



Courtroom Clashes Erupt over Witness's Sources of Knowledge and Relevance of Political Issues

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The examination of Dr. Hun Chhunly, a doctor who published a book describing his experiences practicing medicine during the Lon Nol and Khmer Rouge regimes, continued in the Extraordinary Chambers in the Courts of Cambodia (ECCC) on Friday, December 7, 2012. In his second day of testimony, the witness elaborated on some topics he had already mentioned, notably the execution of Lon Nol military officials and medical staff and his knowledge of senior Khmer Rouge leaders, including the accused persons Nuon Chea, Ieng Sary, and Khieu Samphan.

The day was marked by repeated challenges from all defense teams and the Nuon Chea defense team in particular on Dr. Chhunly's sources of knowledge. Under persistent questioning, the witness conceded that a number of incidents or claims in his book that had been cited in his testimony to the Court thus far were things he did not personally see or hear, including a particularly vivid incident of a girl being burned alive in a crematorium.

The Trial Chamber emphatically halted two attempts by the Nuon Chea defense team to raise political issues on the grounds that they were irrelevant and outside the temporal and material jurisdiction of the Court. These issues were the K-5 Plan, some resulting deaths of which the

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>.

team alleged may have been erroneously attributed to the Khmer Rouge, and the witness's own testimony that he had attended Vietnamese "brainwashing sessions" after the Khmer Rouge era, which the team suggested could have affected the witness's account of events in his book.

Prosecutor's Examination of Witness Continues with Questions on Khieu Samphan

Approximately 200 villagers from Takeo province were in the public gallery this morning. They witnessed Trial Chamber Greffier Duch Phary open the day's proceedings by noting that all parties were present except for accused person Ieng Sary, who was participating in the hearings from the Court's holding cells pursuant to an order from the Trial Chamber.

Following this announcement, International Senior Assistant Co-Prosecutor Tarik Abdulhak took the floor to resume questioning witness Dr. Hun Chhunly, whom Mr. Abdulhak had begun questioning on December 6, 2012.² The prosecutor first directed Dr. Chhunly to a passage in the witness's book in which he had discussed an announcement regarding "enemies inside the Party" and which declared the removal of Hu Nim, the former Minister of Information.³ Asked to elaborate, Dr. Chhunly responded that he had heard the announcement that Hu Nim had been removed at one of the regular meetings convened at night, after the day's labor had been completed.

Next, Mr. Abdulhak referred Dr. Chhunly back to his testimony on December 6, 2012, concerning Khieu Samphan reading out the Constitution of Democratic Kampuchea. The prosecutor first asked how Dr. Chhunly had come to know Mr. Samphan. The witness explained that he had come to know Mr. Samphan "in his capacity as an intellectual" and as the head of the *L'Observateur* newspaper. But, he admitted, "I did not really have good contact or close relations with him in any way."

Regarding Mr. Samphan's reading of the constitution, Dr. Chhunly explained that he had attended another meeting convened by the head of the hospital for the medical staff to hear a radio announcement that said that King Norodom Sihanouk had resigned as the head of state, with Mr. Samphan installed as president of the State Presidium. At this point, the witness recalled, Mr. Samphan read the 25 articles of the Constitution of Democratic Kampuchea on the radio. "I remember only two of [the articles]," Dr. Chhunly said. "One was that people were allowed to follow any religion of their choice [and another was the] right to access all job opportunities."

Mr. Abdulhak was granted permission to read a brief passage from a document stated to be a transcript of a speech attributed to Khieu Samphan and given on January 5, 1976.⁴ Trial Chamber President Nil Nonn advised, however, that if the witness had not seen the document before, he could not be examined on it. Mr. Abdulhak responded that a nexus had been established and he did not propose to show the witness the document but simply read a few

² Cambodia Tribunal Monitor's blog post of this testimony is available at <http://www.cambodiatribunal.org/blog/2012/12/civil-party-and-witness-testify-persecution-lon-nol-officials-conditions-khmer>.

³ The book has the document number D313/1.2.8 and the relevant ERNs are 00678865 (in Khmer), and 00369758 (in English).

⁴ This transcript has the document number E3/273.

words from it to determine if those words were words the witness had heard in the broadcast. The document, entitled *Text of Deputy Prime Minister Khieu Samphan's Report on the New Draft Constitution Delivered on 14 December 1975, Third National Congress in Phnom Penh*, read as follows:

In preparing this constitution, we fought step by step to overthrow the traitorous administration which was the fruit of the aggressive culture of the US imperialists and their lackeys, the traitorous Lon Nol-Sirik Matak-Son Ngoc Thanh clique. We overthrew this traitorous administrative power from one village to another, from one commune to another, from one district to another, until we ousted it across the country. ...

All our citizens enjoy the right to employment, thus unemployment absolutely does not exist in our Democratic Kampuchea.

Chapter 15, Article 20 stipulates that our people have the right to practice whatever religion they like and the right not to practice any religion at all. This is a new freedom for our people. Also, as stipulated in our constitution, our stance is not to allow any foreign imperialists to use religion to subvert us.⁵

Mr. Abdulhak asked the witness if sounded like the speech the witness heard. Dr. Chhunly said he had not heard this speech and that the speech containing the resignation of Prince Sihanouk was brief and clearly written in Khmer and French. He stated that the speech on the constitution was also “rather short” and concluded that the words read by the prosecutor “were not the words read out by Khieu Samphan or then-Prince Norodom Sihanouk during that meeting.”



