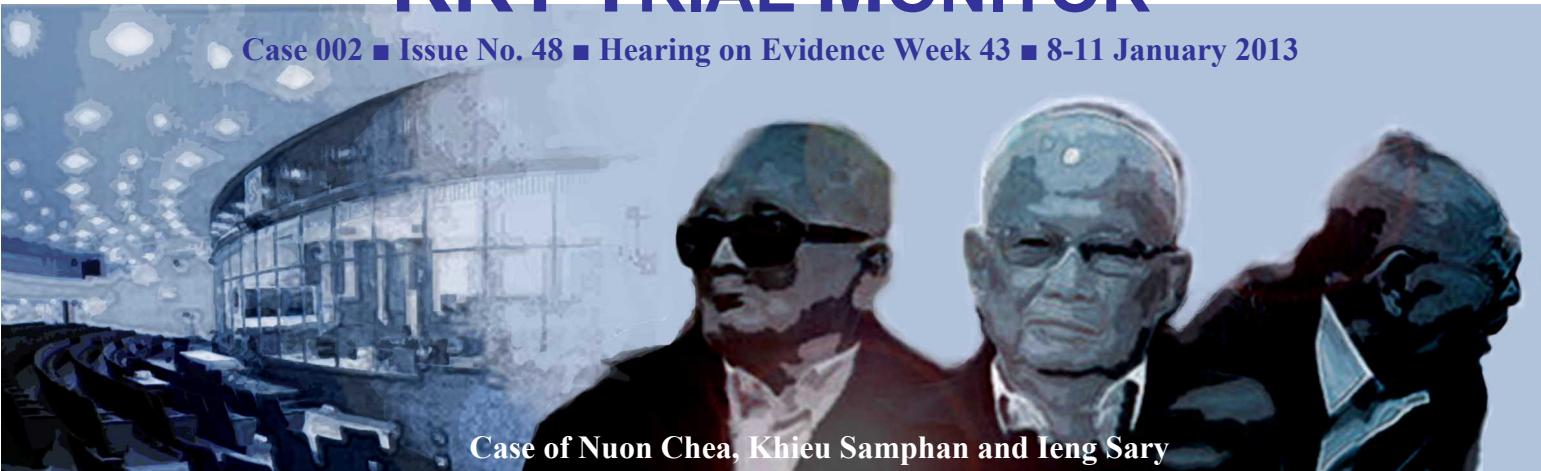


KRT TRIAL MONITOR

Case 002 ■ Issue No. 48 ■ Hearing on Evidence Week 43 ■ 8-11 January 2013



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

It was a kind of routine already...

When someone disappeared, and then later on, we would hear that they had disappeared because they had been accused of being the traitors.¹

- Sa Vi, Witness

I. OVERVIEW

In the first week of trial proceedings in 2013, the Chamber heard the testimony of three witnesses, Sa Vi, Ung Ren, and Chhaom Se. All three witnesses were Khmer Rouge soldiers, and each discussed his experiences prior to and during the fall of Phnom Penh in April 1975. They also described their assignments during the period of Democratic Kampuchea: Sa Vi worked as a guard at K-1, the permanent residence of Pol Pot, while Ung Ren and Chhaom Se were both deployed to the country's Northeast as soldiers within Division 801, where the latter worked as the director of Au Kanseng Security Center.

Few objections were raised during the questioning of the witnesses. Legal and procedural issues this week concerned the Prosecution's use of questions outside the scope of Case 002/01 and the standards of OCIJ's investigations, especially with regard to the interviews of Witness Ung Ren. The Trial Chamber also announced that it would defer summoning TCCP-94, after it was revealed that the Civil Party did not have any personal knowledge on the evacuation of Phnom Penh.

II. SUMMARY OF WITNESS TESTIMONIES

All three witnesses this week testified on their experiences prior to, during, and after the fall of Phnom Penh in April 1975. Describing their reasons for joining the revolutionary movements, as well as their various deployments and promotions during the DK period, Sa Vi, Ung Ren, and Chhaom Se provided detailed knowledge of military structures and roles.

A. Sa Vi's Testimony

The first witness to testify since the Court returned to session in 2013 was Sa Vi, a 52-year old farmer currently residing in Pailin.² He primarily recounted his experiences as a "second-layer" guard at K-1, the office that functioned as the permanent residence of Pol Pot in Phnom Penh. Sa Vi recalled the visits of the co-Accused, the compound's layout, and the temporary and permanent disappearances of fellow cadres.

1. Experiences Prior to Employment at Office K-1

Sa Vi's uncle, Mon, introduced him to the revolution in the early 1970s, and he soon began work as a messenger between communes within Samraong District, Kampong Speu Province. The Witness stated that, in 1975, he became a Samraong District soldier and was later promoted to the sector-wide level, which included Samraong and Kong Pisei Districts.³ Sa Vi explained that Kong Pisei District was not entirely liberated in 1973, but, by 1974, the bombing had stopped and Lon Nol soldiers no longer patrolled the area, leading Sa Vi to conclude that the District had been entirely liberated.

The Witness indicated that, after 17 April 1975, he observed people being evacuated to Kong Pisei District. He explained that some of the people came by cars or motorbikes, but most came on foot. Upon arrival at Kong Pisei, commune chiefs and other cadres directed people to settle at various locations in the Sector. As far as Sa Vi knew, the evacuees were neither separated from their families, nor were they vetted for connections to the Lon Nol government. Although unable to estimate a precise number, the Witness testified that he saw many people arriving at his location at Poh Ang Krong commune over the course of three days. He did not observe any military personnel guarding the evacuees, but he also did not see anyone offer food, water, or medical services to the evacuees. Upon arrival, people took refuge at pagodas, schools, or the houses of locals. The Witness asserted that the local pagoda at that time had ceased to function, and he learned from local villagers that "all Buddhist monks were defrocked by 1973 or 1974 already."⁴

Sa Vi consistently stated he was "an ordinary combatant." He explained that the duty of a combatant was to engage in manual labor, specifically digging canals and building dams. He suggested, however, that soldiers worked in separate sections from the civilian population.

