



### **Khmer Rouge Messenger and Doctor Each Provide Insight into the Democratic Kampuchea Period**

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Former Khmer Rouge messenger Phan Van *alias* Kamphan took the stand in the Extraordinary Chambers in the Courts of Cambodia (ECCC) when the Case 002/1 trial hearing continued on Monday, December 11, 2012. In often-terse exchanges with the prosecution in which he frequently denied any recollection of the facts in question, Mr. Van testified about issues including the authority structure of autonomous Sector 105 — of which his father, Ta Lang, had for a time been secretary — as well as political education and telegram procedure and contents.

Earlier in the day, Dr. Hun Chhunly, a former Khmer Rouge-era doctor, concluded his testimony in his third day appearing before the Chamber. Under sustained questioning from the Ieng Sary defense team on his sources of knowledge and apparent inconsistencies in his testimony, Dr. Chhunly was pushed to testify that he burned diaries he kept during the Khmer Rouge era out of fear for his safety yet maintained possession throughout the DK period of a radio, gold, foreign language books, batteries, and a Rolex wristwatch he was in fact wearing in Court.

The Trial Chamber also delivered two procedural decisions throughout the day. The first held that the Ieng Sary defense team could not continue to make audio recordings of Mr. Sary and his treating doctor in his holding cell until the Chamber had time to consider written submissions from parties concerning this matter. In the second decision, the Chamber advised that civil party TCCP 1 will testify from December 12 to 13, 2012 via video link from France, rejecting an application from the Ieng Sary defense that she be required to appear in person for fear of prejudicing the rights of the accused.

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<sup>1</sup> 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>.

### ***Trial Chamber Rules Written Submissions Required on Audio Recording of Accused***

In the audience this morning were approximately 190 people, including 90 civil parties from 10 provinces around the country and 100 villagers from Kampong Thom province, many of who appeared to have been born before the Democratic Kampuchea (DK) period. After the proceedings commenced, Trial Chamber Greffier Duch Phary noted that all parties were present but for accused person Ieng Sary, who was participating in the hearings from his holding cell pursuant to a Trial Chamber ruling in this regard.<sup>2</sup>

At this stage, Judge Silvia Cartwright was given the floor to deliver the oral decision of the Trial Chamber concerning an application made by the Ieng Sary Defense Team. She stated:

The Trial Chamber has deliberated on the Ieng Sary defense request for an oral hearing to make submissions on the permissibility of audio recording the accused and his treating physician in the holding cell. The Chamber considers an oral hearing is not required, as it has requested written submissions citing appropriate legal authorities on this issue. The Chamber also notes that the Pre-Trial Chamber decision of June 11, 2010, does not appear to provide guidance regarding the specific practices at issue here. Therefore, the Trial Chamber reiterates the Ieng Sary defense must seek leave to resume the audio recording of the accused pursuant to Internal Rule 92,<sup>3</sup> and the request for oral hearing is denied.

In response, International Co-Counsel for Ieng Sary Michael Karnavas reiterated that his team indeed sought leave to audio record what occurred in the holding cell because by the time written submissions were made, two or three weeks would have gone by. In his team's view, audio recordings would not prejudice anyone, and if the Chamber later decided such recordings were not permissible, they could destroy the tapes. However, he argued, the ruling just announced prevented his team from making an accurate record and "can and does have a chilling effect for future purposes." Mr. Karnavas also sought to assure the Trial Chamber that the tapes would not be shared with the public and his team would be willing to provide the tapes to the Trial Chamber at the end of the day. Again, he stressed, the approach did not prejudice anyone.

International Senior Assistant Co-Prosecutor Tarik Abdulhak responded that the Office of the Co-Prosecutors (OCP) had already expressed its views last night but that its position was that all audio recordings now exceeded "the limited authorization that was in place," pursuant to the Pre-Trial Chamber decision.

At this juncture, the Trial Chamber judges gathered briefly in deliberation. Trial Chamber President Nil Nonn advised that the Chamber had already ruled on this issue and would not reconsider it. Instead, it would wait for parties to make arrangements pursuant to the memorandum of the Trial Chamber.

### ***Substance or Semantics: Witness's Role in the Lon Nol Military Structure***

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<sup>2</sup> Cambodia Tribunal Monitor's daily blog post regarding this ruling is available at: <http://www.cambodiatribunal.org/blog/2012/12/civil-party-%E2%80%9Cwe-were-living-prison-without-walls%E2%80%9D>.

<sup>3</sup> This rule permits parties to make written submissions up until closing statements.

Mr. Karnavas was then given the floor to begin his team’s questioning of the witness Hun Chhunly. Dr. Chhunly, who had served as a medical doctor to both the Lon Nol and Khmer Rouge regimes, had already testified extensively on December 6 to 7, 2012, about his experiences during the DK period.<sup>4</sup> Mr. Karnavas began his examination by returning to the witness’s qualifications, asking Dr. Chhunly when he completed and graduated from medical school. The doctor responded, as he had to the same question the previous week, that he had graduated medical school in 1967, after seven years of medical studies, which included 20 months of practicum sessions at Calmette Hospital in Phnom Penh. After his graduation he was assigned to practice in Battambang from 1967 to 1973 and then joined the army as a medical doctor; he practices as a “general physician.”



The defense counsel explained that the reason for these questions was that Dr. Chhunly testified that when he was transferred to the Lon Nol regime hospital, he said that he was a “medic,” not a doctor. Asking the witness whether he recalled making this statement, Dr. Chhunly responded, “I remained a general physician all along.” Mr. Karnavas asked whether the witness had misspoken when he said he was a medic. Mr. Abdulhak interjected that this was perhaps a translation issue and suggested that the relevant passages be read to the witness directly in Khmer. Mr. Karnavas insisted that the witness could remember what he said last week. Dr. Chhunly said, “I was a doctor at the civilian hospital, and I remained a doctor at the military hospital.”

Mr. Karnavas quoted from the English transcript of hearing on December 7, 2012, in which the witness said that he worked as a “military medic” at the Lon Nol hospital from 1973 to 1975.<sup>5</sup> Dr. Chhunly said that he believed the interpretation might have been “slightly different” from what he said. Next, Mr. Karnavas quoted from the transcript on December 6, 2012, in which the witness appeared to testify that he had been a doctor at the civilian hospital and then a military medic at the military hospital.<sup>6</sup>

Judge Jean-Marc Lavergne interjected, identifying this moment as one in which to perhaps be a bit more accurate. He requested that Mr. Karnavas stipulate the time during the hearing when the words were spoken, and next said that any clarification should be from the Khmer and not the English. Mr. Karnavas advised the Court of the relevant times. This prompted Dr. Chhunly to respond that he wished to make the matter “clear once and for all.” He stated, “What was rendered in English, as what you stated, could have been an incorrect interpretation of what I

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<sup>4</sup> Cambodia Tribunal Monitor’s daily blog posts of this testimony are available at: <http://www.cambodiatribunal.org/blog/2012/12/civil-party-and-witness-testify-persecution-lon-nol-officials-conditions-khmer> (December 6, 2012) and <http://www.cambodiatribunal.org/blog/2012/12/courtroom-clashes-erupt-over-witness%E2%80%99s-sources-knowledge-and-relevance-political-issues> (December 7, 2012).

<sup>5</sup> This passage appears at page 37 on the draft transcript.

<sup>6</sup> This passage appears at page 76 on the draft transcript.

said in Khmer at the time, as I said I worked as a physician. ... When I worked at the military hospital, I was the same physician.”

Before Mr. Karnavas could proceed further, however, the Trial Chamber judges huddled in deliberation. The president then advised that it was not “entirely appropriate to rely heavily on the English translation” when the witness had originally testified in Khmer. If the defense counsel wished to dwell on this issue, the president added, he should rely on the Khmer. Mr. Karnavas responded that just before the Trial Chamber judges huddled, the Khmer translators had said that the witness had served as a “doctor or medic,” and that perhaps the translators were using the words interchangeably in the translation booth. The president directed National Co-Counsel for Ieng Sary Ang Udom to verify the statement in the Khmer transcript. Mr. Udom responded that he was not yet in a position to do so as their case manager normally obtained the transcripts and the case manager was currently in the holding cell monitoring Mr. Sary.

