The Witness said they met a number of times but he could not recall if he showed his journal to Heder.

When confronted with passages from Heder's record of interviews with him and Sauv Kim Hong, the Witness refused to confirm statements he allegedly made, and said, "I cannot recall the details of what I spoke to him." He continued, "I cannot say what he recorded or what notes that he took; I did not read them." Ong Thong Hoeung also denied a portion of Heder's interview that stated that he was part of the Heng Samrin Front's Central Committee, saying he was never a member of this Front.

When he returned to France in 1980, he worked with academics such as Laura Summers, translating S-21 documents.

6. Demeanor and Credibility

Ong Thong Hoeung, one of the first to testify who was not an expert, insider witness, or Civil Party, provided apparently candid and sincere testimony before the Chamber. In the face of careful scrutiny by the Defense Teams, he refused to clarify whether he made the statements Heder attributed to him. As such, it remains uncertain whether the Witness was the source of the statements Heder quoted from his joint interview with the Witness and Sauv Kim. Ong Thong Hoeung also challenged the content of the interview he gave the OCIJ in 2007, which he described as "so confusing." He said he could not recall who interviewed him and added, "that's why I was wondering about its content and why it is stated so. It is not based on fact, and for that, in 2008, I challenged the content." He only acknowledged the interview he gave the OCIJ in 2008 and said, "in a judicial sense that was the first time I gave a proper interview, in 2008."

B. Suong Sikoeun's Testimony

This week was the Defense Teams' turn to examine Suong Sikoeun. Khieu Samphan's international counsel, Ms. Anta Guissé, focused on questions relating to the role of her client in DK and the principle of secrecy. Nuon Chea's international counsel, Mr. Jasper Pauw, inquired on the connection of incumbent government officials to the FUNK, the GRUNK, and the MFA. Karnavas, on the other hand, examined Suong Sikoeun's interactions with other witnesses prior to giving testimony, the MFA structure, and the roles played by Pol Pot and Ieng Sary in the regime.

1. DK Administrative Structure

The Witness testified on his personal experiences with the DK command hierarchy. He also provided details on the structure of the MFA.

a. Command Hierarchy and Pol Pot

Suong Sikouen described Pol Pot as a "meticulous person...micromanaging the smallest details" of tasks, from texts of radio broadcasts to the menu served to guests. He reiterated that while it was Ieng Sary who proposed his appointment to the MFA, it was Pol Pot who made the final decision. He did not believe that the Standing or Central Committee had a hand in his appointment since Committee members such as Nuon Chea did not know him well. When Karnavas asked about the distinction between Pol Pot and the "Center," the Witness disclosed, "to me, it's the same: the Center would mean those cadres, and the cadres were under the supervision of the Center and the Center meant Pol Pot."

The Witness restated that Pol Pot appointed him director of Information of the Kampuchea Information Agency around 1978,³ a position that required direct reporting to Brother Number One.⁴ He indicated that both Pol Pot and Nuon Chea⁵ had the authority to assign tasks to party members without seeking clearance from their direct superior, in his case, Ieng Sary. According to the Witness, he had no obligation to consult or report to Ieng Sary when he

carried out tasks directly ordered by Pol Pot. He cited the following principle of the CPK to emphasize his point: “the subordinate shall follow orders or instructions from the superior, and the minority shall respect the majority.” This principle, he explained, did not only apply in DK but also after its collapse.

b. Ministry of Foreign Affairs

As the Witness indicated last week, the MFA, also called B-1, had two main divisions: the bureau and the department.⁶ The bureau was responsible for production and security while the department was in charge of diplomatic affairs. In the B-1 compound, there were buildings used as offices, a one-storey villa residence, and an accommodation for cadres and combatants. He confirmed his position as the chairman of the MFA’s Propaganda and Information Section and the enumeration of MFA cadres and positions that he provided in his OCIJ statement in 2007.

Ieng Sary. The Witness identified Ieng Sary as the Deputy Prime Minister in charge of Foreign Affairs and the head of the MFA. Additionally, the Accused served as the head of the MFA’s General Political Section of which intellectuals such as Ok Sokun, Thiounn Prasith and Keat Chhon were members. Suong Sikouen described Ieng Sary as someone who “... would appeal to his colleagues and associates to express their real opinions without being afraid.” He added that Ieng Sary advised them to be responsible in the performance of their duties and the consequences of the opinions they express, as they were close to the leadership.

The “nucleus” of the MFA. In Suong Sikouen’s book *The Odyssey of a Khmer Rouge Intellectual*, he indicated that he, Keat Chhon, and a certain Bori, formed “the nucleus” of what later became the MFA. He explained that Ieng Sary assigned them to collect and analyze information from foreign broadcasts on the resistance in Cambodia and the international milieu at the time. Keat Chhon, the team leader, was tasked to submit a monthly report to Ieng Sary, the Witness recalled. He explained that their reports aided the leadership in forming the foreign policy of the then newly-established Democratic Kampuchea.

