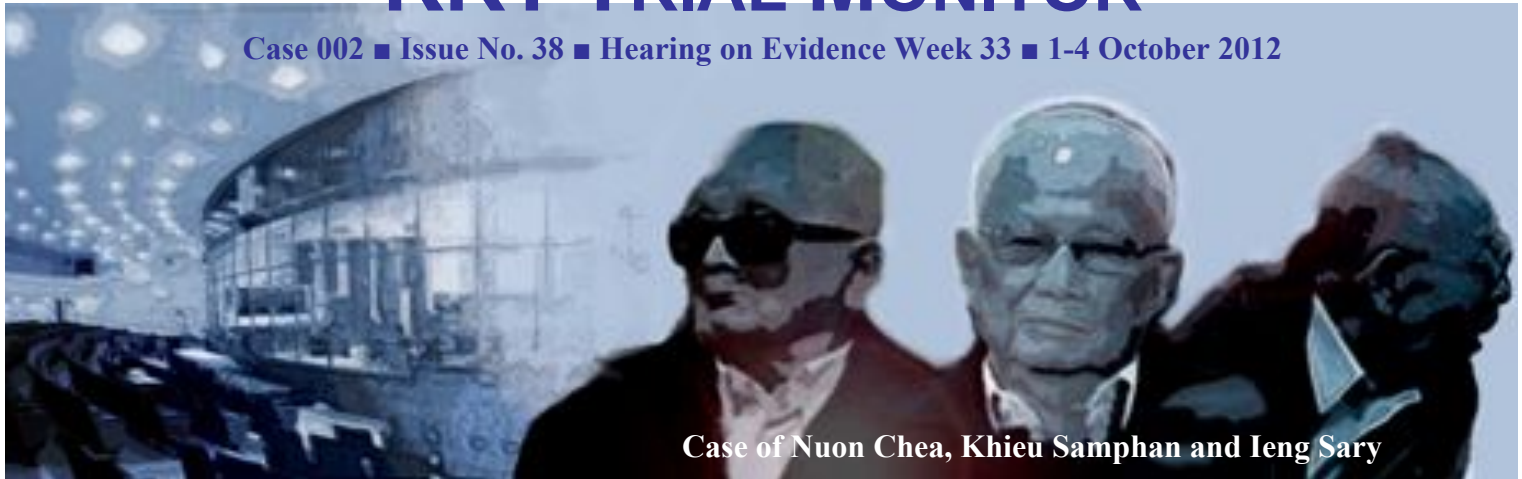


# KRT TRIAL MONITOR

Case 002 ■ Issue No. 38 ■ Hearing on Evidence Week 33 ■ 1-4 October 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

*When we got into Phnom Penh,  
at that time, we saw white flag raising in many houses  
and the city was, at that time, empty and quiet.*

- Witness Meas Voeun

## I. OVERVIEW

This week, the Chamber began by hearing the testimony of Khiev En, who was attached to the Ministry of Propaganda and Education. A transition was then made to Segment Three of Case 002/1, with the Chamber devoting time to read out excerpts from the Closing Order relating to military structure and population movement. The Chamber then called former military officer, Meas Voeun, to the stand.

Accused Ieng Sary, having waived his right to be present during the hearing of the testimonies of Khiev En and Meas Voeun, continued to be absent from proceedings throughout week.<sup>1</sup> In light of the health condition of Ieng Sary, on Tuesday afternoon, the Chamber invited oral submissions from Parties on how trial is to proceed at the ECCC. Other issues on trial management arose, with the Chamber exerting considerable effort to ensure that the proceedings were expeditious and smooth, while the Nuon Chea Defense sought to protect the rights of their client with equal dedication.

## II. SUMMARY OF WITNESS TESTIMONIES

Witness Khiev En, a militiaman prior to the DK and a person charged with intercepting foreign news during the regime, was specifically asked about the removal of persons from the Ministry of Propaganda and Education, and about the role of Accused Nuon Chea in the Ministry. Meas Voeun, who once served as Deputy Division Commander for the regime, gave a detailed account of his duties, military communication, and administrative structures. Notably, he was asked about his interactions with Accused Khieu Samphan.

## **A. Khiev En's Testimony**

Khiev En's testimony began on Monday and lasted until Tuesday afternoon.<sup>2</sup> The Witness testified on his role as a militiaman prior to the DK, and on his experience intercepting international news at Office K-33<sup>3</sup> in the Ministry of Propaganda and Education during the regime. Questions by Parties focused on his time at the Ministry of Propaganda and Education, including the role of Nuon Chea in that Ministry.

### **1. Roles and Responsibilities of Khiev En**

#### **a. Militiaman at Kampong Laeang District**

Khiev En was born in 1958<sup>4</sup> in Kampong Laeang District, Kampong Chhnang Province. He joined the Revolutionary Movement in 1973 as a commune militiaman after American aerial bombings destroyed 500 to 600 houses, leaving only around 100 houses.<sup>5</sup> The Witness described his decision to join the movement as follows:

When people came back to the village, we saw nothing but ashes and nothing of the village. We did not want to join the Revolutionary Forces, but we saw what little our parents had. It was not my personal desire to join the Revolutionary Forces, but when our houses burned down, I did not want to join... but I had to help my parents.

The Witness also briefly described the defrocking of monks that began when the Revolutionary Movement spread to his village in early 1970s, "even before the entry of Lon Nol soldiers," and again after the Lon Nol soldiers were defeated.<sup>6</sup> The Witness explained that the villagers did not protest the order calling for the defrocking of monks, saying that "nobody would dare protest against this and it was a decision by other groups of people and many other people simply agreed to that."

In April 1975, Khiev En, as a member of the Kampong Laeang District Battalion, was "on alert" until the "liberation" of Phnom Penh. After 17 April 1975, he was instructed to coordinate the relocation of evacuees into commune cooperatives. Later, the newcomers in the communes were forced to build dikes and dams. The Witness maintained that the newcomers to his village were only from the provincial towns and he was unaware of people being evacuated from Phnom Penh. The Witness recalled that villagers referred to the newcomers as "17 April people" or "base people".

#### **b. Intercepting Information at the Ministry of Propaganda and Education**

In late 1975 or early 1976, the direct supervisor of the Witness ordered him to leave Kampong Chhnang for Phnom Penh. The Witness did not know who issued the order for his transfer, but remembered being the only individual from Company 33 who was instructed to leave. Witness remarked that workers would be "selected from the lower class" and the selection "was not favorable to those who were educated." He did not know why he was selected, but stated that he "had nothing to hide" in his biography.