Mr. Karnavas clarified that he was now not referring to last week’s testimony but today’s, when the translators said “doctor or medic.” Mr. Abdulhak responded that he heard the witness reiterate twice that he was a doctor at the military hospital from 1973 to 1975 and that everyone in the area knew him as a doctor. Mr. Karnavas insisted, however, that the translators said “doctor or medic.” At this point, the president conferred with the court officer, who made a phone call and left the courtroom. After a pause of several minutes, Mr. Karnavas said that he would move on and return to this issue later.

***Questions about the Witness’s Book Writing Process and Reliance on Other Sources***

Moving on, Mr. Karnavas asked if the witness stood by his testimony that he wrote his book based only on his own memory. The witness agreed with this statement. As to whether he relied on any books he read, Dr. Chhunly insisted that he did not, stating, “It is my personal writing. I did not copy from any other literature.” The defense counsel queried whether Dr. Chhunly had been to the Documentation Center of Cambodia (DC-Cam), for example, to undertake research. The doctor said he had not, although he did go to DC-Cam and the national library afterwards to deposit copies of his book for their respective collections.

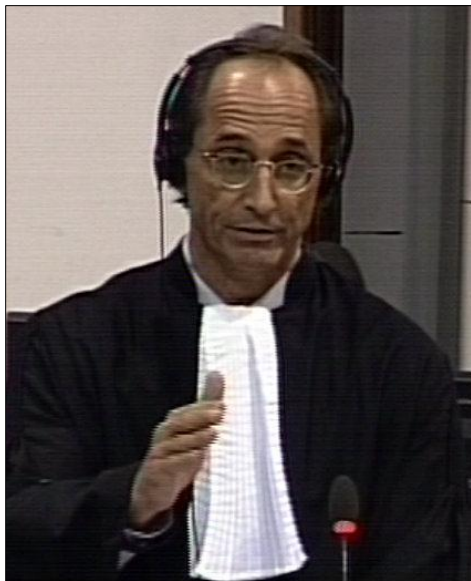
As to whether the witness could speak French, the witness confirmed, “I speak French, and a little English.” Did the witness speak French, Mr. Karnavas asked, during the Khmer Rouge regime? Dr. Chhunly said that he could read French well and could understand written English. The witness then confirmed, when pressed, that he had three books during the DK, *L’Histoire de la Russie*, *The World After Life*, and *Tom Sawyer*.

This response prompted Mr. Karnavas to direct the witness back to his previous testimony that he read many books about the DK period. The witness said that he recalled this statement but said that he read “some books concerning the Khmer Rouge,” including a book by Laurence Picq entitled *Beyond the Horizon*, as well as *Prisoner of the Khmer Rouge* written by Prince Norodom Sihanouk. Thus, Mr. Karnavas said, “the sum total of your reading as an intellectual on this period of ‘75 to ‘79 are those two books and those two books only.” He pressed the witness further, asking how many books Dr. Chhunly read about the DK period between 1979 and 2004, when he began writing his own book.

Before the witness could respond, however, Mr. Abdulhak said that Mr. Karnavas might have been inadvertently misrepresenting the witness's testimony. The defense counsel countered that he thought he had been clear in his questioning. Clarifying the matter, the witness conceded that in addition to the books by Ms. Picq and Prince Norodom Sihanouk, he read "many books" concerning the DK period but emphasized that "the books that I have read did not influence my writing."

***Radios and Rolexes: Witness's Possessions during the Khmer Rouge and Destruction***

Turning to another topic, Mr. Karnavas asked the witness if he recalled writing in his book that he had a Sony radio during the DK regime. The witness confirmed that he did and said, "I took the risk to listen to this at night. I had small earplugs, and I listened to it only at night." The witness attempted to continue to speak but his microphone had not been activated. After his microphone was turned back on, the witness said, "The radio was about 10 centimeters wide and 20 centimeters long. As for the earplugs, I did not plug it with the radio I had to put it separately to hide them from others." Mr. Karnavas queried whether the radio was about the size of a



shoebox. The witness said, "The size of the radio was not big. I covered it with a plastic bag and I used this plastic bag as part of my pillow as well."

Mr. Karnavas also noted that the witness had said, in his book, that he had a Rolex wristwatch all the way through the DK regime. The witness confirmed this and said it was the Rolex he was wearing now, indicating to a glint of metal visible at the edge of his left shirtsleeve. On the subject of gold, which the witness had written about possessing during the DK regime, Dr. Chhunly said that his mother kept the gold.

Where was the witness able to buy batteries for his radio? Mr. Karnavas inquired. Dr. Chhunly said, "During the Khmer Rouge era, we had gold and generally the evacuees had to barter gold with sugar, rice, or batteries.

We had to do it secretly at that time." Mr. Karnavas pressed the witness to answer his original question. Dr. Chhunly explained, "I bartered for them with other evacuees. We exchanged items with them." Did this mean, then, that the evacuees were able to have items such as batteries with them even until late 1977, despite being constantly searched? Mr. Karnavas questioned. The witness agreed that this was the case: despite constant searches, bartering continued secretly.

This answer prompted the defense counsel to ask the witness about the diaries he had testified to having kept throughout the DK but eventually destroyed. Before Dr. Chhunly could respond, the International Lead Co-Lawyer for the civil parties Elisabeth Simonneau Fort asked if Mr. Karnavas could observe a pause before asking his questions as the civil parties had already missed several parts of the discussion. Dr. Chhunly then responded, "I would risk my life if I had been discovered possessing a radio or even read[ing] books, but at that time, I was starving for information. I was hungry for reading, to get information. That's why I dared take the risk to do so."

Rather than returning as to his original question, Mr. Karnavas considered this answer and inquired whether possessing French and English books would also have gotten the witness into trouble. Dr. Chhunly responded, “I had to play some tricks as follows. When I was at the hospital--.” Mr. Karnavas cut the witness off at this point, stating that they could discuss trickery later but his question for the moment was whether the books would have gotten the witness into trouble. Before the witness could reply, the Trial Chamber judges huddled once more in quick deliberation. Judge Lavergne announced for the bench that Mr. Karnavas’s question was repetitive and the tone in which he asked the question was “entirely inappropriate.” He reminded Mr. Karnavas of the need to not be impolite or rude.

Mr. Karnavas asked the witness, in a more subdued tone, whether possession of gold would have gotten the witness in trouble. “I believed that the evacuees had to bring along some gold so as to barter for goods or items if they felt they were much needed,” Dr. Chhunly replied. The defense counsel requested the witness answer the actual question asked. Dr. Chhunly obliged, responding, “Yes. If they learned that we were in the possession of any gold, then the gold would be taken.”

As for whether he would have gotten in trouble for possessing a Rolex, the witness responded that he put the Rolex in a plastic bag and buried it, digging it up after 1979. The defense counsel questioned how the witness kept three foreign books, gold, batteries, a radio, and a Rolex, but took notes and then destroyed them. The witness explained that he kept the books at the hospital because he worked in a separate room; he took the cover pages off, and then would make use of the pages he read in order to roll cigarettes. The notes were destroyed “because I was fearing for my safety.” Dr. Chhunly further elaborated:

At the cooperative, the search was so rigorous. By the time I got to the cooperative, I couldn’t read or manage to keep anything. To throw them away was the best option. I buried the watch when I was at the cooperative but I could hide the radio by blending it in with my cushion. I wrapped it so it looked like a cushion and no one took any notice.

Did this mean that the witness’s room was not searched? Mr. Karnavas asked. Dr. Chhunly explained that due to having a separate house given to him while at the military hospital, he “could manage” to read the book, though not in the open. With the radio, as he explained previously, he hid it in a bag with a mosquito net, using the bag as a pillow.

From 1979 to 2004, the defense counsel continued, did the witness not make any effort to reconstruct his notes, or did he only begin this process 25 years later? The witness insisted, “The experience I lived through the Khmer Rouge still lives with me. I never forget it. It is just a matter of time. I can recollect every detail of the events.”

### ***Distinguishing between Eyewitness Testimony and Hearsay***

This response prompted Mr. Karnavas to refer to a passage in Dr. Chhunly’s book in which he described a helicopter landing along the Sangke River at 9 a.m.<sup>7</sup> Asked whether he actually saw

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<sup>7</sup> The relevant ERNs are 00678756 to 57 (in Khmer).





this landing, the witness said, “On April 17, 1975, at 9 a.m. the helicopter landed at the children’s playground. A few people walked past the metal bridge, boarded the helicopter and departed. ... As I said, I saw this.”

