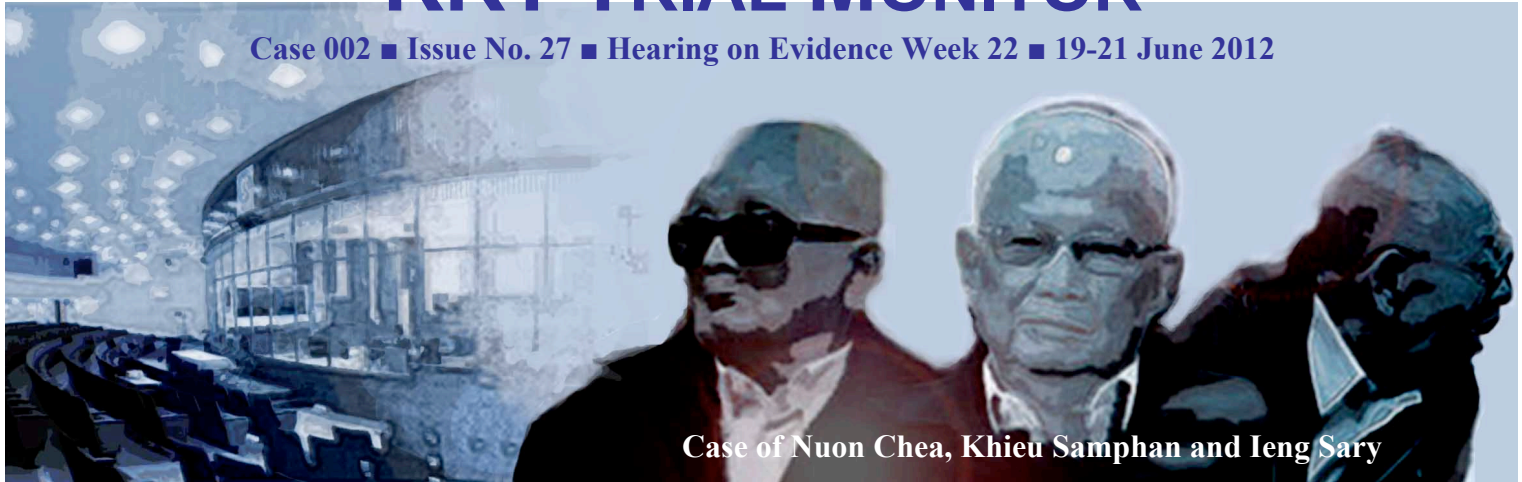


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 27 ■ Hearing on Evidence Week 22 ■ 19-21 June 2012



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

*I never accused any of my villagers to be arrested.  
People who used to live with me at that time are still living in Phnom Penh and  
many of them know me... If they were not living with me at the time,  
they would have been gone already.*

- Witness Yun Kim

## I. OVERVIEW

The Trial Chamber heard the testimonies of two witnesses, Mr. Yun Kim<sup>1</sup> and Mr. Khiev Neou<sup>2</sup> this week. Unlike previous witnesses who were examined only on the current trial segment, both witnesses testified on all allegations in the Case 002 Closing Order within their knowledge.<sup>3</sup>

Yun Kim, a commune chief in Democratic Kampuchea, testified on cooperatives and worksites, the administrative structure and communication structure, and events in his commune and district. While detailed and realistic, his narration came from a perspective colored by his recollection of his own participation in the DK regime.

On the other hand, Khiev Neou, a former monk who joined the DK regime, testified mainly on the disrobing of monks after the “liberation” of Phnom Penh on 17 April 1975, his experiences as commercial transport section chief for the Southwest Zone under Ta Mok and his brief interactions with Khieu Samphan.

Before the adjournment of the week’s session, the Trial Chamber issued a formal warning to the Nuon Chea Defense Team for unethical behavior. The Trial Chamber then declared the start of the scheduled three-week judicial recess. Hearings will resume on 16 July 2012 with the testimony of an expert witness, Dr. David Chandler.

## II. SUMMARY OF WITNESS TESTIMONIES

Mr. Yun Kim, alias “Khan”, is a 70-year-old rice farmer and the commune chief of Voadthonak Commune, Sambo District in Kratie Province. The OCP, through national Prosecutor Mr. Seng Bunkheang and international Prosecutor Dale Lysak, led the Witness’ examination at the start of the week’s session on Tuesday. The following morning, Civil Party lawyers Ven Pov and Elizabeth Simonneau-Fort questioned the Witness for one session, followed by Judge Jean-Marc Lavergne during the second session. Finally, during a

controversial third session in which Nuon Chea tried to make a statement, Nuon Chea's national Defense Counsel Son Arun, Ieng Sary's national Defense Counsel Ang Udom, and Khieu Samphan's international Defense Counsel Arthur Vercken closed the Witness' examination with a few questions each.

The Witness testified on his background, Nuon Chea's role in the establishment of cooperatives in Kratie Province (Sector 505), administrative and communication structures, the situation in the cooperatives and worksites the Witness was in charge of, arrests and purges, forced marriages, forced evacuations, the practice of Buddhism, and the treatment of Cham and Vietnamese minorities in his area.

The second witness, Khiev Neou, is a 79-year-old former monk originally from Takeo Province. He related that presently, he spends his time taking care of his wife and children, and in assisting in the pagoda. The OCP, through Prosecutors Messrs. Veng Huot and Tarik Abdulhak examined the Witness from Wednesday afternoon until the beginning of the third session on Thursday. Civil Party counsels Messrs. Pich Ang and Barnabe Nekuie then took the floor, followed by Judge Lavergne on the fourth session. The three Defense Teams opted not to ask any questions.

## **A. The Testimony of Witness Yun Kim**

Yun Kim related that he joined the Khmer Rouge revolutionary movement in 1971, after an introduction by Chhun Yaung alias "Cheth," the party secretary in Sambo District. At that time, the KR has already "liberated" Kratie Province. He said he feared that "if I did not join the movement, I might be in danger one day." In order to understand the revolution, he decided to join "to protect myself, and also to protect the people." He initially served as commune chief of Voadthonak Commune in 1971. In 1977, he was appointed as head of a larger commune, Sambo Commune, and later, Srae Khoean Commune. In June 1978, he moved to the B-3 worksite. He was one of the few leaders that survived the purges that swept Kratie Province towards the end of the regime.

### **1. Role in the CPK and during the DK Regime**

As a commune chief during the 1970s, Yun Kim's main responsibility focused on economy and agriculture. He was reportedly advised by the DK leadership to put in an irrigation system to ensure that farming could be properly implemented. In addition, he had to maintain order and oversee the people's health. At the B-3 Worksite, Yun Kim was tasked not only with overseeing 700 youth, but was also instructed to convert 100 hectares of land for farming.

The Witness testified that as commune chief, he was expected to follow orders. However, he said that if he thought an order was too difficult to implement, he tried to "ease the burden" by modifying orders to help his people survive. He felt that he was much closer to the people than the upper echelon was, so he had a better understanding of their situation. For him, his task was to "ensure that there is safety in my commune and there is enough food to eat."

Yun Kim averred that he fed his people rice even though he was instructed by the upper echelon<sup>4</sup> to serve gruel. He reasoned that,

I always ate rice because my commune had the ability to sustain by eating rice, because if people had enough to eat then our forces will be strong to carry out the work, so our production would increase in the commune. Wherever I went, my people would eat rice not porridge, so we were always self-sustained.

