

Son Arun, National Co-Lawyer for Nuon Chea, continued his examination of witness Khiev En at the ECCC on Tuesday.

Clarification or Speculation: Testimony on Ministry of Propaganda Continues

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Witness Mr. Khiev En returned to the ECCC today to continue his testimony in the first part of the Case 002 trial under questioning of the Nuon Chea defense team. Again, the witness focused on the Ministry of Propaganda during the Democratic Kampuchea (DK) regime, though today his testimony threatened to be overshadowed by frequent exchanges between the Nuon Chea defense team and the Office of the Co-Prosecutors (OCP) as to whether questions put to the witness sought appropriate clarification or improper speculation. Today's hearing also featured a public hearing in which all parties offered the Trial Chamber their views on how to move forward with the trial in light of defendant Ieng Sary's potentially prolonged absence.

Ieng Sary Still Absent

Defendant Ieng Sary remained absent from the hearing due to health reasons. Before permitting the Nuon Chea defense team to resume the questioning of Mr. En, President Nil Nonn reiterated that Mr. Sary had waived his right to be present for the testimony of Mr. En, and also in respect of the testimony of reserve witness TCW428, who was slated to testify following the testimony of Mr. En.

Insights into the Ministry of Propaganda and Nuon Chea

National Co-Counsel for Nuon Chea Son Arun then took the floor, beginning his team's line of questioning for the day, which focused on having Mr. En revisit and clarify testimony in his Office of the Co-Investigating Judges (OCIJ) interview.¹ In his first question, Mr. Arun asked whether the witness knew of Nuon Chea's part in the writing of the *Revolutionary Flag* or "*Youth Flag*" magazines and whether he ever read these magazines. Mr. En responded that he read *Revolutionary Flag* magazine "two or three times," although he did not completely grasp the content or read the magazine in full. Neither could he recall, when pressed on the subject, many of its formatting details, recalling only that "there was a flag symbol on the cover" and that he thought "it was typed ... because at that time, they had typewriters."

Next, Mr. Arun turned to the witness's statements in his OCIJ interview regarding the phrases "bad elements," "new people," and "old people" and the purge of people from the east zone to be replaced with people from the southwest. Based on what criteria, inquired Mr. Arun, did the witness believe that the southwest people were considered good revolutionaries? Mr. En responded that others told him that "the [east] zone secretary had a problem and for that reason, the people from the east were removed." When Ms. Yun Yat assumed power at the Ministry of Propaganda, he continued, he "only saw those people from the southwest zone. ... They said that the people from the east zone had problems and were replaced by the southwest people." On whether the southwest people were good revolutionaries, the witness stated, "The words 'good' or 'bad' were not my own words," adding emphatically, "I heard these words from other people. ... I could not know why people were removed or what decisions were made by the upper echelon."

Mr. Arun pressed the witness for details of how long he had worked under Mr. Chea. The witness responded, "When Yun Yat stopped and Nuon Chea took over, it was in late 1978 and until we fled in 1979. ... It could be from mid-1978, because he [Nuon Chea] took over for a short period of time only." At this point, Mr. Arun noted the witness's previous testimony that he heard that Mr. Chea was the head of the National Assembly and Minister of Propaganda and Information. Did the witness not wonder, Mr. Arun queried, why, if Mr. Chea was a member of the Standing Committee and/or the head of the National Assembly, would he also become the Minister in charge of that Ministry, when that Ministry was a subordinate unit?

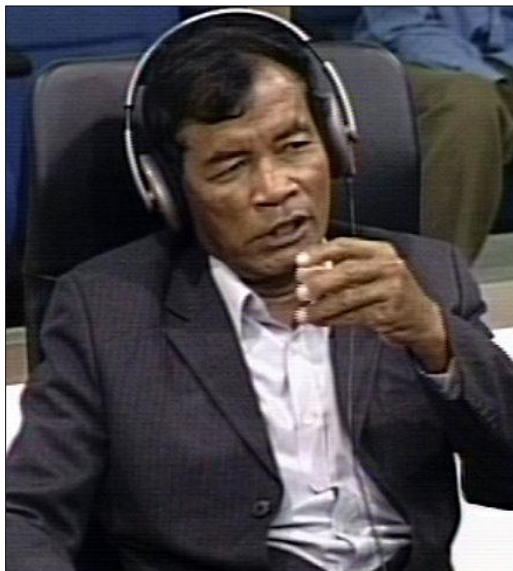
International Assistant Co-Prosecutor Dale Lysak immediately objected to this question, stating, as he would many other times in the day's hearing, that this question seemed to call for the witness's speculation on a matter beyond the witness's knowledge. After a brief exchange and a request from the president for Mr. Arun to rephrase the question, Mr. Arun instead chose to skip ahead to his next question, which concerned the frequency of the witness's contact with Mr. Chea and how well the witness knew him. Mr. En replied that he knew Mr. Chea "but was not close to him. ... I brought documents to Nuon Chea, but I did not have frequent contact with him. I did not know his business. I did not work close with him."

This response invited a further question from Mr. Arun on Nuon Chea's personality, including whether Mr. Chea might be considered "cruel," "barbaric," "rough," or a "good person that

¹ The written record for this interview has the Document Number E3/438 and begins with the ERN 00373430 (in Khmer), 00375871 (in English), and 00426438 (in French).

should be respected and with the spirit of leadership.” The witness glanced up, seemingly considering the question. He then responded that he was not in a position to judge Mr. Chea and lacked sufficient knowledge to do so. However, he did note that Mr. Chea was “a firm person. When it came to the food rations, he paid attention to that. Also, he prohibited people from smoking. ... He advised people to get up early and exercise. Sometimes he walked around and advised people on engaging in exercise in order to keep in good health.”

At this point, International Co-Counsel for Nuon Chea Jasper Pauw took over questioning. For his first topic, Mr. Pauw focused on understanding why the OCIJ came to talk to Mr. En. Mr. En stated that he gave his testimony voluntarily and without an intention to “bias this side or that side.” Indeed, the witness noted, he had actually requested “not to testify before this Court,” and implored the investigators to “try to unite all the Khmer people.” Mr. Pauw noted the witness’s efforts not to speculate thus far and urged him to continue such efforts. Reiterating his inquiry, though, Mr. Pauw proceeded to ask the witness in various ways for insight into why the investigators came to talk to him. Mr. En eventually responded, “I do not want to reject answering this question, but ... nobody knocked on my door and neither did they force me to



answer their questions. The atmosphere of the interview was acceptable by me and the investigators. I received the investigators and voluntarily agreed to provide the interview.”