Mr. Karnavas asked whether the witness recalled saying, in his testimony on December 6 and 7, 2012, that he heard about events rather than seeing them, noting that in his book, the witness had said in the preface, “I am writing what I did, what I saw, what I heard.”<sup>8</sup> Was everything that the witness wrote about his own observation? Mr. Karnavas questioned. Mr. Abdulhak interjected at this point to object that Mr. Karnavas was misstating the witness’s testimony. Mr. Karnavas argued that perhaps the witness did not have as good a memory as he claimed, as he did not seem to recall testimony he made last week, and this went to his credibility; in addition, perhaps the

witness believed that he misspoke. Mr. Abdulhak said that the proper way to proceed was to distinguish between accounts that the witness saw with his own eyes and others he did not; each event had to be distinguished individually.

Mr. Karnavas moved on, asking Dr. Chhunly whether he stood by his testimony that he had no freedom of movement during the DK regime. The witness agreed this was true. Mr. Karnavas then noted that the book only covered Battambang in two districts. Was this because this was the extent of the witness’s universe during the DK? he questioned. The witness replied that during the DK period, he worked at two hospitals and at Mong Russei district, and “these are the confined areas that I could write about.”

Mr. Karnavas then said that he did not hear the witness testify, and did not read in his book, about attending any “high-level meetings where policy may have been discussed.” The witness said that he worked at P-1 and P-2 Hospitals and did not work as a senior doctor there. Therefore, Mr. Karnavas asked, was the witness not treated as a doctor but as a kind of assistant? Dr. Chhunly confirmed this but added, “I was asked to help others as an assistant, and at the same time, I was a prisoner, a subordinate, a low-level employee.”

Returning to the question about high-level meetings, the witness reiterated, “As indicated, I was called to assist other people and then I was at the same time, a prisoner, a low-level worker.” Therefore, Mr. Karnavas pressed, did this mean the witness was not in a position to tell the Court about high-level meetings? Dr. Chhunly agreed that he was not.

### ***Return to the Controversial Issue of Vietnamese “Brainwashing Sessions”***

Mr. Karnavas inquired whether the witness worked as a doctor in Battambang from 1979 until 1986 as he had indicated in his book.<sup>9</sup> The witness confirmed that, after the fall of the Khmer Rouge in 1979, he worked as the head of Battambang provincial hospital until 1986, at which

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<sup>8</sup> The relevant ERN is 00369675 (in Khmer).

<sup>9</sup> The relevant ERNs are 00678941 to 42 (in Khmer).

point he was promoted to the head of the health section of the hospital. In 1992, he explained, he was transferred to the Ministry of Health.

Did this mean that the Vietnamese appointed the witness? Mr. Karnavas asked. Dr. Chhunly responded, “I was appointed by the government of Cambodia, not the Vietnamese.” Yet, the defense counsel countered, the country was under Vietnamese control until 1989. He asked who decided that the witness should attend the “six-month brainwashing session.” Mr. Abdulkhak objected that on this particular issue, the purpose and content of those sessions, and therefore questions on this topic, were irrelevant.

Mr. Karnavas responded that the matter was relevant because the witness said that he had no notes, worked only according to his memory, and was then installed in a very high position by the Vietnamese-controlled government. The purpose of brainwashing was so that the person being brainwashed did not realize this had happened, he asserted, and he submitted it was possible that the witness had been colored by the content of the brainwashing sessions. If he were not permitted to pursue this subject, Mr. Karnavas stated, he would accept it but sought a ruling. The president indicated that Mr. Karnavas was indeed not permitted to continue with this line of questioning.

Keeping with the general topic of the Vietnamese, Mr. Karnavas noted that in the witness’s book, he had described the formation of a new country, the People’s Republic of Kampuchea, and his mind being ravaged by thoughts that this country was trapped “between the crocodile in the river and the tiger on the land.” The book continued that the appearance of this new regime could be different to the Khmer Rouge, but the results were the same, and thus Ho Chi Minh’s long-held ambitions over Cambodia had come true.<sup>10</sup> Asked whether he recalled writing this passage, the witness agreed that he had.

Mr. Karnavas advised that he did not want the witness to discuss what happened after 1979, such as the K-5 Plan, but to reflect upon what he wrote about Vietnam “swallowing parts of Cambodia.” Why did this feeling ravage the witness’s mind, he asked, just as the Vietnamese were liberating him? Dr. Chhunly said:

I believed that it was not uncommon that where a country was assisted by foreigners who helped overthrow a regime, the helper had some kind of clear objective. As I stated in the book, the Khmer Rouge had conflicts with Vietnam, but during the time of conflict, the Khmer Rouge killed their own people instead of the Vietnamese.

Before Mr. Karnavas could continue, the president queried how much longer he would need to question the witness. Mr. Karnavas said he would require up to seven minutes. Permitted to continue, Mr. Karnavas asked whether it was the witness’s experience that the Vietnamese had swallowed Cambodian land in the past. Mr. Abdulkhak objected to this question on the basis of relevance, arguing that these questions “do not in any way elicit evidence that might help Your Honors in finding the truth.”

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<sup>10</sup> The relevant ERN is 00628900 (in Khmer).



Mr. Karnavas responded, “The prosecutor and perhaps even the UN would like us to magically believe that something happened on April 17, 1975, and something magically happened on January 7, 1979.” The issue since the beginning of this trial, he argued, was that there was fear in what the Vietnamese were attempting to do, a matter discussed in the witness’s book. Mr. Karnavas asserted that the matter was relevant, in his view, and “to suggest that we can somehow try this case in a vacuum is illogical.”

After a brief conference with his colleagues on the bench, the president advised that the prosecution’s objection was sustained. Mr. Karnavas asked for a clarification as to whether it was the case that the prosecution could discuss the Vietnamese but the defense could not. He requested a clear ruling. Judge Cartwright could be heard whispering to the president. After a moment, the president advised that the issue had already been ruled upon and the grounds for the objection were based on the specificity of the question posed by the parties. In addition, the witness was not an expert witness; he was not a historian; the purpose of summoning the witness was to hear his testimony concerning the administrative structure of the DK and his experience of the initial population movements. He advised Mr. Karnavas to review the Chamber’s instructions regarding the purpose of the trial segment.



Mr. Karnavas said he had to comment, for the record, that the prosecution, when they were questioning the witness, went into other areas and treated Dr. Chhunly as a witness.<sup>11</sup> However, the president cut the defense counsel off, advising that the matter had been ruled upon. The president then adjourned the hearing for the mid-morning break.

### ***Witness Phan Van Takes the Stand***

When the hearings resumed for the second morning session, bespectacled witness Phan Van *alias* Khamphan took the stand, assisted by duty counsel Mom Rithya. In response to initial questions from the bench, he explained that he is currently known as Phan Van, is 53, and lives in Malai where he works as a farmer. He is married to Hun Chhorvy, and they have three children. The president advised the witness that he had the right not to respond to questions he thought might be self-incriminating.

The witness confirmed, when questioned, that he could read and write some Khmer. He also confirmed that he had given three interviews to the ECCC’s Office of the Co-Investigating Judges (OCIJ) in Malai, although he could not remember the dates of these interviews. As to whether the witness had read the record of OCIJ interviews, Mr. Van confirmed that his duty counsel had done so. Queried as to whether those records reflected the accounts he provided to the OCIJ, the witness confirmed that they were consistent with his interview responses.

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<sup>11</sup> The defense counsel may have misspoken here. It seems that he was in fact suggesting that the OCP had at times treated Dr. Chhunly as an expert, not a witness.

International Senior Assistant Co-Prosecutor Vincent de Wilde began questioning on the part of the Office of the Co-Prosecutors (OCP). Mr. de Wilde first indicated to the witness that he would be questioning him chronologically and directed the witness to events he lived through or was told about before 1970. Asked where he lived in the years before 1970, the witness advised that he lived in Mondulkiri and learned to read to write in the jungle. As to why he was in the jungle, Mr. Van explained that he ran into the jungle with his parents, though he was too young at the time to understand what had happened.

Mr. de Wilde sought the president's permission to read from the witness's records of OCIJ interview on November 21, 2008, and display it onscreen. In the passage, the witness said that the forest was in Ratanakiri near the Vietnamese border and the leaders in the forest included Ta Vong *alias* Vy, Ta Thang Sy, and Ta Lang, the latter being the witness's father.<sup>12</sup> The witness explained, "These people were cadres in the resistance movement, including my father." As to his father's role before 1970, Mr. Van denied any knowledge of this at the time, as he was too young. What about afterwards? Mr. de Wilde inquired. The witness confirmed, "Later on, I learned that he was the secretary of the sector." Asked whether he met any Khmer Rouge leaders in the forest before 1970, the witness denied this.