So Hong. According to Suong Sikouen, So Hong⁷ was the general secretary of the MFA and Ieng Sary’s right-hand man. His role as general secretary reportedly had nothing to do with diplomatic affairs, as he dealt with production and security. So Hong, together with his subordinate, Phy Phoun, were responsible for the security of foreign guests.

Phy Phoun. The Witness stated that the head of the security section or guard unit, Phy Phoun,⁸ was in charge of providing protection to embassies and diplomats stationed in Cambodia. He explained that he was not aware of Phy Phoun’s working relationship with Pang before 1975, as he had not yet met Phy Phoun at that time.

Saur Se. According to the Witness, Saur Se only exercised her role as the Secretary of the Party’s branch in the MFA although she held two other designations: chairperson of the General Secretariat and chairperson of the Protocol Secretariat. Despite her three positions however, she reportedly did not exercise any authority. Her main role was to lead meetings and then report to either So Hong or Ieng Sary. Her tasks for the Protocol Section and the General Secretariat were to prepare documents and materials for the reception of guests. Suong Sikoeun also said he submitted his output to Pol Pot through Saur Se.

2. Role of Khieu Samphan in the CPK

The Witness testified that Van Rith, the former chairman of the Commerce Committee, told him that Khieu Samphan was the Minister of Foreign Trade in DK and was responsible for buying medicine and spare parts from abroad. Asked by Guissé to confirm Khieu Samphan's "figurative role" in DK, Suong Sikoeun answered that the Accused "submitted himself to the party," and it was up to the party to designate any tasks to Khieu Samphan.⁹ He also added that "I lived with him and Pol Pot in 1981, 1982, and I noticed that his role was zero." Suong Sikoeun said that this became evident when in 1981, Pol Pot personally instructed him, instead of Khieu Samphan, to deal with the negotiations to establish the Tripartite Coalition.¹⁰

3. Principle of Secrecy

According to Suong Sikoeun, the principle of maintaining confidentiality was one of the most important principles of the CPK as it guaranteed "half of a victory." Based on the party line, a subordinate must not conceal any information from his superior as a testimony of his loyalty to the party; however, a superior may withhold information from his subordinate within the framework of their responsibilities, explained the Witness. When questioned on his lack of knowledge on Phy Phuon's duties at B-1, Suong Sikoeun reasoned that under the principle of secrecy "people were advised not to dig into other people's business." If he inquired into Phy Phuon's task, the latter could have denounced him for breaching this principle.

4. Evacuation of Phnom Penh

The Witness disclosed that he arrived in Phnom Penh on 25 May 1975. Except from some female workers who were loading rice on a boat, the capital was calm and empty of people, he recalled. Excerpts from the book *Beyond the Horizon*, authored by the Witness' ex-wife, Laurence Picq, state that the search in Phnom Penh to root out any remaining rebels was conducted vigorously following the evacuation. As read out by Pauw in court, "some were still found in hideouts stocked with provisions...hidden from the sun, had turned white." Suong Sikoeun clarified that he and his wife only overheard these statements from combatants. He said there were a few rebel combatants and civilians in hiding at that time.

5. The FUNK

Suong Sikoeun indicated that the FUNK was an alliance of forces with different political backgrounds: royalists, the CPK, and the nationalist middle forces. Although he knew that Prince Norodom Sihanouk was the FUNK's leader and spokesperson, he was unsure if the latter had any connection with the Khmer Information Agency controlled by the "the internal resistance" because the Prince's messages were featured in the agency's weekly bulletins. Ieng Sary "represented the local Front section," while the Politburo handled issues from abroad, said the Witness. He named two FUNK Politburo officials: the head, Samdech Penn Nouth, and Keat Chhon, the secretary responsible for receiving dignitaries and attending receptions.

On inquiry by Karnavas, Suong Sikoeun staunchly maintained that Prince Sihanouk's trip with Ieng Sary to Bucharest was in 1973. This account conflicts with David Chandler and Ong Thong Hoeungs' claims that it occurred in 1974. The Witness clarified that, in 1974, Ieng Sary was with the delegation led by Khieu Samphan in Bucharest.

6. Demeanor and Credibility

Suong Sikoeun was confident and cooperative in answering questions for most of the proceedings. However, he became cautious about responding to certain topics, asking guidance from the President and his duty counsel on whether he should answer some of the questions relating to current government officials.¹¹ There were some issues raised about his interaction with another witness, and questions about whether he had inappropriately monitored proceedings through the media. These are addressed in greater detail in Section III.B., below.