In Phnom Penh, he was taken to the Ministry of Propaganda and Information, where he was assigned to work under Brother Phoas, whose real name he later learned was Hu Nim.<sup>7</sup> Within the Ministry, Khiev En worked in Office K-33, which was under the charge of Hu Nim's son, Sam.<sup>8</sup> The Witness was "trained in telegrams and also in intercepting the news." He was initially assigned with repairing "telegraphs"; consequently, he also learned how to typewrite telegrams. He claimed, however, that he did not understand the content of the telegrams, saying, "I did not really understand the content, I only knew how to put them on the tape representing the alphabetical letter."

Khiev En was, thereafter, tasked to intercept information from international news agencies, including AFP, Reuters, and Xinhua using a “teleprinter” that typed the English and French broadcasts on its own. The Witness, two other persons, and his supervisor OI (phonetic), worked day and night in alternating shifts to ensure that the teleprinter was working properly. Because the printouts were either in English or French and the Witness only knew Khmer, Khiev En did not understand the information they received. Printouts were delivered to a “sending section” responsible for circulating the information to the appropriate departments and authorities. There was also a section charged with translating information to Khmer and another that listened to broadcasts to verify that the printouts were correct. The Witness maintained that he only had time to pay attention to his work; thus, Khiev En was unable to answer questions regarding the final destination of his printouts. To his knowledge, there were no means for anyone in his office to communicate directly with “Angkar” regarding intercepted news.

Judge Jean-Marc Lavergne inquired as to whether the Witness was aware of any other departments tasked with listening and transmitting international news. Khiev En responded that, as part of his job, he received broken teleprinters to repair, thus he assumed that there was another department that also intercepted news.

## **2. Arrests at the Ministry of Propaganda and Education**

When Khiev En first arrived at Office K-33 in 1975, Hu Nim was the Minister of Propaganda and Information. The Witness recalled that Hu Nim was removed from his post in 1977, though he could not recall details of the arrest.<sup>9</sup> The Witness noted that the Ministry of Education and the Ministry of Propaganda and Information were two separate ministries until 1977, when Yun Yat<sup>10</sup> assumed control over both ministries. They were merged into what became the Ministry of Propaganda and Education.<sup>11</sup> During a meeting convened by Yun Yat, the Witness learned that Hu Nim had confessed to being a CIA agent.

Following Hu Nim’s arrest, many employees were successively arrested and removed from the Ministry. According to the Witness, those removed were from the East Zone because, according to accounts from other people, its Zone Secretary had “problems.” In his section, Khiev En, who came from the West Zone, was the only individual to retain his post. Thus, the Witness “had to do all their work as well.” After Yun Yat filled the vacant positions at the Ministry with people from the Southwest Zone, the disappearances stopped.

## **3. Role of Nuon Chea at the Ministry of Propaganda and Education**

According to the Witness, Nuon Chea came to oversee work at Office K-33 from late 1978 until the arrival of the Vietnamese in January 1979. Although, during the course of his testimony, Khiev En indicated that Nuon Chea “took over” or was “in charge” of Office K-33, the Witness admitted that he was not entirely clear on the official role of Nuon Chea at the Ministry. Khiev En clarified, “I only knew that after the removal of Hu Nim, Yun Yat came to replace him, and after Yun Yat, Nuon Chea came to replace her. I could not know for sure regarding his position.” There was no meeting or official declaration to discuss the change in leadership from Yun Yat to Nuon Chea. Initially, Yun Yat still came to the Ministry, but her visits gradually declined until they stopped completely. The Witness could not say for certain where Yun Yat went to work after she stopped coming to the Ministry, just that he no longer saw Yun Yat at the Ministry compound.

The Witness recalled that Nuon Chea came to the Witness’s office in the mornings, “looked around”, and asked whether the workers had eaten or exercised that day. Khiev En occasionally delivered news printouts to Nuon Chea through associates working in the

adjacent “main building,” where Nuon Chea had his workspace.<sup>12</sup> The Witness also indicated he delivered printouts to the Accused on a few instances, saying, “If I met him, then I would hand it in to him.” Beyond these interactions, the Witness only saw Nuon Chea when the Accused gave instructions and when the Witness chanced upon the Accused taking lunch, arriving at or departing from the Ministry. He did not attend any “major meetings” or political study sessions chaired by Nuon Chea. Khiev En further stated that no documents were referred from the upper levels of the Ministry to his section.

Living conditions at the Ministry, particularly in regards to food rations, improved under Nuon Chea’s leadership.<sup>13</sup> The Witness also stated that the Accused forbade him and his colleagues from using the terms “17 April people, new people, people at the base, and old people” within the Ministry.

International defense counsel for Nuon Chea, Mr. Jasper Pauw, confronted the Witness with statements by a previous witness, Kim Vun,<sup>14</sup> that were inconsistent with Khiev En’s testimony on the leadership within the Ministry. Counsel stated that, according to Kim Vun, Yun Yat remained in charge of the Ministry until 1979 and Nuon Chea only came when Yun Yat was absent. Khiev En maintained that “[w]hat [he] knew was that she no longer worked at the Ministry of Propaganda and Information.” He, however, admitted that Kim Vun may have been more familiar with the role of Nuon Chea, saying, “I think that Mr. Kim Vun must have known more than I did, because Mr. Nuon Chea may have visited him more often.” In addition, the Witness stated that, as he did not work in the main Ministry building, he “did not see people come in [the main building].”

Khiev En clarified that he could not offer comments regarding the hierarchical structure or affairs of the leadership because he only learned of his assignments from his direct supervisor and “did not know about the communication between [his] supervisor and his direct supervisor and how many layers of supervision there were within the structure of the Ministry.”

#### **4. Meetings at the Ministry**

The Witness recalled that, every day, he would attend a meeting chaired by his department chief to discuss the section’s production achievements and to encourage increased work efficiency. Around every 10 days, he would attend a criticism and self-criticism meeting, where people would openly confess their mistakes and criticize one another on work performance and “personal political status.” “It was mainly about the cleansing of ourselves, to make ourselves clean by confessing to other people,” Khiev En explained. Any individual who made the mistake of not following instructions was considered a “liberal” who “lacked discipline.” However, the Witness did not know what measures were taken against “liberal” people. The Witness denied ever attending meetings or study sessions outside the Ministry of Propaganda.