Mr. Pauw continued to press the witness further on the reasons that the OCIJ came to see the witness. This prompted a second objection from Mr. Lysak that the question was repetitive and not clearly relevant, and he suggested that Mr. Pauw should move on. Mr. Pauw disagreed, stating that the question’s relevance was that perhaps the OCIJ had informed the witness of such reasons at the interview and that this was not yet known since the witness had not yet answered. However, the president sustained the objection and instructed the witness not to respond.

Moving on, Mr. Pauw turned to the OCIJ interview location, which the witness confirmed was a coffee plantation in Pailin province. Mr. Pauw inquired, “How did they ask you to conduct the interview in that location?” The witness replied, “They came to my house. They had communicated with me earlier and they wanted an answer from me.” He stated further that the investigators advised of their desire for information “relevant to what I had experienced during the three-year period when I resided in Phnom Penh, what life was like in Phnom Penh when I was in the city.” Mr. Pauw concluded his questioning on this matter, although he clarified that he was not suggesting anything bad happened during the interview but was simply trying to get a picture of it.

Comparing Testimonies of Two Witnesses

At this point, Mr. Pauw raised a new subject, namely the previous testimony before the ECCC of a witness known as Mr. Kim Vun *alias* Chhoam. Mr. En acknowledged that he knew Mr. Vun,

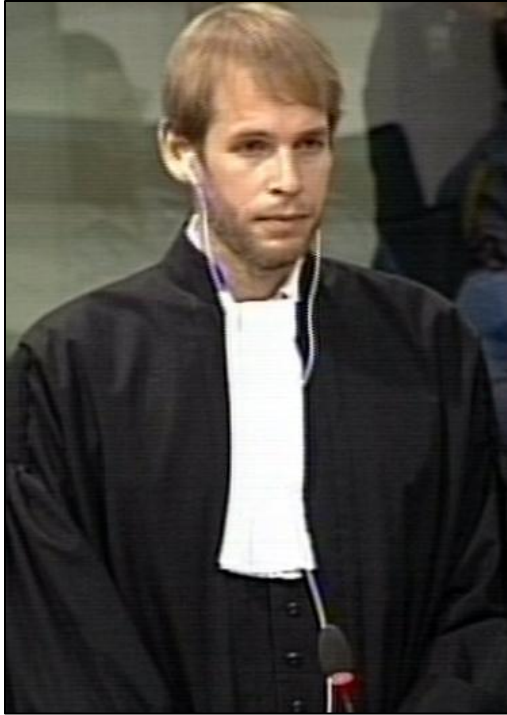
both because they both resided in Pailin province and because, during the DK regime, “I knew Chhoam when he was working with Office K33. He was in that office before I joined the office.” Mr. Pauw then asked when the witness had last spoken to Mr. Kim Vun. The witness stated, “It appears to me that this question is not relevant, but ... when we were in Pailin province, we met each other frequently, but not anymore now. If you ask me about my communications with him recently, I have never met him.” Mr. En denied that he had met Mr. Vun after the latter’s appearance at the ECCC, although he conceded that he did know that Chhoam had been summoned already although he could not recollect how he came by this information. “I never contacted Chhoam,” the witness reiterated, “and did not bother to find out what had happened to him.”

President Nonn advised Mr. Pauw to move on and, moreover, to “be mindful of the relevance of your question. If your intention is to nullify the record of the interview of the investigators, this matter has already been dealt with by the Closing Order. We do not want to interrupt you, but we have to be sure that the question is relevant to ascertaining the truth ... [and to] the section of trial which we are conducting.” Undeterred, Mr. Pauw sought permission to continue with this line of questioning, advising that he was questioning the witness about contact he may have had with a witness who was heard at the ECCC a little over a month ago, testified on the same topic, lived in the same town, and previously worked with Mr. En during the DK. This, Mr. Pauw indicated, was a means of establishing Mr. En’s credibility as a witness.

The president responded that unless Mr. Pauw sought nullification of Mr. En’s OCIJ interview, he did not see the relevance of Mr. Pauw’s questions. Mr. Pauw began to deny having any intention to nullify that interview when the president interrupted, “If you ask questions about the procedures, I know your intention. What we expect from the testimony of this witness is testimony about substantive matters, questions relating to ascertaining the truth.” Mr. Pauw stated if it was the president’s intention not to permit him to proceed with his question, then he sought to have a ruling of the entire Trial Chamber, and particularly the international judges, on this matter, as he was not trying to nullify any part of the proceedings.

At this point, Mr. Lysak interjected. He argued that Mr. Pauw had asked several questions already, and Mr. En had said multiple times that he had no contact with Mr. Vun. Mr. Pauw had exhausted this line questioning, Mr. Lysak asserted, and the suggestion that he was cut off was not correct. Rather, Mr. Pauw had “no basis to continue to harass this witness” when Mr. En had already repeated several times that he had no contact with Mr. Vun.

Mr. Pauw retorted that he had been cut off, would like to proceed, and did not see the need to use words like “harass.” He added that if he could not ask the witness if he had had contact with Mr. Vun both recently and in the past, “what is the point of conducting a cross-examination?” The president and Judge Silvia Cartwright then conferred, before Judge Cartwright responded, “Although the Chamber deplores a direct request to poll the judges, in order to be very clear to counsel to Nuon Chea, the entire Trial Chamber agrees with the president’s ruling, has deliberated on it amongst ourselves, and can see no relevance to continuing with this line of questioning.” She then requested that the counsel “move on to topics that are substantive.”



