

“Absolute” Suffering: Former Khmer Rouge Soldier Provides Further Details on the Evacuation of Phnom Penh

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In a day peppered with exchanges between the defense, prosecution, and bench on appropriate evidentiary procedures, the Trial Chamber in the Extraordinary Chambers in the Courts of Cambodia (ECCC) heard testimony on Monday, November 5, 2012, from former Khmer Rouge foot soldier Sum Chea on events during the evacuation of Phnom Penh.

The hearing ended on a dramatic note, with International Co-Counsel for Ieng Sary Michael Karnavas emphatically suggesting that the witness’s testimony may be tainted due to the witness’s own testimony that he had given the ECCC’s Office of the Co-Investigating Judges (OCIJ) a second interview that was neither recorded nor had a written record on the case file.

Defendant Ieng Sary Remains Absent

The public gallery was largely empty during the day’s first session, with only a small group of civil parties as well as French historian and Khmer Rouge expert Henri Locard in attendance. Trial Chamber Greffier Duch Phary advised the president that Ieng Sary remained hospitalized, but had waived his right to be present for the testimony of the upcoming witness.² Trial Chamber

¹ Cambodia Tribunal Monitor’s daily blog posts on the ECCC are written according to the personal observations of the writer and do not constitute a transcript of the proceedings. Official court transcripts for the ECCC’s hearings may be accessed at <http://www.eccc.gov.kh/en/case/topic/2>.

² This waiver has the document number E237.

President Nil Nonn added that Mr. Sary was still at the Khmer Soviet Friendship Hospital, and that his right to waive his presence was enshrined under ECCC Internal Rule 81(5).³

Witness Sum Chea Commences Testimony

Witness Sum Chea began his testimony with the support of duty counsel. The president first elicited some biographical details from the witness. Mr. Chea⁴ advised that he is 59 years old and was born in Boeng Ney village. He now lives in Veal village, Kampong Cham, where he is a rice farmer and barber. He is married, has one adopted child, and reads and writes only a little Khmer. Mr. Chea confirmed that the ECCC's Office of the Co-Investigating Judges (OCIJ) had interviewed him twice, about five years ago. Records of these interviews had been read to him, and he "fully agreed," according to his memory, that they were consistent with what he had said.

National Assistant Co-Prosecutor Song Chorvoin was given the floor, and she requested permission to hand the witness copies of the written record of his OCIJ interview and display it on screen. The president responded that it might not be helpful to give the witness a copy of the interview in light of his minimal Khmer literacy but permitted its display on screen.

Mr. Chea advised the prosecutor that he voluntarily joined the Khmer Rouge as a soldier in 1972 "because of the former prince, Norodom Sihanouk, who appealed to his children to go to the *maquis* forest." He belonged to Division 1, which was located in Boeng Nay village, Boeng Nay commune, the same location where he was born; Voeun was the head of the division, he said, and "the division was not properly organized and there were not a lot of soldiers ... yet".

Attack on Phnom Penh and the Entrapment of Lon Nol Soldiers

Next, Ms. Chorvoin reminded the witness that he had told the OCIJ investigators of being located in Basit prior to the fall of Phnom Penh.⁵ Asked to elaborate on this comment, Mr. Chea said that his unit was there for about two months, and after conquering Basit, they moved on to attack Phnom Penh. The witness could not recall how many divisions attacked Phnom Penh but confirmed that his division was involved. They attacked Phnom Penh from the south of Basit. They began their attack "at night, and we moved to the location of Khmuonh and Traloak Bek."

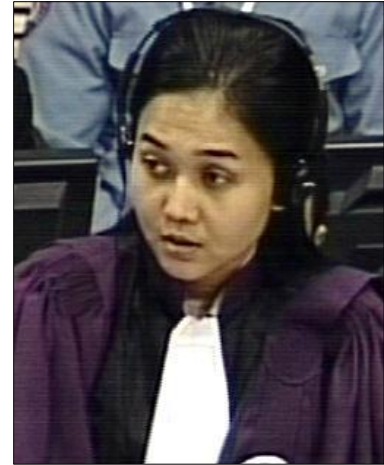
The witness had testified to the OCIJ, Ms. Chorvoin said, that when he entered Phnom Penh, he saw many weapons and people looking very confused. She asked if these people were Lon Nol soldiers or civilians. Mr. Chea responded that he initially "did not know who was who," but they were, in fact, both types of people. He added, "Immediately, upon arriving in Phnom Penh, the Khmer Rouge soldiers asked people to evacuate the city. They were told to leave the city in three days, and the division soldiers had to do their best to ensure that the city was emptied of its population."

³ Copies of the ECCC Internal Rules are available on the ECCC's website in Khmer, English and French at <http://www.eccc.gov.kh/en/document/legal/internal-rules-rev8>.

⁴ For the avoidance of any doubt, all references to "Mr. Chea" in this article refer to witness Sum Chea and not defendant Nuon Chea unless the context clearly indicates otherwise.

⁵ This record has the document number D94/9, and the relevant ERNs are 00205057 (in Khmer), 00223345 (in English), and 00705376 (in French).

Ms. Chorvoïn asked who ordered the evacuation, prompting International Co-Counsel for Nuon Chea Jasper Pauw objected to general questions about the “Khmer Rouge soldiers” and the “Khmer Rouge army,” because it was “well known” that there were different types of soldiers operating, and “operating in different ways depending on where they were.” While he did not object to the questions as such, Mr. Pauw asked that the witness be directed to testify only as to his own knowledge.



Ms. Chorvoïn responded that she had asked the question as a follow-up to the witness’s testimony. The witness then responded to Ms. Chorvoïn’s earlier question, stating:

We received the order from Mr. Hak, who was the head of the battalion. ... Mr. Hak talked in general to the whole group of soldiers. ... It was an order ... to evacuate the whole population of Phnom Penh. The population had to be moved out of Phnom Penh and could only return after seven days, so that the city could be cleaned. ... Hak was under the command of Voëun. Voëun was the commander of the division and Hak was the battalion commander.

Ms. Chorvoïn advised that, according to the witness’s written record of interview, if people resisted leaving the city, the witness “had to do whatever he could so long as they left the city.” Mr. Chea clarified that people under his supervision did not resist the order to leave, but people under other divisions did. He confirmed that people could be forced to leave at gunpoint.

The prosecutor reminded Mr. Chea that he had told the OCIJ of “beatings and mistreatment, and shootings and killings in the most serious cases” of resistance.⁶ Ms. Chorvoïn asked if these acts were committed against Lon Nol soldiers, including those who had surrendered. The witness responded that when they arrived in Phnom Penh, the situation was “really chaotic.” He continued:

We did not know who was who, who was a Lon Nol soldier and who was a civilian. ... There was another group, a group who was designated to force the people [to evacuate]. That group had to resort to whatever means to ensure that [people] left the city. ... They had to resort to harsh measures. ... As a result, within five days, all people left the city.

Providing further vivid details about general conditions at the time of the evacuation, the witness described, “People were leaving in miserable conditions. The situation was worse in the hospital. We saw people carrying their children on the streets ... People were not being treated in the hospitals, and we saw people dying on the streets.”