In a 1976 contest between communes, he revealed that he underreported the amount of rice his commune produced, reporting only 113 buckets of rice instead of 126 buckets, purportedly for his commune to have extra food. He said that while there was generally no report on food shortage in other cooperatives, people ate gruel as ordered by the upper echelon.<sup>5</sup>

According to Yun Kim, he sought to protect the members of his commune from being labeled as enemies. Since he believed that if people in his commune reported on each other, everyone would be killed, he instructed people to keep their biographies to themselves and not to report on each other. In addition, Yun Kim recalled that he produced false reports for “suspicious” persons (e.g., former commune chiefs, Lon Nol soldiers) in order to shield people from being labeled as enemies. He indicated that he was criticized at the district level for not reporting on the enemy situation but he reasoned that it was difficult to report on this because all he saw were people working. The Witness proudly declared that people living with him survived the DK regime: “I never accused any of my villagers to be arrested...If they were not living with me at that time, they would have been gone already.”

As the Witness testified on how he tried to keep people in his cooperatives alive and fed, Judge Lavergne questioned the Witness regarding the statement of a former member of the KR militia who claimed to have been sent to work in Kaeng Prasat Village (located in Srae Khoean/Sambo Commune) in July 1976. According to Judge Lavergne, this former cadre described the harsh life in Yun Kim’s commune:

[T]hey had us work day and night working the rice fields, farming, doing everything: farming, minding cattle and buffaloes, growing vegetables. There was no free time... Food was insufficient. We ate communally. Sometimes there was rice for one meal or gruel for one meal, that’s all.

The cadre’s statement also indicated that, in late 1976 or 1977, 17 April people arrived in the commune from Kampong Cham and “people from the East died from not having had enough to eat previously and some died due to lack of medicines.” He further stated that a certain “Ta Kham” headed the village in question. In response, Yun Kim challenged the accuracy of the former cadre’s statement and averred that he himself supervised the Srae Khoean Cooperative.

Judge Lavergne then read the statement of a member of the Cham minority who said he had been sent to Sambo Commune during the regime. According to this person’s statement, when he arrived in Sambo, his family was instructed to live with the base people. He also related the backbreaking schedule in the cooperative:

We started working at 3 o’clock in the morning up until 11 a.m. before a break for a meal. We then resumed our work at 1 p.m. until 5 p.m., and then we rested to have a second meal. Then we milled the rice and worked from 6 to 9 p.m.

Faced with recollections that contrasted with his testimony, the Witness indicated that he neither knew that people worked so hard, nor was aware of what happened to the Cham in the commune.

## **2. Administrative and Communication Structures**

As a low-level cadre, the Witness had direct knowledge of the geographical, administrative, communication and leadership structures within Sector 505, particularly its districts and communes. He also related his knowledge of security centers within his area.

### **a. Kratie Province**

Kratie Province, referred to then as Sector 505, was “liberated” by the KR approximately two months after the Lon Nol coup d’état in 1970. It was composed of three districts: Sambo, Snuol and Kratie. In 1976 or 1977, it separated from the Northeast Zone, became an autonomous sector and reported directly to the Center in Phnom Penh. In his OCIJ statement, Yun Kim named the following as secretaries of Sector 505: Ta Yem (1971 to 1976); Ta Yi (1976 to early 1978); and Moeun (date unspecified). Witness said that in Sector 505, it was the security and not the military who arrested people.

**Sambo District.** Prior to 1979, Sambo was composed of nine communes: Voadthonak, Sandan, Roka Khnaor, Boeng Char, Kampong Cham, Kbal Damrei, Ou Krieng, Srae Chis, and Sambo. Yun Kim stated that Ta Cheth initially headed Sambo District and was later replaced by Phan,<sup>6</sup> who was in turn succeeded by Ny. After Ny’s arrest in 1978, Voeun, a cadre from the military, took his place until the arrival of the Vietnamese in 1979.

### **b. Communes**

Yun Kim explained that a commune committee was composed of the commune chief as the head, a deputy in charge of the military, and three other members who were in charge of economy, security, and social affairs. The military section was in charge of security at the base, while the security section reported incident in the commune to a higher level. The Witness neither elaborated on the responsibilities of the economic section nor the social affairs section.

### **c. Communication and Meetings**

Since the commune committee reported to the district, as a commune chief, the Witness testified that he reported to his district superiors in person during meetings. The district held weekly meetings attended by all commune chiefs to report on “the enemy situation,” conflicts against the revolution, production, and people’s health. Challenges such as having a lazy workforce, carelessness in work, or foul speech were also reported. He was not sure how his district superiors sent their reports to their superiors but assumed that messengers transported documents from one location to another.

In addition, the Witness attended annual study sessions held in the provincial town. He said he only met the sector secretaries during these study sessions, which lasted 15 to 20 days. District committees, sub-district committees, people working in the provinces, the military, and sometimes even the village committees attended these meetings. Party instructions in the sessions were based on articles in the *Revolutionary Flag*. The Witness indicated that the magazine was the “core document to provide...guidelines and instructions.”

## **3. Cooperatives and Worksites**

The Witness recalled a meeting with the Accused Nuon Chea for the establishment of cooperatives and detailed the formation and events in the locations where he served as chief.

### **a. Nuon Chea and the Establishment of Cooperatives in Kratie Province**

The Witness narrated that he met Nuon Chea only once when the latter convened a meeting with commune chiefs in 1973 to discuss the establishment of cooperatives in Kratie Province. Yun Kim described the alleged Brother No. 2 of the KR as “a good person as a leader.”<sup>7</sup>

Nuon Chea reportedly advocated the gradual adoption of cooperatives. He instructed the commune chiefs on a three-step process for cooperatives. First, he advocated the establishment of “mutual assistance groups” comprised of 5 to 10 families that helped each other and aided in production by farming their own land. After mutual assistance groups proved successful, Nuon Chea told them to implement “low-level cooperatives” which were similar to mutual assistance groups because the people still owned their own land and cattle. However, unlike the mutual assistance groups, production and labor distribution depended on the total number of tools and cattle of the cooperative. Finally, Nuon Chea reportedly instructed the commune chiefs that a “high level cooperative” could be established once people understood the concept of collective property. Yun Kim further recalled that, Nuon Chea was careful to specify that commune chiefs should not form a “community.” Nuon Chea reportedly explained that while a community was similar to a cooperative in that people worked and ate together, unlike in cooperatives, people in a community did not share the benefits of their labor. The Witness indicated that after Nuon Chea’s lecture, the process of establishing cooperatives was underway in each district.

Despite Nuon Chea’s instruction to avoid the establishment of a community, Cheth, the secretary of Sambo District allegedly ignored Nuon Chea’s instructions and ordered the establishment of communities in his district, said the Witness. Yun Kim testified that communities within Sambo District, including Voadthonak maintained this structure until 1979. However, there seemed to be some ambiguity in this part of the Witness’ testimony because he continued to refer to Voadthonak and Sambo as both a commune and a cooperative throughout his testimony and related situations that referred to cooperatives.

**b. Voadthonak Commune**

Voadthonak was a newly established commune in Sambo District in 1971.<sup>8</sup> On 4 March 1971, the district committee appointed Yun Kim as commune chief of Voadthonak and he served as such until his move to Sambo in 1977. He recalled that in 1976, his commune produced more than 3 tons of rice per hectare but a great portion of the harvest was taken away and the people had to eat porridge. He does not know, however, where the produce was exported.