Mr. Pauw duly moved on to ask the witness about Mr. Vun's role at the Ministry of Propaganda. The witness shifted in his seat, before responding, "I only knew him by the name of Chhoam. In K33, he was working with me, but separately from me. I knew that he wrote articles, but I did not know the content of the articles that he wrote. But surely he was at Office K33 during the DK regime." Asked if they talked after the DK period about their time together at the Ministry, the witness denied this, stating, "I focused only on the living conditions of my family, and he himself likewise focused on his family. ... We did not discuss or talk about the past. Let bygones be bygones." Mr. Pauw then sought further details on the meetings between Mr. En and Mr. Vun. Once again, this line of inquiry prompted an objection from Mr. Lysak on the grounds of relevance, as, he argued, there was no reason for such questions.

Mr. Pauw disagreed. For 30 years, he insisted, the two witnesses had met frequently, and worked in the same office during the DK period. He was simply "dubious" that they had never discussed the events of the 1975 to 1979 period, and he contended that this went to the probative value of Mr. En's testimony. Nevertheless, the president sustained the objection and reminded Mr. Pauw to focus on the "substantive nature of the charges against the accused." Moreover, the president continued, insistent questioning along this line was against the prior ruling of the Chamber and the judges of the bench. Mr. Pauw noted the ruling and slowly agreed to move on, on the understanding that he was "not allowed to pursue this issue further." The president retorted that the counsel would indeed not be allowed to continue this line of question and need not repeat the ruling again.

Planes, Printouts, and Nosy Business

Mr. Pauw next asked whether the witness had ever seen American planes over Cambodia in 1973 or before. The witness stated that he had not, "but I knew that the planes were made in America and flew above the Cambodian territory. As I said earlier, my village was burnt down" due to the American bombings. "In my village," Mr. En went on, "500 to 600 houses were destroyed, and there were only about 100 houses remaining. My village was ... a concentrated village where houses were close to one another, so when one house was burned, other houses nearby would also be burned." Responding to a follow-up question from Mr. Pauw as to whether any villagers died in the bombardment, the witness responded that although he was uncertain, "during the night, ... revolutionary forces forced people to move out, so the impact of the bombardment or the fight was not that great when it comes to deaths. ... I cannot put a figure to the number of deaths. Materially, a lot of houses were destroyed. Only at the furthest end of the village did houses remain."

The next topic discussed was the witness's work at the Ministry of Propaganda and particularly the printouts that Mr. En's section produced. Mr. Pauw began by seeking clarification as to why

the witness had suggested that he did not know the contents of the printouts. “The news or information that we intercepted was not in Khmer,” Mr. En replied, “It was either in French or English, and I could not read English. I only knew the Khmer language, so I could not understand the content of the news. I worked on those documents although I could not understand the content.” Mr. Pauw noted that the witness had testified that he also occasionally given documents to Nuon Chea. “Were those documents,” he asked, “the same printouts in French and English that you just mentioned?” The witness affirmed this.

Mr. Pauw noted the Mr. En’s repeated statements in the previous day’s testimony that the witness focused on his own work and minded his own business. Prompted by Mr. Pauw, the witness confirmed that it was correct to say that he focused on his own work and “minded his own business,” adding that “at that time, we did only what [we] were assigned to do, and it would be bad if we put our noses into other people’s work.” At this point, Mr. Pauw asked whether the witness had ever put his nose into the work of the leaders of the Ministry of Propaganda. The witness stated that he “never paid attention to other people’s work ... and let other people mind their own business. ... It would be troublesome if I wanted to get into other people’s work.”



From right to left, Ieng Thirith, Yun Yat, Pol Pot, Ieng Sary, Vorn Vet, Nuon Chea, and others wait at the Pochentong Airport during the Democratic Kampuchea period. (Source: Documentation Center of Cambodia)

The counsel persisted, however, asking the witness about his knowledge of Mr. Nim and Ms. Yat’s daily activities. Mr. En denied possessing any such knowledge, as he did not pay attention to these matters. As for the witness’s testimony that he also did not know the nature of Mr. Chea’s work, Mr. Pauw asked whether this was also because the witness “did not want to stick [his] nose in other people’s business,” or otherwise. The witness smiled and responded:

Let’s say I am a piece of machine and that I could function when somebody switched me on. I only concentrated on my work. I did not have a subset of mind

thinking about other people's work. When people from my section were removed, only I remained, so I had to do all their work as well, so my full concentration was on my work.

Leaning forward and gesticulating, Mr. En emphasized, "I did not have time, except when I concluded my work and I left, then I heard other people talking about that. But I personally did not want to know or understand about the work of other people." Mr. Pauw asked whether the witness was referring to when he left the Ministry of Propaganda after 1979. The witness seemed confused, prompting the president to request Mr. Pauw to rephrase the question and, in turn, prompting Mr. Pauw to leave the question.

Moving on, Mr. Pauw sought the witness's clarification on his testimony from Monday that he did not know whether Mr. Chea was in charge of the Ministry at all. Asked why not, the witness responded, seemingly hesitantly, that his uncertainty was due to the fact that "no meeting was held that I attended discussing Nuon Chea taking over and replacing Yun Yat. But ... after Yun Yat was removed, he [Nuon Chea] came. ... Sometimes I saw him, sometimes I did not." Mr. Pauw then asked the witness to provide more details about whether Mr. Chea had an irregular pattern of work. The witness responded by offering his views on "[t]he personality traits of the leader," referring not only to Mr. Chea. "They normally only monitored the workplace," he said. "They would see people working. [Mr. Chea] would simply pop up once in a while. That was the general task performed by the leaders." Mr. Chea would encourage exercise, the witness recalled, and visit the kitchen to see if people had food, although Mr. En could not comment on the length of his visits. At this point, the president adjourned the hearing for the morning recess.

The number of visitors in the public gallery had swelled for the second morning session, with two large groups of villagers watching the hearing. Mr. Pauw resumed his questioning before this enlarged audience, asking whether it was correct that the witness "concluded" that Mr. Chea was in charge at the Ministry. Mr. En agreed, stated that this was "based on his actual work there. I observed it. ... I saw him coming to work there and he was above the staff there, so he was in charge. ... I did not know about the arrangements at the upper level."