2. Assignment to Office K-1 and Guard Structure

Sa Vi stated that, in late 1975 or early 1976, he was assigned to work at K-1 in Phnom Penh, where he remained until he fled the city with senior leaders and cadres in 1979. He explained that K-1 was the permanent residence of Pol Pot, and was located a kilometer south of the Royal Palace. The Witness reiterated that there were three "layers"⁵ of protection units: the first, innermost layer was surrounded by plank walls and barbed wire; the second layer had plank walls and four watchtowers, as well as a gate to be opened for visitors who had been cleared by the third layer, which was roughly two kilometers from the premises. While he was unsure of the number of guards at the third layer, Sa Vi estimated approximately ten guards worked in the first layer and he was sure there were fifty to sixty guards in the second layer, where he worked.

The Witness stated that his direct superior at K-1 was named Tan, *alias* Khieu, who oversaw a number of intermediary group and unit chiefs. The superior, who received orders from Pol Pot and oversaw the K-1 guards, was named Pang before Kan, *alias* Lin, replaced him. Tan and Soth received their orders from Pang and, later, Kan, as well as occasional ones directly from Pol Pot or Nuon Chea. He remained unsure however how closely Pang worked with the co-Accused and Pol Pot. Arthur Vercken, international counsel for Khieu Samphan, confronted Sa Vi with the fact that a person named Oeun Tan, *alias* Chou, had testified before the Court, and claimed no knowledge of the Witness.⁶ The Witness responded that he stood by his OCIJ interview, in which he stated he was with Tan from 1976 to 1996, and that Oeun Tan must have had his own reasons to deny knowledge of him.

Sa Vi said that he attended self-criticism meetings held by the office leadership on a monthly basis, in which Tan was usually the speaker. The Witness explained that the meetings

mostly focused on how to execute duties well, so peers were asked to criticize each other to ensure mistakes were not repeated. During the self-criticism meetings, there was often mention of possible security threats, but the Witness maintained that, during the time he worked as a guard, there was never any attempted attack on the office. Sa Vi claimed he could not recall anything from such meetings concerning the investigation of internal enemies connected to the CIA, KGB, or Vietnam. In education sessions, the definition of "enemy" related more to armed enemies that might attack the office. When he was working at K-1, the Witness attended celebrations for New Year and CPK anniversaries in the "Old Stadium." He claimed he never saw the senior leaders during these events, but only youth and combatants having a good time.

3. Interactions with the Senior Leaders

At K-1, Sa Vi claimed to regularly see senior leaders, including Ieng Sary, Nuon Chea, and Khieu Samphan, as they arrived and departed in their vehicles. The Witness alleged that he personally knew Soth and Soeun, the respective drivers for Nuon Chea and Khieu Samphan. According to the Witness, Khieu Samphan visited K-1 more frequently than the other leaders, always travelling in a more modest vehicle, accompanied only by his driver. The office also held study sessions attended by sector and zone committee leaders. The Witness would learn of such meetings when the guards of the second layer received orders to clean the road and protect the dignitaries. However, he himself did not know the meeting topics, and, although he claimed not to know the names of most attendees, Sa Vi stated he heard the names of two visitors, Sao Phim, of the East Zone, and Ta Mok, of the Southwest Zone, from the guards of the first layer.

Occasionally, the senior leaders left K-1 to attend meetings or visit provinces. Sa Vi claimed that he only accompanied Pol Pot once, when they went to a study session at Borei Keila. The Witness only learned about the leaders' visits to the countryside from other bodyguards assigned to escort them. During his testimony, the Witness admitted that a number of his statements to the OCIJ concerning the leaders' travels were based on his own personal observations, rather than any objective fact.⁷ Sa Vi stated that, upon return from these visits, Tan and Soth would tell him that the people were eating well at the "bases." The Witness explained that he only learned about the famine during the DK period for the first time in 1982, through a radio broadcast.

Sa Vi explained that guards who made minor mistakes repeatedly, such as sleeping on guard duty, were exposed to refashioning and reeducation, and if they failed to correct their mistake, they would be transferred from K-1. The Witness did not know what happened to them after such a transfer. He claimed to have met some of them at celebrations at the Old Stadium, and also during the period after 1979. According to him, they never mentioned any harsh treatment. In his testimony, however, Sa Vi acknowledged that some people disappeared from K-1, and their names were subsequently impugned as traitors in informal conversations.⁸ The Witness claimed that he did not know who had the power to order the arrests of cadres. In response to questions about his OCIJ interview, in which he had specifically mentioned Pol Pot and Nuon Chea being "aware" of such arrests, the Witness emphasized that any such observation had been based on his own deductive reasoning, that only Pol Pot could make such a decision on an arrest. In Court, he testified that he was now unsure of Nuon Chea and Ieng Sary's role in such a matter. Sa Vi also reiterated his personal views about Khieu Samphan, noting that the Accused was always engaged in "deep thinking" and was very "meticulous" about his work.

4. Involvement with the Khmer Rouge after 1979

On 7 January 1979, Sa Vi joined Pol Pot, Nuon Chea and Khieu Samphan in fleeing Phnom Penh for the Thai border. In May 1979, he attended a guard unit meeting chaired solely by Pol Pot at the top of the Cardamom Mountains, in which the leader allegedly stated that the DK leadership from 1975-1979 had made mistakes, and, although he had not ordered killings and torture, the senior leaders were responsible because of their position. The Witness stayed with them until the three leaders moved to Anlong Veng, while he chose to remain in Pailin.

The Witness felt that the administration and management of the Khmer Rouge changed after the Vietnamese invasion. He admitted that he was a young man who knew little of administrative matters in Phnom Penh during the Democratic Kampuchea regime. Nonetheless, he asserted that, after the leaders lost power in 1979 and fled the capital, their lifestyle changed and priorities shifted from building cooperatives to surviving in the jungle and building a coalition to resist the new government and “rescue the country.”

5. Witness Demeanor and Credibility

Throughout his testimony, Sa Vi gave seemingly consistent responses, and he readily acknowledged that he based much of his testimony, particularly his knowledge of the senior leaders of the DK regime, on his own deduction and assumptions rather than objective fact. He continually confirmed his previous statements to the OCIJ investigators, even when confronted with statements by other witnesses that sought to diminish his views.

B. Ung Ren's Testimony

Ung Ren, a 63-year old farmer from Trapeang Prasat, took the stand this week to testify on his involvement in the Khmer Rouge military beginning in 1970.⁹ His testimony particularly concerned the capture of Lon Nol soldiers prior to 1975, the evacuation of Phnom Penh, and his assignment to Division 801 in the Northeast Zone. Ung Ren was able to provide insight into the roles of Son Sen and Pol Pot within the military command structure.