Next, Mr. Abdulhak sought to ask the witness about two doctors frequently mentioned in the witness's book: Poeng Kimsie and Khem Kimsan. Asked what happened to these individuals, Dr. Chhunly explained that Dr. Kimsan had been appointed as a doctor at the district hospital at Prek Loung, while Dr. Kimsie was appointed to another district – Sao Menoa Pagoda. After the Khmer New Year in 1977, the witness recounted, both doctors disappeared, “one after another.” He continued, “In 1980, when I went to Battambang, I saw Dr. Khem Kimsan's photo at Tuol Sleng. But for Dr. Poeng Kimsie, I only saw his name in a book detailing the names of the enemy. So I believe that these two individuals had been brought all the way to Tuol Sleng.”

The prosecutor requested permission to show the witness two S-21 (Tuol Sleng) prisoner lists to see if he recognized names in that list.⁶ The Trial Chamber judges conferred

⁵ The relevant ERNs are 00657436 (in Khmer), 00167810 (in English), and 00725795 (in French).

⁶ This prisoner list has the document number D312.1.49.

briefly and the president granted permission for this to be done. Mr. Abdulhak directed the witness to number eight in that list, indicated as “Khem Kimsan, Northwest Zone, doctor,” reportedly executed on December 30, 1977.⁷ He asked whether this person was the Khem Kimsan the witness had described. Dr. Chhunly confirmed that it was the Khem Kimsan he knew and, subsequently, that the Poeng Kimsie listed on the page was also the person he knew. Mr. Abdulhak noted for the record that Mr. Kimsie was listed as number 10 in that list and the Court had a prisoner file for him indicating that he died under torture.⁸

Regarding the fate of other doctors in the Northwest Zone, the witness had indicated in his book, in relation to Battambang, that there were only two surviving doctors: himself and Dr. Un Sy.⁹ Dr. Chhunly confirmed this, and noted that Dr. Un Sy was a civilian, not military, doctor. Mr. Abdulhak further noted that the witness had said that only over 30 medical staff from the civilian hospital in Battambang survived, more than half of whom were widows.¹⁰ Dr. Chhunly said, “It is not difficult to assess this, because these widows whose husbands had been killed – of course, because these women were now widows.” Pressed as to whether he knew any of the staff in that hospital, the witness said that he worked there from 1967 to 1973 and this was long enough to know all the staff there.

Witness’s Clarification of Various Issues under Questioning from Civil Party Lawyers

National co-lawyer for the civil parties Ven Pov began the questioning of Dr. Chhunly by the civil party lawyers. Mr. Pov began by directing the witness back to his time at hospital 403, the Lon Nol-era military hospital at which he had to work before the Khmer Rouge regime. Asked about the patients, Dr. Chhunly replied that the in-patients at the military hospital were mostly soldiers, the majority of whom were wounded or injured; the number of patients “would not exceed 100 at any given time.”

Moving on, Mr. Pov asked whether Dr. Chhunly had heard or seen any fighting before 1975. The witness agreed that there had been fighting in “some hot battlefields” in Mong Russei, Banteay¹¹ Svay ... Ta Phon location.”

Turning to the general evacuation of Battambang, Mr. Pov noted that city dwellers were woken by the sound of motorcycles and the noise of a crowd for several hours.¹² Pressed for additional details, Dr. Chhunly recalled:

Early in the morning, no Khmer Rouge soldiers came to Battambang as yet. Indeed, after the announcement of General Mey Sichon for all Lon Nol soldiers to lay down their arms ... By 1 p.m. I saw the vehicle of the governor of Battambang passing my place to the Chamkar Chek location, He was heading to Thailand. At 3 p.m., I saw a group of five to 10 [Khmer Rouge] soldiers ... standing guard at some public parks and gardens. At about 1 a.m., I heard the noise of some

⁷ The relevant ERNs are 00006623 (in Khmer), and 00837537 (in English).

⁸ The prisoner file documents have the document numbers IS5.80 and D82/II-Annex 33.

⁹ The relevant ERNs are 00678908 (in Khmer), and 00369794 (in English).

¹⁰ The relevant ERNs are 00678912 (in Khmer), and 00369797 (in English).

¹¹ In this context, as becomes clear from later testimony, Banteay refers to barracks.

¹² The relevant ERNs are 00678756 (in Khmer), and 00369680 (in English).

motorcycles and people were cheering all across the city of Battambang... I was told that the Khmer Rouge had broken the doors of the prisons and that they had woken up people so that they could get the motorcycles to march on the street so that they could cheer and chant some slogans during the night. That happened, in particular, to people at Battambang provincial town.

Mr. Pov turned his focus on the witness's previous testimony on December 6, 2012, about the execution of 13 of his medical colleagues at a paddy field in Omal, the witness's two attempts to re-enter the hospital the next day, and his seeing patients fleeing the hospital. Asked whether he knew if these people left the hospital of their own free will, Dr. Chhunly said that he observed some patients "walking out of the hospital randomly"; he did not know whether the patients were forced to leave but he stated that he believed the patients left "out of fear of the Khmer Rouge."

Referring the witness to a passage in his book concerning the evacuation of Battambang,¹³ Mr. Pov asked whether anyone was shot if they contested the order to leave the city. Dr. Chhunly said, "People could not challenge such orders by the Khmer Rouge or they would risk being shot. I did not see anyone being shot at when they protested such instructions. That was not my experience."



The civil party lawyer then referred the witness back to his description in his book concerning undercover spies who would observe people's behavior in cooperatives.¹⁴ He asked whether this happened to only "new people" or everyone in the cooperative. Dr. Chhunly responded, "I believed that they could spy on anyone they felt suspicious about, in particular the 'new people.' I do not know whether ... reports were ever made to the 'upper echelon.' They were undercover, and their mission was secret."