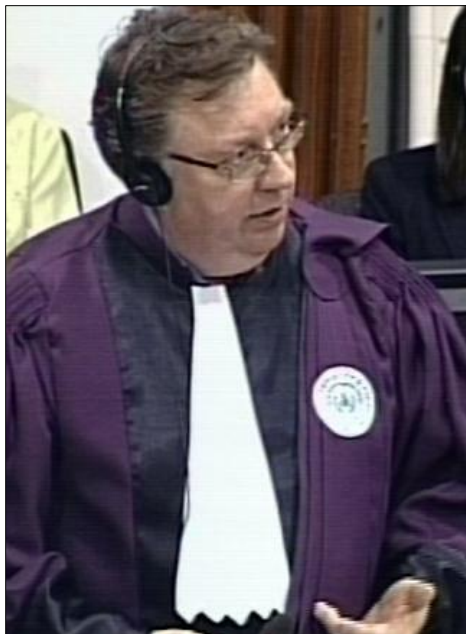
Mr. Pauw next noted the witness's uncertainty, in his OCIJ interview and testimony yesterday, over whether he had ever attended a meeting led by Mr. Chea. The witness reiterated that he "never attended any major meetings, but as for smaller meetings, I attended a few. ... I only focused on what I was assigned." To clarify, Mr. Pauw rejoined, did the witness remember whether Mr. Chea chaired any of the smaller meetings? Mr. En responded that he "attended daily meetings chaired by the head of the department ... and for those big meetings, I did not attend."

Asked by Mr. Pauw when he heard on the radio that Mr. Chea was a member of the Standing Committee, to which he had testified previously, Mr. En that initially replied that he could not say, recalling only that "it was an open announcement on the radio." When pressed by Mr. Pauw, though, the witness suddenly exclaimed, excitedly, that he now recalled that he saw Mr. Chea at the Ministry and then heard the radio broadcast. However, he qualified, he "never tried to analyze what the Standing Committee was," or what it meant that Mr. Chea was the "second person after Pol Pot." Mr. En added that he could not recall who had advised him of the latter

point, but that when he was sitting and chatting with people after his work, he heard people talk about that.

Contentious Attempts to Revisit Kim Vun’s Testimony

At this point, Mr. Pauw moved back to the issue of the testimony of Kim Vun *alias* Chhoam, who had testified, among other things, that there were two separate Ministries: one for Propaganda and Information and one for Education. He referred to Mr. Vun’s testimony that Yun Yat stayed in charge of both ministries until the Vietnamese came in January 1979 and that Mr. Chea only came to the Ministry when Ms. Yat was absent. Mr. Vun had also testified, according to Mr. Pauw, that Mr. Chea would mainly focus on the education program on agriculture; that he did not occupy the role on a permanent basis; and that there was no other minister than Ms. Yat assigned to the Ministry of Propaganda. Mr. Pauw sought the witness’s knowledge on whether Mr. Vun’s answer on Mr. Chea’s focus on the education program on agriculture was accurate.



This inquiry provoked an immediate objection from Mr. Lysak, stating that if Mr. Pauw was going to ask the witness about specific testimony of Mr. Vun, he should quote it, and moreover, the prosecutor disputed Mr. Pauw’s recollection of Mr. Vun’s testimony, suggesting that Mr. Vun had only discussed what he observed when he saw Mr. Chea. As such, he argued, counsel was “mischaracterizing evidence.” The Trial Chamber requested Mr. Pauw to provide such document numbers and quotes, which he duly did.²

Mr. Pauw then asked the witness whether this focus on the education program at the Ministry of Agriculture was true. Mr. Lysak objected once more that while he had no problem with the rephrasing of the question, the statement of Mr. Vun articulated that Mr. Vun had no other knowledge of Mr. Chea’s role and that Mr. Pauw continued to “mischaracterize” the testimony of Mr. Vun.

² Mr. Pauw read out the testimony of Mr. Kim Vun, in document numbered E1/113.1, with ERN 00841885 (in English), 00838789 (in Khmer), being the transcript of trial day 101, dated Aug 23, 2012. In this document, Mr. Vun stated that while he could not recall precisely when Yun Yat arrived, “she could have been in control of these ministries around 1977 and 1978” and may have stayed in charge until the Vietnamese arrived in January 1979. On the page with ERN 00841881 (in English) and 00838786 (in Khmer), Mr. Pauw continued, the witness stated, “When Ms. Yun Yat was absent, Mr. Nuon Chea was attached to the propaganda section on education programs. He was there to produce propaganda on agriculture.” On the page with ERN 00841888 (in English) and 00838922 (in Khmer), and again at document E1/112.1, with ERN 00841179 (in English) and 00839886 (in Khmer), Mr. Vun advised that only when Ms. Yat was absent would Mr. Chea come to replace her and would be in charge regarding the agriculture programs. On the page with ERN 00841211 (in English) and 00839911 (in Khmer), Mr. Vun responded to a question from Judge Lavergne on Mr. Chea’s role at the Ministry of Propaganda that “Mr. Nuon Chea had a role in the education program. The education program was on agriculture. He brought a thick book from the Chinese which he read from page by page.” Finally, on the page 00841212 (in English) and 00839911/12 (in Khmer), when Judge Lavergne asked Mr. Vun if Mr. Chea replaced Ms. Yat or simply came to assist her, Mr. Vun replied, “His fundamental program was the new education program on agriculture,” and the witness had no other knowledge in this regard.

Mr. Pauw, disagreeing, re-read a quotation of Mr. Vun's testimony that stated, "When Ms. Yun Yat was absent, Mr. Nuon Chea was attached to the propaganda section on the education program. He was there to disseminate information concerning agriculture. The information he quoted from a thick book from the Chinese, and also he instructed people from the education section of the propaganda section." Asked whether this statement was accurate, Mr. En shifted in his chair and then replied:

This person, and I only knew his alias back then, provided that testimony. I cannot of course judge his testimony. ... We did work separately. So for him, he knew about what happened at his section, and for my section, I only knew about the work of my section. At my section, the upper level did not come to my section often, but I believe that ... the upper level came often to work with his section.

President Nonn interjected at this point, seeking Mr. Pauw's advice on how much time he would need to complete his examination and whether he had consulted with other teams on the time allocation, in view of the fact that the time allocation for all defense teams was a total of one day. Mr. Pauw confirmed that he had consulted with the other teams and that he understood that the other teams would each have only a few questions.