1. Experiences prior to 17 April 1975

Following King Sihanouk's appeal in 1970, the Witness joined the revolutionary movement at Thmat Pong village in Kampong Speu Province as a member of a Special Zone army. In response to questions from national prosecutor Chorvoi Song, Ung Ren explained that the special zone army reported to Chong On¹⁰ and “gather[ed] people together to join forces so that [they could] strengthen the forces.”¹¹ His early division joined another to form a regiment in 1972 that subsequently merged with others to become Brigade 14, which was led by Sou Saroeun, *alias* 05. Ung Ren was promoted at this time to command his regiment of 500 people. The Witness confirmed that his regiment attacked Lon Nol soldiers near Phnom Baset, and he explained that captured soldiers were “sent to the rear,” although he did not know what happened to them subsequently. While he confirmed that his brigade engaged in the battle of Udong in 1974, Ung Ren asserted that the force involved was not his regiment, but instead from the Southwest. The Witness claimed that Sou Saroeun, the brigade commander, and Chong On devised the plans for the attack, which were conveyed to him at a meeting along the road to Udong.

2. Preparations for the Liberation of Phnom Penh and Subsequent Evacuation

After the fall of Udong and its subsequent evacuation, which the Witness claimed not to know about, orders came from the brigade commander “that there was an arrangement from the

upper level to manage the spearhead of the Southwest force.”¹² Ung Ren confirmed his statements to OCIJ that Son Sen, *alias* Khieu, chaired a meeting in Kampong Speu Province to prepare for the imminent attack on Phnom Penh. The meeting took place “around bamboo trees,” with representatives of the brigades, regiments, and battalions in attendance. The Witness claimed no knowledge of plans for an evacuation of the capital, insisting that Son Sen focused on “advancing on Phnom Penh to liberate the city.”

Ung Ren explained that his regiment advanced through the Pochentong area, while the Southwest forces moved along National Road 4. During this fighting, the Witness was wounded and hospitalized at Tang Krasang hospital, where he stayed behind as the rest of the city fell.¹³ He first saw crowds of people leaving the city – on foot, with their belongings in carts – when he still was receiving treatment at the hospital. He stated that he did not see anyone forcing the evacuees to leave, although he expressed doubts that people could be “evacuated in such huge number without the moving force behind them.”¹⁴ Ung Ren claimed that other soldiers told him that the reason for evacuation was to prevent attacks from enemies embedded in the population, and to avoid American bombings. The Witness denied that there were any established schemes to “classify” and segregate soldiers and officials of the Lon Nol regime, although he reminded the Court that he was hospitalized at this time.

3. Deployment and Reporting Structure of Division 801

During Prosecutor Chorvoi Song’s questioning, the Witness denied knowledge of a great assembly attended by thousands of people on 22 July 1975. He only recalled a meeting held at “the stadium,” in which it was announced that Brigade 14 would be reestablished as Division 801 and deployed to the country’s northeast.¹⁵ In his OCIJ interview quoted by the National Prosecutor, the Witness had stated that Pol Pot, Nuon Chea, Ieng Sary, Khieu Samphan, and Son Sen were in attendance at the meeting. However, in his testimony before the Court, Ung Ren omitted Khieu Samphan from the list. He also claimed that Pol Pot himself “discharged the duties to the division,” announcing its deployment to Ratanakiri Province. The Witness elaborated that it was the first time he had met Pol Pot. At the time, everybody referred to Pol Pot as “Brother Number One,” and Nuon Chea as “Brother Number Two,” but he was unaware of the positions of the other leaders.

Ung Ren stated that there were more than 5,000 soldiers in Division 801, under the command of Sou Saroeun. The Witness explained that, within the Division, there were regiments, each made up of three functional sections – logistic, military, and political – as well as three battalions. Within each battalion were three platoons, each comprised of three squads of approximately 35 soldiers. The Witness explained that he reported directly to Sou Saroeun when he commanded a regiment of approximately 430 soldiers stationed in Siem Pang District, Stung Treng Province, near the Lao border.¹⁶ However, Ung Ren explained that he did not know the original source of Sou Saroeun’s instructions.

Ung Ren claimed that he did not know of a reporting structure or proper frequency at the Division level. The Witness claimed that he could only report to the Division Commander, who did not necessarily need to consult the corresponding zone’s secretary. He elaborated that, prior to the fall of Phnom Penh, reports were filed only for Son Sen; after the deployment of Division 801, military affairs were reported to Son Sen while political affairs were sent to Pol Pot.¹⁷ The Witness recounted that communications were difficult in the country’s remote Northeast because of the distance among units within Division 801. They had a telegram machine that operated only occasionally; otherwise, a four to five day journey on foot was necessary to pass on information. If nothing urgent had taken place, they would revert to monthly reports, and monthly meetings would take place less regularly.

The Witness denied knowing the names of the CPK Central Committee members, other than Pol Pot and Nuon Chea. In his OCIJ interview, Ung Ren explained that disciplinary measures were communicated through Office 870, while technical and tactical matters were sent to and from the Central Committee for decision-making, yet, before the Court, the Witness emphasized that this was merely his personal conclusion. Ung Ren claimed to know that Sou Saroeun went to Phnom Penh every month or two, but he would not always convey the visit's results unless there were urgent issues, such as enemy invasions. The Witness described political education provided by Sou Saroeun in a visit to Siem Pang, in which he taught people not to harm or question potential spies and hostages, but to "have them sent to the division, who further sent them to the upper echelon."¹⁸

4. Assignment at the General Staff

At one point, Ung Ren received orders from the Center to go to Veun Sai in Ratanakiri Province to replace San, *alias* 06, who had been "removed" to Mondulkiri Province. The Witness acknowledged that he was briefly assigned to Phnom Penh approximately a month into his position in Veun Sai. He claimed that he was invited for a study session, but, because he fell sick, he stayed with the General Staff,¹⁹ yet was unable to "engage in any activities." The issue as to when the Witness started working at the General Staff was contentious. During the questioning by the international Prosecutor, Dale Lysak, the Witness insisted that he worked there very briefly in 1977, despite a number of General Staff reports dated from 1976 that included his name. Ung Ren later confirmed that he wrote a report dated 24 December 1976 that, in part, ordered the removal of a cadre, but he asserted that he only wrote the report, not the decision.²⁰ He conceded that he had to monitor and report General Staff "lifestyle" meetings, but insisted that he could not make recommendation to arrest or purge other people.