Mr. Chea further explained that Hak ordered the witness’s division to target Psar Thmei,⁷ Chroy Chongva,⁸ and Kilometer 9 in Phnom Penh. He did not know where the civilians were to be

⁶ The relevant ERNs are 00205057 (in Khmer), 00223346 (in English), and 00705377 (in French).

⁷ This location is known in English as Central Market.

evacuated, however, adding, “It took us around five to six days [to evacuate Phnom Penh], and then the city was empty.”

Returning to the fate of Lon Nol soldiers, Ms. Chorvoin reminded the witness of his OCIJ that “after seven or eight days, they set up loudspeakers and called for all Lon Nol soldiers to go back to their duty stations. Those who attempted to leave were arrested anyway because they were found out through their biographies.”⁹ Asked to elaborate, Mr. Chea said:

Following the evacuation of the city, in various regiments as well as divisions, they set up loudspeakers in order to propagandize, to lure former Lon Nol soldiers to submit themselves, to surrender. That was the trick that they plotted to do. They asked [Lon Nol soldiers] to come in and reveal their former status, for example, if they were captains or soldiers of any rank. In my division, we also did that. ... I was told by Koeun [to do this]. Koeun was a person who was very daring. He ordered the smashing. ... He did not tell us specifically [how to treat former Lon Nol soldiers]. He only asked us to lure those who were former Lon Nol soldiers to come in. ... One day, they would be killed. That was what he told us.

Ms. Chorvoin asked if Mr. Chea knew how research on “networks” of Lon Nol soldiers was conducted. The witness reiterated that they spread propaganda through loudspeakers in the streets.

Period Prior to the Attack on Phnom Penh

At this point, International Assistant Co-Prosecutor Dale Lysak directed the witness back to the period prior to the attack on Phnom Penh, asking if there were other locations where the witness’s division was based between 1972 and the two months at Basit. Mr. Chea replied:

I first joined the Revolutionary Army in Boeng Nay commune. ... We did not have, you know, modern weaponry with us. There were only conventional weapons at that time. We had to fight our way from 1972, and we tried to approach Phnom Penh until 1975. ... We engaged in combat in Kampong Cham, in Kvet, and Skun. It was on the way to Knal Keng, Prek Kdam. Then we arrived at Tatha Bridge. We stationed there briefly. Then we moved on to Basit.

Mr. Chea testified that he did not hold any position within his division. Mr. Lysak asked whether Mr. Chea was a member of a particular squad or platoon. The witness said that he could not recall such details, only that Hak was battalion commander and Voeun was division commander.

Mr. Lysak asked the witness if he could state when Kampong Cham provincial town was liberated by Khmer Rouge soldiers. The witness did not know precisely but said, “Along the way, from 1972, we fought and liberated Kampong Cham in 1972 or 1973 and then we continued to progress along the road, in 1973, 1974, all the way to Phnom Penh.” Mr. Chea did not know the fate of Kampong Cham provincial town after it was liberated, since, as soldiers, they were not allowed to walk freely and could not therefore know “the situation that was

⁸ This is the bridge colloquially known as the Japanese bridge.

⁹ The relevant ERNs are 00205058 (in Khmer), 00223346 (in English), and 00705378 (in French).



evolving at the time.” Mr. Lysak pressed on, asking the witness if he knew if the civilians were allowed to stay in Kampong Cham provincial town or had to move to the countryside. The witness said that he did not know, as he had to “stay at the frontline” and “prepare for combat.” He also denied participating in the battle for Uddong.

The witness did not know how many soldiers were in Division 1 when it attacked Phnom Penh, stating only that it contained many squads of 12 men. Neither did he know how many squads were in Hak’s battalion, although he did know “it was not a complete battalion. There were only a few members in certain squads ... only two members left [in some], in others, three or four.”

Mr. Lysak redirected the Mr. Chea to his testimony that that his troops entered Basit and then came to Phnom Penh through Khmuonh. Mr. Lysak asked the witness to describe the location of those two locations in relation to Phnom Penh. Mr. Chea obliged, detailing:

Basit is the “safety belt” of [Phnom Penh]. Once we conquered Basit, then we headed for Khmuonh. Khmuonh was located west of Basit. It was approximately four or five kilometers away. When we got Khmuonh, we had to progress to La Peak, and then we had to progress to Tuol Kork.

The witness confirmed that Basit is north of Phnom Penh.

A “Pitiful” State: Mistreatment of Lon Nol Soldiers and Civilians during Evacuation

Returning to the issue of the treatment of Lon Nol soldiers, Mr. Lysak asked the witness about orders to identify and detain such soldiers. Mr. Chea responded, “In my group, there was no such assignment, but it happened to other groups of soldiers who were tasked with telling the public – civilians – about who would be allowed to come and work by giving their background or rank.”

Mr. Lysak clarified that he was referring to the period when the witness entered Phnom Penh, asking if there were situations in which Lon Nol soldiers were captured during combat and if so, what happened to them. Mr. Chea replied, “When we approached Phnom Penh, we saw no Lon Nol soldiers because people already took off their uniforms, so we could not identify who was a Lon Nol soldier. They were all civilians to us.”

The prosecutor reminded Mr. Chea of his testimony to the OCIJ that soldiers pointed their guns at people to frighten them into leaving and that if people refused to do so, there were beatings, shootings, and killings, with East Zone soldiers being the harshest.¹⁰ Asked whether he witnessed such beatings and killings after he entered Phnom Penh, Mr. Chea responded:

¹⁰ The relevant ERNs are 00205057 (in Khmer), 00223346 (in English), and 00705377 (in French).

In my unit, we did not mistreat people. People had been evacuated easily. We were stationed on the road leading to the French Embassy. Indeed, our group was located right at the embassy. . . . Other people who resisted such evacuation were shot. Other groups shot people to scare the hell out of people.

The witness advised that Hak told him about the beatings and killings and had said that “without mistreating some of the people, we will not manage to empty the city of its population.” As to whether he personally witnessed mistreatment by East Zone soldiers, Mr. Chea said that he was informed of this by people in his group. The witness did not think that Khmer Rouge soldiers were disciplined for such mistreatment, because “there was no court of law at that time.”

Next, Mr. Lysak noted the witness’s statement to the OCIJ that “they had us tell the people to leave for only four or five days so we could sweep out the Lon Nol soldiers, and we deceived them by saying that soon, the fighting would explode, and everyone would die.”¹¹ Mr. Lysak asked if this ruse was communicated to the witness’s division by Battalion Commander Hak. The witness agreed, stating, “We had to do whatever we could to make sure that the people left the city.” Mr. Chea confirmed that they were told that the purpose of the evacuation was “to sweep out Lon Nol soldiers” and that the people were to be deceived into leaving the city. He recalled hearing announcements that the Americans were going to bomb the city, and identified this as one of the “deceitful acts to trick people into leaving Phnom Penh.”

The prosecutor asked whether the order to evacuate civilians included all people, including the elderly and hospital patients. The witness confirmed this, elaborating:

The whole population of Phnom Penh had to be evacuated, regardless of elderly, hospital patients, disabled people, children; . . . they all had to be evacuated in different directions. You could imagine how this situation would have been, with huge crowds moving out of the city in all directions.