#### **5. Witness Demeanor and Credibility**

Khiev En answered questions to the best of his recollection and informed the Parties whenever questions pertained to matters outside the scope of his knowledge. Throughout his testimony, the Witness repeatedly stated that he paid no attention to the affairs or responsibilities of other departments or individuals. Describing himself at that time, Khiev En said, “Let’s say I was a piece of machine then and that I could function as somebody switched it on. So I only concentrated on my work.” Thus, he declined to answer questions that pertained to, for example, the reasons behind the changes in the leadership at the Ministry, the Standing Committee, and the fate of the printouts from his section after they were delivered to the “sending section”. Notably, Pauw’s questions juxtaposing Khiev En’s

testimony and the testimony of Kim Vun called into question the extent of Khiev En's knowledge of the administrative structure of the Ministry of Propaganda and Education. (See II.A.3.) The Witness also mentioned that, while he specifically asked the OCIJ investigator that he "not be summoned to testify in person before the Court," he voluntarily agreed to the interview.

## **B. Meas Voeun's Testimony**

Meas Voeun, alias "Svay Voeun", is the first witness to testify in Segment Three of Case 002/1 relating to military structures. The Prosecution and the Civil Parties questioned Meas Voeun on his experience as a member of the Revolutionary Army of Kampuchea before and during the DK, as well as his interactions with senior leaders of the regime.<sup>15</sup>

### **1. Roles and Responsibilities prior to 1975**

According to Meas Voeun, he joined the revolutionary movement in 1968 as a member of the Patriotic Youth League. He "provided [the youth] education about the situation in the country, about the lack of independence, and about the colonization economically by France." Soon after, the Witness began serving as a bodyguard for many senior cadres hiding in Prey Thom, Kampong Speu, and Kampong Chhnang. Among these senior cadres were Vorn Vet,<sup>16</sup> Ta Soeung,<sup>17</sup> Hou Yun,<sup>18</sup> Hu Nim,<sup>19</sup> and Khieu Samphan. By 1970, the Witness became a full-fledged soldier within the army of the Southwest Zone. He received orders from the Chairman of Division 1, Ta Soeung. However, according to the Witness, more authority rested with the Zone Secretary, Ta Mok. In 1973, Ta Soeung promoted Meas Voeun to battalion commander and, in following years, the Witness was involved in battles around National Road 5 and in the "liberation" of Uddong.

Prosecutor Tarik Abdulhak read a statement attributed to Khieu Samphan, Hou Yun, and Hu Nim (Document E3/637), which stated that, "According to the interim statistics, we have smashed, injured, killed, deserted, and made prisoners of war 1,050 enemies at the battlefields of Banteay Meah, Kampong Chhnang, and Prek Khmer along National Road 5." The Witness confirmed this was an accurate description of events at that time. With regard to the situation in Uddong, Meas Voeun said there were no civilians when they entered because the people had all left for the liberated zones. He said, "It is my knowledge that the people did not want to go, but we had to force them to go in order to avoid the fighting." Seemingly in contradiction with this statement, when Prosecutor Abdulhak sought to clarify if they were given orders to move the people, the Witness said: "No, there was no order. They left by themselves."

### **2. Regimental Command: Liberation of Phnom Penh and Subsequent Actions**

By the time the Khmer Rouge attacked Phnom Penh in April of 1975, Ta Soeung had promoted Meas Voeun to regimental commander. In this position, the Witness commanded around 600 soldiers; he continued to receive orders from Ta Mok through Ta Soeung. Before earning such a promotion, candidates were screened for loyalty and "good conduct" in society, Meas Voeun explained.

#### **a. Orders to Attack Phnom Penh**

Approximately one week before the advance on Phnom Penh, the Witness received instructions from his Division Commander to participate in the attack. Meas Voeun was responsible for spearheading the attack from Pochentong. During the preparatory meetings, "there was no indication in relation to the evacuation of people out of Phnom Penh," Meas Voeun clarified. The "General Staff"<sup>20</sup> expected the "liberation" of Phnom Penh to take place



on 18 April 1975, but in reality, forces were ready and able to liberate the city on the 17<sup>th</sup>. Meas Voeun's regiment also received orders from the "upper echelon" not to counterattack any opponents who raised white flags. As regards captured Lon Nol soldiers, the Witness explained his instructions as follows: "Upon capture a soldier, they would refer those soldiers... into the hand of the commander of the division and I did not know how he would deal with those captured soldiers."

The Witness said that "[t]he upper echelon referred to those who were in the senior command. Such as Ta Mok, Son Sen, and those who were above them." Abdulhak then asked the Witness to clarify who "was above those in General Staff? Who was above Ta Mok and Son Sen?" The Witness answered: "Back then I only knew Ta Mok, Son Sen, and Khieu Samphan."

#### **b. Liberation and Evacuation of Phnom Penh**

Meas Voeun entered Phnom Penh with his troops in the morning of 17 April 1975. They were instructed to fight their way to the headquarters of Lon Nol soldiers; although his regiment did not achieve this goal, the divisions from the North and East Zones, which had entered the city before his, reached the Lon Nol administration. When asked of his overall impression of the city, the Witness stated: "When we got into Phnom Penh, at that time, we saw white flag raising in many houses and the city was, at that time, empty and quiet."

The next day, Meas Voeun received orders from Ta Mok to withdraw his forces to the west of Steung Mean Chey, where, a few days later, he saw people evacuating the city on National Routes 3 and 4. The Witness, however, never received any order regarding the evacuation of civilians and did not know how this was executed. In the days after 17 April, he heard from Ta Soeung that "the city people would be evacuated out of the city for a week or so, and once Phnom Penh was very well-organized and returned to a normal situation, they would be returned back."

#### **c. Withdrawal from Phnom Penh**

Through his Division Commander, Meas Voeun received instructions from Ta Mok to withdraw forces from Phnom Penh to a farm in Kampong Trach, Kampot Province. At the time of this order, people were still evacuating from Phnom Penh. He stayed in Kampot Province with his men until late 1976. This change in orders was consistent with the responsibilities of the armed forces; Meas Voeun explained: "on one hand, we attack the enemy, and, on the other hand, we engage in production." In late 1976 or early 1977, the Witness and around 2,700 soldiers were transferred to Koh Kong in the West Zone.<sup>21</sup>

### **3. Deputy Division Commander in the West Zone: 1977 – August 1978**

Soon after the arrival of the Witness at Koh Kong, Division Commander Ta Soeung and West Zone Secretary Chou Chet, promoted Meas Voeun to Deputy Commander of Division 1.<sup>22</sup> In this capacity, the Witness was ordered to safeguard the Cambodian coastline through the combined use of ships, infantry stationed on the various islands, and troops on the coastline.

Meas Voeun was responsible for the islands near the maritime border and Koh Kong town. The islands further to the south, near Kampong Som, were under the control of Division 3, of which Ta Mut was the commander. The Witness communicated with the regiments of Division 3 via telegraphs, to ensure their responsibilities did not overlap.