5. Purges of Cadres

Ung Ren recounted an instance when Sou Saroeun showed him a telegram accusing Keo Saroeun, *alias* Khieu, former head of Regiment 81 and member of the Division Committee, of a "moral offense" with Neary Heng.²¹ The Witness explained that, "During that time, we – everyone knew that if people could not refrain from committing moral offence, then we – they could not avoid being arrested, if he or she is found to have committed such offence."²² Keo Saroeun was called to Phnom Penh for a study session, and according to Ung Ren, Keo Saroeun implicated him during a confession.²³ When the Witness returned to Phnom Penh in 1977, Sou Saroeun told him of this accusation, and sent Ung Ren to stay at Boeung Kanseng in Banlung, the provincial capital of Ratanakiri. Later, he was called to Phnom Penh, via a telegram from Office 870, and so he headed to an airplane waiting for him in Stung Treng. Along the way, in Koun Mom District of Ratanakiri Province, a car from the Division intercepted him and told him to return to Banlung, as the situation was not good in Phnom Penh.

Lysak then confronted Ung Ren with a series of documents sent between Division 801 and Office 870, detailing arrests at the "base" as well as the names of alleged Vietnamese soldiers and spies, but the Witness claimed no knowledge of this. The Witness said that he did not know whether it was DK policy to interrogate enemies before they could be "smashed," because, in his own regiment, his men stayed with him, and they had no clashes with Vietnamese troops. Ung Ren confirmed that people who committed misconduct repeatedly after several attempts of education were arrested but that, in his own unit, this did not occur. Ung Ren claimed that he only became aware of Au Kanseng security center when he was assigned to Boeung Kanseng, and the people there complained about their children being arrested for stealing potatoes out of hunger. After requesting Sou Saroeun to pardon the children, they were released soon after.

6. Witness Demeanor and Credibility

The Witness seemed to avoid making clear comments on the chronology of his military career up to 1979. In the face of repeated questions from the Prosecution, he remained particularly insistent that he did not arrive at the office of the General Staff until July 1976; however, his statements to the OCIJ, his testimony before the Chamber, and the information provided by documents conflicted on this matter. Ung Ren also denied involvement in the People's Representative Assembly, despite the inclusion of his name in the list of members.²⁴ The Witness also insisted that he lacked capacity to recommend others to be arrested or purged. It appeared that the Witness feared implications of guilt; at one point, Lysak even felt it necessary to reassure him he was not the one being accused.

C. Chhaom Se's Testimony

Chhaom Se commenced his testimony on the last day of proceedings this week.²⁵ The 62-year old currently resides in Oddar Meancheay Province, where he works as a farmer and serves as Chairman of the Association of Military Veterans of Anlong Veng. The Witness testified on his experiences as a member of the Khmer Rouge military, the attack on Phnom Penh, the establishment of Division 801, and his role as chairperson of Au Kanseng Security Center.

1. Events in the Southwest Zone before 1975

Chhaom Se testified that he joined the revolutionary movements following Norodom Sihanouk's 1970 appeal to resist the government. He went to the forests of Kampong Speu and Takeo, working alongside Khmer Rouge and North Vietnamese forces. In 1971, Chhaom Se became the chief of Unit Six, within the First Platoon of the First Company of Battalion 160, which fell under the command of Sou Saroeun. The Witness explained that Sou Saroeun's superior was Chhit Choeun, *alias* Mok, who was in charge of the Southwest Zone.

Chhaom Se explained that the Special Zone was established to support the resistance and to protect the Phnom Penh Zone. It entirely surrounded the city and comprised three mobile divisions, namely Division 12 to the East, Division 11 to the South, and Division 14 to the Northwest. The Witness worked within Division 11 in 1973, under the command of Sou Saroeun, who told him that the commander of the Special Zone was Vorn Vet. Chhaom Se stated that, in late 1973 or 1974, half of Division 11, including his company, was integrated into Division 14, which the Witness observed had lost a large number of forces. By the 1975 attack on Phnom Penh, the Witness' unit was under the purview of Division 14, and he himself had become a deputy commander of a company.

Between 1973 and 1974, the Witness' unit was involved in several attacks on Lon Nol soldiers in the area of Kampong Speu. He further explained that the upper echelons decided the fate of captured soldiers, as they were sent to another location away from the frontlines. Chhaom Se recounted that, at the time of the "liberation" of Udong in March 1974, his troops were along Road 78 at Kampong Tuol and therefore did not know who planned the attack or the fate of the people after the city's fall. The Witness heard of the liberations of other places, such as Takeo and Kampong Speu, after which the people were evacuated due to security concerns and the desire to gain firm control of the area. The Witness did not know where the evacuees were relocated.

Prior to the liberation of Phnom Penh in 1975, the Witness attended study sessions in which important documents were handed to the participants. These documents related to updates

on the progress of the resistance movement, occasional attack plans and strategies, and efforts to improve leadership capacity for the eventual liberation of the country. He claimed that the official mission at that time was “to ensure that people are freed from the suffering, and the country, liberated.”²⁶ Typically, the commander of the battalion, Sou Saroeun, chaired the meetings. Chhaom Se further elaborated that “enemy” was defined as those who worked under the Lon Nol regime and Lon Nol’s soldiers. He was also aware of the “Seven Super-Traitors” of the regime, but he could not recall from whom he had learned this information.

2. The Liberation and Evacuation of Phnom Penh

Chhaom Se recounted that it took three months of intense military engagement before Phnom Penh was finally “liberated.” On 17 April 1975, his unit advanced from the Pocheutong area to the Propaganda Ministry in the city center. The Witness claimed that he only knew that captured soldiers of the Lon Nol regime were taken to the countryside. Chhaom Se stated his belief that the plan to evacuate the city’s residents was preconceived, because similar population movements had occurred in other liberated areas before. When his regiment was instructed to evacuate the city, the Witness was informed the purpose was to control the situation better, as there were still “pockets of enemies here and there.” No category of people was allowed to stay, which meant that the sick, the disabled, and pregnant women also had to leave the city.