Mr. Pauw then proceeded, advising that he was focusing only on the role of Mr. Chea and asking if the witness knew what his substantive role was at the Ministry of Propaganda. The witness pondered and responded, "I did not know the task of Mr. Nuon Chea, I could only describe when I met with him. ... I did know what Mr. Nuon Chea was responsible for."

Next, Mr. Pauw asked the witness to explain why the upper level would frequently visit the section of Kim Vun. Mr. En responded that Mr. Vun's section "was actually the drafting section; they prepared written scripts for radio broadcasts and would send information to us as well. I did not know the details of their work." Mr. Pauw then asked, again in reference to a statement by Mr. Vun, if it was possible that Ms. Yat stayed in charge of both the Ministry of Propaganda and the Ministry of Education until January 1979 and that she simply had to divide her time between the two ministries and was therefore not often at the former ministry.

Mr. Lysak again objected that counsel was now asking the witness to speculate based on the testimony of another witness, which, he asserted, the witness should not be asked to do. Mr. Pauw responded by rephrasing the question, asking about whether the two ministries that Ms. Yat controlled at a certain point were at different locations in Phnom Penh. The witness confirmed this. Mr. Pauw then sought Mr. En's clarification on the names he used for the Ministry due to varied usage. "I am not 100 percent sure," Mr. En responded, "but ... Ministry of Propaganda and Information ... and the Ministry of Education. ... Later on," he continued, "it was merged into one ministry called Ministry of Propaganda and Education. When further queried by Mr. Pauw on this point, he did not know whether these two ministries were subsequently split or what their names were at that time.

As to what Ms. Yat did when she left the Ministry of Propaganda, the witness stated, "When she left that ministry, I did not even know anything about her departure. ... When there was a decision to remove her from that ministry, I did not know the internal arrangement at the upper

level.” Neither, said the witness in response to a follow-up question, did he know where she went to work. “What I knew was that she no longer worked at the Ministry of Propaganda and Information. I did not know her part after that. What I knew was that she no longer directly supervised the Ministry. ... I did not know her exact portfolio.” Mr. Pauw again pressed the witness on the geographic location of the two ministries, to which Mr. En responded, “The Ministry which also housed Office K33 was located south of Lycée Descartes in a building close to a public park east of a stupa. ... As for the Ministry under the management of Yun Yat, it was located somewhere close to Borei Keila.” Mr. Pauw sought further clarification about whether the Ministry of Propaganda was close to Lycée Descartes or Borei Keila. The witness responded that the Ministry of Propaganda was “adjacent to Lycée Descartes, south of Lycée Descartes,” while the Ministry of Education was “somewhere near Borei Keila.”

Mr. Pauw then referred to Mr. Kim Vun’s testimony that Mr. Chea seemed to come and replace Ms. Yat whenever she was absent and that this happened intermittently. Asked by the counsel whether he witnessed “the same phenomenon,” Mr. En responded that as for him, “What Mr. Kim Vun saw was in relation to his work. As for me, my work had nothing to do with his work. I did not know the communication between him and Mr. Nuon Chea and whether Mr. Nuon Chea came to his place or not. ... I think that Mr. Kim Vun must have known more than I did, because Mr. Nuon Chea may have visited him more often.”

Locations, Offices, Doors and Windows

At this point, Mr. Pauw sought further details of the exact location in which the witness worked. Mr. En responded, “As a matter of fact, my workplace was located in one building block. There was one big building, but my office was in a separate, small building where we had equipment to get our job done. It was in a separate building.” Regarding Kim Vun’s location, Mr. En explained, “He worked in a main building where there were many staff members working. ... The buildings were adjacent to one another and within one premise.” Asked for an estimate on how far they were apart from one another, the witness first posited that the building in which he worked was previously a vacant warehouse, and then, following further direction from Mr. Pauw, he explained, “It was in one building complex ... separated into separate offices. ... There were roads in front of and at the back of the office as well.”

Moving on, Mr. Pauw returned to the witness’s statement yesterday that he did not leave his workplace. “When I was working in Office K33,” Mr. En clarified, “I could walk freely in the building complex, but I did not interfere in other people’s affairs. We had a separate dining hall and place to sleep. We could walk in the main building complex, but we did not bother with other people’s business. ... That was it.”

Mr. Pauw then turned to the witness’s statement on Monday that Mr. Chea had worked within a “certain space” rather than an office at the Ministry and asked whether this “space” was in the main building. The witness affirmed this location and said, “He worked in the office inside the main building but never had I entered his office. ... There were people working outside his room, and whenever I went inside the main building, I simply handed in the printed document and there were people who continued to ... relay the message to him.” Mr. Pauw suggested that there seemed to be a contradiction between this testimony and that of Monday. The witness clarified, “It appeared that there was no separate office dedicated for him. There was a table in the main

hall working with other colleagues in the office as well.” When delivering documents, the witness would pass them to his associates, he explained. Further, while Mr. Chea “would walk freely in the office,” he said, “I simply met with his colleagues ... and then I would return back to my office.” Mr. Pauw asked a further question, qualifying that it was not because he doubted the witness’s description, but that the witness’s testimony suggested that Mr. Chea’s work was behind “a certain door.” To this query, Mr. En stated that Kim Vun had more frequent contact with Nuon Chea. “As far as my role was concerned,” he reiterated, “my visit to his office was very brief generally, and when I went there, I only briefly saw him sitting at a table.”

Before the court adjourned for lunch, Mr. Pauw noted that, as during Monday’s hearing, Mr. Chea complained of a headache, back pain, and lack of concentration and sought to follow the remainder of the day’s proceedings remotely; he also noted that they had prepared a waiver. The president granted this request and adjourned the hearing.