Moving on, Mr. de Wilde noted that the witness had testified living in B-20 between 1970 and 1973. Where was this located? he asked. Mr. Van said that he did not remember this very well, but "I know that it was somewhere near Kilometer 10." This prompted Mr. de Wilde to advise the witness that the purpose of his testimony at the Court was to explain what he knew even if he had already advised the OCIJ. As to the province in which B-20 was located, the witness said that he did not know, which prompted Mr. de Wilde to read a passage from a record of OCIJ interview in which the witness said that B-20 may have been in Stung Trang district, Kampong Cham province.<sup>13</sup>

#### ***Witness's Work as a Khmer Rouge Messenger at Office B-20***

The prosecutor next inquired as to what the witness did at B-20. Mr. Van responded that he lived and worked there as a messenger. Asked about his work as a messenger, the witness looked down, apparently perusing a document, and then advised, "I served uncles at the office. ... These uncles include Uncle Nuon, Uncle Hu Nim, Uncle Hu Yun, and Uncle Pol Pot." Mr. de Wilde asked if there were any other "uncles," but before the witness could respond, International Co-Counsel for Khieu Samphan Arthur Vercken said that perhaps the president should direct the witness not to read his interview records to refresh his memory.

Continuing, Mr. Van said he did not recall any other "uncles" there. This prompted Mr. de Wilde to read a passage from another record of OCIJ interview in which the witness said that Ta Mok and Son Sen appeared at B-20 from time to time.<sup>14</sup> The witness confirmed, "I saw them there, because that place was a common office where people would come to meet. However, these people would not stay on a regular basis at this place." Continuing on, Mr. Van said that he

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<sup>12</sup> The interview has the document number E3/58, and the relevant passage appears on page 2.

<sup>13</sup> This record has the document number E3/58, and the relevant passage appears page 2 in all versions, and additionally on page 3 in English.

<sup>14</sup> This record has the document number E3/57, and the relevant ERN is 00287701 to 02 (in Khmer). The passage also appears on page 3 in English, and page 2 in French.

“carried these messages from one uncle to another: for example, from Uncle Nuon to Uncle Pol Pot, from one house to another.” As for whether “all the uncles” lived at B-20 or whether some lived further away, the witness said they all lived at B-20.

Mr. Karnavas objected that this questioning was not creating a clear record, was confusing, and may even lead the witness. Mr. de Wilde offered to rephrase his question, asking whether Pol Pot, Nuon Chea, Khieu Samphan, Hu Nim, and Hu Yun were all living at B-20. “They stayed there altogether, but others came once in a while,” Mr. Van responded. However, he denied knowing what roles these leaders played.

The prosecutor said that in the passage he previously referred to, the witness had said zone leaders met in the center. Mr. de Wilde asked whether the witness knew whether more senior leaders met at B-20. The witness said he learned this later on.

Next, Mr. de Wilde queried whether Mr. Van was made to study anything while at B-20. “At the time, I was made to study the decoding of telegrams,” he said. Asked who oversaw this training, the witness was prevented from responding as the president gave the floor to National Co-Counsel for Mr. Samphan Kong Sam Onn. Mr. Sam Onn objected that it had appeared Mr. de Wilde was asking about translation of messages. The president advised Mr. de Wilde that it appeared that there was a difference in translation. Mr. de Wilde responded that he was referring to the “decoding” reference, although he did note that there was also a reference to “translation” of telegrams in another record of interview.

Mr. Van then responded, “These were called telegrams at the time. . . . At the time, a woman by the name of Sim was the trainer.” Mr. de Wilde asked whether there was also a person called Yos training in the decoding of telegrams at B-20. The witness stated that did not recall this. Mr. de Wilde advised that in one of his OCIJ interviews, Mr. Van had said that he was trained in decoding by a person called Yos.<sup>15</sup> Mr. Van then confirmed this was true.

The prosecutor queried whether Mr. Van ever met people called Norng Sophang *alias* Pang or Dim while at B-20. The witness denied this. Mr. de Wilde asked whether the witness learned to draft and encrypt telegrams. The witness responded, “I was trained in how to encode telegrams . . . but I did not practice it anywhere. I never decoded [telegrams].”

### ***Transfer to O Buon Krom and Structure of Autonomous Sector 105***

Moving on, Mr. de Wilde asked the witness when he left B-20 with his father to go to O Buon Krom at Sector 105. The witness said he did not recall the exact date. Mr. de Wilde pressed on this point, querying whether Mr. Van had an approximate date. “I do not recall the year but it could have been either in 1972 or 1973,” the witness replied. As for what Mr. Van did for his father, the witness replied, “I was assisting him in decoding telegrams.” The witness then confirmed that O Buon Krom was located in Mondulkiri province. As for whether Pol Pot, Mr. Chea, Mr. Samphan, and Mr. Sary ever visited the area while the witness was there, Mr. Van denied this.

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<sup>15</sup> This record has the document number E3/57, and appears on page 3 of all language versions.

Mr. de Wilde asked the witness how long he stayed in O Buon Krom before leaving for Phnom Khraol in Sector 105. The witness said that this was “when we were about to liberate Phnom Penh.” Did the office at Phnom Khraol have a codename? Mr. de Wilde asked. Mr. Van confirmed that the codename was K-17. Mr. de Wilde asked whether the witness saw evacuees arrive while at Phnom Khraol. Mr. Van denied this.

When questioned about his father, the witness advised that before April 17, 1975, his father served as “the secretary of the sector” and that his father’s only revolutionary aliases were Lang and Ham. To whom did the witness’s father report from April 1975 onwards? Mr. de Wilde asked. The witness responded, “My father had to report to Office 870” and he knew this because this was “in accordance with the telegrams.” Mr. Sam Onn interjected at this point that the witness testified that his father was sent to Office 870 and that the prosecutor had added that the telegrams were sent to Office 870. Mr. de Wilde responded that this may have been a question of interpretation<sup>16</sup> and he was simply asking to whom the witness’s father reported at Office 870.

When asked the rank of his father within Sector 105, Mr. Van responded instead that, “870 belonged to the Center.” Mr. de Wilde asked whether Sector 105 was an autonomous sector. The witness confirmed that it was, if his “understanding was correct.”

This prompted Mr. de Wilde to ask the witness if he could recall the number and names of districts in Sector 105. The witness responded that he could not remember them all, but that the names included “Koh Nhek, Keo Seima, O Rang, Pich Chenda” Mr. Van also confirmed that there were cooperatives in Sector 105, and they were set up “before 1975.” As to when cooperatives were set up, the witness testified that “it was in late 1973 or early 1974.” When, therefore, did the witness leave B-20 for Sector 105? Mr. de Wilde asked. Mr. Van said he could not recall this. After stressing once more that he was too young to know much about what was going on, Mr. Van said, “What I knew was that before 1975, people acted collectively.”

“There was a sector military attached to the sector,” Mr. Van went on, when asked. He also confirmed that the troops reported to his father. Above his father, Mr. Van continued, Sophea controlled the troops. In addition, the witness confirmed that between 1975 and 1977, there was a division of the Revolutionary Army of Kampuchea (RAK) in Sector 105. They arrived in mid-1975 and “were under the command of the commander of Division 920.” Chhin led Division 920 when it was first established, he said, although Mr. Van could not recall whether someone replaced him later.

### ***Health Status of Accused Person Nuon Chea***

At this stage, President Nonn indicated that it was an appropriate time for lunch. Before the adjournment, Mr. Ianuzzi advised that Mr. Chea awoke with an elevated blood pressure at 5 a.m. and had been checked twice this morning. Although his blood pressure had returned to normal, Nuon Chea continued to suffer from a backache, headache, and lack of concentration and wished to retire to his holding cell for the afternoon, Mr. Ianuzzi explained, adding that his team would inform the Chamber if Mr. Chea’s condition changed.

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<sup>16</sup> This part of the prosecutor’s reply was not translated in the English translation but was audible in the original French.