C. Sa Siek's Testimony

Sa Siek, alias "Sim," was born in 1956 in Prey Veng District, Prey Veng Province. She currently works as a farmer in Samlaut District, Battambang Province. The examination conducted by Prosecutors Veng Huot and Tarik Abdulhak focused on the final evacuation of Phnom Penh, the structure of the Ministry of Propaganda, and Sa Siek's interactions with Khmer Rouge leaders.

1. The Movement's Propaganda Structure Prior to DK

According to Sa Siek, before DK was established, she was a member of the Art Unit, known as Office S-6, which was located at Steung Treng District. The Art Unit recorded songs that were sent for broadcast in Hanoi. Apart from Office S-6, there were other offices in Steung Treng, such as Office B-20, which was responsible for distributing food to small units in the area, and K-18, the women's sewing group.

When asked about the mobile radio stations, Sa Siek clarified that, since she was not a member of this group responsible for the stations, she did not know their structure and the persons involved in them. She was able to say, however, that the stations' broadcasts were meant to encourage and raise the spirits of combatants in the battlefields.

2. The "Liberation" and Evacuation of Phnom Penh

Sa Siek affirmed that, on 17 April 1975, a radio broadcast announced the liberation of Phnom Penh.¹² On the same day, the Art Unit began its journey from Steung Treng to Phnom Penh with the heads of the unit, Hu Nim and Tiv Ol, who went entered the city ahead of the unit. Reaching Phnom Penh four days later, she and the rest of the members of the Art Unit proceeded to the Olympic Stadium where she observed –

... there were male and female soldiers. There were weapons, there were tanks, there were planes, and there were also people being evacuated from Phnom Penh. It was the last round of the evacuation.

Sa Siek testified that she did not see any soldiers escorting the people when she arrived in the capital. She did not know who controlled the evacuation, but she was told that the crowd was evacuated to the wrong direction. People in the "tens of thousands" walked "in the direction they wanted to go," as "they were instructed to go temporarily to their native villages." She further recounted that there were white flags raised at some homes and at the stadium.

3. DK Administrative and Communication Structures

During DK, Sa Siek worked for the Ministry of Propaganda, which later became the Ministry of Propaganda and Education.

a. Ministry of Propaganda

Sa Siek recounted that the Ministry of Propaganda was composed of the News Reading Section, the Technical Section, the Telegram Section, and the Artistic Section. The Ministry and its cadres were housed at the former Lycée Descartes, a large school compound near Wat Phnom. Hu Nim was the head of the Ministry in 1975 with Tiv Ol as his assistant, but both these leaders “disappeared” in late 1976.¹³ Later, some Ministry staff, including singers and news readers, were replaced and transferred to work in other locations. These people were told that they would be sent to work in rice fields at Chey Dam or Kantuot, but the Witness did not know if they were actually sent there. She never saw these people again. She, herself, was moved to the printing house in late 1977 and later to B-20 at Dei Kraham.

Ministry Meetings. Matters such as the Art Unit’s performances and song recordings were discussed in Ministry livelihood meetings. Self-criticism meetings where attendees discussed their own and others’ shortcomings were also held. The Witness explained that these meetings were conducted without any expression of anger, and sometimes included encouragement for the work that they had accomplished. According to the Witness, she attended a meeting chaired by Hu Nim and attended by all the sections of the Ministry. The objective of the meeting was to draw from the sections’ experiences to improve the Ministry’s performance. However, the meeting was cut short when Hu Nim was called away and never came back.

DK Radio Station and its Broadcasts. Sa Siek testified that six technicians from the Lon Nol regime remained at the radio station near Wat Phnom and guided the newcomers. She said the artists were evacuated, but she did not know what happened to the station’s senior officials. Although she could not specify the tasks the radio department was responsible for, she knew from working in the station that the station’s broadcasts were on “how to promote production and how to be self-sustained, self-reliant,” as well as the situation in the conflict with Vietnam. She added that recorded interviews and confessions of Vietnamese soldiers who were arrested in battlefields were aired. Sa Siek also confirmed her OCIJ statement that the recordings were broadcast “to let the people know that the Vietnamese soldiers had been actually captured.” The Witness also confirmed that there was a radio broadcast that announced that Vietnamese troops conquered Koh Tral. The broadcast “was meant to educate people to understand the aggressive neighbors, and they were told to devote themselves to defend, to fight, to protect the country and territory,” said Sa Siek.

b. Ministry of Propaganda and Education

The Witness said that in 1977, she was transferred to the printing office. The office was integrated with the Ministry of Propaganda, which subsequently became the Ministry of Propaganda and Education chaired by Yun Yat. Part of Sa Siek’s work at the printing office was checking page numbers and laying the type set for publications. In court, when she was shown a copy of the *Revolutionary Male and Female Youth* magazine, Sa Siek said the photo looked familiar but she could not recall the caption or title. She was also unable to identify a September 1977 edition of the *Revolutionary Flag*, saying that she left the Ministry of Propaganda in late 1977.