#### **a. Capture of Persons Fleeing to Thailand**

Before Meas Voeun's arrival in Koh Kong, the people had been evacuated from provincial towns to farms in the countryside, the Witness stated. Those on the islands were sent "to the rear," and there were no people living in the coastal areas where the soldiers were stationed. Sometimes, the Witness and his troops found people attempting to flee to Thailand; as there were no boats for people to cross the sea, they usually attempted to travel through the forest. Meas Voeun had no specific orders regarding escapees, "There was no order, but as we spotted them, we brought them back, and we also made a report to the division, and the division then instructed us to bring them back to the rear." Such reporting was done via mobile radio communication and telegrams. The Witness also testified that the Division used telegrams to report to and receive orders from the General Staff.<sup>23</sup>

#### **b. Capture of Thai and Vietnamese Fishing Vessels**

The Witness recalled receiving orders to attack Thai soldiers along the border in response to encroachment on Cambodian waters by Thai fishing vessels that carried illegal equipment. He stated that he was sure that the orders he received from Ta Soeung at this time came from the General Staff. Orders from the Division Commander dictated that Meas Voeun capture such Thai boats, keep them, and send the boats to the Division Headquarters at Kampong Som.<sup>24</sup> Vietnamese boats holding men, women, and children on the way to Thailand that were found in Cambodian waters were treated similarly. The Witness did not know, however, whether the Division reported the capture of Thai and Vietnamese vessels and their passengers to the General Staff.

#### **c. Removal of Cadres, Koh Kyang Security Centre, and the Special Force.**

Meas Voeun testified that, upon his arrival at the West Zone, he learned through sector soldiers of the removal of some Sector 37 (Koh Kong) leaders, including its secretary and military leader. "When they were removed, I knew that they were sent to the zone, but I did not know the reason for their removal." Meas Voeun clarified that "the zone" referred to the location of West Zone Secretary Chou Chet. While he never went there himself, the Witness had heard of Koh Kyang Security Centre in the Prey Nup district. Soldiers within Division 1 were investigated for familial ties to officials and soldiers of the Lon Nol regime; if any links were discovered, Ta Soeung called them and took them to "Koh Kyang Security Centre or elsewhere."

All decisions to investigate and arrest people within the Division were carried out by a separate unit overseen by Ta Soeung, which the Witness referred to as the "special regiment" or "special force." Meas Voeun was instructed by Ta Soeung to keep a record of biographies, previous activities, and performances of the soldiers to aid in his decision-making. Meas Voeun explained that, when the "special force" came to collect or remove his soldiers, he did not resist their orders for fear of his personal security. The Prosecution cited two documents authored by Office M401, which Witness confirmed was Chou Chet's office.<sup>25</sup> These documents listed individuals who were purged or "smashed".<sup>26</sup> Meas Voeun confirmed that many of those removed from Division 1 were accused of being affiliated with the CIA.

### **4. Investigations in Preah Vihear: August 1978 – January 1979**

Meas Voeun stated that, in August 1978, he was transferred from Koh Kong to control a sector in Preah Vihear Province. On his journey, he stopped in Phnom Penh on orders by Ta Soeung to attend a meeting with Pol Pot and division commanders. The Witness specified that he met neither Nuon Chea nor Khieu Samphan during that visit. Pol Pot

reported on Vietnamese border attacks and on the situations in Preah Vihear and Siem Reap, where people were being arrested and others were starving. Pol Pot went on to give the Witness and Ta Soeung<sup>27</sup> new assignments to investigate the imprisonment of specific people in Preah Vihear and Siem Reap, respectively.

**a. Telegrams, Investigations, and Khieu Samphan's Relatives.**

Meas Voeun testified that, in compliance with instructions issued through telegram by Khieu Samphan, the Witness reported to the Accused via telegrams on the situation of Khieu Samphan's relatives in Preah Vihear and Siem Reap. On this basis, the Witness found Khieu Samphan's mother and father-in-law in Preah Vihear (Sector 103) and brought them to the division at Siem Reap because they were fearful of being arrested. In regards to the situation in Siem Reap, Meas Voeun recalled reporting about "those who were in prison and those who were later released by Ta Soeung, including his in-laws as well." He also located Khieu Samphan's sister-in-law among approximately 700 prisoners at a security center in Siem Reap. Upon this discovery, the Witness and Ta Soeung went to the prison to secure her release, although the issue "was already sorted out." The Witness never learned who ordered her detention in the first place.

At the time of their correspondence, the Witness was unclear on Khieu Samphan's position. He stated, "To my knowledge, Sector 103 was under his supervision... this sector was known as an autonomous sector and it was supposed to report directly to Khieu Samphan." The Witness confirmed that he responded to Khieu Samphan's instructions because he had been told that Sector 103 was under his supervision.

**5. Interactions with the Accused**

Meas Voeun never referenced Ieng Sary during his testimony this week. Regarding Nuon Chea, the Witness specifically stated that, from 1975 to 1979, he never saw Nuon Chea at any meeting or at the two party congresses he attended. He also commented that he "did not know which position [Nuon Chea] held or for which section he was in charge of. It was the affairs of the Center." In his statements to the OCIJ, he stated that a meeting took place with the General Staff prior to the liberation of Phnom Penh and that this meeting was attended by Son Sen and Nuon Chea. However, in his courtroom testimony, the Witness clarified that he learned this information through his Division Commander, Ta Soeung, as he did not personally attend the meeting.

The Witness had more personal contact with Accused Khieu Samphan. During his early revolutionary activity, he served as Khieu Samphan's bodyguard. However, the Witness knew little of his role, only saying that he heard the Accused "was in charge of the economy" and was the head of FUNK. Upon his arrival in Preah Vihear in mid-1978, Meas Voeun began corresponding with Khieu Samphan through telegrams. (See II.B.4.a.) The Witness nonetheless remained unaware of the full extent of Khieu Samphan's position within the DK regime, as Meas Voeun only knew of his involvement with Autonomous Sector 103.

**6. Witness Demeanor and Credibility**

Meas Voeun appeared candid in his responses to the questions from the Prosecution and the Civil Parties. Towards the end of his first day of testimony, he fell asleep momentarily, but there was no clear effect on the quality of his responses. He gave a full account of his ascent through the ranks of the armed forces of Democratic Kampuchea and helped clarify misunderstandings regarding his previous statements to the OCIJ.