Moving on, Mr. Pov noted that in the witness's book, family member terms were used to address people during the Khmer Rouge regime.¹⁵ Asked how he learned about this practice, Dr. Chhunly responded, "As I indicated yesterday, the Khmer Rouge did not make any pronouncement through written forms. Normally, they did it from one person to another. It was a distribution of information by word of mouth."

When asked to provide details about the introduction of communal living, Dr. Chhunly explained that, during the evacuation, cooperatives had not yet been established, and evacuees were allowed to bring food with them as food was still readily available. In 1976 by the Khmer New

¹³ The relevant ERNs are 00678769 (in Khmer), and 00369689 (in English).

¹⁴ The relevant ERNs are 00678775 (in Khmer), and 00369693 (in English).

¹⁵ The relevant ERNs are 00678777 (in Khmer), and 00369695 (in English).

Year, however, cooperatives had been established, he said, and people were then asked to live collectively.

Next, the civil party lawyer asked Dr. Chhunly why the majority of people who came to the hospital asking for medicine were mainly “base people,” as outlined in his book.¹⁶ The witness replied:

At the time, it was one month after the evacuation had taken place, so “new people” from the city were still well and did not fall sick as yet. Those who came to ask for medicine were the “base people,” in particular those who did not have access to hospital services before. That’s why they came to ask for medicine.

Mr. Pov asked Dr. Chhunly whether the new Khmer Rouge-trained doctors were instructed in medical ethics. Dr. Chhunly said that he did not know how these people were trained and “perhaps this was for the best.”

With respect to the witness’s testimony on December 6, 2012, as to the differences between P-2 and P-1 Hospital (the Khmer Rouge and civilian hospitals, respectively), Dr. Chhunly explained that at the Khmer Rouge, or military, hospital, the soldiers were patients and would be well-treated; at the civilian hospital, however, where the majority of patients “had problems with sanitation,” the civilians did not receive “great attention.” Pressed for further details as to conditions at P-1 Hospital for civilians, Dr. Chhunly said, “I noted that some offices ground to a halt, in particular, the children’s ward. . . . Patients were placed in a big hall. They were treated as the way animals were treated.”

Returning to the witness’s book, the civil party lawyer read a passage regarding two doctors, Chhunly¹⁷ and Long Naren, describing people’s evacuation by train.¹⁸ Mr. Pov asked whether the witness knew if Khmer Rouge soldiers would be waiting at train stations to receive evacuees. The witness responded that he knew sick people were dropped at every train station, including Tepdey Mountain, an impoverished area where water was scarce. He did not know whether food or water was distributed to people, however.

Witness’s Knowledge of Senior Khmer Rouge Leaders’ Activities

Mr. Pov next read a passage from the witness’s book mentioning Ieng Sary coming to inspect a paddy field.¹⁹ Asked to elaborate on this incident, Dr. Chhunly described how, at the time:

I worked at the military hospital P-2, and on that day, the head of the hospital announced that the whole city would be closed for one day. No traffic could be allowed. It was a ghost town already . . . At noon, I saw a Mercedes . . . escorted by a group of people. I did not see who exactly was inside the vehicles, but I knew that this convoy was heading to Phnom Sampov location. Later on, Nom, who . . . became military staff at the hospital in charge of transporting meat and rice to the

¹⁶ The relevant ERNs are 00678785 (in Khmer), and 00369702 (in English).

¹⁷ The witness had in previous testimony noted that this witness had the same name.

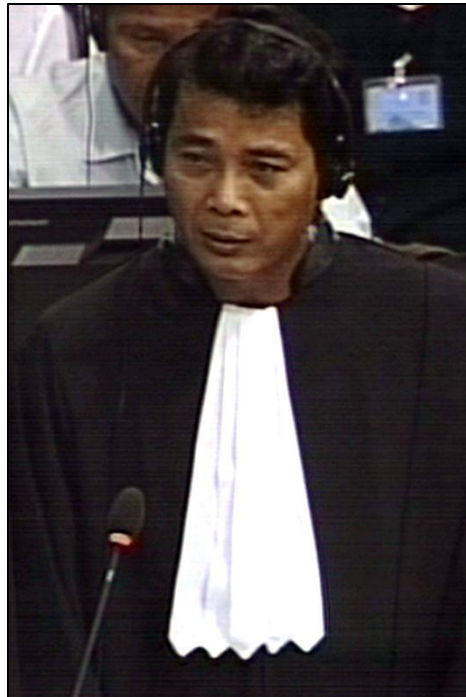
¹⁸ The relevant ERNs are 00678805 (in Khmer), and 00369716 (in English).

¹⁹ The relevant ERNs are 00678826 (in Khmer), and 00369730 (in English).

hospital, told me that [one person in the convoy] was Ieng Sary, who was inspecting the farmers in the paddy field; ... he saw them through his binoculars. ... I knew that Mr. Ieng Sary was the Minister of Foreign Affairs of Democratic Kampuchea.

Moving on, the civil party lawyer noted that in his book, the witness had also indicated that Nuon Chea was the president of the assembly during the Democratic Kampuchea (DK) period.²⁰ Asked how the witness knew this, Dr. Chhunly said “Frankly, I heard about this but I don’t recollect how I knew this.”

Mr. Pov read the witness the following passage from his book: “Chun Kaset’s mother said that Nuon Chea came to visit his family and there was a question about where A Ny was. Nuon Chea said not to worry because everywhere there was rice to eat.”²¹ Mr. Pov then asked if Mr. Chea frequently visited his family. Dr. Chhunly explained, in an answer not particularly directed to the question, that he heard the account about A Ny from Nuon Chea’s sibling and also from Nuon Chea’s mother, with whom the witness frequently visited.