4. Interactions with the Accused

Sa Siek appeared to have little personal interaction with any of the Accused during DK. She recalled that she saw Khieu Samphan from a distance during their journey to Phnom Penh. She saw him again when the leader stayed at the Ministry of Propaganda for a few days, but she never talked to him personally. However, the Witness disclosed that she only met Khieu Samphan and his family after the fall of Khmer Rouge.¹⁴ The Witness also said she had no interaction with Ieng Sary during DK. Veng Hout read an extract of her statement to the OCIJ, where she averred that she “also had knowledge of the presence of Mr. Ieng Sary and at that location” (possibly referring to the Olympic Stadium) and that he was working at the Ministry of Foreign Affairs. The Witness denied this, however.

5. Demeanor and Credibility

Sa Siek appeared to have exerted efforts to recount the events during DK, although her memory of these events seemed limited. She declared: “I am very honest,” and added that, “I already talked (about) it all to the Court.” While she was unable to recall some statements she made before the OCIJ during her testimony, she affirmed the veracity of most of these statements when particular portions were read out to her. There were also some passages in her OCIJ statements that were ambiguous, such as her reference to “three Uncles” who did not allow entry into Phnom Penh immediately after the capital’s “liberation.” These “three Uncles” seemed to refer to Khieu Samphan, Hu Nim, and Son Sen, but she clarified that she was referring to Hu Nim, Tiv Ol and another person.

Near the end of Thursday’s hearing – during examination on the details of the transfer of her colleagues in the Ministry – the Witness lost her composure and became emotional. The Chamber acted with sensitivity when it adjourned the proceedings early, on account of the Witness’ distress, and ensured that she received support from the WESU.

III. LEGAL AND PROCEDURAL ISSUES

The hearings this week were fraught with procedural issues,¹⁵ including persistent uncertainties regarding the use of documents in the examination of witnesses, and the propriety of interactions between witnesses prior to giving testimony.

A. Use of Documents in the Examination of a Witness

Reference by Parties to documents during witness examination is not a new issue. In March 2012, the Chamber barred Parties from using a document a witness was unfamiliar with but permitted them to ask general questions about its subject matter. Although contentious, this rule has been followed for most of the subsequent proceedings. During witness Sar Kimlomouth’s examination by the OCP in May 2012, the Chamber ostensibly expanded this rule by allowing the OCP to ask the Witness about documents’ contents he had personal knowledge of, even if he had not seen the documents prior to giving testimony.¹⁶ Moreover, in response to the OCP’s *Request for Clarification on the Use of Documents*,¹⁷ the Chamber issued a *Notice to Parties*, E201/2,¹⁸ which provides in part:

The Trial Chamber further notes the Co-Prosecutors’ Motion E201 of 30 May 2012 in which they provide advance notice to the Chamber and the parties of their intention to use documents in order to (1) refresh the memory of a witness; (2) authenticate a given document, or to aid the Chamber to assess the weight that should finally be attributed to that document; (3) corroborate the substance of, or extrapolate from, the substance of a document, based on the witness’ direct knowledge; or (4) test the credibility of the witness.

Notwithstanding the Chamber's previous rulings that otherwise showed a narrower approach to the use of documents when questioning witnesses,¹⁹ in its *Notice to Parties*, the Chamber added that the OCP's application "merely restates the law,"²⁰ and "is compatible with previous directions by the Chamber."²¹

Since the issuance of the *Notice*, the Parties have followed these guidelines without further incident, as there appeared to be no need to determine whether a witness was familiar with a document before it can be used during his examination. This week however, the Chamber reverted to its previous narrower position when it denied the Nuon Chea Defense's request to use a telegram relating to a visit by a Thai delegation in 1979²² and an annex to a civil party application when witness Suong Sikoeun stated that he had not seen these documents before. This prompted Pauw to comment –

it seems that you are reversing an earlier position and the way we've been questioning witnesses for a few months now, which is if a witness is in some way related to the subject-matter of a document, he can read it and he can comment on it. ...It doesn't seem to be fair to change the proceedings in the middle of my examination.