#### **IV. LEGAL AND PROCEDURAL ISSUES**

This week ushered in Segment Three of Case 002/1 with the reading of relevant passages of the Closing Order and hearing of the testimony of a former military officer. The Chamber was challenged with issues relating to the use of statements obtained by torture and introduction of new evidence. In light of Ieng Sary's uncertain health condition, the Chamber heard submissions from Parties on how trial is to proceed without incurring undue delay.

##### **A. Beginning of Segment Three of Case 002/001**

Commencing Segment Three of Case 002/1, the Chamber instructed the greffiers, one after another, to read out paragraphs of the Closing Order relating to the military structure during the DK and population movement.<sup>28</sup> This began right before proceedings adjourned on Tuesday and continued on Wednesday morning. On military structure, paragraphs covering the "Establishment of the Revolutionary Army of Kampuchea" (RAK), "Role of RAK", "CPK Centre Military Organs", "Composition of the RAK", "Communication/Reporting", "Discipline", and "Participation of RAK in Purges" were read.<sup>29</sup> The greffiers also read sections of the Closing Order on "Factual Findings of Joint Criminal Enterprise",<sup>30</sup> including the paragraphs relating to population movement.<sup>31</sup> Paragraphs concerning population movement Phases One<sup>32</sup> and Two<sup>33</sup> in "Factual Findings of Crimes" were thereafter read out.<sup>34</sup> Lastly, the greffiers read some paragraphs of the Closing Order referencing Nuon Chea,<sup>35</sup> Ieng Sary,<sup>36</sup> and Khieu Samphan<sup>37</sup>. Thereafter, the Chamber called the first witness of Segment Three, Meas Voeun.

Upon inquiry by national Civil Party Lawyer Pich Ang, President Nil Nonn stated that paragraph 282<sup>38</sup> of the Closing Order was not read because the Chamber "would only read the paragraphs that are relevant to the facts against the charged persons." According to the President, this practice is consistent with document E124/7.2 ("List of paragraphs and portions of the Closing Order relevant to Trial One in Case 002, amended further to the Trial Chamber's Decision on Ieng Thirith's Fitness to Stand Trial [E138]").<sup>39</sup>

After the reading of relevant paragraphs of the Closing Order on Wednesday, international defense counsel for Nuon Chea, Mr. Andrew Ianuzzi, informed the Chamber that the Accused, Nuon Chea, wished to make a public comment about excerpts of the Closing Order. The President replied that, "the Chamber will take that into consideration and issue a ruling afterwards." After Ianuzzi reiterated and sought clarification on this request on Thursday, the President said the Chamber would consider granting leave for Nuon Chea to give his remarks following the conclusion of the hearing of Meas Voeun, and would choose the time for the Accused to do so. The President said that this ruling was clear enough for "even ordinary and other reasonable people" to understand." In response, Ianuzzi said, "I am certainly not a reasonable person, Your Honor."

##### **B. Introduction of New Evidence**

Before calling Meas Voeun to the stand, President Nil Nonn also ruled on the application of the OCP to place a new document (an interview of the Witness dated 11 December 2010) in the case file. He stated that, pursuant to Internal Rule 87(4), the Chamber may admit new evidence deemed conducive to ascertaining the truth where that evidence also satisfies the *prima facie* standards of relevance, reliability, authenticity required under Rule 87(3). In accordance with Internal Rule 87(4), the Chamber has generally required the requesting party to satisfy the Chamber that the evidence in question had not been available before the opening of the trial and/or could not have been discovered through the exercise of due diligence, the President continued.

The President said that the subject evidence had been available for almost one year when the Trial Chamber notified the Parties on 25 October 2011 that Meas Voeun might be called to testify. Further, the interview document is around 40 pages and was only available in Khmer as of the previous Friday, 28 September 2012. This provided insufficient notice for the Parties and the Chamber to consider the substance of the document; thus the Trial Chamber rejected the OCP's request.

### **C. Exclusion of Statements Obtained by Torture**

Right before adjourning for lunch on Wednesday, Ianuzzi made a motion *in limine*<sup>40</sup> to strike out questions and answers 16 to 20 of Meas Voeun's OCIJ statements (Document E3/40), because, during the interview, the investigator asked questions relating to the S-21 confession of Chou Chet *alias* "Sy".<sup>41</sup> Ianuzzi argued that the investigator quoted and relied on a substantive portion of "that torture-tainted material," in contravention of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>42</sup> The President replied that the Chamber noted the application. Even though Ianuzzi argued that the application was not meant to challenge the procedural defect of the investigation, the Chamber noted that Counsel had the right to challenge the procedure in relation to such investigation. The President then immediately called for adjournment. (See V.C.)

At the start of the afternoon session, Judge Silvia Cartwright stated that the Trial Chamber had consistently and unanimously ruled that confessions obtained contrary to the Convention against Torture are not permitted to be used as evidence or basis for questioning. Thus, she continued, the Chamber will not permit questions on the content of Chou Chet's confession nor use the confession in its verdict. Addressing Ianuzzi, Judge Cartwright said, "the applicable legal framework that this Court operates under does not provide for striking out as a remedy, so that is not an application that can be seriously considered by the Chamber." She concluded by saying that the Chamber required no further submissions from any other Party on this issue.

President Nil Nonn observed that this matter should have been brought up "even during the investigative stage, prior to the issuance of the Closing Order." In reply, Ianuzzi stated this was not an issue they could have made during the judicial investigation; it was instead "a motion *in limine* with respect to a particular witness that Your Chamber has called to give evidence." The President reminded Ianuzzi that the Chamber had already ruled on the issue and, thereafter, called the Witness Meas Voeun.

### **D. Submissions by Parties on Conduct of Proceedings in Ieng Sary's Absence**

On Tuesday, through Judge Cartwright, the Chamber invited the Parties to give their opinions on how the Chamber should proceed with the presentation of documents and hearing of witnesses, considering that Ieng Sary remained confined at the Khmer-Soviet Friendship Hospital.<sup>43</sup>

Ieng Sary has agreed to waive his right to hear the testimonies of approximately 20 witnesses, international counsel for Ieng Sary, Mr. Michael Karnavas, stated. There may be instances when a testimony would unexpectedly put his client in a vulnerable position, however, according to Karnavas, the Prosecution had indicated that the Defense would be able to recall a witness in those occasions. Further, the Accused has authorized his Defense Team to represent him in regards to the hearing of documents. Ieng Sary's counsel indicated that they are making all efforts not to delay proceedings, and there is a lot of work that can be done in the following months without incurring delay. Pauw and international counsel for Khieu Samphan, Ms. Anta Guissé, signified their support of the position of the

leng Sary Defense Team. Civil Party Lawyer Elisabeth Simonneau-Fort agreed that proceedings should move forward and the Chamber should hear witnesses on forced transfer.