Did the witness hear any other information about Mr. Chea, such as whether he would go to inspect worksites? Mr. Pov asked. Dr. Chhunly said he did not know.

Finally, Mr. Pov said that in the witness’s book, he specified that during the Khmer Rouge regime, he frequently listened to the Voice of America. Asked whether he also listened to the DK radio frequency, Dr. Chunnly replied:

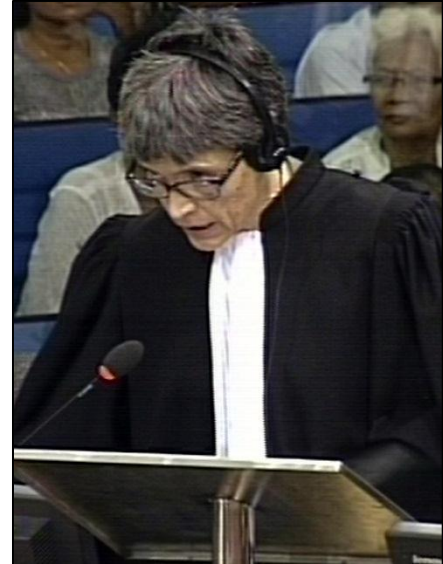
During the Khmer Rouge regime, to me, I needed food. I was starving. I was not only starving for food but I was starving for information as well. That’s why I took the risk to listen to the Voice of America. I had a headset and I kept it in my pocket and I listened to this radio. But never did I listen to the Democratic Kampuchea radio. I only listened to the Voice of America. After listening to the VOA, I also tried to pick up the English language. VOA at that time broadcast in Khmer, and it was followed by the English version. ... So I found it was an opportunity to learn English.

Treatment of Vietnamese, Other Foreigners, and Religious Adherents

²⁰ The relevant ERNs are 00678828 (in Khmer), and 00369731 to 32 (in English).

²¹ The relevant ERNs are 00678830 (in Khmer), and 00369732 to 33 (in English).

International Lead Co-Lawyer for the civil parties Elisabeth Simonneau Fort took the floor at this point. She first noted how the Vietnamese had to leave the country from April 19, 1975, onwards, and asked the witness whether they did leave and what became of those who remained. Dr. Chhunly recounted how, on April 19, 1975, the Khmer Rouge ordered all Vietnamese return to Vietnam. As the location set for the transfer was not far from his hospital, he said, the witness saw a number of boats standing by to take the Vietnamese. “I did not know whether those Vietnamese eventually reached Vietnam,” he concluded. “Even today, when I ask, there is no clear-cut answer.”



Asked whether some Vietnamese stayed behind, Dr. Chhunly said he did see a “minority of a few Vietnamese” who remained, including a midwife who worked with him at the hospital. However, he said, in 1977, she and her entire family were executed. For those in the village, it was also the same: “Even if those with Vietnamese origins had been transcended from many generations, so long as they were found out, they would be executed,” he testified.

As to foreigners in general, Dr. Chhunly said they were never discussed. “They only mentioned the Vietnamese enemy or the Yuon²² enemy, KGB or CIA,” he stated.

The civil party lawyer queried whether the witness observed the evacuation of towns smaller than Battambang. Dr. Chhunly responded, by way of denial, “We did not have freedom of movement. If we did not have a permit or we did not receive any order, we would not be able to move freely.” Did the witness know what was happening elsewhere in the country, for example through meetings and the radio? Ms. Simonneau Fort asked next. Dr. Chhunly responded, “I listened to the Voice of America, but at that time, I heard very little about what was going on in Cambodia.”

When the witness arrived at the P-2 Hospital in July 1975, Ms. Simonneau Fort asked next, what were the conditions like? Dr. Chhunly explained that when he arrived at the military hospital, “everything was in chaos, scattered everywhere.” Despite having no technical skills in radiology or medical equipment, he was designated by the hospital director to look over the x-ray machine, reorganize the medical facilities in the hospital, and set up the pharmacy. The facilities and equipment at the hospital were “very basic,” he recounted and explained that operations were conducted at the Battambang civilian hospital rather than P-2.

Asked whether the Khmer Rouge had certain privileges, Dr. Chhunly replied that the Khmer Rouge cadre “applied a secret policy.” He continued, “They ate adequately or they had enough food to eat, but that was done in secret, because they did not want other people to know, because the general population did not have enough to eat.”

²² Yuon is a pejorative term for Vietnamese.

Ms. Simonneau Fort noted that in the witness's December 6, 2012 testimony, he had discussed the arrival of Phnom Penh evacuees in Domrei Slap village. Pressed for further details about this, the witness said that when evacuees from Phnom Penh arrived in his village, he and his family would visit them, hoping to find lost relatives. "At that time," he recalled, "what I noted was that these people had to travel a very long distance. They were very exhausted. . . . At the same time, I could also feel that the children who came with them did not have a playful spirit as normal children did."

Comparing the evacuation from Battambang with that from Phnom Penh, Dr. Chhunly indicated that he believed the evacuees from Phnom Penh "could endure more hardship because they had to travel a long distance," but concluded, "I can say that the two evacuations cannot be compared."

The president interjected at this point to instruct Dr. Chhunly to respond on only what he bore witness to and what he saw and experienced, and not to give subjective speculations or opinions.

Moving on, Ms. Simonneau Fort asked about the witness's work in the fields as a farmer. Dr. Chhunly said, "It was difficult for me to understand why that happened to me." Asked, finally, the consequences of the evacuation for his family, Dr. Chhunly replied "My siblings and relatives also had to be made to do farming as I did."