The president conferred briefly with Judges You Ottara and Cartwright before being joined by all judges of the bench in brief deliberation. The president then continued to deliberate with Judges Ottara and Cartwright, before advising that the request was granted. He also advised Mr. Ianuzzi that medical checkups of Mr. Chea were at the discretion of the duty doctor and not the observations of his counsel. Mr. Ianuzzi clarified for the record that he did not say that he would perform checkups of Mr. Chea but would monitor him for the afternoon to ensure that he was “in fact participating in the proceedings.” The hearing was then adjourned for lunch.

***Chamber’s Ruling that Civil Party TCCP 1 Can Testify Via Video Link From France***

Upon resuming the hearing after lunch, the president took the floor to deliver the Chamber’s decision concerning civil party TCCP 1, who is scheduled to testify soon. That decision was as follows:

On 19 Oct 2012, the Trial Chamber received a memo from the Witnesses and Experts Support Unit indicating that civil party TCCP 1, aged 68, requested to testify by video link, indicating that:

1. She had significant anxieties about traveling to Phnom Penh.
2. She continues to suffer from distressing memories of events that befell her before she left Cambodia.
3. She has lost everyone she once knew in Cambodia.
4. Her husband was unable to travel with her to Cambodia in a supporting role.<sup>17</sup>

The Trial Chamber granted the request by civil party TCCP 1 to testify via video link from France and scheduled her testimony for December 12 to 13, 2012.<sup>18</sup> The Chamber noted that TCCP 1 is not an expert, would not likely implicate a large number of documents, and therefore video-link testimony would be feasible. It further noted that TCCP 1’s emotional and physical fragility are such that testimony by video-link is required.

At that time, the parties were not aware of TCCP 1’s request and therefore had not lodged any objection. The Ieng Sary defense now moves the Court to provide further reasons to support its decision because the Trial Chamber has not demonstrated that TCCP 1’s request is justified and requests that TCCP 1 appear in Court to testify.<sup>19</sup> The Trial Chamber notes that it has broad discretion to permit evidence by video-link whenever necessary so long as such measures are not seriously prejudicial to or inconsistent with defense rights.<sup>20</sup>

The defense submits that accepting TCCP 1’s testimony by video-link would prejudice the rights of the accused because it is not unreasonable to assume that

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<sup>17</sup> This memorandum has the document number E236/1/1.

<sup>18</sup> This decision has the document number E236/1/1.

<sup>19</sup> This application has the document number E236/1/1/2, and the relevant passage appears at paragraph 17.

<sup>20</sup> The president referred in this regard to the International Criminal Court’s (ICC) decision in *Prosecutor v. Bemba* of February 3, 2012, at paragraph 5, and also Internal Rule 26(1).

TCCP 1's testimony was inculpatory during the accused Ieng Sary's 1979 trial.<sup>21</sup> This is undermined by the defense submission that TCCP 1's testimony is not vital to establishing the guilt of the accused.<sup>22</sup> Although the accused maintained his right to object to witnesses testifying in his absence where the testimony directly or indirectly touches upon [him] or any alleged conduct or crimes attributed to [him] in the Closing Order, the accused Ieng Sary previously waived his rights to attend the hearing of testimony of TCCP 1 when Ieng Sary and his lawyers had access to various documents which contained a clear description of the experiences of this civil party during the DK era including the loss of her husband, her daughter and many other relatives.<sup>23</sup> After the Trial Chamber found the accused Ieng Sary fit to stand trial, that waiver was withdrawn,<sup>24</sup> and the Ieng Sary defense now submits that video link test will not permit Mr. Ieng Sary or his lawyers to fully access the civil party's testimony.<sup>25</sup>

As noted by the OCP, this assertion runs counter to international procedural rules established by the [International Criminal Tribunal for the former Yugoslavia], which has held that an accused does not lose materially from the fact of the physical absence of the witness when testifying by video link.

The defense further submits that TCCP 1's physical and emotional fragility is not adequately supported by evidence.<sup>26</sup> The Chamber notes that video-link testimony is fully justified to protect psychological wellbeing and dignity of its witnesses subject to the fundamental dictates of a fair trial.<sup>27</sup> In addition to the communications from TCCP 1 from WESU, TCCP 1's civil party application makes clear that she suffered physical, material or psychological injury on the basis of at least one of the crimes alleged in Case 002/001.<sup>28</sup>

Indeed, the acceptance of her civil party application by the OCIJ, which was not appealed by the Ieng Sary defense, supports this fact. Furthermore, the Trial Chamber is now in receipt of a medical certificate attesting to TCCP 1's inability to travel to Phnom Penh due to her health status. For the foregoing reasons, the Trial Chamber rejects the Ieng Sary defense motion to summon civil party TCCP 1 to testify in Cambodia.

In response, Mr. Karnavas stated, to make it sure that the record was clear, that it was only at 11:53 a.m. today that his team received the civil party's medical certificate, and had they received this document in advance, his team may have taken a different posture. Whenever the Trial Chamber intended to hear witnesses by video link, he asserted, his team would insist that

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<sup>21</sup> This argument appears at paragraph 15 of the defense team's application.

<sup>22</sup> This submission appears at paragraph 13 of the defense team's application.

<sup>23</sup> These documents have the document numbers D22/36, D22/36.2, and D199/15.

<sup>24</sup> This withdrawal of waiver has the document number E237/2.

<sup>25</sup> This argument appears at paragraph 16 of the defense team's application.

<sup>26</sup> This argument appears at paragraph 11 of the defense team's application.

<sup>27</sup> The president referred in this regard to the ICC's decision in *Lubanga* dated February 9, 2010, at paragraphs 15 and 16.

<sup>28</sup> The president referred in this regard to Internal Rule 23 *bis*.



“everything be done correctly and by the numbers.” The president then cut Mr. Karnavas off, saying that the ruling had been made.

### ***Evacuation of Mondulkiri Residents***

Having been ceded the floor, Mr. de Wilde continued questioning Mr. Van, asking whether the witness noted the movement of any villagers from Sector 105 in Mondulkiri organized by Sector 105 between 1975 and 1979. “Yes,” Mr. Van replied, “there was an evacuation in which people were evacuated from the mountainous areas to undertake farming in lowland areas.” The witness said he did not know from whom such an order was rendered, but could confirm that the evacuation indeed took place. As to whether people agreed to be transferred from the mountainous regions to farmland, the witness said he did not understand whether they “objected to that order or they came to that place voluntarily.”

### ***Structure, Leadership, and Offices of Sector 105***

Moving back to the authority structure of Sector 105, Mr. de Wilde asked who headed the sector and how far it was from Sector 17. Mr. Van explained that the headquarters of the 920 Division were about seven kilometers from K-17. He added, when questioned, that the office of the 920 Division was indeed in Phnom Khraol. As to the role or responsibilities of K-17, Mr. Van explained, “At the office of 105, there was a workshop unit, for example, an auto-repair unit and a mobile production unit, a unit in which there were people who had to undertake farming.” Mr. de Wilde clarified that he was referring to Office K-17, the office that the witness’s father oversaw. Regarding the role and purpose of this office, Mr. Van explained that the names K-17 and 105 were, in his belief, used interchangeably, as local people referred to the offices both ways. “There were other sections including the worker section and security within Office 105,” he continued. “The office was classified into different sections. People had to work and stay at different houses.”

In terms of whether Office K-17 had an oversight role over the sector, Mr. Van stated, “At that time, I did not know the role or function of K-17 because my father was only in charge of K-17 whereas Phnom Khraol was known as 105.” This prompted Mr. de Wilde to read from the witness’s record of witness interview in which he stated that K-17 oversaw Sector 105, housed the general assembly, and was in charge of a variety of areas including military training, education and economics. It also hosted meetings.<sup>29</sup> The witness said, “That account is correct, however I have no idea what happened at those meetings or the content of those meetings. I know for sure that my father was the head of K-17, but [Office] 105 was the whole office covering the area of Mondulkiri.”

Moving on, the prosecutor asked the witness for details of the other leaders of Sector 105. Mr. Van obliged, explaining, “These people already passed away. They included Uncle Sophea, An Sy, and another person. One person who survives is Brother Sarun. ... There were these two people, Uncle Sophea and Poun, and Uncle Mey, also [who collaborated closely with my father]. But these people already passed away.”

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<sup>29</sup> This record has the document number E50/57, and the relevant ERNs are 00287702 (in Khmer). The relevant passage also appears on pages 3 of the English and French versions.