After the liberation of the city, Chhaom Se’s division was stationed to the west of Psar Thmei. He recalled attending a conference held at Olympic Stadium, where the official leadership of the Khmer Rouge was announced and the anniversary of the establishment of the army was celebrated. Members of various military divisions, companies, and battalions were in attendance as the 21 senior leaders of the DK government were introduced and the Witness recalled seeing the three co-Accused presented as such. Speeches were made, including one by Nuon Chea.

3. The Creation and Deployment of Division 801

After the liberation of Phnom Penh, Chhaom Se explained, the three divisions of the Special Military Zone were renamed and reassigned: Division 11 became Division 605, Division 12 became 703, and his own Division 14 became Division 801. International Prosecutor Vincent de Wilde d’Estmael quoted the Witness’ OCIJ interview, in which he stated that Division 14 was reestablished as Division 801 during another General Assembly at the Olympic Stadium in September 1975. He had stated that more than 1,000 people attended this assembly. Upon further questioning on whether he was referring to the 22 July 1975 General Assembly discussed in an issue of *Revolutionary Flag*, the Witness admitted that he did not take note of the dates, but the Assembly’s agenda in the article appeared consistent with the one he attended.

The Witness was promoted to commander of a company comprising approximately 100 soldiers, and he explained that there were three regiments and three battalions under Division 801. According to the Witness, the deployment of the Division to the country’s Northeast was not made publicly but, rather, relayed through the Division Commander. Chhaom Se stated that Sou Saroeun, *alias* 05, commanded Division 801, and he asserted that Sou Saroeun had the authority to make decisions, describing his leadership as “one-man leader style.” The Witness said that Division 801 was located close to the Northeast Zone and there was “intention to cooperate, mutually assist each other,” but, as a low-ranking personnel, he claimed not to know much about the working arrangements between the two.

4. Purges in Division 801 and Au Kanseng Security Center

Chhaom Se did not know why Au Kanseng Security Center was established within Division 801 in late 1976, but he recounted that, at the time, there were a lot of army personnel who were “ill-disciplined” and required management. De Wilde d’Estmael confronted him with his statement to the OCIJ that the security center was opened when “enemies from within were emerging throughout the entire country.”²⁷ The Witness elaborated that people holding ranks of colonel and other senior people were removed, therefore security had become a primary concern.

According to the Witness, servicemen were arrested and sent to the security center upon the decision of the Division Secretary. Chhaom Se claimed that personnel sent there were only of a lower rank than his own position as a lieutenant. He presumed that higher-ranking personnel were sent to Phnom Penh and then arrested, because people noted that these officials disappeared following their visits to the capital. Chhaom Se acknowledged that it was not abnormal for high-ranking cadres to receive summons to Phnom Penh and subsequently disappear, as in the case of Ta Ya, the chairman of the Northeast Zone.

The international prosecutor confronted the Witness with a document from Run, of the Party Committee of Division 801, addressed to Uncle 89, which recommended the implementation of five measures concerning the need to arrest enemies masked as cadres as well as those who fail to adjust themselves after reeducation.²⁸ The Witness asserted that, although these measures were implemented in other units, they were not utilized in his. Chhaom Se claimed that, after he became the director of the security center, he did not understand the process of how people sent to him were arrested. However, in a latter stage of questioning, de Wilde d’Estmael quoted a section from his OCIJ interview in which the Witness explained that people became military prisoners because of their own confessions, because they received the security center’s summons, or because they were implicated by confessions in Phnom Penh. Chhaom Se testified that such confessions were sent to Sou Saroeun, possibly via radio, and he subsequently forwarded the list of “names of people who had been implicated.” The Witness affirmed that all of these confessors were Division 801 personnel who were removed, although he could not recall their names. He also stated that the only instructions he received from Sou Saroeun were to remain vigilant and, if the matter was serious or systematic in nature, then to take “further measures and actions.”

Chhaom Se explained that confessions from Au Kanseng detainees were sent to Sou Saroeun, although he could not recall how often these reports were forwarded to his commander, but that the frequency would increase if the matter was considered urgent. When asked about the purpose of such reports, the Witness stated that they were used to determine whether the case was a political one, a systemic issue, or just an isolated incident. They also served as the basis for the commander to decide whether a person would remain detained or subjected to disciplinary actions.

The Witness initially stated that he never received any order for execution, nor did he send anyone to be executed. At a later point of his testimony however, he acknowledged that he received an order from Sou Saroeun to execute six people, and that there were three others who died as a result of fights with his guards, or escape attempts. Chhaom Se acknowledged his own authority to release prisoners upon order from the Secretary of Division 801. However, he did not know whether Sou Saroeun had to wait for approval from the Center before deciding the fate of a prisoner.

5. Witness Demeanor and Credibility

The Witness calmly answered questions about the period before 1975, providing exact and detailed answers. However, he was less certain and consistent when inquiries were made into his duties as the chief of Au Kanseng Security Center. He was the only witness this week to testify with the assistance of a duty counsel.

III. LEGAL AND PROCEDURAL ISSUES

Most objections and legal issues this week had already been raised in prior weeks.²⁹ Concerns over the use of leading questions were volleyed, as were reminders not to employ phrasing that summarized the witness' views in ways they had not described them. Additionally, objections were made over questions that went outside the scope of Case 002/01, as well as the proper use of documents in forming the basis of questions put to witnesses. The leng Sary Defense Team continued to raise its concerns with the OCIJ's investigatory standards and practices, specifically as regards an off-the-record interview with Witness Ung Ren. Lastly, the Trial Chamber heard submissions related to the possible summons of a Civil Party, TCCP-94, but it ruled that it would defer hearing her testimony.

A. The Use of Leading Questions

A recurring objection to the use of leading questions took place during the questioning of witnesses this week. Arthur Vercken, international counsel for Khieu Samphan, raised the matter in response to national Prosecutor Seng Bungkheang's tactic of reading out Sa Vi's OCIJ statement, and ending it with a question as to whether the Witness recalled having made such comments. The Prosecutor replied that he was only making sure that the Witness understood before he followed with some clarifying questions. The Trial Chamber overruled the objection.

B. Premature Phrasing in Questioning of Witnesses

During Prosecutor Song Chorvoi's questioning of Ung Ren, international counsel for leng Sary, Michael Karnavas, objected when the Prosecutor classified the Great Assembly as "important" before the Witness made such a classification. The Chamber did not address this objection, but the Prosecutor rephrased her question. Lysak raised a similar objection during Vercken's examination of Ung Ren. In his follow-up to the Witness' account that telegram machines often could not be used for days, Vercken started to ask the Witness about the period he described as a "situation of autonomy." Lysak objected to such phrasing and the Defense counsel rephrased his question.