Following the lunch break, Mr. Pauw resumed his line of questioning, inquiring of the witness whether the room where he worked had windows. Mr. En provided a lengthy description in response, including mention of “a window facing the road,” which specifically faced the north, towards the building “known as Lycée Descartes.” The witness then confirmed that a large building that was part of the Ministry was toward the front of his office to the south. When Hu Nim was in charge of the Ministry, Mr. En continued, “I saw him even less than the later leaders. ... I didn’t know where Hu Nim’s office was.” Specifically as to the entering of the main building, Mr. En clarified, “The entry to the building was at the back of the building. I saw Hu Nim when he left his office and had lunch, because sometimes when I went to lunch, I saw him there as well.” After some further discussion and apparent confusion, the witness agreed that he could not see the main building from his office. Mr. Pauw then queried whether staff members could enter the main building without the witness seeing them, to which the witness agreed. “Sometimes I saw him” incidentally, he said, in reference to Hu Nim.

Mr. Pauw turned to ask Mr. En whether Ms. Yat did come to the Ministry of Foreign Affairs at the time when Mr. Chea was in charge. Mr. Lysak rose at this point, objecting firstly that Mr. Pauw had misspoken in referencing the Ministry of Foreign Affairs, and secondly, and more importantly, he was asking the witness to speculate. Conceding the former but challenging the latter, Mr. Pauw contended that he had instead been asking the witness to speak based on his knowledge at that time. Nevertheless, he rephrased his question, asking whether Ms. Yat ever came to the Ministry of Propaganda at the time when Nuon Chea was in charge. Mr. En responded slowly, stating, “At the beginning ... sometimes Yun Yat came, but later on, it became less and less frequent, and for that reason, I stated earlier that I did not know what happened at the upper level, only what happened on the ground.” He further noted that at one point, Ms. Yat’s visits stopped completely.

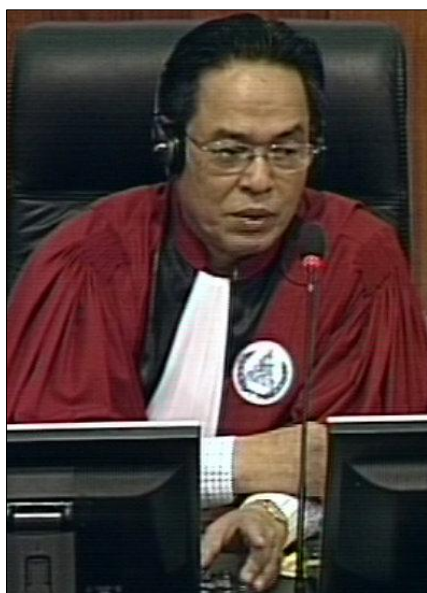
Continuing, Mr. Pauw questioned whether it would have been possible for Ms. Yat to be in the main building without the witness seeing her. Mr. En responded, “The upper level could have frequently contacted my direct supervisors, and I might only have received specific instructions from my direct supervisors. ... Sometimes when I went to work, I just happened to see her. I did not know when she left,” although, he added, he might see her when they left at the same time. Mr. Pauw asked whether “the upper level” could have been Ms. Yat. This question prompted a

further objection from Mr. Lysak that the defense counsel was again asking the witness to speculate.

In response to this objection, Mr. Pauw moved on, returning to his earlier question regarding whether the witness could exclude the possibility that Ms. Yat was still coming to the Ministry of Propaganda and that he simply did not see her. The witness considered this question for several seconds and then replied, “Regarding the work of the leadership, I did not know, because it was all in the hierarchical structure.” Gesturing animatedly, the witness continued, “I could not know whether my direct supervisor would receive instruction from this person or that person.”

Mr. Pauw asked the witness if he had any reason not to believe Mr. Vun when he stated that Ms. Yat stayed in charge until January 1979, qualifying that this question was not about speculation or guesswork, but the witness’s knowledge. Mr. Lysak immediately interjected, however, asserting that it was precisely asking for speculation and comment. This query was dangerous, he suggested, as Mr. En had not been present for the testimony of Mr. Vun and as Mr. Vun had testified that when Mr. Chea arrived at the Ministry, Mr. Vun was transferred to another office. Mr. Pauw disagreed, arguing that this witness worked with Mr. Vun, would be able to provide an answer, and may know of some such reason.

The president sustained the prosecutor’s objection and instructed the witness that he need not respond to this question. President Nonn then requested Mr. Pauw once again indicate how much time he would need for his final questions, further noting that the other defense teams would not



receive extra time if Mr. Pauw did not indicate his timing now. Mr. Pauw stated that he would take less than half an hour. Both Anta Guissé, International Co-Counsel for Khieu Samphan, and Ang Udom, National Co-Counsel for Ieng Sary, clarified that they did not have any questions to put to the witness.

Permitted to proceed with his line of questioning, Mr. Pauw returned to the issue of the two different locations where the witness and Mr. Vun worked. On this issue, Mr. Pauw queried who, between the witness and Mr. Vun, would be better able to witness the comings and goings of senior leaders Mr. Lysak objected again at this point, suggesting that counsel was again asking the witness to speculate on the knowledge of Mr. Vun and ignoring the testimony of Mr. Vun that when Mr. Chea came to the Ministry, Mr. Vun was transferred to a different location. Mr. Pauw disputed this claim, stating that he was asking Mr. En simply to answer as

to the physical location of the buildings based on his understanding. The president directed the witness to respond to this question, if he could. As to people coming in to the main building, Mr. En responded, “I did not see it as often as those who were working in the main building.” Furthermore, the main entrance to the main building was blocked by security guards, he explained, concluding that Mr. Vun would have been in a better position to see visitors to that building.

Mr. En then verified, in response to questions from Mr. Pauw, that when Ms. Yat was in charge of the Ministry, she came on a daily basis, and that at a certain point, Ms. Yat came less often and Mr. Chea came instead. In response, Mr. Pauw queried whether there was any way for Mr. En to know whether Ms. Yat stayed in the Ministry structure when she started coming less often. “I did not know who was responsible for what position or what Ministry,” Mr. En reiterated, explaining that “the reason I knew that Yun Yat was responsible for the Ministry of Propaganda back then was because of the word of my colleagues, but ... I did not see ... a written appointment.” Mr. Pauw noted that Mr. Vun, on the other hand, stated that Ms. Yat stayed at the Ministry of Propaganda until January 1979. Mr. Lysak objected again, asserting that counsel was asking the witness to comment on the testimony of another person and that the witness had answered this repetitive question many times. Mr. Pauw disagreed, characterizing his question as a simple follow up to the witness’s statement that he did not know about the leadership structure at the Ministry. After conferring with Judge Silvia Cartwright, the president instructed Mr. Pauw to move on from this repetitive question and cautioned that he was not making good use of the Court’s time.