Mr. Lysak read out some of the witness’s description of the evacuation of Phnom Penh during his OCIJ interview:

The state of the people then was pitiful. Some were crying. Mothers were crying. Children were crying. The suffering was absolute. Some died in the big hospital, now Calmette Hospital. They put patients in pushcarts. Some patients without relatives just lay there and died at the hospital.¹²

Mr. Lysak followed this reading with a series of questions seeking further details. Mr. Chea advised that he saw patients in pushcarts at Calmette Hospital that “children or loved ones had to push”; he also saw “sick people walk with difficulty.” Calmette Hospital was “just a stone’s throw away” from the French Embassy, he added, and he and a few friends went into the hospital. The witness said, “We were tasked with guarding the road all the way from Chroy Chongva Bridge on Monivong. We had to ensure that people along this route evacuated the city quickly.”

¹¹ The relevant ERNs are 00205057 (in Khmer), 00223346 (in English), and 00705377 (in French).

¹² The relevant ERNs are 00205058 (in Khmer), 00223346 (in English), and 00705377 (in French).

Mr. Chea testified that his battalion was not given food or water to distribute to the evacuees or told where evacuees could obtain it. “The soldiers themselves could not have enough food to eat, let alone the people,” he added. Mr. Lysak queried whether it was fair to say that evacuees were “left to fend for themselves” to obtain the sustenance they needed to survive the evacuation. The witness confirmed this, explaining, “Everyone was left to his or her own devices. There was no policy of providing assistance to any of them.”



Khmer Rouge soldiers entering Phnom Penh in April 1975. (Source: Documentation Center of Cambodia)

Turning to the identification of Lon Nol soldiers, Mr. Lysak advised the witness that in his written record of interview, he had described the broadcasting of propaganda to Lon Nol soldiers to “go back to their duty stations,” and the eventual death of these soldiers.¹³ Mr. Lysak asked if all former Lon Nol soldiers were killed, or if this only happened to soldiers of a certain rank. The witness responded to Mr. Lysak, “The broadcasts were for everyone, whatever rank he or she had before.”

Power in the courtroom appeared to flicker on and off at this time, accompanied by a nearly 10-minute interruption to the Khmer language broadcast usually audible in the public gallery.

Mr. Lysak noted that in the witness’s OCIJ interview, he testified that “some [Lon Nol soldiers] wanted to live and tried to hide things, but they were arrested anyway because they were researched and found out through their biographies.” Asked how this research was carried out, the witness reiterated that this was “through the loudspeakers,” adding that “people were told to reveal their background ... so that they could be offered the same ranks when they joined the Khmer Rouge.” He did not know, however, if everyone who left Phnom Penh was required to provide biographies as he did not know about “what happened at the rear.”

¹³ The relevant ERNs are 00205058 (in Khmer), 00223346 (in English), and 00705378 (in French).

The prosecutor advised the witness that in the written record of his OCIJ interview, it is stated that he testified that Lon Nol soldiers who returned to their duty stations were taken away by trucks and were killed west of Prek Pnov.¹⁴ Mr. Chea elaborated that he did not know the exact whereabouts of Prek Pnov but that Koeun ordered the executions and was the executioner. He also stated that many others participated in the executions but the witness did not know from which divisions they came. He did recall that Koeun “brought along with him some 10 trucks from different places” and that the executions took place “just four or five days after the liberation of Phnom Penh ... sometime in 1975.”

Having it Both Ways? Objections from the Defense on Prosecutorial Questioning Techniques

Mr. Lysak sought permission from the president to read to the witness from the written record of interview of another soldier from the same battalion who was not being proposed as a witness.¹⁵ Noting that it was usual practice to reveal only to the witness the identity of the interviewee, the prosecutor asked whether it might be appropriate to give a copy of the interview to Mr. Chea’s duty counsel in order to advise the witness who gave the statement.

International Co-Counsel for Ieng Sary Michael Karnavas interjected at this point, noting that while he did not object to the way the prosecution sought to proceed, Mr. Lysak’s counterpart had recently objected to the same technique being used by the defense in relation to an excerpt from a book by Philip Short and that “the prosecution can’t have it both ways. They can’t avail themselves of a procedure” and then object to the defense doing the same. Mr. Lysak responded that if he recalled, the issue as to Philip Short was the Chamber’s intent to call him as a witness, which was not the case in this instance. The president permitted Mr. Lysak to proceed.

Mr. Lysak advised that the individual whose testimony was being referred to was in Battalion 31 of Division 310 in the North Zone military, with Hak as battalion commander.¹⁶ Mr. Chea said that he did not know the individual. Mr. Lysak explained that the individual had described how he was injured in the battlefield around April 16, 1975, and that when he returned to his unit, stationed around Wat Phnom, he learned of an order to arrest Lon Nol soldiers. The prosecutor continued, reading from the record:

I knew there was an order from the senior Son Sen, the supervisor, to arrest those who were high ranking civil servants of the Lon Nol regime who denied leaving Phnom Penh city and the patients who were Lon Nol soldiers who were being treated in Preah Ket Mealea hospital. ... I was the chairman of Company 3 of Division 310, [and was told that Lon Nol soldiers] were killed and thrown into a well in Tuol Kork area.¹⁷

Mr. Pauw objected, advising that the Office of the Co-Prosecutors (OCP) had recently asserted that it was improper for him to put information from someone else’s statement to a witness when starting a line of questioning, so the OCP should be subject to the same rules. Mr. Lysak

¹⁴ The relevant ERNs are 00205058 (in Khmer), 00223346 (in English), and 00705378 (in French).

¹⁵ This record has the document D166/117, and the relevant ERNs are (in Khmer), (in English), and (in French).

¹⁶ The relevant ERNs are 00287535 (in Khmer), 00293364 (in English), and 00355872 to 73 (in French).

¹⁷ The relevant ERNs are 00287536 (in Khmer), 00293365 (in English), and 00355873 (in French).

responded that the key issue was whether there was a proper foundation to ask the witness about this statement. Continuing, he agreed that reading a statement to the witness by someone the witness had no connection to would be improper but argued that he was reading a statement of someone in the same battalion describing an execution, which was a “completely different situation.”

The president asked if Mr. Pauw had any further comments, although noting that parties were not normally permitted to respond. Mr. Pauw replied that he would abide by the Chamber’s ruling and “hoped for a correct decision.” The judges huddled, perusing a document and seemingly led by Judge Jean-Marc Lavergne, who gestured animatedly. Eventually, President Nonn reported:

The Chamber rules that the witness needs not respond to the question. The Chamber bases its ruling on document E1/59,¹⁸ page 30: “Parties are not allowed to extract portions of statements or documents of another witness to put questions to a witness. However, parties may ask general questions.” This had been ruled on by the Chamber and parties should abide by it. The Chamber also advises the prosecution that it should not put statements to the current witness by other potential witnesses who may be called to testify, for example, Mr. Philip Short.

The president ceded the floor to Judge Lavergne, who added:

Today’s situation may be slightly different to the one which gave rise to a decision by the Chamber last week. Last week, a reference was made to an opinion by a historical expert who might have been likely to appear before this chamber, and it seemed inappropriate to refer to that opinion or analysis. Today ... the prosecution ... referred to an event which belonged to the realm of hearsay. ... A better way for the prosecution to put the question might have been a more general question asking the witness about his general personal awareness of a particular event.