Confirming what Karnavas said, international Prosecutor William Smith stated that there are enough matters to be dealt with until Christmas. Aside from waiving his right to hear the testimonies of certain witnesses, the Accused has also consented to be defended by his Defense Team during document hearings on administration and communication structures and during the debate on the use of corroborative evidence. The Prosecutor also explained that the testimonies of the next witnesses will not relate to the acts and conduct of leng Sary. If evidence relating to the Accused, leng Sary, did however arise, Smith continued, they could either recall the witness for examination once the Accused recovered, or have the information excised from the trial transcript.

## V. TRIAL MANAGEMENT

Upon leng Sary's waiver of his right to be present, proceedings were held from Monday to Thursday this week. The Chamber again invited submissions from Parties on how proceedings should continue in light of leng Sary's condition. Parties indicated that there are enough matters to address until the end of the year. (See IV.D.) The Chamber continued to exert efforts to manage time by reminding counsels to be clear and to the point in their objections and unilaterally instructing witnesses not to answer questions it deemed irrelevant, repetitive, or required speculation. As he endeavored to keep proceedings smooth, the President's composure was challenged by submissions from the Nuon Chea Defense.

### A. Attendance

leng Sary remained confined in the Khmer-Soviet Friendship Hospital and was, therefore, absent throughout the week. From Monday to Thursday, Nuon Chea participated in the proceedings in the courtroom in the morning sessions and retired to the holding cell in the afternoons. Only Khieu Samphan stayed in the courtroom for all sessions this week.

**Civil Party Attendance:** Approximately 10-20 Civil Parties attended the proceedings daily, either in the courtroom or in the public gallery.

**Parties Attendance:** All Parties were properly represented during the week.

#### Attendance by the Public:

DATE	MORNING	AFTERNOON
Monday 01/10/12	<ul style="list-style-type: none"> <li>▪ Around 300 villagers from Kampong Trolach District, Kampong Chhnang Province</li> <li>▪ More than 20 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Around 150 villagers from Borset District, Kampong Speu Province</li> </ul>
Tuesday 02/10/12	<ul style="list-style-type: none"> <li>▪ Around 400 villagers from Toek Hot District, Kampong Chhnang Province</li> <li>▪ 4 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Around 200 villagers from Tram Kork District, Takeo Province</li> <li>▪ 2 foreign observers</li> </ul>
Wednesday 03/10/12	<ul style="list-style-type: none"> <li>▪ Around 250 villagers from Kampong Trach District, Kampot Province</li> <li>▪ 3 foreign observers</li> </ul>	<ul style="list-style-type: none"> <li>▪ Around 150 villagers from Kampong Trolach District, Kampong Chhnang Province</li> </ul>
Thursday 04/10/12	<ul style="list-style-type: none"> <li>▪ Around 200 youth from Cambodia Youth Association, Kien Svay District, Kandal Province</li> </ul>	<ul style="list-style-type: none"> <li>▪ Around 100 villagers from Samroung District, Takeo Province</li> <li>▪ 1 foreign observer</li> </ul>

	<ul style="list-style-type: none"> <li>▪ Approximately 200 students from Sa-arng and Tep Bronorm High School, Kandal Province</li> <li>▪ Around 60 villagers from Mok Kampool District, Kandal Province</li> <li>▪ 1 foreign observer</li> </ul>	
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**B. Time Management**

The Chamber and Parties continued to grapple with efficient time management, with Ieng Sary and his defense team exerting efforts to not delay proceedings while the Accused recovered from his illness and the Chamber eliciting opinions from the Parties on how trial is to proceed.

On Thursday, after addressing objections from Ianuzzi that Abdulhak was asking questions that counsel believed invited answers based on the torture-extracted confession of Chou Chet alias “Sy”, the OCP indicated that it was losing “precious time” for questioning. Ianuzzi then offered to give the OCP further time for questioning from their team’s time allocation. The President, however, intervened and said, “It is not the party who decides how much time is to be allocated to Parties. It is the discretion of the Chamber.” Later in the day, the President, upon the request of the OCP and after consulting with the Civil Party Lawyers, granted the OCP an additional hour to question the Witness. Ianuzzi, although noting that the defense had not been consulted, stated that they had no objections to the additional time allocation.

**C. Courtroom Etiquette**

This week, the Trial Chamber’s interactions with the Nuon Chea Defense became increasingly difficult as the week progressed.

On Tuesday, Pauw insisted on asking Witness Khiev En about communications the Witness had with Kim Vun after the DK, even though the President had instructed counsel to move on because the question had already been asked<sup>44</sup> and was irrelevant. Pauw then stated: “I would like to have a ruling of the entire Trial Chamber on this... I would specifically invite the International Judges to give their position on this matter, because it seems there may be a misunderstanding.” Counsel further asked, “If I cannot test the context that this witness may have had with Kim Vun, both recently and in the past, what’s the point of conducting a cross-examination?” Judge Cartwright, reiterated the President’s ruling that the questions were irrelevant, stating, “Although the Chamber deplores a direct request to poll the Judges, in order to be very clear with counsel for Nuon Chea, the entire Trial Chamber agrees with the President’s ruling...”

On Wednesday morning, after President Nil Nonn indicated that the Chamber noted Ianuzzi’s application to strike out portions of Meas Voeun’s OCIJ statement, the President adjourned the proceedings. (See IV.C.) Although the Judges had begun leaving the courtroom, Ianuzzi said that he had made an oral application and the OCP’s opinion and the Chamber’s ruling should be heard. Counsel continued, “Now, I see you are all getting up and walking out of here, but you are Judges and you need to be able to deal with this matter... Walking away doesn’t solve the problem.” As soon as sessions began in the afternoon, Judge Cartwright said that the oral application had been considered by the Chamber and “there is no need to impute any impropriety on the part of the Chamber.” After Judge Cartwright laid the Chamber’s ruling, Ianuzzi stated that he understood the President’s final comment before lunch break to dismiss the application, because the President “characterized” it as a “procedural defect” for being “an application for annulment,” and it was for this reason that he

continued to speak. Counsel then indicated that he was grateful for the Chamber's oral ruling.