Nuon Chea Defense Team Seeks Clarification on Various Issues

After the morning break, the defense teams took the floor to begin their questions. National Co-Counsel for Nuon Chea Son Arun began by asking the witness when it was that he became a physician. Dr. Chhunly responded that he became a physician in 1967 and was assigned to work at a civilian hospital in Battambang, with the permission of the government. He worked at Battambang Hospital until mid-1973, he recalled, at which time he was requested to join the army; he then worked as a military medic at Hospital 403 until 1975. After 1975, he lived in Battambang throughout the entire DK period and until 1992 when he came to Phnom Penh.

Moving on, Mr. Arun asked the witness whether the Khmer Rouge captured Battambang in 1975. Dr. Chhunly replied, "On April 17, 1975, having followed the broadcast by the Phnom Penh radio, the soldiers surrendered and laid down their weapons. They were defeated." No Khmer Rouge soldiers came to Battambang that morning, however, he testified: "I don't know why, but it was very quiet." He also reiterated his testimony that the governor of Battambang fled en route to Thailand at 1 p.m., and then young Khmer Rouge soldiers came to the town.

Mr. Arun asked the witness why it was that General Mey Sichon and Lon Non asked soldiers to lay down their arms if the Khmer Rouge had won. National Lead Co-Lawyer for the civil parties Pich Ang objected that the question was speculative. The president suggested that Mr. Arun rephrase the question. Mr. Arun asked whether Dr. Chhunly believed their announcement, or whether he thought it to be a rumor. Dr. Chhunly said, "I heard this information directly from the radio broadcast. I heard these two generals say they were defeated and they accepted the defeat. They made an appeal to all Khmer Republic soldiers across the country to lay down their weapons."

Next, the defense counsel asked the witness how he knew about the execution of civilian doctors. Dr. Chhunly replied that, as he had testified on December 6, “military medics from the rank of major-lieutenant [up] would be executed first,” whereas others would be made to perform farm work. He then elaborated, “Many of [them] disappeared one after another. ... Poeng Kimsie and Khem Kimsan disappeared first. Other doctors also disappeared after they had been assigned to treat other patients. I learned about their disappearance through their widows.”

At this point, the defense counsel directed the witness to his testimony on December 6, 2012, concerning Mr. Chea’s family and their living conditions at Wat Kor village during the DK period. Mr. Arun asked if the witness knew Mr. Chea very well. Dr. Chhunly said, “I have been in good relations with Mr. Nuon Chea’s cousins and family members. Nuon Chea’s mother was believed to have been a respected woman. But I never knew or had contact with Nuon Chea.”

This prompted Mr. Arun to ask whether Dr. Chhunly ever heard Mr. Chea’s name during the DK regime. Dr. Chhunly confirmed this and said he heard of him as the “president of the assembly, but I just don’t recollect when exactly I heard of this.” When pressed, he denied ever hearing that Mr. Chea held any other positions. Mr. Arun pressed further, asking whether the witness knew of Mr. Chea having the power to order arrests, executions, or starvation of the population. The witness also denied this.

Moving on, Mr. Arun said that in his book, the witness wrote of a former customs officer, Mr. Chea’s younger brother, who was not taken away by the Khmer Rouge, and mentioned also that Mr. Chea was “Brother Number Two.” Asked why he used this term, Dr. Chhunly replied, “I used the term ‘Brother Number Two’ because I heard other people using this. I don’t remember when exactly I heard people saying this when referring to Nuon Chea.”



The defense counsel then noted that in the witness’s book, there was discussion of Siv Heng rallying to Prince Norodom Sihanouk after the Geneva conference.²³ He asked when this occurred. Dr. Chhunly said:

I knew clearly that after the Geneva conference, he rallied to the then-Prince Norodom Sihanouk to serve the Royal Army of Kampuchea. Then he was promoted to the position of colonel. Later on, he had health problems. He was paralyzed on one side of his body and remained hospitalized or stayed at home.

Witness’s Diaries, Book Writing Process, and Memories

International Co-Counsel for Nuon Chea Jasper Pauw took the floor after his colleague. He first asked the witness why, during the Khmer Rouge regime, he took notes about what was happening. Dr. Chhunly explained:

²³ The relevant ERNs are 00678759 (in Khmer), and 00369686 (in English).

As an intellectual, I valued note-taking. I believed that it was a very important part of my life. However, during the Khmer Rouge regime, my house was checked and searched on several occasions, and I was afraid that the diary I kept would be found and I would be at risk. So I made the decision to have all the diaries destroyed. But I did my best to store all the information in my brain ... and to associate all the main events ... and main details of those events.

Queried as to when he started writing the book, Dr. Chhunly said he started in 2006 and then corrected himself, saying that he actually started the book in 2004. He continued, "But by the time I wrote the book, I was deprived of my sleep, because the memories made me find it difficult to have a good night's sleep, because this flood of memories kept haunting me during nighttime, so I had to quit writing for a while."

The book, Mr. Pauw described, was full of very specific dates and events. He asked whether Dr. Chhunly used any other sources in writing his book to "refresh his memory" as to dates of important events. The witness responded that the book was "a reflection of my memory" and that he did not rely on any other references. He did confirm, however, that he read "many history books" concerning the DK period. Pressed as to whether he could remember any book titles, the witness responded, "I recall some of them, for example a book written by a female French writer ... I read it in the 1980s. Then I read a book written by Samdech Norodom Sihanouk entitled *Prisoner of Khmer Rouge*." As to whether he had read books or articles of other historic books, the witness said that he had seen some but had not finished reading them.