In response, the President repeatedly demanded that counsel "refer to any particular document as example to show to the Chamber that I reversed my decision in this regard." Pauw gave notice that the Nuon Chea Defense would address the matter in writing, and proceeded to examine Suong Sikoeun by reading out excerpts from the document in question. The Chamber interrupted Pauw's attempt to use another document during his examination and gave this reminder: "you can refer to the content of a document when you put question to the witness, *but you cannot use the exact quote from that document.*"

In the afternoon of the same day, the OCP introduced a document the witness Sa Siek was unfamiliar with – a transcript of a foreign radio broadcast, which Abdulhak admitted, was "not a contemporaneous Democratic Kampuchea document." Guissé objected, citing the Chamber's ruling that morning.²³ The Chamber ruled that the Witness should not be given the document but allowed the Prosecutor to "refer to the documents for putting questions to the witness." When requested to clarify the extent with which the OCP may use the document, the Chamber held that, "(s)ince this is the transcript from the radio recording, *Co-Prosecutor is allowed to read or to cite any portion from the document* to refresh the memory of the witness." Further, Judge Jean-Marc Lavergne explained that, "since this document was put before the Chamber, it may be used as a basis to put questions," and reminded the Parties on the need for "the relevance of the questions and the relevance of the reading of the document itself."

This turn of events highlighted the need for the Trial Chamber to provide clear guidelines and implement them consistently. According to Judge Lavergne's explanation, the criteria for allowing a party to use documents during witness examination are three-fold: (i) whether the document has been put before the Chamber; (ii) "relevance of the questions;" and (iii) "relevance of the reading of the document itself." As pointed out by Pauw, however, the documents they attempted to use had already been put before the Chamber but they were not allowed to read them out to the Witness.²⁴ Moreover, it would be interesting to know what specifically sets apart the transcript of the radio broadcast from other documents that the OCP was allowed to "read or cite any portion" of it, and broadly, the kind of documents Parties may use in questioning witnesses, and the extent to which they are allowed to refer to these documents. Another point Pauw raised was whether there is a distinction in the use of documents that have been put before the Chamber and those that have not been but are included in the Parties' documents lists.

The issue remained unresolved until the end of the hearing week, as the Chamber advised the Parties that it would be discussed during the trial management meeting the next day. Both the OCP and the Nuon Chea Defense agreed on the need to adopt a liberal approach to this matter, so it would be helpful for the Chamber to review the rationale behind the rule and determine if it is still responsive to the legal and practical demands of the trial. Hopefully this recurring issue will finally be laid to rest during the trial management meeting.

B. Witness Interaction with Other Witnesses prior to Testimony²⁵

During Suong Sikoeun's examination by Pauw and Karnavas, the Witness admitted that, prior to appearing before the Chamber, he communicated with another witness, Phy Phoun, before the latter left their hometown to testify at the ECCC. He also indicated that, before he testified, he and Phy Phoun met a second time at a hotel in Phnom Penh while Phy Phoun "was having breakfast with a representative from the WESU." While Suong Sikoeun assured the Chamber that they "did not speak about anything related to the Court," he nevertheless disclosed that the reason for his request to meet Phy Phoun was to ask "whether he's been asked on specific points and that he responded clearly, so that I can prepare myself to respond to the Court." He added that he wanted to know if "there's something that the Court wished not to hear from me, and I would not tell the Court things that the Court did not want to hear." Suong Sikoeun also admitted that he followed Phy Phoun's testimony through radio and even commented that, "majority of it was the truth." When questioned if he knew of the testimony of So Hong, another witness who worked at the MFA, Suong Sikoeun stated that he never communicated with So Hong²⁶ and only learned of the latter's testimony from the television.

Neither the Parties nor the Chamber commented on these revelations despite related occurrences in July, when Phy Phoun admitted that he observed the OCP's opening statements in November from the public gallery.²⁷ Notably, this issue was discussed at the start of substantive hearings in December 2011, when the Chamber acknowledged the issue and the difficulties in limiting exposure of witnesses to the proceedings. Judge Lavergne reminded that this is not a mandatory regulation, but a general duty to be implemented by the WESU.²⁸ Curiously however, in this case, the witnesses met in the presence of a WESU representative, who should have been responsible for preventing these incidents. While it is indeed challenging to prevent witnesses from being exposed to the various sources of information regarding Case 002, preventing witnesses from discussing matters relating to the proceedings before they testify is reasonably achievable.²⁹

C. Retraction of Witness Testimony

On 15 August 2012, the Nuon Chea Defense called the Court's attention to a *Cambodia Daily* report in which Phy Phoun apparently retracted his prior testimonial statement that Hor Namhong was in charge of Boeng Trabek during DK.³⁰ Pauw questioned Suong Sikoeun about this matter in Court, asking if he was aware that Phy Phoun had issued a retraction. The OCP objected, on the ground that it was improper to ask the Witness to comment on what another witness might have said. Pauw argued that it was relevant to inquire whether the witness was influenced by outside sources. The Chamber found Pauw's question irrelevant and sustained the objection.