Relations only became more strained on Thursday afternoon when Ianuzzi referred to an article in that day's *Cambodia Daily* newspaper on the Mam Sonando case entitled "Sonando Verdict a Tough Test for KRT Legacy." According to Ianuzzi, it related to the "abject failure" of the ECCC to have any effect on the national justice system. Counsel quoted from the article as follows: "Far from setting a good example, the Khmer Rouge Tribunal may have done just the opposite, said Rupert Abbott, Amnesty International's Asia researcher for Cambodia." Ianuzzi suggested that "everyone could have a look at it," give their responses the following Monday, and a decision could be made "as to whether or not that is an appropriate topic for discussion in the Court." After Ianuzzi made his submission, the President merely instructed the Prosecution to continue examining Meas Voeun. Later in the afternoon, Ianuzzi again insisted that the Chamber consider the legacy it will be leaving behind and said:

I know it's rather embarrassing to be confronted with what your colleagues are up to across town; I'm sure that's embarrassing for all seven of you up there on the Bench. However, that doesn't change the fact that those events are transpiring beyond this glass wall... And to simply cut off my microphone and pretend that you don't want (to) hear these things, hear about these things, I suggest that is a shirking of your duty as judicial officers.

The President interrupted counsel and instructed him to submit his application in writing and with appropriate grounds. Before requesting Ianuzzi to take his seat and not pursue the issue further, the President said:

We are not here to please you. We are here for the just cause and for the expeditious trial and for the justice, as well as the effective use of the time. And you just cannot be on your feet and rush any matter.

**D. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Monday 01/10/12	9:04	10:33-10:53	12:04-13:31	14:42-15:09	16:06	4 hours and 48 minutes
Tuesday 02/10/12	9:01	10:32-10:53	12:05-13:30	14:23-15:00	16:07	4 hours and 43 minutes
Wednesday 03/10/12	9:02	10:27-10:49	12:28-13:46	14:43-15:02	16:01	5 hours
Thursday 04/10/12	9:00	10:33-10:52	12:09-13:33	14:41-15:02	16:03	4 hours and 59 minutes
Average number of hours in session				4 hours 52 minutes		
Total number of hours this week				19 hours 30 minutes		
Total number of hours, days, weeks at trial				499 hours 42 minutes		
<b>114 TRIAL DAYS OVER 34 WEEKS</b>						



**Unless specified otherwise,**

- the documents cited in this report pertain to *The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;
- the figures in the *Public Attendance* section of the report are only approximations; and
- photos are courtesy of the ECCC.

**Glossary of Terms**

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



EAST-WEST  
CENTER



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> In accordance with Internal Rule 81 (1) and Articles 14 (1) and 14 (3) (d) of the International Covenant for Civil and Political Rights, Accused Ieng Sary issued a Limited Waiver, agreeing to waive his direct presence in the courtroom for 1 Civil Party and 7 witnesses. He explicitly stated that he is not waiving his right to be present for other witnesses. See Ieng Sary. “Limited Waiver” (18 September 2012). E229. Due to his extended stay in the

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hospital, he subsequently issued another Limited Waiver for 11 additional witnesses and 7 Civil Parties. See Ieng Sary. "Limited Waiver" (1 October 2012). E237.

<sup>2</sup> Khiev En was examined in the following order: national Prosecutor Seng Bunkheang; international Prosecutor Dale Lysak; national Civil Party Lawyer Lor Chunthy; international Civil Party Lawyer Beini Ye; Judge Jean-Marc Lavergne; and Nuon Chea's counsels, Mr. Son Arun and Mr. Jasper Pauw.

<sup>3</sup> Office K-33 at the Ministry of Propaganda was responsible for "capturing data from various foreign language sources, translating that information and forwarding it to the Party Centre." Office of the Co-Prosecutors. "Co-Prosecutors' Rule 66 Final Submission (Public Redacted Version)" (16 Aug. 2010). D390. Para. 151.

<sup>4</sup> There was some confusion regarding Khiev En's birth year. While his citizen identification card states that his birth year is 1958, he insists that he was actually born in the Year of the Snake, and if he were to calculate it based on the Khmer year, his actual birth year would be either 1952 or 1953.

<sup>5</sup> When asked by Nuon Chea's international defense lawyer, Jasper Pauw, about the details of the bombardment, the Witness claimed that he saw planes "made in America" flying over the area. He could not recall whether people died in the bombardment, but he mentioned that Revolutionary Forces had entered the village the night before to evacuate residents.

<sup>6</sup> The Witness added that the defrocking occurred before he personally joined the Revolution.

<sup>7</sup> Hu Nim alias "Brother Phoas" was the Minister of Propaganda from April 1975 until his arrest and deportation to S-21 in April 1977. OCIJ. "Closing Order" (15 September 2010). D427 [hereinafter **CLOSING ORDER**] para. 883.

<sup>8</sup> Civil Party Lawyer Beini Ye manifested that Sam is listed as Prisoner 5619 in the Revised S-21 Prisoner List and that he arrived at S-21 from the Ministry of Propaganda on 10 April 1977 and was executed on 20 July 1977.

<sup>9</sup> The Witness noted that, in practice, the word "arrest" was not used. Instead, authorities used phrases such as "be removed for re-education" when they came to remove individuals. Regardless, the Witness explained, "when people were removed from one place to another during that regime, it referred to that person being arrested."

<sup>10</sup> Yun Yat alias "At" (Son Sen's wife) was initially just the Minister of the Ministry of Culture, Training and Education. After Hu Nim was arrested and sent to S-21 in April 1977, the Ministry of Information and Propaganda was reorganized and merged with the Ministry of Culture, Training and Education. At that time, Yun Yat became the minister for both. **CLOSING ORDER**, para. 883.

<sup>11</sup> The Witness stated that the Ministry of Education was located near Borei Keila, while the Ministry of Propaganda was located adjacent to the Lycée Descartes.

<sup>12</sup> According to Khiev En, Nuon Chea had a workspace in the "main building" adjacent to the smaller building where the Witness carried out his work. The Witness stated that Nuon Chea's work station was "open" and "there was no proper closed office"

<sup>13</sup> The Witness recalled that under Nuon Chea's leadership, workers enjoyed increased food rations, including cooked rice and an occasional dessert. He also stated that the Accused forbade employees from smoking in the workplace and encouraged them to exercise regularly to stay healthy.

<sup>14</sup> Kim Vun alias "Chhaom" testified before the Trial Chamber on 21 and 22 August 2012. He worked in various offices in the Ministry of Propaganda and Education between 1975 and 1979. See CASE 002 KRT TRIAL MONITOR, Issue No. 33, Hearing on Evidence Week 28 (20-23 August 2012).

<sup>15</sup> Meas Voeun was questioned by national Prosecutor Veng Huot, followed by international Prosecutor Tarik Abdulhak and national Civil Party Lawyer Pich Ang.

<sup>16</sup> Vorn Vet was one of the 20 people who participated in the Cambodian communists' first Congress in 1960. He was in charge of the Special Zone and later became a member of the CPK Central Committee's "Specialist Military Committee". He was also a member of the Party Standing Committee and was later appointed as Deputy Prime Minister for Economics. **CLOSING ORDER**, paras. 20, 31, 39, 43 and 63.