At this point, Mr. Pauw requested further guidance, explaining that he had not been referring to his attempt to use Mr. Short’s testimony but Heng Samrin’s, who was “not an expert witness but another normal individual that cannot be considered an expert.”¹⁹ As such, the ruling remained unclear to the defense, he stated. However, without a response to this objection, the hearings adjourned for the mid-morning break.

Challenges from Defense over References to S-21 Prisoner List
Audience numbers swelled after the adjournment, with approximately 200 villagers from Prey Veng province joining the public gallery. The hearings resumed, slightly later than usual, with

¹⁸ This ruling was made on May 17, 2012.

¹⁹ This event occurred during the hearing on October 25, 2012. The *Cambodia Tribunal Monitor* article on this hearing day is available at <http://www.cambodiatribunal.org/blog/2012/10/details-evacuation-phnom-penh-revealed-amidst-clashes-over-use-evidence>.

Mr. Lysak first asking the witness whether he was aware of executions of Lon Nol soldiers or officials at Tuol Kork. Mr. Chea confirmed this, qualifying that victims were purely soldiers, and that “these people were killed after the radio broadcasts ... when they were tricked into revealing their identities.”

The prosecutor sought more details from Mr. Chea concerning his testimony to the OCIJ²⁰ in which the witness stated that Hak was promoted to be in charge of aircraft at Pochentong Airport and was later purged. On this subject, the witness stated, “I heard from members of my unit that he rose to the regimental level at the airport at Pochentong. ... I don’t know what happened to him, because when he rose to that level, he was separated from our unit.”

By way of conclusion of OCP questioning, Mr. Lysak stated that in the OCP’s Revised S-21 Prisoner List, Yang Hak was listed and identified as a member of Division 310 who was hiding in Unit 502.²¹ At this point, Mr. Pauw objected to the OCP’s “repeated tactic” of reading from S-21 prisoner lists at the conclusion of their questioning. He argued that this should happen after all parties had been given a chance to question the witness and preferably after the witness had left the chamber. Mr. Lysak responded that he would be happy to do so if the Chamber preferred, but that otherwise, this was the OCP’s last opportunity to do that.

This prompted the Trial Chamber to confer again, with audience members looking on in apparent interest, while both defendants present in the courtroom — Nuon Chea and Khieu Samphan — took the opportunity to peruse documents and confer with counsel. The president then responded that the Chamber “allowed the prosecution to continue in this manner,” that “parties should have raised such issues in advance,” and that the prosecution’s reference to S-21 prisoner lists while they had the floor was “appropriate.”

Civil Parties Lawyers Elicit Details of Training, Leaders, and Meetings

National Co-Lawyer for the civil parties Ty Srinna took the floor and redirected the witness to pre-1975 events. Specifically, she asked how many divisions were in the jungle when the witness was there. Mr. Chea stated that he did not know about this or about communications between them, as “ordinary soldiers” would not be informed about communications between senior leaders.

The witness confirmed that he received military training, stating that “people were informed, for example, with regard to the suffering people felt.” Ms. Srinna asked who “incited or provoked the spirit of suffering,” with Mr. Chea responding that it was Ta²² Voeun and other village chiefs with reports that the Americans bombed and burned down homes. Ms. Srinna inquired whether the witness’s training extended to how to identify enemy targets. Mr. Chea responded, “The idea was to make sure that we felt the pain, the suffering, and that we treated people who caused this suffering as our enemies, like the Americans. ... Lon Nol soldiers and their accomplices were entirely regarded as the enemy, no doubt.”

²⁰ The relevant ERNs are 00205058 (in Khmer), 00223347 (in English), and 00705379 (in French).

²¹ This list has the document number E3/342.

²² Ta is an honorific intended to convey great respect.

At this point, defendant Nuon Chea was wheeled back into the courtroom after a short bathroom break, with many audience members seeming to watch intently as he returned to his place and put his sunglasses back on. The witness, meanwhile, testified that leaders came to “propagandize.” Asked whether he had heard announcements concerning Pol Pot, Khieu Samphan, or Nuon Chea, witness Sum Chea denied this, saying he “heard only about Prince Norodom Sihanouk.”

Ms. Srinna asked whether the witness had attended any meetings conveying plans to attack Phnom Penh. The witness agreed, saying that he attended a meeting conducted by Hak that discussed “how to attack the tactical lines of the city like at Basit.” As to whether the instructions relayed by Hak could have come from the “upper echelon,” Mr. Chea said he believed this would have been the case, because Hak “would not have had the authority to render such a decision.” At the meeting, Mr. Chea went on, Hak “asked us to be well-trained so that we could capture Basit. If we won the battle for Basit, then we would capture Phnom Penh easily.”

The Emptying of Phnom Penh, the Aftermath, and Rebuilding and Reentry

When his group arrived in Phnom Penh, the witness went on, “we only saw civilians, people who were wearing civilian clothing. We saw weapons scattered, left by the roadside.” He explained that people were only asked to evacuate Phnom Penh via announcements by loudspeaker and no other medium, stating that the people were asked to leave “for a few days, three to seven days, otherwise they would be bombed and die.” There was no assistance provided to people during the evacuation. “Whole families,” even “hospital patients” had to evacuate.

Mr. Chea confirmed that “soldiers were deployed to protect the city and ensure that people could never reenter the city ... never come back.” Asked whether there were checkpoints, Mr. Chea confirmed this, adding that some checkpoints were installed at Chroy Chongva Bridge and Psar Thmei. He explained, “The checkpoints were mainly installed to ensure that former Lon Nol soldiers were checked. We had no problems with civilians.”

Asked for details about what happened near where he was stationed at the French embassy, Mr. Chea elaborated, “When we were at the French embassy, I saw no *barang*.²³ The embassy was empty and quiet and there were only soldiers there. ... There were no civilians. The whole city was quiet and empty. There was no one, no civilians.”

Ms. Srinna asked the witness if he saw any monks being evacuated, which the witness denied.

Regarding his location when the city was being captured and empty, Mr. Chea said that he “was at the French embassy before being transferred to Tuol Sankae. ... [There,] the soldiers were used like cattle to clear the bushes, to make way for farmland.”



²³ This is a Khmer term for French.

Ms. Srinna queried whether the witness knew of any plans to rebuild the city. The witness denied this, noting only that coconut trees were planted to “beautify the city.” At this point, Ms. Srinna asked Mr. Chea whether he ever attended any celebratory events. Mr. Chea recalled, “There were meetings. We were told how to work very hard to rebuild the city, to build dams, dykes. We were disarmed and treated like ordinary civilians.”

As to leadership, the witness testified that at a meeting at Olympic Stadium in 1975, he and others were informed about the identities of the Secretary and leadership of the Communist Party of Kampuchea (CPK). He continued, “I could see that people were on their feet when Pol Pot was named.” He could not recall any other Khmer Rouge leaders, however, as he only knew “regimental battalion leaders.”

Returning to the events during the evacuation of Phnom Penh, Ms. Srinna asked the witness whether he was aware of announcements that people would be allowed to reenter Phnom Penh after the evacuation. Mr. Chea responded, “Politically, it was the political message that people had to be evacuated out of the city. There was no such announcement that they would be allowed to return.”