Phy Phoun's retraction, if true, raises several issues, including possible political interference as repeatedly asserted by the Nuon Chea Team, and the extent of support and protection the ECCC provides witnesses. Moreover, apart from putting Phy Phoun's credibility and testimony into question, his alleged retraction could potentially result in legal action against him. Under IR 36.2 (cf IR 35.2), if the Chamber has grounds to believe that a witness may have knowingly and wilfully given false testimony, it may (i) deal with the matter summarily;

(ii) conduct further investigations to ascertain if there are sufficient grounds for instigating proceedings; or (iii) refer the matter to the appropriate authorities of the Kingdom of Cambodia or the UN.

D. Role of a Witness to Answer Questions

A witness has the obligation to answer questions unless his statement might tend to incriminate him,³¹ and to state the truth in his testimony before the Chamber.³² On Wednesday however, Suong Sikoeun refused to answer queries he considered repetitive, and asked the President about the propriety of questions relating to current government officials before addressing them. Surprisingly, the President instructed Suong Sikoeun as follows:

Mr. Witness, please be reminded that you listen to the questions. And indeed, you are an intellectual, you are a wise person. If you believe that the question is repetitive, you can reserve your right not to respond or you can ask question to the Chamber to see whether you should respond to the question. We have heard a lot of questions, some of which are repetitive and some of the questions are those that witnesses impeach the witness. And if you feel that questions that you need to answer yes or no, then you should -- you should not -- if you know that the question is leading, then you can reserve your right not to respond to the question.

By giving a witness the prerogative to unilaterally refuse to answer questions he perceives as repetitive or leading, it appears that the Chamber has derogated its power to determine the propriety of questions in an examination, a power it should hold exclusively.³³ This might set an unwanted precedent for other witnesses and open the possibility for witnesses to refuse to answer just because they find questions uncomfortable or not to their liking.

E. The Right of the Accused to be Present in his Trial

The right of the accused to be present in this trial is embodied in Article 35 new (d) of the ECCC Law and IR 81.1. This right was underscored again this week with Ieng Sary's poor health condition and efforts the Trial Chamber took to provide opportunities for the Accused to participate in the hearings.³⁴

Taking into account Ieng Sary's now-waiver of his right to be present because of the importance of the testimony of the witnesses and a report that he was not feeling well enough to participate in the proceedings for the day, the Chamber summoned the court physician, Dr. Kem Samsan, to provide his findings on the health condition of the Accused. According to the physician, Ieng Sary said "he was very dizzy and fatigued, and he felt confused and his memory was too poor, that he could not observe the proceedings." He disclosed that since he did not have the capacity to assess Ieng Sary's memory properly, he merely relied on what the Accused told him. Respecting Ieng Sary's right to be present in his trial, the Trial Chamber decided to defer the morning session and assess improvements in Ieng Sary's condition. In the afternoon, the Chamber announced the suspension of the hearing for the rest of the day, as Ieng Sary still felt too weak to attend the proceedings.

IV. Trial Management

Managing the proceedings was a challenge this week, as the Trial Chamber dealt with Ieng Sary and Suong Sikoeun's health concerns, as well as a number of procedural issues that arose during the hearings.

A. Attendance

Due to Ieng Sary's frail health, the Chamber was compelled to adjourn proceedings the whole day on Monday. Ieng Sary participated from the holding cell the rest of the week due to his condition. Nuon Chea, on the other hand, was present in the courtroom during the morning sessions, but retired to the holding cell for the rest of the day. As is usual, only Khieu Samphan remained in the courtroom throughout the week.

Civil Party Attendance. The 10 seats in the courtroom reserved for Civil Parties were fully occupied during the proceedings.

Attendance by the Public. Public attendance for this week remained fairly high. On Monday, approximately 250 villagers from Kandal, Takeo, and Kampong Speu Provinces were present in the morning; 200 villagers from Takeo Province took their place in the afternoon session. The next day, there was an increase in attendees, with around 100 foreign visitors and 300 villagers from Bakan District, Pursat Province attending the morning sessions. In the afternoon, 200 people from Tram Kok District, Takeo Province followed the proceedings. On Wednesday, 250 villagers from Kampot and Kampong Chhnang participated the morning session, followed by some 300 people from the same province in the afternoon. Approximately 50 foreign visitors were also present in the afternoon. On the last day of hearing for the week, the public gallery was full, with 400 people from Kratie, Kandal, and Kampong Chhnang Provinces and 53 students from the Youth Resource Development Program attending the hearing. In the afternoon, there were around 200 villagers from Kandal present in the public gallery.

B. Translation Issues

Translation issues, although still present, did not figure prominently in the proceedings this week. There were a number occasions that the dates were not translated accurately and at one point, there were no English translation when Guissé appeared to make an observation during Sa Siek's examination by the OCP.