At this juncture, the prosecutor noted that in one of his records of OCIJ interview, the witness had listed several additional individuals who were also leaders of Office K-17, as follows:

Ta Kham Phuon was responsible for politics and policy. Ta Sarun was the deputy leader. Mey was in charge of education. Cham was a deputy. Ra was a deputy in charge of general issues. There was An Sy, a deputy, and he was the secretary of Keo Seima district. There was Chuon: he was a deputy in charge of the provincial commercial unit. There was also Sophea, in charge of the military sector. There was Veang, Sophea's deputy, as well as La, a deputy of military affairs, as well as Meng, another deputy of military affairs, and Peng: another deputy of military affairs.<sup>30</sup>

Mr. Van confirmed that this refreshed his memory, and, when pressed, that Ta Sarun, the deputy of the sector, also worked at a district committee and came to K-17 "rather often" to meet with sector leaders. The witness also confirmed that An Sy, who was the secretary of Keo Seima district, was his uncle, and died "on a later date."

The prosecutor moved on, asking the witness whether it was correct that in Sector 105, there was an office called K-11. The witness denied this. As for whether there was an office called K-16, the witness said he did not know, but "as far as I can recollect, there was no such office."

Who replaced the witness's father as secretary of Sector 105 after his death? Mr. de Wilde asked. The witness advised that this was Ta Sarun. Although the witness could not recall the district of which Ta Sarun was secretary, Mr. de Wilde noted that in one of the witness's records of OCIJ interview, he had said that Ta Sarun was the secretary of O Rang district.<sup>31</sup> Queried as to whether this was correct, Mr. Van said he could not recall.

What the witness could recall was that Lang was in charge of the security center at Phnom Khraol and that this was not the same person as the witness's father. This prompted the prosecutor to ask whether, in light of the witness testifying that Sophea was in charge of security, who was superior as between Leng and Sophea. Mr. Van replied, "Sophea was the military commander in charge of security, but Leng was the person placed directly in charge of security."

As for whether there were Sector 105 offices in Phnom Penh, Mr. Van said that there were and that "the branch office in Phnom Penh was tasked to receive materials and supplies in order to supply to Sector 105. ... It was called the Office of Commerce of Sector 105." Mr. Van also confirmed that when officials of Sector 105 visited Phnom Penh, they stayed at this office.

***Meetings, Political Education, Self-Criticism Sessions, and a 12-Point "Moral Code"***

Next, the witness testified that meetings at K-17 were held "rather frequently," perhaps on a monthly basis. Mr. de Wilde asked who attended these meetings. However, before the witness could respond, Mr. Karnavas interjected that the witness would be speculating if he were to

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<sup>30</sup> This record has the document number E3/57, and the relevant ERNs are 00287705 to 06 (in Khmer). The relevant passage also appears on page 5 of the English version, and page 6 of the French version.

<sup>31</sup> This record has the document number E3/57, and the relevant ERNs are 00287705 (in Khmer). The relevant passage also appears on page 6 of the English version, and page 7 of the French version.

provide an answer, unless a foundation was laid, for, if he did not attend the meetings, how would he know who attended them. The judges deliberated briefly, before resuming their seats.

Mr. de Wilde responded it would have been perfectly possible for the witness to see who attended the meetings without attending the meeting himself. The president advised that the defense objection was inappropriate and not sustained. He directed Mr. Van to respond to the question. The prosecutor reworded the question, asking the witness who attended the monthly meetings. Mr. Van responded:

There was representation from various districts. Sometimes, the district chiefs — but in the past, back then, they called them district secretaries — they would come and attend the meeting. The meetings were in different formats. Sometimes they would convene for the district secretaries, sometimes for the district committee.

Asked to specify the type of meeting held monthly, the witness said they were for “those in Sector 105 committees.” That said, the district secretaries would also come to K-17 “almost once every month.” Questioned as to whether the district secretaries were also members of the sector, Mr. Van confirmed that “according to the hierarchical structure, of course [all district secretaries] were [indeed] members of the sector.”

Mr. Van next confirmed that Office K-17 also held political education sessions that were “generally ... meant for the cadres of Sector 105.” As for whether there was an education school in each district where political trainings were held as well, the witness denied this, advising that “there was only one education center located in Phnom Khraol.”

Mr. de Wilde read from the witness’s testimony before the OCIJ in which he said that he was the secretary for his father at the district education hall and one for the sector.<sup>32</sup> Asked to react to this earlier testimony, Mr. Van said:

Concerning the self-criticism sessions, it was conducted regularly and generally Normally, the cadres of Sector 105 would come to assemble and receive certain trainings. They then went back to their respective district and would call for the self criticism sessions. This was the practice. These were ongoing sessions held regularly at the “base” level.

The witness also confirmed that he attended “certain trainings for my specific responsibilities” but did not attend the “large meetings.” Groups and squads would attend regular training sessions, he added.

In the same extract of OCIJ interview, Mr. de Wilde went on, the witness had said that it was through such training sessions and reports that enemies were identified. Mr. de Wilde asked why such identification was necessary. Mr. Van responded, “I did not understand it either, but it was a general practice at that time. ... During the self-criticism sessions, those who did not fall in line with the group would be alleged of being enemies.” When asked if he knew clearly who the

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<sup>32</sup> E3/57, and the relevant ERN is 00287704 (in Khmer), and the passage appears on page 5 of both the English and French versions.

enemy was, Mr. Van denied this and elaborated, “At that time, it was never clear. I did not know, I did not know who was the target of the Party. But normally, those who attended those sessions returned to the “base” and then they disappeared. Those people were thought of as the enemy.”

Moving on, the prosecutor noted that in his prior testimony, Mr. Van had mentioned the existence of a “moral code.” Asked whether violations of the code would result in being labeled as an enemy, the witness responded:

At the time, they were not all alleged of being the enemies, because there were different types of enemies. There were consciousness enemies and other types of enemies. But for consciousness enemies, they would not be removed. ... The ideological enemies, those who did not fall in line with the organization, ... were also alleged to be the enemy of the Party. But I did not know how they characterized those groups of people. I did not understand it at that time.

Regarding the content of the “moral code,” the witness said:

Most important of all was the moral living. In the early days, many people supported these 12 moral codes, but later on, everyone was alleged of being enemies of the party, that’s why people did not abide by these 12 moral codes anymore. Of course, the essence of these 12 moral codes was to respect everyone in society, to pay respect to the Buddhist monks, and so on. But later on, everyone did not adhere to these moral codes; they lived by their own moral codes.

The witness confirmed, in response to a question from Mr. de Wilde, that Party cadres were regularly asked to write their biographies. As to what a “pure” biography would look like, Mr. Van advised, “I did not know the requirements of the personal biographies at that time, but most important of all, we did not own any property by ourselves, everything belonged to the collective group, and we only had plain clothes on our bodies. Only two sets of plain clothes.”

#### ***Witness’s Siblings and Their Role Under the Khmer Rouge Regime***

Mr. de Wilde asked Mr. Van to provide more details about his brothers and sisters. Mr. Van obliged, explaining that he has “three brothers<sup>33</sup> and three sisters” – Thik, La, Teat, Han, and a younger brother named Tith, who is still alive.

Asked whether he has a sister called Phan Sovannhan, the witness confirmed this and that her alias was Bophan. “She worked for my father only very briefly in the telegram section,” Mr. Van added, when pressed. The prosecutor asked whether the person named Thik was the witness’s sister Phan Sovann Thik. The witness confirmed this. As to whether she ever worked in Sector 105, the witness denied this and explained, “I’m not quite sure where she worked, but she worked with Ta Thouch. Later on, she lived elsewhere.”

With respect to the witness’s brother Van Ny, Mr. Van explained, “Van, at that time, perhaps worked with Pol Pot. ... During the time when they ran away into the jungle, they passed the

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<sup>33</sup> It appeared from the testimony that the witness was counting himself among the number of brothers.

center and they got to know my father. I did not know how well they knew each other but they stayed for a while in Mondulkiri.”

Returning to his sister Phan Sovannhan *alias* Bophan, the witness added that she had worked with his father at a later date.

***Witness’s Role as a Sector 105 Messenger and His Father’s Meetings in Phnom Penh***

As for Mr. Van’s own role working for his father, he clarified that he “was a messenger and driver.” Asked to whom he delivered telegrams while at Office K-17, Mr. Van said:

“Messenger” at that time did not only mean that you had to carry messages to someone. You were expected to also do some kind of security work. ... I used to carry messages to district chiefs, and also had to transport them back and forth to attend meetings.