C. Questions Outside of the Scope of Case 002/01

During the questioning of Sa Vi, Lysak referred to his experience after the fall of the DK regime in 1979, when the Witness followed the senior leaders to the jungle. Kong Sam Onn, national counsel for Khieu Samphan, objected on the grounds that the topic fell outside of the scope of the proceedings. Lysak explained that there was a limited amount of information regarding the relationship among the co-Accused after 7 January 1979, which was part of the Closing Order and allegations in Case 002/01.³⁰ The Trial Chamber agreed with the Prosecutor's position that his question primarily addressed the issue of military structure. The President directed the Witness to respond.

Victor Koppe, international counsel for Nuon Chea, again raised this issue when de Wilde d'Estmael questioned Chhaom Se on the confessions of Unit 83 soldiers who were arrested in 1976. Koppe said that the international Prosecutor seemed to be asking about the

Security Center, which was an issue that fell outside the scope of the case at trial. De Wilde d'Estmael explained that he was inquiring about the communication structure of Division 801, and those who had decision-making authority on the fate of the prisoners. The Trial Chamber overruled the objection.

D. The Use of Documents as Basis of Witness Examination

There were objections raised this week with regard to the use of documents as the basis to question a witness. Vercken first raised the issue when Song Chorvoi attempted to question Ung Ren on the Great Assembly held in July 1975 based on an article in an issue of *Revolutionary Flag*. Vercken maintained that the Prosecutor needed to first establish the merit of the document before using it for questioning. The Chamber sustained this objection when the President established that the Witness never saw the document before. Son Arun raised the same issue when Lysak referred to a document on Division 801 when questioning Ung Ren. Son Arun said that the Prosecutor must first confirm whether the Witness had seen the document before. The Chamber supported the Prosecutor's position that documents may be used as the basis of questioning if there is reason to believe that the witness has direct knowledge of them. As that particular document pertained to his military unit, its use was allowed for the examination of Ung Ren.

E. Missing Requested Transcript and Quality of OCIJ Investigations

On Thursday, a debate ensued regarding the transcript of an audio recording requested by the Defense Team for Ieng Sary. While he questioned Ung Ren, the national counsel for Ieng Sary, Ang Udom, requested that the Court play a section of the Witness' OCIJ interview, because the transcript of that section had not been made available, despite a previous request. Lysak intervened, asserting that a transcript was posted to the case file the previous day that pertained to the Defense counsel's question—namely whether or not the Witness, in his interview, stated that a telegram summoning him to a study session in Phnom Penh was signed by Office 870. The Trial Chamber ruled that playing the audio recording was unnecessary, as the transcript was already filed.

When Karnavas took the floor to question the Witness, he used the opportunity not only to clarify that his national counterpart was referring to a different transcript request, but also to remind the Court to avoid insinuating that the Defense Team was negligent in checking for notification that the transcript had been included in the case file. He also made a request for the OCIJ investigators' notes of the Witness' interview that took place prior to the one on record. During Ang Udom's questioning, Witness Ung Ren had acknowledged that an interview prior to the one on record had indeed taken place, and notes had been taken. After this issue was raised, the Chamber adjourned the Court for 30 minutes. Upon resumption of proceedings, the Courts referred to its December 2012 decision pertaining to the OCIJ's interview standards.³¹ Karnavas acknowledged the decision, but he maintained that his team would always highlight any indication that a witness was conditioned by the OCIJ prior to a recorded interview.

F. The Summoning of TCCP-94

On the last day of the week, the Parties were given the floor to comment on whether or not the Court should summon TCCP-94, giving the first opportunity to the Civil Party Lawyers, as the requesting Party. Civil Party Lawyer Sam Sokon explained that the request was for TCCP-94 to be summoned to testify on the role of the Accused and the situation in Boeng Trabek, as well as the DK policy regarding the returnees from abroad. He clarified that the Civil Party Lawyers never made a specific request for the Civil Party to be summoned to testify on the issue of evacuation. International Civil Party Lawyer Beini Ye emphasized that

TCCP-94's testimony would be useful for this portion of the trial because she could shed light on the role of the Accused. Lysak said that the Civil Party's testimony would be useful in clarifying the role of Khieu Samphan on political education and the forced movement of the Vietnamese, as well as to establish the authority of Ieng Sary over diplomats and returnees.

Karnavas emphasized that TCCP-94 would offer little new information, and he suggested summoning other witnesses available in Cambodia, such as TCWs 243 and 292, instead of TCCP-94, who lives abroad and would require the Court to pay for her long-distance flights. Karnavas recalled that the Trial Chamber believed the Civil Party would testify on the subject of forced evacuation, so she should not be called because it had become clear that she did not have any direct knowledge on the matter. Vercken added that, while the Civil Party could shed light about what transpired at Boeng Trabek and in education sessions led by Khieu Samphan, none of these issues appeared in her Civil Party application. Ye referred to memorandum E/172 of 17 February 2012, wherein the Civil Party was listed under the heading of Boeng Trabek. Lysak also responded that the reference to Boeng Trabek was available in the summary application of the Civil Party and the argument of "We already heard one witness, so what's the use of another" was not grounded. The final response from Vercken and Karnavas underscored their view that the summaries of the Civil Party's application, in fact, contained no reference to Boeng Trabek. Following the mid-morning break, the Trial Chamber returned with the decision to defer the summoning of TCCP-94.

IV. TRIAL MANAGEMENT

The Court heard the complete testimonies of two witnesses this week. The testimony of a third, Chhaom Se, will continue in subsequent proceedings. The sessions generally proceeded smoothly, with only one extended break on Thursday, following the debate about the missing transcript (see III.E).

A. Attendance

Based on daily medical reports, Ieng Sary and Nuon Chea continued to follow the proceedings from the holding cell due to chronic backache, fatigue and dizziness throughout the week. However, on Thursday, Son Arun, national counsel for Nuon Chea, requested that his client be allowed to stay in the courtroom for the first 30 minutes of the day and then retire to the holding cell following medical recommendation. President Nil Nonn appeared confused and directed Nuon Chea be taken immediately to the holding cell; Son Arun did not clarify his request. Khieu Samphan remained active in the courtroom for every session of the week.