**c. Sambo Commune**

In February 1977, after more than a month in a Phnom Penh hospital for a “swollen nostril,” the Witness was reportedly transferred to Sambo Commune due to the “chaotic situation” there. According to the Witness, the commune committee members in Sambo had been arrested, so the district chief at that time, Phan, asked for his assistance. When Yun Kim arrived, he was instructed by the district to classify the people into three categories: base people (members of the cooperatives), candidate base people (base people from well-off families or who had the tendency to oppose the party), and “depositees” (i.e. 17 April people or those who were transferred from urban areas). However, the Witness said he did not categorize the people in his commune, to prevent base people from looking down on depositees. Notwithstanding other witness testimony indicating that disobedience resulted in punishment, counsels did not ask Yun Kim to state how his defiance of the instruction to classify people remained unpunished.

Originally, Sambo Commune had eight villages. When it was split into two cooperatives— Sambo and Srae Khoean— each of the new cooperatives had four villages. Each cooperative had a three person committee that oversaw the cooperative. The Witness became the cooperative chief of Srae Khoean, where he was in charge of roughly 3,000 people.

#### **d. B-3 Worksite**

Yun Kim informed the Chamber that the B-3 worksite was a former prison for arrested cadres. In April 1978, the prisoners were transferred to an undisclosed location and young people took their place, initially under military supervision. According to the Witness, on 11 June 1978, Voeun, the new district secretary from the military, ordered him to supervise the B-3 worksite. When he arrived, there were roughly 450 youth and 50 sheds, each of which housed 10 people. In addition, there were two medics at the facility to treat the youth if they contracted malaria.

The Witness was tasked to clear 100 hectares of land for farming. Since they only had axes and hoes, he reportedly requested that ironsmiths be brought in to make tools. He also asked for 30-40 elephants to help clear the land. He was given 12. When he requested additional forces, he said around 250 youth from Ta Maung Commune, Memot District, Kampong Cham Province (East Zone) were sent to the B-3 worksite to assist in clearing land. People in this location were believed to have allied themselves with the Vietnamese because of the proximity of their area with Vietnam. These youth only stayed in the B-3 worksite for three months before being sent to Kampong Cham.

#### **4. Arrests, Re-education and Purges**

Yun Kim's entire testimony was strewn with references to arrests of cadres in his area throughout the DK regime. He revealed that for most cadres, a meeting was often convened and the person was arrested during the meeting. Asked to explain the CPK slogan "when pulling out weeds, remove them roots and all," he said that if a cadre was arrested, anyone affiliated with him was also be arrested. This appeared to prove true in Sector 505.

However, the Witness disclosed that when people he knew were arrested, he never discussed it with anyone or expressed his concern. He kept quiet because he knew that if he or his equals spoke about it, they would start to mistrust one another. He was afraid that he might be reported, which would put him in danger of arrest himself.

##### **a. Arrests Prior to 1978**

The Witness recalled that in 1976, Cheth, his former superior at Sambo District, was arrested.<sup>9</sup> Ban Sarun, alias "Kang", the Sector 505 security chief was also arrested and apparently sent to S-21.<sup>10</sup> In addition, he recalled that Ta Chhi, a former commune chief, also disappeared after orders by the district committee to take his tools and go to the district office. As previously indicated, the Witness related that he believed that he was transferred to Sambo Commune because of the arrests of its committee members. He also mentioned the arrest of a certain Ta Khin who worked in the district, and later, the sector economic section.

##### **b. Sector Purge in 1978**

Yun Kim described the situation in Kratie Province in early 1978 as "chaotic," with the military taking over the area. Arrests were reportedly made on all levels: the provincial committee, most of the district committees, some from the commune committees, even sector soldiers. The sector secretary, Yi, was said to have been arrested on a boat to Phnom Penh. Kuon, the sector's deputy secretary and the chief of the sector military was also arrested. From the records, these two cadres, together with their wives, were brought to the notorious S-21 prison.<sup>11</sup> The Witness revealed that at Sambo District, Phoen, the district security chief, and Ny, the district secretary, were also arrested, while a few committee members were able to flee and hide. Ny and Phoen also escaped at first but after an appeal was made for them to

come back, they did, and were arrested in a meeting. Upon examining S-21 documents shown to him, the Witness confirmed that the names indicated in the documents were of Ny and Phoen.<sup>12</sup> He recalled that Phan, the Kratie District chief, also suffered the same fate.<sup>13</sup>

Near the end of the regime in late 1978, the Witness heard of another wave of arrests implemented in Kratie, where a number of commune and district chiefs were arrested. S-21 documents show that in December 1978, 22 cadres from Kratie entered the security center.

When asked about the reason for these arrests, the Witness said that people who were arrested were usually suspected traitors. However, he said he did not believe that everyone was a traitor, especially Phan and Ny, whom he knew were good people.

### **c. Security Centers**

Yun Kim mentioned two security centers in Sambo District: Prasral and Kok Kduoch. He said Prasral was a detention center for people who committed light offenses, and detainees were made to do farming. In contrast, the Witness stated that he did not know of the wrongdoings of prisoners in Kok Kduoch, from where prisoners were never allowed to get out alive. He named Ung Samon (former Voadthanak commune chief and head of security in Sambo District), Chhean (Ung Samon's replacement), and Chhun (former commune chief of Voadthanak), as some of the victims executed in Kok Kduoch.

The B-3 security center, on the other hand, (later converted to the B-3 worksite) was a provincial security office, explained Yun Kim. While he said that he did not know of the B-3 worksite's existence before he was appointed there, he described it as a re-correction camp, where district and commune cadres were held. Detainees farmed and did other normal tasks as in cooperatives.

## **5. Forced Marriages**

The Witness averred that there were no forced marriages in his communes; they sought permission from each woman before the marriage ceremony. While he was the head of the Voadthonak Commune, the military put in a request at the district level for 30 women to marry soldiers. The district informed him of this and he sought "the opinions from the female youths" in his unit. According to him, 25 women stepped forward to volunteer and the military fetched them from the base.

Yun Kim added that sometimes, soldiers themselves proposed to their superiors on particular women they wanted to marry.<sup>14</sup> At times, couples wore numbers for easier identification due to the size of the mass marriage ceremonies. In a wedding ceremony at an adjacent commune, he said he witnessed 10 couples wearing numbers. The men were paired with the women who had the corresponding number. However, the Witness said he did not know if these were forced marriages, as he merely attended the ceremony.

## **6. Forced Evacuations**

The Witness disclosed that he had limited knowledge of evacuations in his location. He said that Chams arrived in the Voadthonak Commune prior to 1975, and that there were 30 to 40 families that came from the Svay Kambet Commune. As for the Phnom Penh evacuation, the Witness testified he only learned of this when he saw the "new people" arriving by boat and by other means. He also mentioned that in 1978, there was another influx of people from Memot District near the Cambodian-Vietnamese border.

## 7. Policies against Buddhists, Cham, and Vietnamese Minorities

**Policy against Religion.** According to Yun Kim, he learned the party's policy on religion during study sessions, where he was told that the "revolution shall not be done twice." He said that, based on instructions, this meant that, with the start of the revolutionary movement, people must also be educated not to believe in religion. This way, the violent Cultural Revolution that occurred in China (where religion was forcibly smashed and oppressed) could be avoided.

The Witness revealed that some monks still practiced Buddhism in the immediate aftermath of the "liberation" 1975. By 1976, people in Kratie Province no longer practiced Buddhism openly. The few remaining monks were sent to Ou Reang Ov District in Kampong Cham Commune in July or August, and by late 1976, there were no monks left. "It was an end to Buddhism. No monks, no religion," the Witness declared. Although pagodas remained intact, they were used for other purposes: as warehouses, housing, or for the production of bricks. One pagoda was used as a CPK meeting place, and the roof of another pagoda was dismantled for use in a hospital.