Next, Ms. Srinna queried whether the witness knew when money was no longer able to be circulated. The witness stated that he “heard about this through the grapevine” but did not say when.

For her penultimate question, the civil party lawyer asked if the witness was sent back to Basit after the fall of Phnom Penh. Mr. Chea confirmed that he was, and added that he was sent there “to build canals and do farming rather than be a soldier.” Finally, questioned as to food and living conditions there, Mr. Chea said, “People suffered a great deal. Every family member mature enough had to work, to carry dirt and build canals. No one was spared.”

Treatment of Hospital Patients, Women, and Former Lon Nol Soldiers

Taking over from her colleague, International Co-Lawyer for the civil parties Nushin Sarkarati returned to the issue of the treatment of civilians during the evacuation, first asking whether Mr. Chea had received instructions on how to treat people “too old or sick to leave the city.” The witness denied he had received such instructions. Ms. Sarkarati asked the witness how the “severely ill” patients at Calmette hospital were treated. After a pause, Mr. Chea replied, “I don’t believe there was such care or service ... to the elderly or sick. ... There was no such luxury as asking to be admitted to the hospital to be treated before leaving.” As to whether medicine was taken with evacuees, Mr. Chea said, “There were some medics who could be seen going to the hospital to collect some medicines.” He confirmed that the medics were with the Khmer Rouge and “were also treating Khmer Rouge soldiers.” The witness also confirmed that Calmette Hospital was used for military purposes and that at the time, “people were offered some medicines, [although] there were no intravenous fluids available.”

Ms. Sarkarati asked whether Mr. Chea saw Khmer Rouge soldiers entering people’s homes to look for civilians. The witness denied this, saying that “after five days, the city was emptied, and no people could be seen hiding in their apartments or houses.” The witness also denied either seeing women being attacked or hearing of sexual assaults against women at the time.

The witness testified that Lon Nol soldiers were not armed when he entered the city and that they faced “no armed resistance at that time.” He elaborated, “We saw people waving white flags. Everyone was waving white flags. It was hard to tell who among the civilians could have been soldiers.”

The witness testified, in response to final questions from Ms. Sarkarati, that he did not personally see any Lon Nol soldiers come forward in response to the announcements enticing them to do so. Instead, he recalled, Koeun told the witness about persons who had come forward and of incidents of people saying they held higher ranks than they really did during the Lon Nol regime. Regardless, “everyone ended up being killed,” he concluded.

At this juncture, Mr. Pauw requested for his client to follow the afternoon’s proceedings from his holding cell due to health reasons. The president granted this request and then adjourned for lunch at the later time of 12:15 p.m.



Judge Lavergne Seeks Details on Areas of Control and Treatment of Foreigners

After lunch, a new audience of 100 villagers from Takeo province took their seats in the public gallery. Greffier Phary also notified the Chamber that the civil party scheduled to testify after Mr. Chea was now in the waiting room.

Moving forward with the afternoon session, Judge Lavergne posed some questions to Mr. Chea. He first asked whether bombs were dropped on Basit. The witness confirmed that “mortar shells” were used, but they landed “only at the location of 100 houses.” Were bombs dropped on Phnom Penh discriminately or indiscriminately? Judge Lavergne asked. The witness said that he did not know about this, as he was a simple soldier.

Judge Lavergne asked if the witness knew where the Khmer Rouge obtained the loudspeakers they used to broadcast messages intended to “reveal former Lon Nol soldiers.” Mr. Chea replied that he did not know and also denied personally witnessing the use of those loudspeakers in his own unit. He did confirm that the same loudspeakers were also used to tell civilians to leave Phnom Penh.

Requested to provide further details on the rounding up of former Lon Nol soldiers for execution, the witness confirmed that these soldiers were transformed by truck, adding that the trucks “came from the military,” as they were formerly the property of the Lon Nol army.

At this point, Judge Lavergne asked the witness if, when he was stationed in Basit, he heard any radio broadcasts from the National United Front of Kampuchea (FUNK). The witness denied this and added that he did not possess a radio. Nor did the witness hear about a list of “seven super traitors.”

The judge asked the witness precisely when he arrived in Phnom Penh. Mr. Chea replied, “At the time, every soldier in each unit came to Phnom Penh simultaneously. It doesn’t mean that one unit came to Phnom Penh first and the others came later. Everyone came at the same time. They communicated by radio.

Asked how he knew the exact area under the control of his unit and what his role was. The witness replied:

Bang²⁴ Hak, the head of the battalion, asked us to stand guard on the stretch of road from Psar Thmei to Kilometer 9. ... [Kilometer 9] is to the north of Chroy Chongva Bridge. It is on National Road 5. ... I had no role in particular. I was just assigned to be stationed there. ... I was stationed right across from the Calmette Hospital. Other members of the group would be assigned to cover other parts of the road.

Turning to the situation at Calmette Hospital, Judge Lavergne asked whether the witness saw any doctors or medical personnel at the hospital being instructed to leave. The witness responded that these staff “had already abandoned the patients ... there were no doctors.” He clarified that knew this because he “entered the hospital and learned that there were no people and there were no doctors. Patients had been evacuated in just two days.”

The witness did not have the opportunity to visit other public buildings, including ministries or the National Bank of Cambodia. He “was not allowed to walk freely or contact other members” of other units, he stated

As for foreigners, the witness said that he “saw Filipinos at a building that is now demolished. ... But a few days later, they were no longer to be seen there again.” Mr. Chea did not know what happened to them, recalling that he asked about this but that his colleagues said they did not know. Pressing this point and noting the witness was stationed across from the French embassy, the judge asked if the witness “never saw a single foreigner.” The witness confirmed this, also saying that he was “certain, there was no one, no Cambodians, no French nationals ... Knowing this, we put some soldiers to be stationed in the complex.” Mr. Chea clarified that he was talking about the French Embassy, adding, “There was no one in the compound, no diplomats, no other staff members, nothing.”

This answer prompted the judge to ask when the witness was assigned to the area in front of the French Embassy. Mr. Chea testified, “Since I had been in Phnom Penh, I had to stand guard at all times. That was the policy of the Khmer Rouge: soldiers had to be vigilant and stand guard, be on duty, at all times.”

Witness’s Military Career, Treatment of Patients, and Execution of Lon Nol Soldiers

National Co-Counsel for Nuon Chea Son Arun then opened the questions from the defense, asking first for confirmation of some details. The witness duly confirmed that he was about 18 years old when he first became a Khmer Rouge soldier; that he joined the army in response to the

²⁴ Bang is an honorific translated as “brother.”

appeal from Prince Norodom Sihanouk; and that he “wholeheartedly and voluntarily” became a soldier of Sihanouk and had no knowledge of the Khmer Rouge at that time. He added that he heard about Sihanouk’s appeal because when he was still in the forest, he had access to a radio.

Asked how long he was a soldier for the Khmer Rouge, the witness responded that he was a soldier until just before 1980. He was an “ordinary soldier,” he said, and, when pressed, confirmed that he was never promoted during the period from 1975 until he left the Khmer Rouge army, as he “was not the kind of person who was brave enough to be promoted.”