<sup>17</sup> The Closing Order refers to "Soeung", who was attached to the CPK Central Committee among other senior leaders. **CLOSING ORDER**, para. 38. The Closing Order also refers to "Soueng", who commanded military forces that supervised Koh Kyang Detention Centre in Sector 37 in the West Zone. **CLOSING ORDER**, para. 519. Witness Meas Voeun repeatedly explained that Ta Soeung was his direct superior, Commander of Division 1 of the Southwest Zone, and authored some telegrams from the "Western Division". For purposes of consistency, all references to the Commander of Division 1 are spelled as "Soeung"

<sup>18</sup> Hou Yun was involved with Hu Nim and Khieu Samphan in appealing to Phnom Penh residents and monks to "rise up and smash the enemy" prior to the city's liberation. **CLOSING ORDER**, para. 1130.

<sup>19</sup> Hu Nim worked with Son Sen and Khieu Samphan in preparation for the invasion and occupation of Phnom Penh in April 1975. He was later appointed as Minister for Propaganda. **CLOSING ORDER**, paras. 63 and 1155

<sup>20</sup> According to the Witness, he learned from Ta Soeung that the division commanders received orders in a meeting with the "General Staff", which included Son Sen and Nuon Chea, for the commanders to disseminate to the lower ranks.

<sup>21</sup> Witness clarified that, "these 2,700 soldiers were stationed close to my regiment, but then they suffered from malaria then, most of them had to return back and that left only a few hundred there."

<sup>22</sup> Chou Chet was one of 27 members who, in early 1971, attended a CPK Central Committee meeting; it was the first meeting of the Central Committee since October 1966. The Secretary of the West Zone "was Chou Chet alias Si until his arrest in March 1978. The West zone committee would regularly report to Office 870 on the situation of the internal and external enemies." **CLOSING ORDER**, paras. 28 and 538.

<sup>23</sup> Meas Voeun was asked about three telegrams in particular: (i) Telegram 45, authored by "Office 09, Koh Kong," with "Western Division, Political Section" at the top left corner of the page, dated 6 October 1977, Document E3/137; (ii) Telegram, authored by "Western Division, Political Section," signed by "Soeung," annotated with name "Khiev," dated 12 August 1977, Document E3/1031. Witness confirmed that "Soeung" was likely Ta Soeung, and that the alias "Khiev" at the General Staff level referred to Son Sen; (iii) Telegram, authored in West Zone, signed by "Soeung," dated 31 March, 1978, Document E3/1001.

<sup>24</sup> Witness testified that, in fact, Ta Soeung kept his office in Prey Nup, but he worked in Kampong Som as well.

<sup>25</sup> When asked about the fate of Chou Chet, Secretary of the Western Zone, the Witness stated, "As far as I know, he did not stay in that position until the end... it was an affair between himself and the Center." According to the Witness, Center referred to Pol Pot and Ta Mok.

<sup>26</sup> The two documents cited by Prosecutor Abdulhak are: (i) Report "To respected and beloved Angkar," authored by Office M401, Document E3/1220; (ii) "To respected, beloved, and missed Angkar," Monthly Report to Angkar, authored by Office M401, dated 4 August 1978, Document E3/1094. Witness clarified that he had already departed from Koh Kong by the dates described in the latter report.

<sup>27</sup> The Witness learned from Ta Soeung that the latter was nominated as Chairman of the new North Zone. Although Meas Voeun could not say who previously held the position, he "knew it was Ta Mok" who had nominated Ta Soeung.

<sup>28</sup> IR 89 *bis*. states: The President shall order the Greffiers to read the counts against the Accused and may order the Greffier to read the factual analysis in the Indictment.

<sup>29</sup> See CLOSING ORDER, paras. 113 to 149.

<sup>30</sup> See *ibid*, paras. 156 to 159.

<sup>31</sup> See *ibid*, paras. 160 to 165.

<sup>32</sup> Movement of the Population from Phnom Penh.

<sup>33</sup> Movement of the Population from the Central (Old North), Southwest, West and East Zones.

<sup>34</sup> See CLOSING ORDER, paras. 221 to 281.

<sup>35</sup> See *ibid*, paras. 873 to 879 on Nuon Chea's alleged role in the security apparatus; 893 to 901 on his association with other CPK senior leaders and participation in population movement phases one and two; and 1580 to 1584 on the character of the Accused.

<sup>36</sup> See *ibid*, paras. 1016 to 1024 on Ieng Sary's association with other CPK senior leaders and participation in population movement phases one and two; and 1589 to 1597 on the character of the Accused.

<sup>37</sup> See *ibid*, paras. 1146 on Khieu Samphan's role in the military; 1151 to 1162 on his association with other CPK senior leaders and participation in population movement phases one and two; and 1601 to 1604 on the character of the Accused.

<sup>38</sup> Paragraph 282 states that 354 civil parties were found to have provided sufficient elements tending to establish *prima facie* personal harm as a direct consequence of crimes committed during the Movement of the Population from the Central (Old North), Southwest, West and East Zones (Phase 2).

<sup>39</sup> Pich Ang followed up by saying that paragraph 261 of the Closing Order was also not read; however, the President did not anymore address this matter.

<sup>40</sup> As explained by Andrew Ianuzzi, a motion in *limine* is "typically an oral application made prior to the testimony of a witness to exclude certain segments of the testimony."

<sup>41</sup> Ianuzzi referred to the evidence as "fruit of the poisonous tree -- that is, we have an illegal act, illegal violation, the use of illegal material -- so, that in itself is the poisonous tree... the fruit being the material that comes as a result of that." He also cited jazz musician Duke Ellington, saying: "'There are two kinds of music; good and bad.' I think there are two kinds of evidence, and this is clearly bad evidence and it should not be used before this Chamber."

<sup>42</sup> Article 15 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

<sup>43</sup> On 21 September 2012, the Chamber had invited Parties to give their positions relative to the hearing of the testimony of Expert Witness Philip Short, considering that Accused Ieng Sary was confined at the Khmer-Soviet Friendship Hospital. See CASE 002 KRT TRIAL MONITOR, Issue No. 36, Hearing on Evidence Week 31 (20-21 September 2012).

<sup>44</sup> The Witness said: "Chhaom (the alias of Kim Vun), actually, does not use telephone. He cannot even ride a motorbike. So, he does not hold any telephone at all. And I did not have - I do not have any intention to contact him for whatever reason. So, never bothered to ask him - or communicate with him at all."