Civil Party Attendance: Approximately 10 Civil Parties attended the proceedings daily within the courtroom, and several others attended in the public gallery.

Parties Attendance: All Parties were properly represented during the week. However, the international counsel for Ieng Sary, Michael Karnavas, was notably absent for the first day of trial and the first session of the second. CPLCL Elizabeth Simonneau-Fort and Kong Sam Onn, the national counsel for Khieu Samphan, were not in attendance on the last day of the week. All of the absences were attributed to personal reasons. Victor Koppe began appearing this week as the international counsel for Nuon Chea, following the departures of Counsels Michiel Pestman, Jasper Pauw, and Andrew Ianuzzi at the end of last year.

Attendance by the Public:

DATE	MORNING	AFTERNOON
Tuesday 08/01/13	<ul style="list-style-type: none"> 256 students from Prey Veng Province 20 Korean law students 15 foreign observers 	<ul style="list-style-type: none"> 120-140 villagers from Takeo Province 5 foreign observers
Wednesday 09/01/13	<ul style="list-style-type: none"> 102 villagers from Kandal Province 	<ul style="list-style-type: none"> 135 students from Pour un Sourire d'Enfant, Phnom Penh
Thursday 10/01/13	<ul style="list-style-type: none"> 350 people from Kandal Province 26 students from the United States 	<ul style="list-style-type: none"> 200 students from Economics and Finance Institute 17 Korean law students
Friday 11/01/13	<ul style="list-style-type: none"> 350 students from Hun Sen Ang Krosom High School, Takeo Province 	<ul style="list-style-type: none"> 100 villagers from Takeo Province

B. Time Management

Following a judicial recess for Christmas, International New Year's Day, and Cambodia Victory Day, the Court commenced its first week of proceedings in the new year, from Tuesday to Friday. It successfully heard and completed the testimony of two witnesses, while the testimony of the third witness, Chhaom Se, will continue in subsequent proceedings. Notably, the testimony of Ung Ren took longer than that of Sa Vi, as some legal issues were raised. However, it appeared that the time management was quite satisfactory, as the Chamber was able to afford time for the Parties to discuss whether to call TCCP-94.

C. Courtroom Etiquette

The departure of the three international counsels for Nuon Chea, Andrew Ianuzzi, Jasper Pauw, and Michiel Pestman, brought an end to the typical legal confrontation with the Judges. In contrast, Koppe appeared relatively tranquil in his advocacy, especially concerning the matter of alleged political interference in the affairs of the Court.

D. Time Table

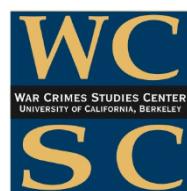
DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS IN SESSION
Tuesday 08/01/13	9:11	10:29-10:52	12:01-13:34	14:40-15:08	16:06	4 hours and 31 minutes
Wednesday 09/01/13	9:07	10:13-10:33	12:02-13:32	14:40-15:01	16:04	4 hours and 46 minutes
Thursday 10/01/13	9:05	10:30-10:52	12:05-13:33	14:47-15:26	16:10	4 hours and 36 minutes
Friday 11/01/13	9:04	10:12-10:32	12:00-13:32	14:38-15:02	16:03	4 hours and 43 minutes
Average number of hours in session		4 hours 39 minutes				
Total number of hours this week		18 hours 36 minutes				
Total number of hours, days, weeks at trial		633 hours 22 minutes				
143 TRIAL DAYS OVER 44 WEEKS						

Unless specified otherwise,

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

Glossary of Terms

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



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

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¹ Trial Chamber. Transcript of Trial Proceedings (8 January 2013). E1/156.1 [hereinafter **8 JANUARY TRANSCRIPT**]. Lines 6-9. 47.

² Sa Vi was examined in the following order: national Prosecutor Seng Bungkheang; international Prosecutor Dale Lysak; national Civil Party Lawyer Hong Kim Suon; international Civil Party Lawyer Beini Ye; national Counsel for Khieu Samphan, Kong Sam Onn; international Defense Counsel for Khieu Samphan, Arthur Vercken; national Defense Counsel for leng Sary, Ang Udom.

³ Sa Vi lived and worked in Samraong and Kong Pisei Districts, Kampong Speu Province, which, during the DK period, fell within Sector 33 in the Southwest Zone.

⁴ 8 JANUARY TRANSCRIPT. Lines 15-16. 66.

⁵ The English translation consistently translated this term as “layer,” referring to the three perimeter lines that blocked access the building at K-1. During Arthur Vercken’s questioning of Sa Vi, during the proceedings on 9 January 2013, President Nil Nonn asked the Witness to clarify his terminology, as to whether he intended to use the Khmer word – *choan* – as “layer” or “floor.” Ang Udom later sought to confirm once more that the Witness intended the Khmer word as “layer.”

⁶ The testimony of Mr. OEUN Tan took place during the week of 11 June 2012. See CASE 002 KRT TRIAL MONITOR. Issue No. 26, Hearing on Evidence Week 21 (2 July 2012). Available at http://krtrialmonitor.files.wordpress.com/2012/07/26-wk-21_11-14june2012_final.pdf.

⁷ For example, the Witness told the OCIJ that Khieu Samphan did not travel to the provinces as often as other leaders, but, during his testimony before the Court, he admitted that this conclusion was based on his own observations of the Accused’s coming and going at K-1, as well as information from his driver, Soeun.

⁸ Among the names the Witness mentioned were Yorn and Sem, the former chief of K-1, whose records Prosecutor Dale Lysak noted in S-21 Prisoners’ Lists on the case file. In document E3/1564, Ney Muong, *alias* Yorn, is listed, and, in document E3/342, OCP’s Revised S-21 Prisoner List, Kep Sar *alias* Sem was identified as the chief of Office K-1 at No. 3391.

⁹ Ung Ren was examined in the following order: national Prosecutor Song Chorvoi; international Prosecutor Dale Lysak; Judge Jean-Marc Lavergne; national counsel for Nuon Chea, Son Arun, international counsel for Nuon Chea, Victor Koppe; national counsel for leng Sary, Ang Udom; national counsel for Khieu Samphan, Kong Sam Onn; international counsel for Khieu Samphan, Arthur Vercken.