Mr. Pauw asked the witness whether it was possible that he only heard the term "Brother Number Two" after 1979. The witness said he could not recall this. The defense counsel then asked the witness if he had wanted to take notes to ensure that the notes of his memory were accurate. Dr. Chhunly confirmed this. Returning to the question of "Brother Number Two," he said he did not take note of this.

Was it possible, Mr. Pauw asked, that in writing his book, the witness's memory may have been influenced by other literature he read on the DK period? "No, absolutely not," the witness responded emphatically. "Those books had nothing to do with my writing so I was not influenced by them."

Revisiting Testimony on the Evacuation of Battambang and Execution of Lon Nol Soldiers
Moving on, Mr. Pauw asked the witness whether at the Lon Nol military hospital, he ever treated Khmer Rouge soldiers injured during the battle with Lon Nol. Dr. Chhunly denied this. He also denied hearing it said that most Khmer Rouge soldiers were executed after being captured by Lon Nol forces.

Referring the witness back to the passage in his book describing the gathering of surrendered Lon Nol soldiers at two schools in Battambang,²⁴ Mr. Pauw inquired whether Dr. Chhunly personally witnessed this event. Dr. Chhunly replied, "I witnessed it by myself. Not only did I witness it, I also went there to visit the military commanders who were assembled at a Chinese

²⁴ The relevant ERNs are 00678758 (in Khmer), and 00369682 (in English).

school in the middle of the town.” Mr. Pauw also noted that the witness had said this gathering was in keeping with orders from the “upper level.” Asked how he knew this, the witness responded, “In the Khmer Rouge regime, everything was kept in utmost secrecy. Matters were handled by the senior leaders at the upper level. This was general knowledge [to] refer to people in the upper hierarchy as the ‘upper level.’” He added, “I was also afraid of those who were in the ‘upper level’ position.”

Pressing the witness as to whether he knew which level ordered this specific incident, Dr. Chhunly said:

On the 17th, there were a few ... troops who came to Battambang city. After dawn, those soldiers were very violent and rather offensive. They were riding around on motorbikes showing off with guns. The next day they went to a place, Anlong Vel ... to receive the senior leaders of the Khmer Rouge. Among those senior leaders, the high profile one ... was Mr. Khek Pen, a former professor in universities in various provinces. After his visit, there were several directives handed down. It was not in the form of written directives, it was oral directives. As to where they stayed ... we down below did not know this.

Asked whether he personally attended that meeting, the witness denied this, but said that his boss, who was a colonel and the hospital director had done so. As to whether he personally saw these directives handed down to Lon Nol soldiers, the witness denied this. However, he said he did see the commanders assemble at the Chinese school and others assemble at the other school. But he “did not hear the directive” or “see it in written format.” Therefore, was the witness “merely assuming or concluding that there was such a directive”? Mr. Pauw asked. The witness said, “The soldiers who assembled in the two different places came to those places under order from their superiors, from their upper authorities. I cannot elaborate any further.”

Next, the witness said that he did see the five truckloads of Lon Nol soldiers, but then corrected that he did not; he heard this from others. He added, “On that very morning, at the Chinese school where the soldiers had been assembled, I did not see the soldiers anymore.” As to whether he ever witnessed the execution of people during the Khmer Rouge regime, Dr. Chhunly advised that he did not. He then confirmed, when questioned, that he did not witness the execution of the Lon Nol soldiers.

At this point, Mr. Pauw turned to the witness’s testimony that there had been a special camp set apart for ethnic Vietnamese in Battambang. He asked whether the witness knew why the Lon Nol regime had established such a camp. The witness responded:

I knew that the Lon Nol administration did not trust the Vietnamese. They were afraid that the Vietnamese would spy in order to get information for the Viet Cong. That’s why there was an order that the Vietnamese be gathered in a special camp. But this rounding up of Vietnamese was carried out at night. We only saw them gathered in this camp at night. ... I saw this because the location was not far from the hospital. I walked there and saw it.

Mr. Pauw asked the witness what the conditions at the camp were, but before Dr. Chhunly answered, Mr. Abdulhak objected. He said that Mr. Pauw was now entering into information outside the scope of the trial, and while contextual evidence was relevant, specifics went beyond the scope of the trial. Mr. Pauw said that, in this case, there was a very specific incident, namely the setting up of a camp, and its relevance was that, when the Khmer Rouge came to power, there were issues around the Vietnamese. This provided a context of “racial strife and conflict,” and that both the *Tadić*²⁵ and *Akayesu*²⁶ cases indicated the relevance of such exploration of issues. However, he indicated that he would nevertheless move on due to time constraints.

The president intervened at this point, however, noting that the time was appropriate for lunch. Mr. Pauw then advised that Mr. Chea suffered a headache, backache, and lack of concentration and therefore sought to spend the afternoon in his holding cell, having prepared a waiver already. The president granted this request and adjourned the hearings for lunch.

Sources of Witness’s Knowledge as to Executions of Medical Staff

After the lunch break, a new audience of approximately 100 villagers from Kandal province took their seats in the public gallery. Several of these audience members appeared to have been born before the DK period. Mr. Pauw began the afternoon’s questioning session, first advising the witness that he was not trying to indicate to the witness that he did not believe him but simply that he was trying to establish where the witness obtained his knowledge.

The defense counsel noted that according to the witness’s previous testimony, the witness understood there to be a policy to kill Lon Nol military medical personnel of a certain rank. He asked Dr. Chhunly whether this was an accurate description of the witness’s understanding. Dr. Chhunly responded, “After the Khmer Rouge entered Battambang, the Khmer Rouge killed the 13 military personnel first.” Did any Khmer Rouge soldier say that this was Khmer Rouge policy? Mr. Pauw queried. The witness replied, “Through my experience, the Khmer Rouge did not only kill the military medical personnel. They also killed civilian medical personnel, but that only happened on a later date.”