C. Time Management

The Trial Chamber had to revise the trial schedule this week as a result of the health of Ieng Sary and the needs of the witnesses. As Ieng Sary was too unwell to follow the proceedings, the Chamber was constrained to announce an adjournment on Monday. Moreover, since the witness Ong Thong Hoeung's return ticket to Belgium could not be extended, the Chamber prioritized his testimony on Tuesday. Giving due regard to his fragile health, the Chamber allowed Suong Sikoeun to testify only on certain parts of the day during the week. As a result, reserve witness, Sa Siek took the stand after lunch on Wednesday.

D. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 13/08/12	9:24	9:55	-	13:44	13:50	37 minutes
Tuesday 14/08/12	9:00	10:31-10:51	12:07-13:31	14:40-15:01	16:04	4 hours and 59 minutes
Wednesday 15/08/12	9:01	10:36-10:56	12:05-13:31	14:42-15:02	16:04	4 hours and 57 minutes
Thursday 16/08/12	9:07	10:32-10:55	12:14-13:32	14:42-15:01	15:55	4 hours and 48 minutes
Average number of hours in session				3 hours 50 minutes		
Total number of hours this week				15 hours 21 minutes		
Total number of hours, days, weeks at trial				420 hours 24 minutes		
96 TRIAL DAYS OVER 28 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)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev. 8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit



* AIJI is a collaborative project between the East-West Center, in Honolulu, and the War Crimes Studies Center, University of California, Berkeley. Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia. The Program is funded by the Open Society Foundation, the Foreign Commonwealth Office of the British Embassy in Phnom Penh, and the Embassy of Switzerland in Bangkok.

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¹ It appears from Ong Thong Hoeung's testimony that he was able to keep his journal by chance.

² Mr. Hor Namhong currently serves as Cambodia's Minister of Foreign Affairs.

³ The Witness further recounted that he initially declined the position on Ieng Sary's advice, but Pol Pot "was very optimistic and he told me I could take up the position and I could work on five stories per day." Asked if he was in a position to decline an order from Pol Pot, the Witness provided that, "at that time I declined his offer because I personally knew Pol Pot very well. I was not really afraid of him, I knew him since I was young. And I only learned of what happened during the regime only after 1979; and if I were to know what happened during the regime maybe I would not dare to refuse that offer."

⁴ It appears that Suong Sikoeun also communicated with Pol Pot through Saur Se, the party secretary at the MFA.

⁵ Suong Sikoeun recalled that Nuon Chea, in his capacity as deputy secretary of the party, once tasked him to write an article on the DK foreign policy. He described this as the only occasion he had contact with Nuon Chea.

⁶ See also Asian International Justice Initiative. KRT Trial Monitor [hereinafter referred to as **CASE 002 KRT TRIAL MONITOR**]. Issue No. 31. Hearing on Evidence Week 26 (6-9 August 2012). 3.

⁷ "So Hong" was the alias of Saloth Ban, who also testified before the Trial Chamber in Case 002 from 23 April to 2 May 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 20, Hearing on Evidence Week 15 (23-26 April 2012/July). CASE 002 KRT TRIAL MONITOR. Issue No. 21, Hearing on Evidence Week 16 (30 April, 2-3 May 2012). The Witness indicated that although So Hong was Pol Pot's nephew, the leader did not trust him because he was "a person of middle path."

⁸ Phy Phuon, whose aliases were "Rochoem Ton" and "Cheam," testified before the Trial Chamber in Case 002 from 25 July to 2 August 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 29. Hearing on Evidence Week 24. (23-26 July 2012). and CASE 002 KRT TRIAL MONITOR. Issue No. 30. Hearing on Evidence Week 25. (30-31 July, 1-2 August 2012).

⁹ In his OCIJ statement, Suong Sikoeun also expressed that Khieu Samphan "was seen by the Khmer Rouge as a tactical than a strategic force." He explained that the tactical force related to intellectuals who were needed to gather the masses because the CPK believed that they more effective than ordinary students. They were only considered as a strategic force if they refashioned themselves and changed their mentality and adopted the proletarian view.

¹⁰ Suong Sikoeun said he was tasked with preparing the substance of the negotiation, conducting the negotiation, and reporting on it once every two days to Pol Pot, who the Witness said made all the decisions by himself. An agreement was reached on 4 October 1981 in Singapore.

¹¹ The Witness also expressed that he felt "uneasy" hearing the names of Keat Chhon and Hor Namhong mentioned repeatedly in the proceedings. He asked the parties not to "trouble them," asserting that these individuals were intellectuals who held no power during DK.