**Treatment of the Cham.**<sup>15</sup> Yun Kim denied that the Cham people were subject of study sessions because they were considered as Khmer, not of other races. He insisted that the Cham were treated as ordinary Khmers and they were not classified as "new people." Like other Cambodians, the Cham had to wear the standard DK regime clothing (black shirt and trousers), and speak Khmer when they were at work. However, they were allowed to speak their own dialect at home. They were also allowed to live together in a big mansion, not in a traditional village. Nevertheless, he admitted that Cham were not allowed to practice their religion, which was Islam. In some cases, the Cham were forced to eat pork or denied food, including a local delicacy, *prahok*. However, in his commune, the Witness disclosed that he occasionally allowed the Cham people to slaughter cattle in accordance with their culture.

**Treatment of Vietnamese.** The Witness did not specify the party's policy towards Vietnamese people; he only said that since there was continued conflict with the Vietnamese after liberation, they had to study Vietnamese tactics. He indicated that, prior to 17 April 1975, there was a large number of Vietnamese who lived in Kratie Province, but many Vietnamese also moved back to their country after the Vietnamese troops withdrew. While he said he was unaware of what happened to the Vietnamese after 1975, he recalled that there were two Vietnamese in Sambo Commune married to Cambodians who continued to live in the community without any problem.

When questioned about the youth from Memot District who were relocated to the B-3 worksites for a few months, the witness opined that these people may have been suspected of being Vietnam sympathizers due to the proximity of their location to the Vietnam border. While it remained unsaid, it is possible that their removal from their town and transfer to B-3 may have been a form of punishment for this alleged connection.

## 8. Closing of Markets and Businesses

Yun Kim testified that the markets continued to operate even after the KR liberated Kratie Province. Although the Witness did not know exactly when the markets were closed, he did indicate that money was no longer circulated in Kratie in 1974. He stated that it was "common sense" that the markets and businesses were closed after money was taken out of circulation. The timeframe of the closure markets and businesses was supported by a *Revolutionary Flag* excerpt that the OCP presented to the Witness.



## **9. Witness Demeanor and Credibility**

Unlike previous witnesses, Yun Kim had a clear and coherent recollection of events and dates. He freely enumerated the names of the people he thought had been arrested, and rarely said he “could not remember,” only that he “cannot grasp” answers to some questions. However, his account seemed to be much more positive than other accounts of that time, which may be attributed to his viewpoint as an insider witness. Even with this difference in accounts, the Witness seemed to provide a compelling and truthful account of his experience during the regime.

### **B. The Testimony of Witness Khiev Neou**

Khiev Neou was born and raised in Trapeang Thum Village,<sup>16</sup> Tram Kak District, Takeo Province. He entered the monkhood at Trapeang Thum Pagoda at a young age. There he met Ta Mok,<sup>17</sup> who was a monk in the same pagoda and a native of the same village. As he was still very young, the Witness related that his relationship with Ta Mok at that time was that of “a young boy to a monk.” However, Ta Mok left the monkhood in the early 1940s, while Khiev Neou remained and was ordained as a monk in the 1950s. The Witness said however that Ta Mok usually visited the pagoda and talked with the monks about various matters; they discussed communist theories and Buddhist principles.<sup>18</sup> They also farmed together. Khiev Neou served as a monk for 25 years, but after the 17 April 1975 “liberation” of Phnom Penh, the Witness stated that he disrobed.

Due to their prior relationship, Ta Mok asked the Witness to work with him in the Southwest Zone during the DK regime. Initially, Khiev Neou was responsible for various tasks but later became chief of the Zone’s commercial transport unit. There, Khiev Neou oversaw drivers and the transportation of materials between the state warehouse in Phnom Penh and the provinces.

#### **1. The Role of Witness During the DK Regime**

The Witness related that he initially went to his mother’s home after he had left the monkhood. Due to his poor health, he also stayed in a hospital for a time. Once Khiev Neou recuperated, Ta Mok reportedly asked him to work for him (Ta Mok).

First, the Witness said he worked near the Kompung Kontut River in a former Lon Nol military barracks. Ta Mok assigned him to work on “currency” but there was no money, as none was circulated and markets were abolished. Consequently, he started doing some general tasks such as counting goats, listing tools and helping to fix them.

Later, he was transferred to the Southwest Zone’s commercial transport unit, where he worked until the end of the war in 1979. The office transported materials to and from Phnom Penh. Most of those materials, such as dishes, cement, steel, candles or tools, were transported from the state warehouse. In turn, products such as cotton, rice and coconuts were transported from the provinces to the Phnom Penh warehouse. He disclosed that to transport the goods, a special letter was issued by the economic sector, signed by Vorn Vet or the K-22 Office. When Judge Laverge inquired if the goods from the warehouse were transported to Kampong Som (where the port was located), the Witness said he was only responsible for the Southwest Zone. Moreover, he explained that delivery of goods to the port was supervised by the State.

## **2. Administrative and Communication Structures**

Khiev Neou's post in the commercial transport section of the Southwest Zone allowed him to observe the administrative structure and operations of both the Southwest Zone and the DK Economic Sector.

### **a. The Southwest Zone**

The Southwest Zone was headed by Ta Mok, with Sam Bit as his deputy. The Witness affirmed he was under the direct orders of Ta Mok because he was the chief of the commercial transport unit. Khiev Neou enumerated the provinces (sectors) that composed the Southwest Zone and their heads: (1) Takeo Province, with its chief, Soam; (2) Kandal Province, with its leaders, Chea and Prak; (3) Kampong Chhnang, with its chief, Yun; and (4) Kampong Speu Province (the Witness was unable to recall the leader's name). He said these people went the Southwest Zone office in Phnom Penh when they went to the city for meetings with upper echelon to receive instructions. He also recalled Chou Chet, alias "Sy," (secretary of the West Zone) who was originally from the Southwest Zone. The Witness also recounted that his district, Tram Kak (District 105) was under Sector 13 (Takeo), and was headed by Chay and Kit.

### **b. DK Economic Sector**

According to the Witness, Vorn Vet was DK's head of State Economy. He further named Cheng An as the head of the Industry Committee, Roeng as the head of the State Warehouse, and he believed that Van Rith was from the foreign trade section. Khiev Neou moreover confirmed the conclusion he made before the OCIJ that Khieu Samphan replaced Vorn Vet in the area of foreign commerce after the latter's "disappearance."<sup>19</sup> From his interactions with Khieu Samphan, the Witness believed that the Accused had the power to authorize the release of certain materials.

## **3. Interaction with the Leaders of DK**

Although the Witness did not hold a senior position, he had some contact with many of the DK regime leaders. On account of his frequent interactions with Southwest Zone leader Ta Mok, Khiev Neou indicated that he briefly saw Pol Pot once in Ta Mok's house in Takeo.

Khiev Neou further revealed that he met Khieu Samphan on two occasions. Khieu Samphan reportedly granted him an audience when he accompanied people from the rubber plantation who wanted to meet the Accused. The meeting occurred at the Foreign Commerce Section, where they discussed a request for fabric by Battambang Province, the use of conventional tools (instead of those manufactured by factories), and the reuse of bottles for fish sauce. According to the Witness, the second meeting was held in the same place. People from Kandal Province requested that he contact the upper echelon about a road destroyed by flooding. He said it was easier for him to contact Khieu Samphan since his nephew-in-law worked closely with the Accused. Both indicated that these meetings took place while Vorn Vet was absent.

As regards Nuon Chea, Khiev Neou remembered seeing him once in early 1978. He said Nuon Chea stopped his car and asked him to look for traditional musical instruments in the state warehouse and to send them to the radio station.

#### **4. CPK Policies**

The Witness was only able to provide vignettes, not detailed testimony, on the implementation of forced evacuations, cooperatives, and arrests during DK. He also described how his own marriage was arranged to a woman from the sewing unit of the Zone.