Pressed on which district secretaries he was referring to, Mr. Van said, “It depended on the service I had to offer. For example, if each secretary of a district wanted me to carry letters to him or her, then I would go to each particular district.” As for whether telegrams could be sent from district level to K-17 or other offices, and whether there were particular telegram sections organized, the witness denied this and explained, “At that time, there was no such telegram section at district level in Mondulkiri. We had to use letters or messages to communicate with one another.” He elaborated, “The letters from the district would not be encoded, they were just placed in envelopes. They were just ordinary letters, but we were not authorized to open them and read them.”

The witness confirmed that his father “traveled to Phnom Penh rather frequently during the time when there was fighting with the Vietnamese.” At this juncture, the president adjourned the hearing for the mid-afternoon break.

After the mid-afternoon break, Mr. Van advised, when pressed, that when his father went to Phnom Penh, “sometimes, he went there on his own, sometimes, he was accompanied by another cadre,” and “I only went to the commercial office where I could wait for him there.” He then said, when the prosecutor queried him on this point, that he accompanied his father on “every single trip” to Phnom Penh. As to who summoned his father to meetings, the witness said that he knew only that “someone at the ‘upper echelon’ could have done that.”

Asked whether he had to go to Phnom Penh with his father around May 1975, the witness confirmed that he did. What kind of meeting did his father participate in? Mr. de Wilde asked. Mr. Van said that his father “attended a meeting during the Khmer New Year, but I did not know what kind of meeting it was.” The witness then confirmed, when questioned, that Ta Sarun accompanied his father, although he was “not quite sure” about this.

Next, Mr. de Wilde asked if the witness could remember where a “large gathering” took place in May 1975 in Phnom Penh. The witness advised that it took place at the stadium,<sup>34</sup> but he was not there; “I went there only at night to watch a play,” he added.

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<sup>34</sup> This is presumably a reference to Olympic Stadium in Phnom Penh.

The witness denied, when questioned, that he knew with whom his father would meet in Phnom Penh, or where these meetings were. This prompted Mr. de Wilde to read from the witness's record of OCIJ interview in which the witness said that "district and sector committees took turns to go to study at K-3."<sup>35</sup> The prosecutor asked the witness if this refreshed his memory. Mr. Van said that he wished to "emphasize that I'm not very sure about that. ... In my capacity, I only stopped at the [Sector 105] commercial office."

Did the witness's father Ta Lang also attend major congresses in Phnom Penh? Mr. de Wilde asked The witness confirmed this but stated that he himself only "went there on only one occasion." Regarding who took the floor from among B-20 leaders, Mr. Van responded, "I saw Uncle Pol Pot, who took the floor."

The witness denied knowing whether his father attended political study sessions in Borei Keila.

Moving on, Mr. de Wilde asked whether the witness's father would normally convene meetings in Sector 105 to pass on what he had been advised in Phnom Penh. Mr. Van responded that his father had done so, explaining, "Normally after getting back from Phnom Penh, he would convene meetings where he would invite people from the district to attend. ... I don't know what would be discussed in those meetings but I saw district chiefs coming to attend those meetings."

As for whether other Sector 105 cadres would also attend meetings in Phnom Penh, Mr. Van confirmed that "there were the first and second deputy secretaries of the sector who would attend such meetings." The prosecutor asked if cadres who went to attend meetings in Phnom Penh would "often not come back." The witness confirmed that this was the case. Mr. de Wilde then asked the witness if he knew who called the cadres to Phnom Penh, given that he delivered the telegrams. Mr. Van said, "I don't know, but normally the telegram would be addressed to [Office] 870." Mr. de Wilde clarified that he was asking about messages from the Center convening cadres from Sector 105 to the Center. As to who sent these messages, Mr. Van explained, "Normally, no name was mentioned in the letter on the envelope. It only addressed [Office] 870."

### ***Arrests, Disappearances, and Execution of Khmer Rouge Cadres***

This answer prompted Mr. de Wilde to read a passage from the witness's OCIJ interview in which the witness said that Nuon Chea would have sent his father or Ta Sophea typewritten messages to go and study in Phnom Penh, and that his father and Ta Kham Phuon were killed on the last meeting to which they were called in Phnom Penh. In addition, both Mey and Cham were called to study in Phnom Penh "and they disappeared forever."<sup>36</sup> Asked whether he remembered saying that and how he knew Mr. Chea, Mr. Van said, "Yes, I do. That happened occasionally. When 870 addressed a letter to him, then they would put the term Nuon or Hem." As for who called Cham and Mey to Phnom Penh, Mr. Van responded more generally that "it was Uncle Nuon who would ask for some men or forces." As for who sent for Ta Chuon to go to Phnom

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<sup>35</sup> This record has the document number E3/57 at 00287704 (in Khmer), and the relevant passage appears on page 4 in English and page 5 in French.

<sup>36</sup> This record has the document number E3/58, and the relevant ERN is 00239937 (in Khmer). The relevant passage appears on page 4 of both the English and French versions.



Penh, Mr. Van said that he would have been sent at the same time as others. He then said that Ta Mey and Chuon were called to Phnom Penh before his father's death.



*Nuon Chea (front left) with other Khmer Rouge cadres during the Democratic Kampuchea period.  
(Source: Documentation Center of Cambodia)*

At this juncture, Mr. de Wilde advised the Chamber that on the case file was an S-21 prisoner list of November 1977 in which Ta Chuon was listed as number 128 of S-21 prisoners;<sup>37</sup> there was also an October 26, 1977, S-21 confession on the case file from Mey.<sup>38</sup> The prosecutor asked Mr. Van whether these arrests were more widespread. Mr. Van denied this, explaining, "At the time, no huge arrests were made yet. Only these three individuals were arrested. Later on, more people were arrested."

The witness confirmed, when queried, that he began decoding telegrams before 1975. Mr. de Wilde asked whether his father received telegrams from the Center before 1975, that is, from the Khmer Rouge leaders, not from the geographic center. Mr. Van agreed that this was so. As for the content of the telegrams Mr. Van was to decode, the witness advised that they were "more about the day-to-day situation with some brief instructions. During that time, the country was in war." He denied, when pressed, that enemies were already "singled out" in those telegrams, and advised, also when pressed, that this practice began after April 1975.

Regarding the witness's qualifications as a telegram decoder, Mr. de Wilde asked Mr. Van whether the witness ever went to Phnom Penh for further training on secret codes between 1975 and 1977. The witness denied this.

<sup>37</sup> This list has the document number E3/1645.

<sup>38</sup> This confession has the document number D175/3.78.

### ***Details of Telegram Procedures in Sector 105***

Moving on, Mr. de Wilde asked the witness what the procedure was when a telegram came in from the Center to Sector 105. Mr. Van explained:

First the letters would be typed by a group of typists. The telegram decoders would be assigned to deal with the letter separately. For those who decoded telegrams they were tasked with this particular duty. When it comes to secret codes, only certain people understood this. For those who received the telegrams, they were meant to receive the telegrams, nothing else.

As to whether there were different kinds of telegrams, for instance those that were not encoded, the witness responded, “There were two types of codes used in the telegrams: the 10-digit coded telegrams, and another one, which is more complicated to understand.” Did the witness master all types of codes? Mr. de Wilde asked. Mr. Van responded that he only understood the 10-digit coding system, continuing, “My father didn’t tell me about this, however, when we looked at the telegrams, we could see numbers coded into different numbers, numbers that we didn’t understand but were understood by others.”

The prosecutor noted that in his record of OCIJ interview, Mr. Van had said that he sent coded letters to Brother Nuon.<sup>39</sup> Asked what the witness did with such telegrams he could not decode, Mr. Van said:

The encrypted number was in the numerical form. For example, it may read 102. We did not understand what was meant. But when we looked at the title, it was addressed to Brother Number Two. But for the number, we did not decode the number as it needed another level of decoding; ... I left the number as it was. But for the title, we had to decode it ... so normally we decoded from the numbers into letters. We had to put them together to make sense as a message.

Next, Mr. de Wilde asked who in Sector 105 had the power to communicate directly via telegram, aside from his father, with the Party Center. Mr. Van responded:

At that time, no one. No one was allowed. As for Division [920],<sup>40</sup> they had their telegram office and they would communicate by themselves. But as far as Sector 105 was concerned, he was the only person who communicated via telegram to the center. ... There was no telegram communication between Division [920]<sup>41</sup> and Sector 105.