Mr. Pauw duly moved on to ask the witness whether he knew what Ms. Yat did after January 1979. This query provoked the president to interrupt the witness’s response to advise that Mr. En did not need to answer this question, as it was beyond the scope of the facts before the Chamber. Mr. Pauw entreated that the Chamber reconsider, asking that if Ms. Yat stayed within the business of education, broadcast, and radio, as evidence would suggest, that was relevant. Nonetheless, the president maintained that the question was irrelevant and directed Mr. En not to respond to it. At this point, it was Mr. Pauw’s turn to object: “Are we not allowed to establish that Yun Yat stayed in the propaganda business after 1979?” The president confirmed that this line of inquiry was not allowed. He added, sternly, that it was for the Chamber to decide whether any part of the question did not relate to facts in the Closing Order in order to provide for the expediency of the trial.

In response, Mr. Pauw declared that while he had more questions, he could not pose them, and noted for the record that “if a contentious issue is whether or not Yun Yat stayed in charge of the Ministry of Propaganda, it would clearly be relevant to establish whether she stayed in that line of business in the years after. I’m not allowed to go there, so I will conclude ... also noting for the record that we were not allowed to explore the full extent of your [Mr. En’s] context with a very relevant witness, Mr. Kim Vun.”

President Nonn thanked the witness for his time and excused him. He then instructed the reserve witness, WTC 428, to return home and return to the court tomorrow, as, during the remainder of the day’s hearing, the Chamber would hear the parties on the state of Ieng Sary’s health, considering his ongoing hospitalization in the Khmer-Soviet Friendship Hospital. In particular, the president added, the Chamber wished to hear the parties’ views on how to go forward from here taking into account Mr. Sary’s health.

Oral Submissions on Issues Posed by Ieng Sary’s State of Health

Following the adjournment, and at the invitation of President Nonn, Judge Cartwright opened the final session of the hearing by reiterating her instructions of Monday as to its purpose. In particular, she advised that the Trial Chamber anticipated that there would be significant delays in proceeding until Mr. Sary's health situation was clarified. She noted that the Chamber had already sought the opinion of an expert by the name of Professor Campbell, having forwarded Ieng Sary's scan, medical report, and other medical information to him, and was now awaiting advice on steps that the Trial Chamber should take concerning obtaining more accurate information about the accused's diagnosis and prognosis.

Judge Cartwright explained that the Chamber was requesting discussion from counsel on how to proceed while awaiting this diagnosis and prognosis. She clarified, however, that while the Chamber was grateful to Mr. Sary for waiving his presence in respect of some witnesses, it must decide which witnesses would be heard and in what order. It was not particularly helpful, she



added, to indicate that only parts of a witness statement would be acceptable. These views would also be useful for planning in relation to the upcoming document hearing and to enable the Chamber to plan as expeditiously as possible.

International Co-Counsel for Ieng Sary Michael Karnavas rose at this point. He noted, firstly, that a subsequent list of names of some 15 witnesses over whom Mr. Sary would provide a waiver had been put to the Trial Chamber, bringing the total number of witnesses yet to be heard to about 20. He then addressed the recent incident in which his team did provide, and then revoked, a waiver in respect of a witness, explaining that his team had initially agreed to provide a waiver based on available information on a witness's expected testimony and documents, but then found that something unanticipated arose. This unexpected change put his team in a vulnerable situation, he stated, and he did not want to put his

client in jeopardy due to such a situation. However, he went on, his team would be able to work around this issue as the OCP had indicated that his team would be able to call back witnesses later if needed.

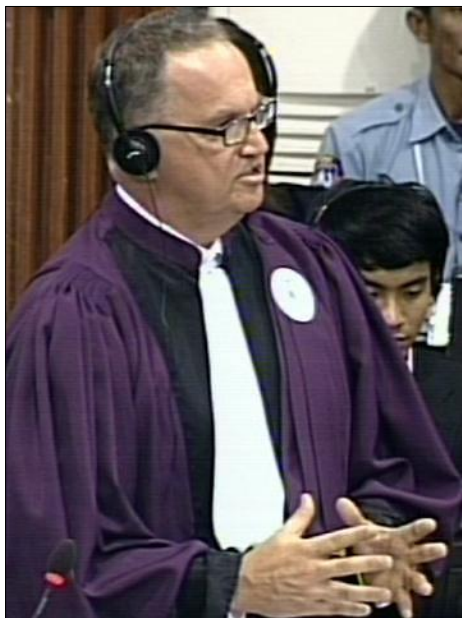
As to the document hearing, Mr. Karnavas continued, Mr. Sary had given his counsel full authorization to proceed with this hearing. Therefore, he did not anticipate any problems going forward "for the next few months." He concluded by noting that his team had made four trips to the hospital to consult with their client on specific witness names, making all efforts not to delay the proceedings.

Ms. Guissé then rose to briefly clarify that the Khieu Samphan team had indicated its endorsement of the position of Mr. Sary as it is normal that the waiver be lifted in light of new information about a particular witness. She also noted that it is important for each accused to be

present and confronted during the proceedings. “It is in this regard that we endorse the request,” she asserted, “Recalling the major principles involved – we are defense counsel and we may one day find ourselves in the same situation as our learned colleague for Mr. Sary; these principles should always be applied.” Moreover, she continued, her team maintained their objection to the tendering of documents into evidence containing such new information.

For the Nuon Chea defense, Mr. Pauw noted simply that they fully supported the position of the defense team of Mr. Sary.

At this juncture, International Deputy Co-Prosecutor William Smith rose to give comments on the part of the OCP. Noting that the issue of significant delays was an issue for all, Mr. Smith stated that their position had changed since last week, since there had now been a proposal from Mr. Sary’s defense team to listen to witnesses concerning the first and second forced movements



while the court determined the health of Mr. Sary. He noted that the proposal was for waivers on approximately 20 witnesses and that Mr. Sary had also waived his presence for three additional witnesses, one of whom was currently unavailable. Mr. Smith also explained that Mr. Sary had indicated his consent to be defended by his team at next week’s document hearing on the administration and communication structure; at subsequent hearings on military structure and command and policies; and at the debate on the use of corroborative evidence without admitting witnesses. These additional waivers, he suggested, would mean that there would be enough business until Christmas.