Mr. Arun asked whether the witness personally witnessed East Zone soldiers behaving harshly. Mr. Chea said that he only heard from his fellow squad members that such soldiers “killed people who denied leaving Phnom Penh city.” This answer prompted Mr. Arun to question how the witness’s fellow team members learned this information if they were also prevented from walking freely. Mr. Chea responded, pointing emphatically, that “those who were assigned to stand guard learned that information, and they were the ones who told me about those killings.”

Mr. Arun asked if the witness was permitted to at least walk from his location to Calmette Hospital. Gesturing animatedly, the witness denied this, stating that he was only able to go to Calmette Hospital when he had to change shifts.

At this point, Mr. Arun asked the witness to clarify who Koeun was. Mr. Chea explained that Koeun “was a former commander of a regiment, but later on he was demoted to an ordinary soldier. ... He was the one who was quite known to other people as a daring man.” As to why Koeun was vested with the power to arrest and kill Lon Nol soldiers, Mr. Chea said:

Koeun was a very fierce and harsh guy. He was the one who implemented orders straight away without hesitation, so he was the one assigned to carry out the task. ... My squad was broken into small groups of three. We had to change our work shifts regularly, so when we were on shift, we heard announcements from the loudspeakers, and Kun was the one who was mentioned.

The president interjected at this point that Mr. Arun may have been confused – the person by the name Koeun had committed moral wrongdoings and was demoted. There was another Koeun who was a regiment commander. After a long pause, Mr. Arun moved on, asking the witness whether, prior to attacking Phnom Penh, military commanders trained soldiers in various squads as to what they were to do once they had conquered Phnom Penh. Mr. Chea responded, “The only instruction we received was to fight our way to Phnom Penh and conquer it. Only after we conquered Phnom Penh were we told to evacuate it.”

American “Carpet Bombardment” of Cambodia

Continuing on for the Nuon Chea defense, Mr. Pauw returned to the issue of the bombardments by Americans, seeking more details about the bombardments themselves. Mr. Chea stated:

The bombardment was everywhere. It was a carpet bombardment. Houses were destroyed. The reason why there was sentiment in favor of Norodom Sihanouk was the bombardment. ... I saw the aerial bombardments every day. ... I could say for the province where I resided — it was Kampong Cham province — that they bombarded every day. Fortunately, none [of my relatives was killed]. Only one of my brothers was executed. He had worked for Samdech Sihanouk for 18 months. When he returned home, he was arrested and killed.

Asked to describe the impact of the American bombardments, the witness explained that the bombings were “very destructive,” burning down up to 20 houses in his village alone. He continued, “As for pagodas, they were targets of the attacks as well, and they were all destroyed. ... So long as there were bushes or areas suspected of anything, they were bombarded.”

Regarding the responsibility for his brother’s execution, the witness stated that he did not know “who ordered the arrest and execution of him and his family” as Mr. Chea had been working as a soldier at that time. While engaged in combat, the witness added, he “was not allowed to return home ... We were fighting at risk of our lives, but never, ever were we allowed to return home during that period.”

Mr. Pauw sought to discuss an area of Phnom Penh, seeking permission to show the witness a colored map of the city.²⁵ Granted such permission, Mr. Pauw first asked the witness whether the area indicated on the map was the area he was supposed to guard – that is, the area between Psar Thmei, Tuol Kork, Kilometer 9, and the Chroy Chongva Bridge. Mr. Chea confirmed this. Mr. Pauw asked whether the witness’s division ever went any further south than Psar Thmei during the evacuation of Phnom Penh. Mr. Chea denied this on the basis that they had to operate within their given boundary. He did agree that his division was responsible for guarding areas around Wat Phnom.

Moving on, Mr. Pauw directed the witness to his earlier testimony on Calmette Hospital, asking whether Mr. Chea knew when doctors and medical staff had abandoned the patients. Mr. Chea stated that this happened “during the day when we engaged in the fighting. By the time we approached the hospital, it was already abandoned. There were only helpless patients inside.” As to whether the witness saw doctors leaving or merely did not see doctors at all, the witness indicated that it was the latter, claiming that the doctors would have left for fear of the fighting.

Further Clashes over Appropriate Use of Evidence

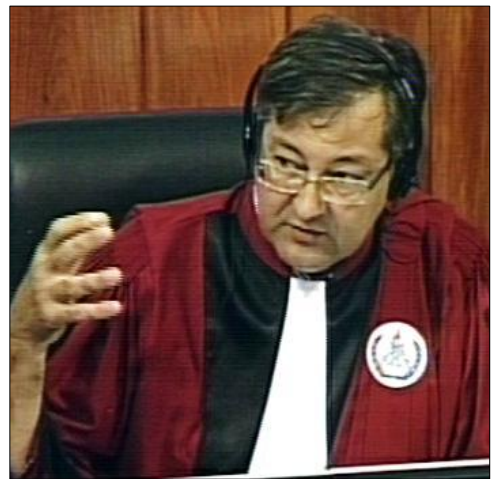
Mr. Pauw then sought permission from the president to read to the witness from Michael Vickery’s book *Cambodia 1975-1982*,²⁶ prompting an interjection from Mr. Lysak that Mr. Pauw had prevented the prosecutor from using such statements, or indeed, statements that were “much more directly within the knowledge of the witness.” Unless Mr. Pauw could demonstrate

²⁵ This map has the document number D108/50/1.2.

²⁶ This book has the document number D222/1.17. It is only available in English, and the relevant ERN is 00396998.

satisfy the requirements he himself articulated this morning, Mr. Lysak contended, he should not use this document.

Mr. Pauw clarified that he had not made such requirements but that the prosecution had to first lay a foundation, namely an open question. Mr. Pauw said that he had asked an open question that the witness answered, and argued that he was now entitled to put to the witness related information from the book by a scholar on Cambodia. His team had “always said that documents should always be able to be used,” he stated, but there was a “proper modality” with which to do so.



The Trial Chamber judges conferred for some minutes. Upon resuming their seats, Judge Lavergne delivered the Chamber’s response, detailing:

The Chamber needs to be consistent [with] previously rendered decisions. There is no particular interest here in quoting Michael Vickery’s book to substantiate the question. I think you can use the substance of Michael Vickery’s book itself. ... You are authorized to ask open questions to the witness, as was granted to the prosecution this morning, but there is no express reason to directly quote from that book by Michael Vickery.

Mr. Pauw thanked Judge Lavergne for this guidance but stated that the Chamber’s ruling did not make the issue any clearer. He conceded that Michael Vickery was not in Cambodia at the time about which the witness was testifying, but neither were experts such as Philip Short or David Chandler. His team sought to test whether their scholarly treatises were based on fact, he explained, but the Chamber’s ruling did not make clear which expert documents they could use and which they could not. Philip Short’s writing, for example, had been quoted by Mr. Lysak, Mr. Abdulhak,²⁷ or Mr. Smith,²⁸ he recounted. At the moment, his team was “in the dark,” he contended, and could not effectively formulate lines of questioning.

In response, Mr. Lysak asserted, “Counsel only seems to have a problem with the Court’s rule when it’s his turn to ask questions.” He continued, “We used Philip Short’s book when he was quoting interviews [relating to] Phy Phuon when Phy Phuon was testifying. ... There are lots of situations where there is clearly a legitimate foundation to do so.” If the section of Mr. Vickery’s book was an interview of this witness or one of his colleagues, Mr. Lysak continued, the OCP would have no problem in the defense using it. He then accused Mr. Pauw of feigning “a lack of understanding why he is being prevented from doing this,” and suggested that the defense counsel understood the reason “very well.”