Moving on, Mr. de Wilde asked if the witness knew the *raison d’être* of Office 870 or who worked there. The witness denied any knowledge of the former. As to the latter, Mr. Van said that “at the time, the telegrams were sent to uncles.” That is, Mr. Van said, when pressed,

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<sup>39</sup> This record has the document number E3/58, and the relevant ERN is 00239937 (in Khmer). The relevant passage appears on page 4 of both the English and French versions.

<sup>40</sup> This was mistranslated as 902 in the English translation.

<sup>41</sup> Again, this was mistranslated as 902 in the English translation.

“During the DK era, “uncles” referred to Nuon Chea, Pol Pot, Khieu Samphan. We addressed them as ‘uncles’ or ‘Om Om.’”<sup>42</sup> The witness did not know of telegrams addressed specifically to Pol Pot without also being addressed to Office 870.

At this point, Mr. de Wilde asked what name Mr. Chea used to address telegrams to people, calling them to Phnom Penh. Mr. Van responded that his father addressed Mr. Chea as “brother or bong.”<sup>43</sup> The witness denied any recollection of Mr. Chea ever sending telegrams to the sector concerning security matters. This prompted Mr. de Wilde to again quote from the witness’s record of OCIJ interview in which Mr. Chea advised his father regularly on security matters, including the need to be vigilant as to the presence of Vietnamese enemies and Vietnamese ambitions, and so on.<sup>44</sup> Asked whether he ever saw such discussion in telegrams, Mr. Van said:

I recall some instructions. At the time, the instructions also served as reminders for cadres in general. Of course there were such instructions. ... There were instructions through telegrams that we had to raise our vigilance. The situation at that time was very pressing, and we had to adhere to the instructions.

Concerning vigilance, the prosecutor queried, what exactly did this mean? Mr. Van responded:

At that time, there were enemies fighting with our forces along the border, and there was also warfare among different factions, different groups internally. That’s why we had to adhere to instructions. If I had to elaborate on the elements of enemies, I would be very long-winded, because there were a lot of elements of enemies at that time.

Directed therefore to focus just on “infiltrated enemies,” Mr. Van elaborated:

To my personal understanding, the “infiltrated enemies” were the ones who did not fall in line with instructions of the organization, those who deviated from the instructions. Those people were no longer trusted by the organization, and they were no longer given any tasks to handle. In addition, in certain circumstances, they would be detained as well. They held differing views from the organization. They were not the Vietnamese enemy who were fighting along the border. ... Back then, those who disappeared, they announced that they were traitors. Some were accused of being members of the traitorous CIA network. Mey was also charged with being in the CIA network, and ... of associating with the Vietnamese enemy.

Did Sector 105 ever receive telegrams from Doeun? Mr. de Wilde asked. The witness said he did not recall this and did not think that name existed. As for whether Sector 105 ever received telegrams from Mr. Samphan himself, the witness testified that he was “not clear” about this.

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<sup>42</sup> Om Om is a term used for an uncle older than one’s own father, whereas Pou is used to refer to uncles younger than one’s own father.

<sup>43</sup> Bong is translated as brother in Khmer.

<sup>44</sup> This record has the document number E3/58, and the relevant ERN is 00239937 (in Khmer). The relevant passage appears on page 4 of both the English and French versions.

The prosecutor then read from the witness's record of OCIJ interview in which the witness stated that telegrams that did not relate to security matters were sent to Mr. Samphan *alias* Hem in plain language, and when Mr. Samphan sent telegrams back, he used the name Hem.<sup>45</sup>

Mr. de Wilde then noted the witness having stated that Hem had sent and received telegrams. He asked the witness whether he stood by this statement, and that Mr. Samphan indeed sent telegrams about materiel, social affairs, health care or so on. Mr. Van confirmed this and elaborated, "Whenever it was related to equipment or so, as you enumerated, he would sign it with the [alias] Hem."

The witness could not, however, recall precisely whether Sector 105 sent rice to Phnom Penh, although he could recall that they sent such rice "approximately twice a year." Was malnutrition an issue within the cooperatives of Sector 105 between 1975 and 1977? Mr. de Wilde asked. The witness agreed malnutrition and food shortages were prevalent, but "it was not in a desperate situation." Was rice sent to Phnom Penh twice a year despite such conditions? The prosecutor asked. Mr. Van confirmed this.

### ***Reviewing of Specific Telegrams Sent to and From Sector 105 and the Center***

The prosecutor was granted permission to show the witness a series of telegrams, given that he had worked in the telegram office. The first telegram, dated October 12, 1976, and entitled *Telegram 00*, was signed by Lang, and addressed to "Beloved and Missed Comrade Doeun."<sup>46</sup> The author of the telegram advised Doeun of the date of his arrival in 105 and about the change in his revolutionary name. The prosecutor advised that this telegram was sent to and decoded by the Center. Asked if Lang was the witness's father, Mr. Van confirmed this but added that he had never seen this telegram. Could the witness nevertheless tell the Chamber whether the form of this telegram was consistent with telegrams at that time? Mr. de Wilde queried. Mr. Van responded, "My brother might have known it better because back in 1976, I was, at that time, tasked to drive the truck. My brother was, at that time, the one who was involved in this kind of task. ... Not my brother, my elder sister by the name of Han."

In the first telegram the prosecutor showed to the witness, the witness's father had emphasized to Doeun that he should now be known as Comrade Chhan. Mr. de Wilde asked if the witness was familiar with this. Mr. Van sought clarification on whether the prosecutor was referring to Chhan or Phan. The prosecutor noted that the English referred to Chhan, although the French referred to Phan and Chhan. He directed the witness to refer to the original Khmer version. Mr. Van said:

Phan was the family name of my father. ... As for my father, I don't think that at any point in time, he changed his name to Chhan. In 1976, my elder sister was close to my father, working with my father. She would have known this better than I did.

The prosecutor noted that there was a second telegram, also dated October 12, 1976, sent by Lang and addressed to "Beloved Brother Nuon."<sup>47</sup> The prosecutor noted it was quite likely that

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<sup>45</sup> This record has the document number E3/58. The relevant passage appears on page 4 of all language versions.

<sup>46</sup> This telegram has the document number E3/1191.

<sup>47</sup> This telegram has the document number E3/1192.

the witness had never seen this telegram, and therefore sought leave from the Chamber to show the witness this particular document. The president and Judge Cartwright turned to each other and were joined by their colleagues on the bench for a quick conference. The president then directed Mr. de Wilde to proceed, who duly advised the witness that Lang sent this telegram, asking if Lang was the witness's father. Mr. Van confirmed this.

Mr. de Wilde noted that the telegram was addressed to "Beloved Brother Nuon." Did "Nuon" refer to Nuon Chea? he asked. Mr. Ianuzzi interjected at this point, suggesting that the first question should have been whether the witness was familiar with the document. The witness had testified, the defense counsel said, was a driver at the time and not working in the telegram office, and therefore the witness's knowledge of the telegram should be laid first. Mr. de Wilde responded that he believed that earlier on, he said that the telegram bore the same date as the previous one, and he did not think that Mr. Van had seen it. However, he did wish to know if this was the way that his father would normally address Mr. Chea. Mr. Ianuzzi responded, "I can tell you that my client is Nuon Chea ... and I can tell you that the witness's father is Lang," and that he therefore could not understand the purpose of this exercise. He implored parties to always orient themselves in time with each and every set of questions and if it was therefore outside the scope of the witness's knowledge, he did not see the point of the exercise.



To satisfy Mr. Ianuzzi, the prosecutor asked the witness if he ever saw this telegram. Mr. Van said that he had not, but "the format is familiar." Mr. de Wilde asked if the witness could recognize on the telegram the way that his father would normally address Mr. Chea. The witness responded that his father would address Mr. Chea in the same way that the telegram already stated, namely as Brother or Bong.

Continuing on, Mr. de Wilde noted that the telegram discussed the assignment of Comrade Chuon to the sector commerce committee. Asked whether this was the same Comrade Chuon as the witness discussed earlier, Mr. Van agreed that this was so.

The hearings were then adjourned for the day. Hearings in the ECCC will resume on Wednesday, December 12, 2012, with the continued testimony of Mr. Van. Following the conclusion of Mr. Van's testimony, the Court will hear the testimony of civil party TCCP 1 via video-link from France.