Mr. Pauw explained that his question was different, and it concerned who, if anyone, told the witness that it was a policy of the Khmer Rouge to carry out such killings. Dr. Chhunly replied, “This policy was not raised, but in real practical terms, or in reality, that’s what we saw happen.” Asked whether this meant that he had assumed or concluded that there was a policy, Dr. Chhunly responded, “I may say that it was part of Khmer Rouge policy in executing former medical military personnel and civilian medical personnel and other intellectuals and educated people.” Mr. Pauw reiterated his previous question, but Dr. Chhunly disagreed with this, saying that “it was wrong to say that I presumed. I did not speculate. I was testifying to the Chamber based on what I saw. That’s what happened across Cambodia at that time.”

In the witness’s book prologue, Mr. Pauw went on, Dr. Chhunly had written, “I don’t know whether in other provinces the Khmer Rouge had called health staff of the old regime to work in hospitals and then had physically eliminated them.”²⁷ Was it fair to say that the witness was not

²⁵ This is case of the International Criminal Tribunal for the Former Yugoslavia (ICTY).

²⁶ This is a case of the International Criminal Tribunal for Rwanda (ICTR).

²⁷ The relevant ERNs are 00678751 (in Khmer), and 00369675 (in English).

in a position to comment on Khmer Rouge national policy at the time? Mr. Pauw queried. The witness said, “What I was saying was that at Battambang the Khmer Rouge asked medical staff to work at the hospital and later they were executed. I did not know whether they were executed altogether ... but the execution did take place.” Again pressed on whether it was fair to say that he could not comment on national policy because he did not see it and was instead confined to Battambang, Dr. Chhunly agreed with this and explained that what he wrote in his book was based on what he knew happened in Battambang: “the medical staff were asked to work but were later on executed.” He admitted, however, that he did not know whether this type of incident happened in other locations as well.

Mr. Pauw referred the witness to his testimony that medical staff at the civilian hospital were executed starting from 1977 but that the witness never witnessed any executions. He asked whether it was possible that some people were not executed, but relocated or fled the country. Dr. Chhunly said:

As for the civilian medical personnel, these people were asked to work at district level. There were four offices where these people were asked to work. On January 30, 1977, an order was made that these people had to move to a new location. On the 31st ... everyone had already been transferred to a new location ... Later on, we learned that each one had been killed, one after another. ... Some people had been asked to treat sick people but they never returned. I learned about this because their spouses who survived the regime told me that their husbands would never come back.

Regarding the disappearance of Siv Heng, Mr. Pauw summarized, the witness had stated in his book that they received “mouth to ear” news spreading in the town that Siv Heng was collected and driven away on the national road to Pailin.²⁸ The defense counsel also noted that the witness testified having no idea who ordered the disappearance of Abbot Acha Sang.²⁹ Mr. Pauw asked whether it was fair to say that the witness knew of these disappearances because of hearsay, or “mouth to ear” communications. Dr. Chhunly said:

A few days [after April 17, 1975], I had no access to Phnom Penh radio anymore, because there was no such reception. I heard about this based on word of mouth and it proved to be correct. Siv Heng’s wife was taken away. The Khmer Rouge asked me to work at the hospital P-2. At noon, I would pay a visit to Siv Heng’s house and met his wife with children at home. With regard to Acha Sang, he was also taken away, but I did not know who ordered his removal.

According to Mr. Pauw, the witness had previously testified that Abbot Achag San had been taken away by the “upper echelon.” As the witness said he did not know who ordered his removal, Mr. Pauw queried, was it fair to say that this was speculation? Dr. Chhunly disagreed with this and said “I didn’t assume at all. The fact is that the order was made from the upper echelon. People would be forced to say that they did not know about this.” As to who in the

²⁸ The relevant ERNs are 00678758 (in Khmer), and 00369682 (in English).

²⁹ Due to variations in translation, this name was translated in Cambodia Tribunal Monitor’s December 6, 12 blog post as Acha San; however, translators today referred to this person as Acha Sang.

“upper echelon” made such order, Dr. Chhunly said he did not know and that the defense counsel should direct the question to the Khmer Rouge themselves as this was language used by the them. This prompted Mr. Pauw to ask whether this meant the witness was assuming there was an order from the “upper echelon.” Dr. Chhunly insisted that there was such order. He added, “‘Upper echelon’ – it is language that the Khmer Rouge used. Every time they talked to us, they would just say it was an order from the ‘upper echelon.’ Perhaps they just tried to evade responsibility. ... It was part of the system applied during the Khmer Rouge.”

Hospital Conditions and Experimental Surgery under the Khmer Rouge

Moving on, the defense counsel asked whether it was correct that Khek Pen *alias* Mit Sou called a small number of doctors, nurses and midwives. Dr. Chhunly said “Yes, it is correct. ... Later, orders were issued from Comrade Sou ordering me to work at Prek Loung. However, before I was allowed to work at Prek Loung, I was asked to get another physician from another village to work with me.” Were the people who worked with the witness at the hospital medically-trained personnel? Mr. Pauw asked. Dr. Chhunly responded that he was joined at Prek Loung Hospital by two other physicians – Khem Kimsan and Ny Cham – as well as a dentist and a nurse. “Apart from these four people I knew, the rest were Khmer Rouge medical staff,” he said.

The witness explained that Prek Loung Hospital was a district-level hospital for treating civilians. Mr. Pauw asked the witness where he found the medicine to treat patients at the hospital. Dr. Chhunly responded, “I did not know where these medicines were obtained in the first place, but there was a medicine warehouse under the supervision of the director of the hospital.”