²⁷ This is a reference to International Senior Assistant Co-Prosecutor Tarik Abdulhak.

²⁸ This is a reference to International Deputy Co-Prosecutor William Smith.

Under direction from the president, Mr. Pauw proceeded to a new line of questioning, asking the witness whether he heard any examples of harsh treatment meted out by East Zone forces. Mr. Chea stated:

The policy was harsh and was about making sure the population was evacuated from the city. ... The East Zone people were covering the stretches of road from Psar Thmei to the north direction. ... The Southwest [Zone] was covering the western part of the city, somewhere near Pochentong Airport.²⁹ ... The city was divided according to different zones. For example, Voeun would be in charge of one section of the city.

The witness did not personally see soldiers from the East Zone, he said, but recalled that “people in my unit said that people who were stationed to the south of Psar Thmei were those from the Eastern Zone.” As to how these people dressed, the witness said that they wore the same clothes: “black shirts and trousers.” There were no Eastern Zone people near Wat Phnom, the witness added; “from Psar Thmei to the riverfront was occupied by people from the North [Zone].”

Relationships and Comparisons between Zone Forces, and Further Evidentiary Objections

Following the mid-afternoon adjournment, the president asked Mr. Pauw if he had consulted with the Ieng Sary and Khieu Samphan teams about the time allocation needed for questions. Mr. Pauw stated that the Ieng Sary team had stated that it needed no more than 10 minutes, and the Khieu Samphan team needed no time at all. Mr. Karnavas confirmed that 10 minutes would indeed be sufficient, and National Co-Counsel for Khieu Samphan Kong Sam Onn confirmed that their team had no questions for the witness.

Returning to the examination, Mr. Pauw asked the witness what would happen to soldiers who would try to enter areas of Phnom Penh occupied by other zones. Mr. Chea said that those who “dared do that would run the risk of mysterious disappearance.” The witness then said, in response to a question from Mr. Pauw, that he did not hear of fights breaking out between soldiers of different zones. As to whether Mr. Chea or his colleagues had ever encountered soldiers from other zones in its area of control, the witness testified that he did not but that “there was a general prohibition” on travelling to different zones.

At this point, Mr. Pauw sought to read to the witness from a document by Professor Ben Kiernan containing an interview he had conducted with National Assembly President Heng Samrin.³⁰ The president refused this permission, stating that the matter had already been ruled upon. However, he clarified, Mr. Pauw was free to ask the witness about his own knowledge.

Mr. Pauw countered that this statement was contained in a document the OCP wished to use as evidence, and what he was seeking to do here was a straightforward “impeachment technique.” The president again advised that this issue was ruled upon on October 25, 2012, and Mr. Pauw was not permitted to “extract the testimony of any other witness to put to the witness at issue.”

²⁹ This is presently the location of the Phnom Penh International Airport.

³⁰ This interview has the document number E3/1568, and the relevant ERNs are 007213947 (in Khmer), 00651879 (in English), and 00743351 (in French).

Mr. Pauw, “hating to belabor the point,” stated that Judge Cartwright had ruled some months ago that it was appropriate to cite witness testimony as long as the name of that witness was not revealed. He added that Heng Samrin, “as far as we know, might never be called before the Chamber” and that in the past, the OCP and the defense had quoted from witness statements. Mr. Lysak responded that the Court had made clear that counsel could ask questions “relating to the underlying content” and that whatever Mr. Samrin had or had not said would not impeach this witness “unless there is a direct connection to this witness ... a direct nexus to the witness.”

Mr. Pauw responded that they could not have this debate in the abstract, as he would need to read portions of Mr. Samrin’s testimony in order to demonstrate such a nexus, suggesting that there may be a need for a closed portion of the hearing. This prompted the Trial Chamber judges to once again confer, with Judges Cartwright, Lavergne, and Ottara addressing their colleagues. The president then addressed Mr. Pauw directly, advising:

The Chamber had ruled that counsel must not extract any portion of the witness interview of other witnesses as the basis to put questions to the witness before the Chamber. By reading those witness statements, you can get an overview of the information and then put general questions to the witness.

The defense responded that he understood that he could only “paraphrase.” He then addressed the witness, stating that while some had said that Eastern Zone forces were the harshest, others said that they were much better behaved and more organized. Did the witness ever hear of this? Mr. Pauw asked. The witness replied:

I overheard from others that the Eastern Zone forces were strong, but this was not necessarily true. Forces from the North were also strong. The only difference was that people used different means and measures to evacuate people out of the city. For example, forces from the North used a much softer approach to evacuate people out of the city, as opposed to soldiers from the Eastern Zone who used much harsher methods.

Did this mean, Mr. Pauw continued, that the witness understood that Northern Zone forces were not as harsh as their Eastern Zone counterparts? Mr. Chea responded in relation to the Northern Zone forces: “These forces were firm, but gentle and ethical.” However, the witness also confirmed that he never went to areas controlled by other zones and that everything he knew about the Eastern Zone forces was based on hearsay, adding that he “heard this only from people within my squad.” Mr. Pauw asked if any of these people were still alive, to which the witness answered, looking straight ahead rather than at Mr. Pauw, that they had all died.

Clarification on Various Broadcasts

The defense counsel again directed the witness to his testimony about setting up loudspeakers to lure former Lon Nol soldiers “after about seven or eight days” after the fall of Phnom Penh.³¹ The witness confirmed this and said that it was Koeun who talked about this and delivered the loudspeaker broadcasts. The witness did not personally hear any of these broadcasts while he

³¹ The relevant ERNs are 00205058 (in Khmer), and 00222326 (in English).

was stationed in Phnom Penh; he only knew about these events because Koeun told him that “messages were broadcast on loudspeakers.” The witness also heard that people were arrested along the road.

Thanking the witness for his clarification, Mr. Pauw noted that the witness’s written record of interview made it seem like the witness personally heard such broadcasts and asked why the witness had testified that the loudspeakers were deployed “seven or eight days” after the fall of Phnom Penh. Mr. Chea reiterated that he heard from Koeun that he would go out with the loudspeakers to try and encourage people to come forward. Mr. Pauw asked whether that meant Lon Nol soldiers were in hiding. Phnom Penh was clear, the witness stated, “no civilians, no soldiers, no single soul.”

Mr. Pauw asked whether the witness ever heard of a radio broadcast made two days before the liberation of Phnom Penh ordering all military physicians, surgeons and medical students to report to the medical center at Olympic Stadium. The witness denied this; however, he said that he did hear “broadcasts in the form of songs ... every morning.”

The defense counsel then paraphrased from Mr. Samrin’s testimony about Eastern Zone forces in Phnom Penh, which detailed that Eastern Zone forces had distinct uniforms either in khaki or camouflage material, as opposed to the black uniforms worn by other soldiers. Asked whether he ever saw this, Mr. Chea responded, “At the beginning, people wore only black clothes, but after capturing enemy barracks, soldiers could make use of war spoils, like the uniforms of the enemy, and they could wear them, whatever they liked.”