¹² Sa Siek was unable to recognize the liberation day broadcasts reportedly made by Hu Nim and Khieu Samphan when Prosecutor Abdulhak read these out to her. She was also unable to recall the contents of Khieu Samphan's speech quoted from a transcript of a foreign broadcast.

¹³ Sa Siek recounted that Hu Nim was in a Ministry meeting with them sometime in 1976 when he received a phone call from someone he addressed as "Brother." He reportedly drove himself to this meeting and the Witness did not see him again. At 3:00 pm on the same day, a military truck came to take Hu Nim's wife away.

¹⁴ Khieu Samphan's wife asked Sa Siek and her husband if they knew if Khieu Samphan went to Preaek Kdam in 1979 because Khieu Samphan could not remember. The wife of the Accused also told Sa Siek's husband to "tell the whole truth" if investigators asked any question about Khieu Samphan.

¹⁵ The Parties also raised objections to questions on the ground that they were repetitive, irrelevant, or speculative.

¹⁶ See CASE 002 KRT TRIAL MONITOR. Issue No. 24, Hearing on Evidence Week 19 (28-31 May 2012). 15-16.

¹⁷ Office of the Co-Prosecutors. *Co-Prosecutors' Request for Clarification Regarding the Use of Documents During Witness Testimony* (30 May 2012). E201. The OCP requested the Chamber to allow the introduction of documents to witnesses when "sufficiency of the nexus between a document and the direct knowledge of a witness can justify the use of that document."

¹⁸ Trial Chamber. *Notice to parties regarding revised modalities of questioning and Response to Co-Prosecutors' Request for Clarification Regarding the Use of Documents During Witness Testimony* (13 June 2012). E201_2. 1.

¹⁹ See CASE 002 KRT TRIAL MONITOR. Issue No. 15, Hearing on Evidence Week 10 (19-22 March 2012). 9-10; CASE 002 KRT TRIAL MONITOR. Issue No. 16, Hearing on Evidence Week 11 (26-29 March 2012). 10; CASE 002 KRT TRIAL MONITOR. Issue No. 17, Hearing on Evidence Week 12 (2-5 April 2012). 10.

²⁰ Ibid.

²¹ Ibid.

²² The telegram dated 10 February 1978 originated from the French Ministry of Foreign Affairs. It related a visit of a Thai delegation to DK in early 1978 and enumerated the Khmer officials they met, including Pol Pot, Ieng Sary, Thioung Prasith, and Keat Chhon.

²³ Abdulhak justified the use the transcript by referring to the OCP's submission and the Chamber's *Notice to Parties* –

[i]f we're in the business of searching for and finding the truth, then it's about the information in the document and whether or not the witness is familiar with that information, whether she recognizes it. We filed the motion on this seeking to clarify the way in which the ruling is intended to operate. This was one of the basis that we put forward and Your Honours agreed with us, and I think we're just seeking to act consistently with that ruling.

²⁴ Pauw stated that after reviewing Suong Sikoeun's testimony, he found that, "not every time that a document is shown to the witness is the witness asked whether or not he has seen that document, and for that reason the document is not removed from the witness if he does not -- if he has not seen that document immediately." Judge Cartwright interrupted him, stating that this will be discussed in more general terms at the scheduled trial management meeting.

²⁵ See IR 88.2.

²⁶ Notably, the three witnesses knew each other from their work with the MFA during the regime. Presently, all of them live in Malai District, Banteay Meanchey Province. Sikoeun contacted Phy Phuon more often because Sikoeun said he treated Phy Phuon as a younger brother due to their shared memories.

²⁷ CASE 002 KRT TRIAL MONITOR. Issue No. 30. Hearing on Evidence Week 25. (30-31 July, 1-2 August 2012).

¹¹.

²⁸ CASE 002 KRT TRIAL MONITOR. Issue No. 6. Hearing on Evidence Week 1. (5-9 December 2011). 9.

²⁹ According to Lars Olsen, Legal Communications Officer of the ECCC's Public Affairs Section, "There was a WESU rep there, and the reason the WESU rep was there was to monitor that they did not discuss case-related issues." See White, Stuart. "Khmer Rouge court witnesses' meeting scrutinized." *Phnom Penh Post*. (21 August 2012). Available at <<http://www.phnompenhpost.com/index.php/KRTalk/khmer-rouge-court-witnesses-meeting-scrutinised.html>> last accessed on 31 August 2012.

³⁰ Chhorn Chansy and Julia Wallace. "KRT Witness Recants Hor Namhong Claim." *Cambodia Daily* (13 August 2012). 17.

³¹ See IR 28.1.

³² See IR 24.1.

³³ See IR 85 and 87.3.

³⁴ See CASE 002 KRT TRIAL MONITOR. Issue No. 23. Hearing on Evidence Week 18 (21, 23 May 2012). 3-4.