¹⁰ Ung Ren referred to Chong On as the person who introduced him to the revolution in 1970, and he subsequently became his superior within the special zone. In response to questioning by Prosecutor Dale Lysak, the Witness clarified his understanding of Chong On’s subsequent positions. After Son Sen came to Kampong Speu for a meeting with his brigade in 1974, Chong On “no longer had anything to do with the brigade.” Lysak also asked if Chong On was the person who later became the Minister of Industry, to which Ung Ren replied that he did not know, but that he was in charge of an area to the west of Phnom Penh.

¹¹ Trial Chamber. Transcript of Trial Proceedings (9 January 2013). E1/157.1 [hereinafter **9 JANUARY TRANSCRIPT**]. Lines 10-11. 31.

¹² Ibid. Lines 20-22. 38.

¹³ After 17 days in hospital, Ung Ren was discharged and did not return to Brigade 14. Instead, he received orders directly from the brigade commander to station to the west of Borei Keila, where he was “tasked with protecting the city” and guarding the area.

¹⁴ 9 JANUARY TRANSCRIPT. Lines 20-21. 44.

¹⁵ In response to questions from the international counsel for Khieu Samphan, the Witness clarified that he attended three meetings at the Olympic Stadium in 1975, two of which were study sessions. At such sessions, he received instruction on the duties of the army, namely to defend the country and to be vigilant with the livelihood in their division.

¹⁶ In response to questioning from Prosecutor Dale Lysak, the Witness stated that he was in charge of Regiment 82. After being shown a document signed by “Thin,” Ung Ren explained that Thin was the secretary of Regiment 83, and he also said a person named Meut was secretary of Regiment 81, both of which were part of Division 801.

¹⁷ This statement was made in response to questions from counsel for Nuon Chea, Son Arun. The Witness also explained that he had learned of this situation “from [his] commander.”

¹⁸ 9 JANUARY TRANSCRIPT. Lines 15-16. 72.

¹⁹ The Witness stated the general staff’s office was located behind the Ministry of Defense in Phnom Penh and employed three general staff members – Som, Nat, and Chham – as well as 30 general staff.

²⁰ This document has the number E3/766. Lysak cited the individual recommended for removal in the report as Number Six on an S-21 prisoner list of arrivals on 31 December 1976 (D108/26.22).

²¹ The Witness stated that the telegram was from the office at Brigade 801 in Veun Sai, and had been sent to Sou Saroeun by Office 870 (E3/84).

²² 9 JANUARY TRANSCRIPT. Lines 2-5. 79.

²³ Dale Lysak showed the Witness an S-21 prisoner list that included a person numbered 189 as Keo Saroeun *alias* Seng, and another person numbered 184, who was identified as Touch Sorn. Ung Ren confirmed that they were the two accusers Sou Saroeun told him about. The second accuser, Sorn, was the head of logistics within Regiment 82 and similarly implicated the Witness. The list has the document number D108/26.86. In response to questions from Dale Lysak about how Sou Saroeun gained this information, Ung Ren responded that he was told only that he had been implicated, “that I should try to work hard, and that I should not go freely anywhere. I stayed in [Boeung Kanseng] until the events that took place later on.”

²⁴ The Witness insisted that he was unaware of any voting for the People's Representative Assembly in 1976 at his location at Stung Treng. It was revealed during the questioning by Judge Jean-Marc Lavergne that the Witness was included in the list of the People's Representative Assembly, but the Witness maintained that he was only informed about the inclusion of his name by his Commander. He claimed no knowledge of the function of the Assembly or of his supposed role as a member. He also maintained that he was never invited to the Assembly's meetings.

²⁵ Chhaom Se was examined in the following order: national Prosecutor Chan Dararasmey; international Prosecutor Vincent de Wilde d'Estmael. Questioning of the Witness will continue in subsequent proceedings.

²⁶ Trial Chamber. Transcript of Trial Proceedings (11 January 2013). E1/159.1 [hereinafter **11 JANUARY TRANSCRIPT**]. Lines 4-6. 54.

²⁷ Ibid. Lines 22-23. 86. De Wilde refers to the witness' OCIJ interview (document E3/405) at answer 6.

²⁸ This report is dated 25 November 1976, and has document number E3/1164. The second segment of the report specifically recommended five measures: 1) anyone suspicious of being an enemy must absolutely be arrested; 2) those denounced by the enemies must be arrested for the moment; 3) those who violate discipline and for those after education who do not change their behavior should be cast aside and followed carefully; 4) any company squad cadres who are inactive, deceitful, or lazy must absolutely be removed; 5) those who are affiliated with political tendencies must be arrested one after the other, and those who are good should be left alone, while those who are against and not active should be arrested and detained. Those violating disciplines after reeducation shall be arrested.

²⁹ One matter that was brought up again this week was the issue of the leng Sary's defense team request to make audio-video recordings of leng Sary in the holding cell. The Trial Chamber issued a ruling denying the request (E254/3). The Chamber asserted that such an action consists of an outside investigation by a Party, which Internal Rule 38 prohibits. The Chamber warned that the Defense's approach to the matter thus far "verges on misconduct" pursuant to the rule, and it asserted that leng Sary does not have a specific right to such audio-video recording.

³⁰ Although Dale Lysak never clarified which parts of the Closing Order he noted, it is possible that he was referring to brief paragraphs from the sections on Character Information of each of the co-Accused. The Closing Order lists the chronology of actions taken by each individual following the fall of the DK regime in January 1979 to continue supporting the efforts of the Khmer Rouge forces. Relevant paragraphs of the Closing Order are 1581, 1590-1594, and 1602-1603.

³¹ The Trial Chamber coalesced a number of complaints from the Defense Teams on the testimony of specific witnesses and relevant OCIJ investigatory practices. While they acknowledged some OCIJ practices as "puzzling," the Trial Chamber did not find them to detract from the rights of the accused to a fair trial. It also held that the proper forum for calling such practices into question would have been either directly to the OCIJ during the investigatory phase or to the Pre-Trial Chamber, but the Trial Chamber was not equipped or expected to alter the indictment as such. Even as the Trial Chamber warned the leng Sary Defense Team not to conduct its own investigations, pursuant to Internal Rule 38, it did suggest, nonetheless, that knowledge of certain investigatory practices would impact the probative weight given to testimony in question. Trial Chamber. "Decision on Defense Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation," (7 December 2012). E251.