Noting that Mr. Samrin had also testified as to occupying an area near Wat Phnom, which would contradict the witness’s testimony, Mr. Pauw inquired whether the witness saw Eastern Zone soldiers in his area. The witness denied seeing any Eastern Zone forces, adding that “Hak, the head of the battalion, talked to us about how the city was classified into different sections.” Mr. Pauw sought further details on this point. Mr. Chea explained:

Hak was the head of the battalion. ... You can imagine how many divisions there were in each zone because I can see that only for the North Zone, there were at least three to four divisions of soldiers already. ... I don’t know [how many divisions other zones had] but there must be at least three divisions. ... I could see that there were three to four divisions from each zone conquering Phnom Penh at that time.

Mr. Pauw thanked the witness for his testimony and took the opportunity to clarify that although he had stated that Mr. Samrin had been a divisional commander during the evacuation of Phnom Penh, he was, in fact, the Deputy President of the Front Command of Regiment 25, which would later be called Division 1 of the Eastern Zone. Therefore, Mr. Samrin was only the deputy Division Commander during the evacuation, and only after the evacuation did he become the division commander, deputy chief of the East Zone forces, and a member of the Zone Committee.³² Mr. Pauw asserted that, given his position in the military, Mr. Samrin would have been an “exceptional witness to testify” and that by comparison, the present witness “simply

³² This is contained in tE3/1568 00713945 and 58 (in Khmer), and 00651878 and 86 (in English).

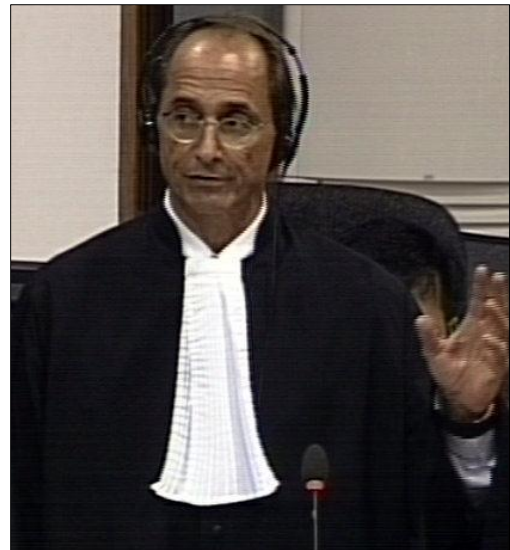
does not know what went on in the East Zone” due to the division of areas of control of different zones, a general prohibition on walking freely, and confinement to a particular area.

Questions from the Ieng Sary Team on the Witness’s Second OCIJ Interview

Mr. Pauw ceded the floor to Mr. Karnavas to put the final questions of the day. Mr. Karnavas began by noting that although only one OCIJ interview was referenced during questioning, the witness had testified that he had given two interviews. Mr. Karnavas asked the witness for the date of the second interview. The witness said that he could not remember the date. He added that during the first interview, there was a document, but in the second, there were no documents, and some Americans were in attendance for the second interview.

Mr. Karnavas asked if the people who came to interview Mr. Chea the second time were from the same organization as those who came for the first interview. At this point, the witness attempted to consult his duty counsel. The president said that if he did not understand the question, he should ask Mr. Karnavas to clarify, and was not permitted to consult his duty counsel while being questioned unless he believed his answer could be self-incriminating.

After Mr. Karnavas repeated his question, the witness responded that the people who came to the second interview were different people; however, he was told that the “documents were brought from this court, and with that document, that’s why the Americans knew where I lived and found me.” Mr. Karnavas asked the witness whether those people explained where they were from. Mr. Chea responded that he “was only told that they were from the Khmer Rouge tribunal. Again, later on, I was met by an American, and they also brought along my document.”



Mr. Karnavas asked the witness about the length of that interview. At this point, Ms. Srinna sought to make an objection, which, Mr. Karnavas quipped in advance, would “surely be interesting.” Ms. Srinna stated that Mr. Karnavas’s questions did not relate to the facts at issue as set out in the Closing Order. Mr. Karnavas attempted to respond but was cut off by the president, who gave the floor first to Mr. Lysak. Mr. Lysak said that the defense should have only a limited scope to ask such questions and it was still unclear whether the first or second interview was recorded. However, if he clarified that, the OCP would not have any objections to asking questions on this issue.

Mr. Karnavas reassured that he would make himself “abundantly clear.” He then said, in relation to Ms. Srinna’s comments, that the president himself was the one who elicited from the witness that there were two interviews, but that only one interview had been disclosed, and the witness had today come “full circle” and conceded that much of his testimony had in fact been based on “hearsay.” Mr. Karnavas then stated, emphatically, and gesturing repeatedly:

Now, I am entitled to explore this. Why? Because it goes to his credibility and the weight that you wish to give his testimony. If the gentleman was interviewed first by investigators of the OCIJ without being tape recorded, without being mentioned anywhere in their summary, and also produced documents, showed those documents to the witness, went over those documents with the witness, might that have been a way of coaching the witness, refreshing the witness, creating a memory in the witness? Might that in any way taint his entire testimony, let alone the process itself? ... I know that under the French system, this would be called a nullity. I'm not going for that. I'm talking about an inappropriate manner in which an interview took place with this gentleman. I'm within my rights to question on this because after all it was you, Mr. President, who asked the witness how many times he was interviewed. ...

The president permitted Mr. Karnavas to proceed with the examination but requested that he "be gentle."

Turning back to Mr. Chea, Mr. Karnavas asked the witness when he was recorded, and when documents were shown to him. Mr. Chea responded that both events occurred during the first interview. As to how long each of the two interviews lasted, the witness stated, "The first interview lasted for approximately half an hour, and the questions that they put in relation to one document, that document belonged to me. But the second interview, it lasted approximately 10 minutes, and they asked me about different subject matter."

Returning to the fall of Phnom Penh, Mr. Karnavas asked the witness if he could recall when precisely he went to the French Embassy. Mr. Chea responded that this occurred in 1975. As to how many days this occurred after the fall, the witness responded that they moved to the embassy around the third day. The witness agreed that, based on his recollection, the entire embassy was empty by the time his troops arrived and he went in to check the embassy.

Mr. Karnavas turned to the topic of killings, asking how many times the witness had been involved in killing Lon Nol soldiers who had waved white flags of surrender. The witness stated, "We never killed anyone. Koeun was the one who announced through loudspeaker that Lon Nol soldiers surrender." Neither had the witness ever witnessed killings of Lon Nol soldiers; he only heard about this from Koeun, who was in a unit attached to the witness's unit.

Was it fair to say, Mr. Karnavas concluded, that "much of what you told us today is based on what others told you and not what you saw or participated in?" The witness confirmed this. Mr. Lysak objected that Mr. Karnavas was "slightly overstating," and that the witness had stated from the beginning that his testimony on the execution from Lon Nol soldiers was based on information from Koeun and that to the extent that Mr. Karnavas was trying to extend that to all of the witness's testimony, he was being "argumentative." Noting that the witness had already given an answer, Mr. Karnavas concluded his questions.

The president dismissed the witness with thanks for his valuable testimony and adjourned the hearing for the day. Hearings will resume on Tuesday, November 6, 2012, with testimony from civil party TCCP 89, beginning with questions from the civil party lawyers.