##### **a. Forced Evacuations**

Khiev Neou admitted that he did not witness the evacuations himself; he was only told of the event when he saw the people arriving in his area. He recalled:

Thousands of people were evacuated. You could see a crowd of people everywhere, and I recognized some of the people who were living in Phnom Penh, some of my relatives in Phnom Penh and Takeo, and I met them and asked them, and that's how I learned of the evacuation.

He averred that people who had been evacuated were free to go wherever they wished, with most returning to their native villages. Monks were also evacuated from Phnom Penh and Takeo, and they gathered at Angk Roka Pagoda, according to the Witness.

##### **b. Cooperatives and Worksites**

From the influx of people, some new villages were created and cooperatives were established, Khiev Neou disclosed. All the people lived in the cooperatives except the ones from the ministries or unit chiefs. He observed that, in the cooperatives, they did farming with "the same old routines, but this time they had to do that collectively." "People were asked to build dams, dig canals, eat communally," he said on further questioning. However, he specified that he was not in the area long enough to know the living conditions of the people, as he had "other fish to fry."

##### **c. Arrests and Disappearances**

Khiev Neou confirmed to the OCP that there were disappearances during DK but he was never told about the reasons, just that the ones that disappeared were accused as traitors. He indicated that he heard of the disappearance of Vorn Vet and at least of two others, Hu Nim and Hou Yun. When Lysak asked him about Chou Chet, Khiev Neou admitted that he heard that the West Zone leader disappeared, but he did not know what happened to Chou Chet's wife.<sup>20</sup>

##### **d. Study Sessions and Criticism Sessions**

The Witness testified that people had to attend study sessions where topics such as living conditions were discussed. There were also criticism meetings where people convened to discuss the people's progress and shortcomings. Meetings were held at the Southwest Zone, chaired by the zone deputy Sam Bit, where revolutionary lines were taught, such as how to conform with the peasants and carry out peasant work, as 85% of the population were peasants, the Witness indicated.

##### **e. Arranged Marriages during DK**

According to Khiev Neou, religious ceremonies were not held in weddings during the regime. If the superior in the commune allowed the bride and groom to be married, the unit leader organized it. Rites were conducted differently, depending on each unit, village, or commune.

He disclosed that Ta Mok arranged his marriage, and when asked if his spouse knew him beforehand, he replied, “she knew me, but not very clearly.” He was informed of the marriage earlier and he learned later from his wife that she was also “tipped-off” on the impending marriage. He remembered that they met and smiled at one another at a meeting to administer the marriage. In the ceremony, the couples’ relatives were absent, and only members of the KR witnessed the wedding.

#### **f. Abandonment of Religion during the DK Regime**

Sometime before 17 April 1975, the Witness recalled that “Angkar” ordered him –through the local militia – to move from Trapeang Thum Pagoda to Angk Roka Pagoda. There he met other monks coming from other locations. They were asked to disrobe and, according to him, no one objected.<sup>21</sup> However, he also said they disrobed to survive.<sup>22</sup> Khiev Neou maintained that monks “left monkhood voluntarily, and there was no such arrests or coercive measures.” A religious ceremony was even held for the disrobing, according to him.

In his OCIJ statement, the Witness had previously stated that he knew of the plan to disrobe monks long before it happened. He explained that he learned this from reading magazines and conversations with Issarak members. Despite disrobing, Khiev Neou indicated that he continued to practice Buddhism secretly. When asked why he did not practice his religion openly, he replied, “How could we practice this religion in the open if there were no monks left?” He further revealed that, at this point in time, he had no more desire to return to the monkhood, because now he has his own family.

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

This week highlighted the need for further guidance on the implementation of the Chamber’s adoption of a witness’ statement to the OCIJ as part of his or her testimony in court. The Trial Chamber allowed the Nuon Chea Defense Team’s requests to use certain documents for impeachment purposes. However, on a separate matter, the Chamber also issued a formal warning against Nuon Chea’s counsel as a result of various actions that the Court considered to be misconduct.

#### **A. OCIJ Statements Considered as Part of Witness Testimony**

In the interest of expediting the proceedings, the Trial Chamber adopted the following modality for questioning witnesses, as summarized in its Notice dated 13 June 2012:<sup>23</sup>

... it has recently commenced the questioning of each witness by asking whether the witness is familiar with the statement they gave before the Co-Investigating Judges (OCIJ) and whether this represents an accurate statement of their evidence. Where the witness indicates that s/he does recall their statement and that its contents as recorded in the OCIJ written record are true, parties shall not repeatedly request the witness to confirm this fact or otherwise attempt to force the witness to merely repeat the contents of that statement. The parties should instead focus their efforts on other questions (for instance, on matters beyond the contents of the statement) or in posing specific challenges to the credibility of the statement or the witness’ evidence. (*Underscoring supplied*)<sup>24</sup>

In effect, if a witness affirms in court the veracity of his statement before the OCIJ, this is already considered part of his testimony before the Chamber, and need not be repeated in the courtroom. While this will undoubtedly help accelerate the proceedings, it also poses some difficulties. A party who would like to examine the Witness further on certain aspects

of the answers in the OCIJ statement will do so at the risk of having their questions barred by the Chamber for being repetitive.

The need for clear guidance was highlighted on Wednesday afternoon at the start of the OCP's examination of Khiev Neou. Vercken objected to Veng Huot's method of beginning a question with facts stated by the Witness in his answers before the OCIJ. He said that, when speaking of facts, "it is necessary to ask, first, an open question rather than to immediately try to refresh the witness' memory." In response, Judge Lavergne explained:

it's not necessary to go over the questioning since the start. These are only – we should only ask complementary questions. This is why a summary of previous statements is not surprising. The only thing here is that if the witness disagrees with the way the questions are formulated or if the way the questions are reminded to him, (he) must make this known to us when he answers."<sup>25</sup>

From the public's perspective, restating the content of the OCIJ interview, before asking questions, provided context and a better appreciation of the testimony of the witness; otherwise, his statement before the OCIJ would not be heard in court. It will also be unclear whether or not a sufficient foundation has been laid for a question. It is a concern that, with the new method adopted by the Chamber, it will be harder for the general public to grasp the complete picture of a witness' testimony, unless the OCIJ statement itself will be made public.

Moreover, in the instance where a witness disputes all or parts of his statement, the proper recourse is unknown. It must be noted that when the Chamber asked Khiev Neou to affirm that he has read his interview, the latter expressed, "(y)es I have, but I still feel that the record was not really fully accurate because I need to-- I thought it was not correct". Unfortunately, the Chamber did not address this concern. Instead, the Court merely modified the query by asking the Witness if, "in general," the statement read out was consistent. Consequently, the part of the OCIJ statement the Witness was disputing remained unclear throughout his testimony.<sup>26</sup>

## **B. Reliability of Written Record of OCIJ Interviews**

In connection with the new rule issued by the Chamber, relying on the OCIJ statement of a witness as part of his direct testimony, the accuracy and reliability of these statements were put in question by the Defense counsels on Thursday afternoon.

Vercken drew the attention of the Chamber to alleged discrepancies between the audio recording and the written record of the interview of the witness Khiev Neou, stating that statements that were not on the audio record appeared in the written record, such as the words "KGB, CIA etc."<sup>27</sup> He manifested that he had asked the transcription unit to transcribe the record. The Chamber's response indicated that it found no material discrepancies between the two records to necessitate further inquiry.<sup>28</sup>

At the end of the session, Pestman, raised the issue again. He alleged that, when he compared the first four pages of the transcription of the interview, the summary on file, and the written record of interview, he was "quite shocked," as:

It is like a conversation between one investigator and the witness and it is so chaotic that as a result, it is practically impossible to reconstruct what information came from the witness and what information was fed to the witness by the investigator and the other problem that occurred is that the summary itself ... is also inaccurate, if not misleading. It is not a summary

but a highly personal interpretation of what I described as a chaotic conversation and I only compared 4 pages of a short very passage.