Mr. Smith then noted a document issued by the Chamber minutes ago that appeared to call a significant number of those witnesses. He noted that there may be more witnesses put forward by the lead co-lawyers for the civil parties who could take the hearing to beyond Christmas.

As to the revocation of the witness waiver that Mr. Karnavas had just discussed, Mr. Smith explained that the situation was one that the OCP did not foresee; only on late notice did they learn that the witness might have testimony regarding Mr. Sary’s activities after 1979. However, he suggested that this was not particularly relevant and so the OCP decided not to ask questions on this matter. In a show of good faith, he noted, Mr. Sary’s team immediately reinstated the waiver. Mr. Smith regarded that this situation would be highly unlikely to occur in the future, not only because the next witnesses to be called would be “crime-based witnesses” whose testimony would not relate to the acts and conduct of the accused, but also because, if evidence relating to Mr. Sary did arise, they could either recall the witness for cross-examination once Mr. Sary had recovered or simply have the information excised from the trial transcript.

The OCP was of the view, Mr. Smith concluded, that there would not be any delay to the trial, asserting that the only change to the current plan would be that witnesses who were to be called later on in the trial regarding forced movements would have to be brought forward earlier.

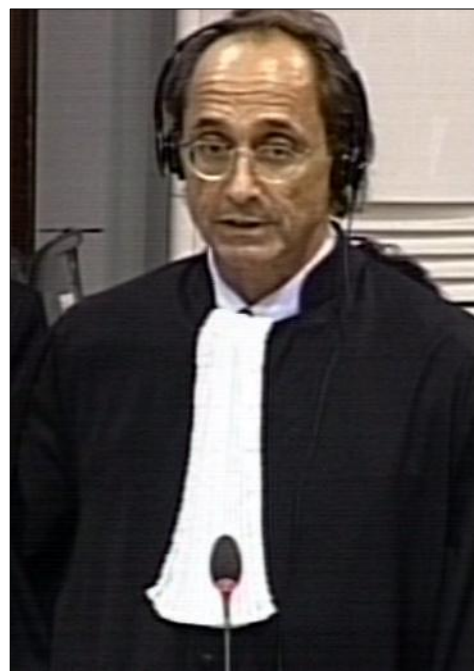
International Lead Co-Lawyer Ms. Elisabeth Simonneau Fort then presented a few comments on behalf of the civil parties. Noting that the civil parties also wished to move forward as cohesively as possible, they agreed with the proposal to hear witnesses regarding forced transfers. She noted that the civil parties would be putting forward a list of witnesses and civil parties to be heard in the near future and hoped that Mr. Sary's team would indicate its views on that list as soon as possible thereafter. In addition, she drew the Chamber's attention to the fact that this situation could only be temporary, as there might be situations that arise when witnesses or parties may need to refer to Mr. Sary. Noting that the civil parties did not receive medical reports concerning Mr. Sary, Ms. Simonneau Fort requested precise information as to what Professor Campbell would decide, since the Chamber would have to make important decisions in relation to that.

To the latter comment, Judge Cartwright responded that they had already made clear to the lead co-lawyers that the relevant medical information had been placed on the case file; that the information provided to Professor Campbell was as stated earlier, although he did not yet in fact have the scan; and that medical assessments had been provided as appropriate. In short, she maintained, the civil parties were not being deprived of information.

At this point, Judge Jean-Marc Lavergne posed a few short questions to Mr. Sary's team. First, he sought clarification on the scope of Mr. Sary's waivers, and in particular, whether they were conditional and if so, to what extent. In response, Mr. Karnavas gave some details of the process his team undertook when going through the potential witness list with Mr. Sary. He then stated that all witnesses would testify to the extent that the Trial Chamber deemed necessary. Noting only one caveat on situations in which unexpected issues arose relating to Mr. Sary, Mr. Karnavas noted that they could in any case hear this issue and then come back to it at a later date with Mr. Sary. Otherwise, all parties could testify to the full extent for which they had been summoned.

Judge Lavergne then asked whether this meant that witnesses could be examined as comprehensively as possible, and that if necessary, Mr. Sary's team could always call a witness back. Mr. Karnavas agreed with this, noting that if such a need arose, the Court could be sure, "as day follows night," that his team would mention it, adding, "I don't think that shyness is one of my qualities – in Court at least."

For his final question, Judge Lavergne sought clarification from Mr. Sary's team on their position as to the witness slated to testify on Wednesday – TCW 428. Concerning whether this witness were to be permitted to testify on every relevant issue in Case



002/1 or only on issues concerning military structure, Mr. Karnavas confirmed it to be the former.

Next Closing Order Paragraphs, on Military Structure, Read

After conferring with Judge Cartwright, President Nonn thanked the parties for their submissions. He then stated that in order to facilitate upcoming hearings and further clarify facts against the three accused in the third segment of Case 002/1, the Chamber would, pursuant to the Internal Rules, ask the Trial Chamber greffiers to read out the relevant paragraphs of the Closing Order.

Greffier Se Kolvuthy closed the hearing by commencing the lengthy reading of relevant paragraphs, during which the audience members continued to listen attentively, shifted restlessly, or appeared to be asleep. The paragraphs she read, from 113 to 132, addressed the military structure of the DK regime, covering topics including the establishment and role of the Revolutionary Army of Kampuchea (RAK), Communist Party of Kampuchea Center military organs, and the RAK's composition.³

The president then adjourned the hearings, which will continue Wednesday, October 3, 2012, with the reading of the further relevant Closing Order paragraphs, before moving to hear the testimony of Witness TCW 428.

³ The Closing Order can be found at <http://www.eccc.gov.kh/document/court/14888> (in Khmer), <http://www.eccc.gov.kh/en/documents/court/closing-order> (in English), and <http://www.eccc.gov.kh/fr/document/court/ordonnance-de-cl%C3%B4ture-dans-le-dossier-002> (in French).