As a result, Pestman submitted that the written statement was unreliable, and thus no weight should be attributed to it by the Chamber. Abdulhak countered by pointing out that the testimony of the Witness in court had been 'largely consistent' with the written record, thereby confirming the latter's accuracy.

The Chamber did not rule or comment on this issue. While the Internal Rules does not oblige the Chamber to disclose how much weight it intends to give a particular piece of evidence, a ruling on this issue would clarify the standards of admissibility contained in Rule 87(3) of the Internal Rules, which allows the Chamber to reject a piece of evidence if it is too unreliable and thus "unsuitable to prove the facts it purports to prove."

### **C. Judicial Issuances Not Considered as Evidence under Rule 87 but may be used in the Examination of a Witness**

Nuon Chea's international counsel Mr. Andrew Ianuzzi informed the Court on Tuesday morning that their Team had filed a request to admit an OCIJ Order as new evidence under Rule 87.4 for the purpose of impeaching the witness Yun Kim.<sup>29</sup> On Wednesday, before the Nuon Chea Defense commenced their examination of Yun Kim, Ianuzzi inquired about the status of their request. In response, the President stated that judicial documents such as the OCIJ Order<sup>30</sup> subject of the request, are not considered "evidence" and do not fall within the ambit of Rule 87. With this, the Chamber implied that there was no need for the Nuon Chea Team to file its motion to admit the judicial document as new evidence, and therefore allowed the use of the document in the counsel's examination.<sup>31</sup>

Ianuzzi, surprisingly, declined the opportunity to use the document despite the Chamber's assent, on account of the difference between their Team's reasoning and that of the Chamber's. He insisted that while they maintain that impeachment material is not evidence, judicial documents can be evidence, as "Orders contains facts, and facts could be evidence."

### **D. Document Not in the Document List cannot be Used in Court to Examine Witness**

The Nuon Chea Team filed a similar request for the admission of two documents to be used for impeachment purposes in relation to Khiev Neou.<sup>32</sup> When their turn came to question the Witness, Pestman asked the Chamber about the status of their request. It appeared that one document was in the OCP Document List while the other was not on any list.<sup>33</sup> Judge Silvia Cartwright, on behalf of the Chamber, stated that Pestman may rely on the document in the OCP List but ruled against the use of the unlisted document. In a seeming repeat of Ianuzzi's refusal the day before, Pestman also declined to proceed with his examination on the basis of one document, asserting that it was essential for both documents to be presented to the Witness together, as they support each other and contain important exculpatory information, which the Defense would now be barred from presenting.

### **E. Using Statements of Witness Scheduled to Appear**

During Judge Lavergne's examination of Yun Kim on 20 June, he confronted the Witness with statements by two individuals, and asked the Witness to comment (see II.A.1. above). On both occasions, Ianuzzi intervened and asked whether these two persons were in the list of witnesses scheduled to appear in court. Lysak indicated that, during last week's proceedings, the Nuon Chea Defense requested leave to use a statement of a witness scheduled to appear in court on the condition that his name not be disclosed.<sup>34</sup> The

Chamber had revised the ruling that applied to the examination of previous witnesses and had allowed the Nuon Chea Defense Team's request.

The new ruling will be helpful to the Parties in drawing out the truth from witnesses, and as long as the identities of future witnesses are protected,<sup>35</sup> many observers of the proceedings hope that the move towards a more progressive interpretation of the rules on evidence continues.

#### **F. Need for Prior Notification in the Use of Documents in Court**

In relation to the use of documents for examination of witnesses, Vercken suggested that the Judges should also notify all the parties of the Court's intent to use a document at least a day beforehand, so the Parties can prepare accordingly. In response, Judge Lavergne declared that, "the responsibilities and obligations that fall upon the Parties are not identical to those who comprise the Bench." Hence, while the Parties are required to notify the Chamber and the Parties prior to the use of a document, this requirement does not apply to Bench.

#### **G. Allowing the Accused to Ask Questions to the Witness but not to make Statements**

On Wednesday, during Nuon Chea Defense Counsel's examination of Yun Kim, Ianuzzi asked the Chamber to allow Nuon Chea to take the floor to "comment about the evacuation of Phnom Penh." Lysak and CPLCL Simonneau-Fort made similar objections against the Accused using the time for examining the witness to provide comments. Despite these objections, and perhaps appreciating the submission as a request for Nuon Chea to ask questions, and not to comment, the Chamber allowed the Accused to ask the Witness questions through the President of the Chamber, in accordance with Rule 91.<sup>36</sup> However, instead of asking questions, Nuon Chea began to read a statement relating the 17 April 1975 evacuation with the present evictions in Cambodia.<sup>37</sup> As it became evident to the Chamber that this was not what it has allowed Nuon Chea to do, the President stopped Nuon Chea in the middle of his speech and turned off his microphone. Nuon Chea continued with his statement without a microphone and thus, without translation. When Pestman complained that his client's statement was not being translated into English, the President remarked:

Your client is not allowed to speak. The purpose today is to hear the testimony of this Witness. You can proceed to do so (make a statement) during your closing statement and if you don't have questions to this witness, please be seated.

Significantly, a few weeks ago, the Chamber allowed Nuon Chea to respond to Duch's testimony over the objections of the OCP and CPLCL.<sup>38</sup> It appeared that this was in keeping with the procedure that applied in Case 001, where the Chamber allowed Duch to respond after witnesses testified. With the Chamber's present pronouncement, it appears that the Chamber may have modified this procedure, limiting any statement to the Closing Statement at the end of the trial.

#### **H. Formal Warning to the Nuon Chea Defense**

Before announcing the start of the summer judicial recess on Thursday, the Trial Chamber issued a formal warning to the Nuon Chea Defense (particularly the international defense counsels) for what the Chamber deemed as a "consistent pattern of misconduct," which had included: (i) "willful violation of the Chamber orders"; (ii) "unauthorized disclosure to the press of confidential or strictly confidential materials"; and (iii) "statements in Court which are disrespectful of the Court and which otherwise does not accord with recognized standards of

ethics in the legal profession." The Chamber indicated that it would bring these acts to the attention of respective bar associations of Nuon Chea's counsels. Moreover, the Chamber announced that it may invoke ECCC Internal Rule 38(1), in order to impose punishment independent from any decision to be made by the counsel's bar associations. According to Internal Rule 38(1), after the issuance of a formal warning, the Chamber may impose sanctions against or refuse audience to a lawyer if it opines that the conduct of the counsels is offensive or abusive, or obstructs the proceedings, amongst other things.

The Chamber has the authority to issue a formal warning under Internal Rule 38. While the Chamber did not elaborate on the particular acts it considered to be "misconduct,"<sup>39</sup> certainly some of Nuon Chea's lawyers have exhibited recalcitrant behavior in the courtroom. In March, Pestman invited the Chamber to file a complaint against him with the Dutch Bar, even volunteering the contact details of the Dutch Bar Association.<sup>40</sup> The Chamber appears to have responded to Counsel's provocation. This week, Ianuzzi pinned a badge on his gown that said, "I ♥ (love) Dada," which caused national CPLCL Mr. Pich Ang to react and the President to order Ianuzzi to take off the badge. (see IV.A. below).

#### **IV. TRIAL MANAGEMENT**

Despite a few issues on courtroom etiquette and translation, the proceedings generally ran smoothly this week. The Trial Chamber exerted commendable efforts to expedite the proceedings, resulting in the completion of the scheduled testimonies by Thursday afternoon.

##### **A. Courtroom Etiquette**

As indicated in the previous section, at the start of Tuesday's proceedings, Pich Ang drew the Chamber's attention to a logo on Ianuzzi's robe, which appeared to read "I ♥ (love) Dada." In response, Ianuzzi stated that the badge was an ideological logo. The Chamber asked him to remove the logo, explaining that judicial personnel (like counsels) are not allowed to wear any logo on their robes. Ianuzzi stated that he would not remove it voluntarily and would only do so if the Chamber issued an order. This prompted President Nil Nonn to declare in a loud voice: "You are ordered to remove it now."

The episode did not end after Ianuzzi removed the badge. When Ianuzzi asked for leave for his client to participate in the proceedings from the holding cell, he took the opportunity to elaborate, "for the record that, Dada refers to Dadaism," "the movement that rejected logic and reason in favor of nonsense, irrationality, and chaos." He added that, "it is not 'don't ask, don't answer' although I would say that that seems to encapsulate this Chamber's approach to our Defense Team quite well." Surprisingly, the Chamber did not respond to the Counsel's apparent taunt. Instead, the President merely ruled calmly on Nuon Chea's request to stay in the holding cell.

The President's restraint was, however, tested once again later in the afternoon, after both Vercken and Ang Udom objected to Veng Huot's manner of questioning with witness statements (see III.A. above). While, the Chamber did not rule on the objection directly (only asking the OCP to rephrase its question), the President reprimanded Veng Huot for his failure to provide the English and French ERNs for the document with inordinate impatience. He admonished the counsel rather strongly in Khmer, "*khou oy khmas ean nas!*" In English, this means, "you should be ashamed!" but the statement was not officially translated into English by the simultaneous translators in the Courtroom.



## B. Translation and Technical Issues

Translation was a challenging issue this week, with inaccuracies causing some confusion during the proceedings. Difficulties became evident when dates and numbers were mistranslated and a number of omissions occurred, prompting Parties to repeat their questions and seek clarification.

## C. Attendance

Only Khieu Samphan remained in the courtroom throughout the proceedings this week. Due to his illness, Ieng Sary was allowed to participate remotely from his holding cell the entire week. On Tuesday and Thursday, Nuon Chea was present in the courtroom in the mornings. Thereafter, he also followed the rest of the proceedings from his holding cell. This routine deviated somewhat when he remained in court until the third session on Wednesday. However, after the Chamber refused to let him read his statement, Nuon Chea asked to be permitted to follow the rest of the hearing from the holding cell, remarking, "if I am not allowed to speak, then I would like to go to the holding cell downstairs."

**Civil Party Attendance.** The 10 seats in the courtroom reserved for Civil Parties were fully occupied throughout the proceedings this week.

**Attendance by Counsels.** All the parties were represented during the week's proceedings, with the noticeable absence of Ieng Sary's international counsel Mr. Michael Karnavas the entire week. On Thursday, Simonneau-Fort was also observed to be missing from the courtroom as well.

**Attendance by the public.** On Tuesday, 300 people from Battambang Province observed the proceedings in the morning. In the afternoon, however, only a few international visitors were present in the gallery. On Wednesday, about 100 people from Mukh Kampul District, Kandal Province and 300 from Borei Chulsa District, Takeo Province were in court until the third session. Similarly, around 570 people from Memot District, Kampong Cham Province attended the hearing on Thursday until the end of the third session.

## D. Time Table

| DATE  | START | MORNING BREAK | LUNCH       | AFTERNOON BREAK      | RECESS | TOTAL HOURS IN SESSION |
|---|-------|---------------|-------------|----------------------|--------|------------------------|
| Tuesday<br>19/06/12                         | 9:00  | 10:30-10:53   | 12:03-13:30 | 14:41-15:03          | 16:03  | 4 hours and 51 minutes |
| Wednesday<br>20/06/12                       | 9:01  | 10:47-11:06   | 12:04-13:32 | 14:49-15:07          | 16:02  | 4 hours and 56 minutes |
| Thursday<br>21/06/12                        | 9:00  | 10:33-10:51   | 12:04-13:31 | 14:43-15:00          | 15:42  | 4 hours and 40 minutes |
| Average number of hours in session          |       |               |             | 4 hours 49 minutes   |        |                        |
| Total number of hours this week             |       |               |             | 14 hours 27 minutes  |        |                        |
| Total number of hours, days, weeks at trial |       |               |             | 331 hours 18 minutes |        |                        |
| 77 TRIAL DAYS OVER 23 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**

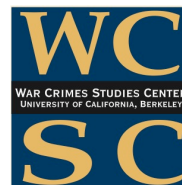
|          |  |
|----------|--|
| Case 001 | <i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)                            |
| Case 002 | <i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No. 002/19-09-2007-ECCC)   |
| CPC      | Code of Criminal 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  |
| OCF      | Office of the Co-Prosecutors of the ECCC   |
| RAK      | Revolutionary Army of Kampuchea  |
| VSS      | Victims Support Section  |



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AIJI TRIAL MONITORING



\* 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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<sup>1</sup> Mr. Yun Kim’s pseudonym is TCW-797.

<sup>2</sup> Mr. Mr. Khiev Neou’s pseudonym is TCW-321.

<sup>3</sup> See Trial Chamber. “Next witnesses in current segment of Case 002/01” (15 June 2012). E172/27.1.

<sup>4</sup> Asked on the identity of the upper echelon, however, the Witnessed replied that it referred to leaders from the sector and districts.

<sup>5</sup> The Witness did indicate that there was a food shortage in Chrouy Banteay Village, to which he shared potatoes or bananas, but he said this did not occur in Sambo District.

<sup>6</sup> According to Yun Kim, Phan was the Sambo District chief in early 1977, but was subsequently transferred to Kratie, and later on, also arrested.

<sup>7</sup> Yun Kim characterized Nuon Chea as a “good person as a leader...he would like us cadres, to be good cadres and we had to engage with the people to know the people.” The Witness also stated that he knew Nuon Chea was with the party center and that Nuon Chea had “supreme authority.” When pressed by Simonneau-Fort to elaborate on what the Witness meant by “supreme authority,” the Witness simply stated that supreme authority referred to the “supreme leadership level.” The Witness did not know much more about Nuon Chea’s role in DK.

<sup>8</sup> According to Yun Kim, Voadthonak Commune was established in 1971 when it separated from Kampong Cham Commune in Kaoh Khnaer Island, one of the biggest islands of Cambodia. It is located on the West side of the Mekong River while Sambo and Kratie Districts are on the East side.

<sup>9</sup> Previously, Yun Kim revealed that Chhun Yaung alias “Cheth” was transferred to Kratie for committing immoral acts. Cheth allegedly had a special room where he “work[ed] with women,” with some of the women dying as a result. The Witness testified that he remembered that Cheth had strangled and (reportedly) raped a district level teacher in 1971 or 1972.

<sup>10</sup> Lysak indicated there is an S-21 confession from Ban Sarun alias Kang dated February 1978.

<sup>11</sup> Lysak pointed out that from the Case File, Yi, Sector 505 secretary, entered S-21 on 15 March 1978 and signed a confession in April 1978. Yi’s wife, Hun Yun alias Ken, a member of the sewing unit committee, was also imprisoned in S-21. Similarly, Kuon, Sector 505 deputy secretary and military chief, entered S-21 on 21 March 1978. His wife, Bun Lei alias Vun, textile squad chief, was also imprisoned in S-21.

<sup>12</sup> From the records, Phang Ny, identified as a member of Sambo District, entered S-21 on 9 April 1978. Ea Savay alias Phoen entered S-21 on 11 April 1978.

<sup>13</sup> From the records, Chhi Huor, alias Phan, member of Kratie District, entered S-21 on 17 March 1978.

<sup>14</sup> This appears to be similar to Duch’s experience, as Duch testified that he asked Ta Mok permission to “organize” the wedding to his wife. See Asian International Justice Initiative. KRT Trial Monitor [hereinafter **CASE 002 KRT TRIAL MONITOR**]. Issue No. 15, Hearing on Evidence Week 10 (19-21 March 2012).

<sup>15</sup> According to the Closing Order, “the Cham are an ethnic minority within Cambodia who share a common language, a common culture and Islam as a common religion.” It was one of the groups targeted by the KR. From a demographic report, 36% of the Cham population perished during DK (compared to 18.7% for Khmers). See Office of the Co-Investigating Judges. “Closing Order” (15 September 2010). D427. par.745,747,753. 186.

<sup>16</sup> Trapeang Thum Commune was later divided in two and separated by a road: Trapeang Thum Choeng in the North and Trapeang Thum Tboung in the South, where both Khiev Neou and Ta Mok were born.

<sup>17</sup> Ta Mok, known as “Brother No. 5,” was one of the central figures of the Khmer Rouge. He is a full-rights member of the CPK Standing Committee and the Secretary of the Southwest Zone during DK.

<sup>18</sup> According to the Witness, in the early 1940s Ta Mok left the monkhood, married and joined to the Issarak movement. After the Geneva Convention, Ta Mok quit the Issarak and lived as an “ordinary person” in their community. From their discussions, each tried to convince the other of his views: “I convinced him based on Buddhism when he convinced me on his doctrine. However, we were adamant. We were not easily convinced.” This changed when KR gained power, with the Witness quipping, “when he had more power, I was convinced. But still, my belief, my background in Buddhism would never be convinced. I am still superior to him in terms of this.”

<sup>19</sup> This question was met with an objection from Vercken, who stressed that the Witness only stated in the courtroom that he thought the Accused took charge when Vorn Vet was “absent,” and did not say “disappeared,” since the latter term has a different connotation. Judge Lavergne clarified that in the French version of his OCIJ statement, the Witness did indeed state that, “after Vorn Vet disappeared approximately in 1977, Khieu Samphan succeeded Vorn Vet for being (sic) in charge of foreign trade. I was told that Vorn Vet was arrested for being involved with the KGB and the CIA.” Judge Lavergne commented, “what is abundantly clear is following Vorn Vet’s disappearance, Khieu Samphan succeeded Vorn Vet in foreign trade.” Curiously, records indicate that Vorn Vet was not arrested until November 1978, near the end of the regime. See Office of the Co-Investigating Judges. “Closing Order” (15 September 2010). D427. 425.110. Also Ben Kiernan. *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-1979*. Second edition. Chiang Mai, Thailand: Silkwood Books. 437.

<sup>20</sup> While the Witness did not know what happened to Chou Chet and his wife Im Len, alias Li, Pros. Lysak indicated that in S-21 documents, the two KR leaders were arrested and included in the prisoner lists of S-21.

<sup>21</sup> Nonetheless, the Witness also recounted that there were some monks who went to Pchet Chrum Pagoda and practiced Buddhism for about a year. Eventually, these monks also disrobed, and people did not go to the pagodas anymore as “Buddhists went to the pagoda because there were monks.”

<sup>22</sup> The Witness however related that he heard recently of a certain monk from Kirivong who resisted disrobing and instead hanged himself.

<sup>23</sup> 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.

<sup>24</sup> *Ibid.* at par. 1. 1.

<sup>25</sup> Despite Judge Lavergne's explanation, Ang Udom still expressed reservations on the necessity of reading the statement and then putting questions, as this may be classified as a leading question. This point remained unaddressed, with the President only asking Veng Huot to rephrase his question to avoid objections.

<sup>26</sup> Notably, when the Trial Chamber asks witnesses to recall their previous OCIJ testimonies, they were not provided with the statements and the chance to review them again inside the courtroom. Although it was mentioned that they reviewed the statements before entering the courtroom, the circumstances on how this was made, or if the witness is aware that this is the document referred to by the Chamber subsequently in the courtroom, are unknown.

<sup>27</sup> This probably is in reference to the part of Khiev Neou's OCIJ statement read out by Judge Lavergne in court, see endnote 21 above.

<sup>28</sup> In response to Vercken's submission, Judge Lavergne merely asked the counsel, "Is what I just read contrary to what was recorded? Does it contradict what Mr. Khiev Neou stated to the investigators?"

<sup>29</sup> See Nuon Chea Defense Team. "Rule 87 Request to Put New Evidence to TCW-797 for Impeachment Purposes" (18 June 2012). E209.

<sup>30</sup> Ibid. at p. 1, footnote 1, citing Office of the Co-investigative Judges. "Order on Co-Prosecutors' Requests for Investigative Action" (12 January 2010). D303.

<sup>31</sup> The Chamber allowed questions on the document, but with the caveat that it will exercise the discretion to disallow irrelevant questions.

<sup>32</sup> See Nuon Chea Defense Team. "Rule 87 Request to Put New Evidence to TCW-321 for Impeachment Purposes" (19 June 2012). E210.

<sup>33</sup> Judge Cartwright commented that the Nuon Chea Defense did not submit any document list.

<sup>34</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 26, Hearing on Evidence Week 21 (11-14 June 2012).

<sup>35</sup> As provided under **Rule 29** of the Internal Rules.

<sup>36</sup> Internal Rule 91 on hearing of other parties and witnesses provides:

xxx

2. The Judges may ask any questions and the Co-Prosecutors and all the other parties and their lawyers shall also be allowed to ask questions with the permission of the President. Except for questions asked by the Judges, the Co-Prosecutors and the lawyers, all questions shall be asked through the President of the Chamber.

<sup>37</sup> Mr. Nuon Chea's statement, as read in Court, states thus:

My respect to my compatriots. My respect to Mr. President. I'd like to talk about the forced evacuation of people. I'd like to make some responses to the testimony of this witness and for the witnesses so far that have been heard with regards to the evacuation of people. Mr. Witness has provided some reasonable reasons for the evacuation of people from cities, that is, to avoid the bombardment by the United States and the starvation and the internal wars. However, many of the witnesses do not know the real reasons or more reasons than that, which does seem to show that the means of evacuation was ill-intent. I'd like to make the following responses. First of all, I'd like to state that we are the war losers and we have been accused of forced evacuation of people. However, the current activities are inappropriate if compared to the evacuation conducted after 17 April, 1975. I'd like to make my statement to the poor people who have been oppressed, who have been persecuted and threatened of their lives by the rich, by the powerful, who are robbing their farmland and rice fields.

<sup>38</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 19, Hearing on Evidence Week 14 (18-20 April 2012).

<sup>39</sup> The Trial Chamber subsequently released a written Decision on the Nuon Chea counsels' misconduct and forwarded written complaints to the Amsterdam Bar Association and the New York State Supreme Court. See Trial Chamber. "Decision on Nuon Chea Defence Counsel Misconduct" (29 June 2012). E214.; Trial Chamber. "Professional misconduct of lawyer[s] admitted to your Bar Association" (29 June 2012). E214/1.

<sup>40</sup> See CASE 002 KRT TRIAL MONITOR. Issue No. 15, Hearing on Evidence Week 10 (19-21 March 2012). 11.



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