Directing the witness back to his time at P-2 Hospital, where Khmer Rouge soldiers were treated, Mr. Pauw asked if Dr. Chhunly knew the names of any physicians working there with him. Dr. Chhunly replied that, at P-2, he was the only physician working there, as the others were Khmer Rouge medics. The personnel of the hospital were categorized based on their family backgrounds, he explained, such as children of Khmer Rouge cadres or children of “ordinary people.” As for his own role, he explained, “When I was there, I did not hold any position. I was rank-and-file personnel over there. I considered myself as one of the prisoners. But whenever there were any technical problems, for example, when they needed certain physicians to treat certain diseases, then they would call upon me.”

Mr. Pauw moved on to discuss experimental surgery. He asked whether the witness had personally seen experimental surgery conducted by the Khmer Rouge or even participated in it. Dr. Chhunly replied, “Yesterday, I testified on this issue. There was a lady who was injected with--” but was cut off by Mr. Pauw, who repeated his question again. Dr. Chhunly responded, “I never witnessed experimental surgery and neither did I participate in these experiments, because my expertise was not in anesthetic medicine and I was not a Nazi doctor.”³⁰

³⁰ The last part of the phrase, “because I was not a Nazi doctor,” was not rendered in the English translation.



Prince Sophanavong (in gray jacket) of Laos, accompanied by Khieu Samphan and Ieng Sary, watches medical staff perform their work at a hospital in Phnom Penh during DK regime. (Source: Documentation Center of Cambodia)

Witness's Walk through a Place Smelling of Corpses

Moving on, Mr. Pauw read an excerpt from the witness's book that described a walk to Mong Russey with an arts teacher named Chan, and a person telling the witness that the smell at that place was of decomposing bodies. In the same paragraph, the witness had noted that Mong Russey had been a fierce battlefield.³¹ Asked about this incident, the witness said:

At Mong Russey, there had been a barracks known as Banteay Svay. Before they took over Battambang city, the Khmer Rouge destroyed these barracks. The battle was very fierce. Even brick houses in Mong Russey were damaged by artillery and gunfire. Then they fought their way all the way to Battambang city. When I reached Mong Russey stream, I could smell the decomposing bodies, and people told me they were bodies from the battle. ... What I could see was that those were the dead bodies of the Lon Nol soldiers and some were Khmer Rouge soldiers and some were even ordinary citizens. Battles in Mong Russey were fierce and even some civilians were killed in those battles.

The witness did not know what happened to the bodies there. Mr. Pauw asked if the witness had experienced any burials at the time, inquiring whether bodies were buried individually or in mass graves. Dr. Chhunly said, "By Cambodian tradition, the dead body would be cremated ... in the crematory lot in the pagoda." As for whether this happened to bodies killed in combat, the witness said he did not know and "did not see everything either at that time."

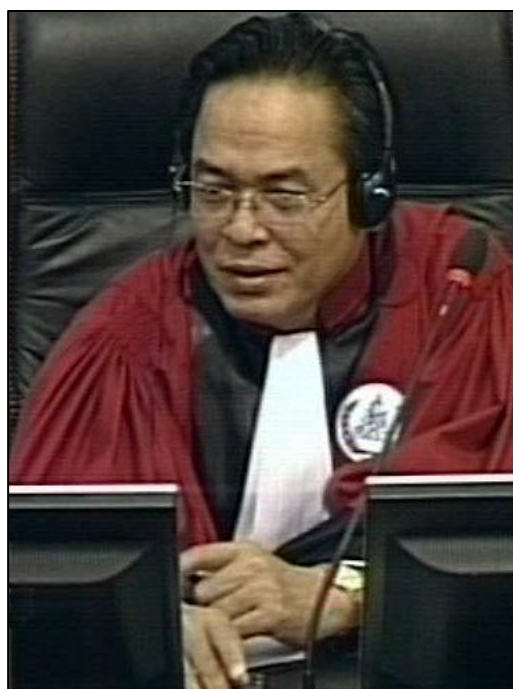
³¹ The relevant ERNs are 00678789 (in Khmer), and 00369705 (in English).

Suggestion that K-5 Plan Resulted in “Hundreds of Thousands” of Deaths Questioned

Mr. Pauw next questioned the witness about the “infamous K-5 Plan,” which, the witness had written, “took the lives of many hundreds of thousands of lives around the country.”³² In response, the witness said that Mr. Pauw was veering off-topic as his questions were supposed to relate to the period between 1975 and 1979. The president interjected that the witness indeed did not need to answer the question. Dr. Chhunly then said, “I know the temporal jurisdiction of this court ... but if the president so directs me to respond to the question, I would do so.”

This response prompted the defense counsel to refer the witness to the Court’s Demographic Expert Report prepared by Eva Tabeau.³³ In this report, Mr. Pauw said, Ms. Tabeau concluded, “It is unquestionable that a vast majority of bodies in those graves are Khmer Rouge victims.” She also stated, however, that she did not know of any other episode of mass killings in Cambodia. Mr. Pauw argued that this provided the relevance of this discussion, as the witness had indicated in his book that K-5 resulted in the deaths of “hundreds of thousands of people.” He continued, “K-5 took place especially around the region of Battambang and therefore it is likely that people who died ... under the K-5 Project ended up in mass graves simply because there were hundreds of thousands of them.” Therefore, the defense counsel argued, it was relevant to ascertain whether the witness knows what event resulted in the deaths of the bodies he encountered, in order to discover whether they were truly Khmer Rouge victims. The president interjected, however, and advised the witness again not to answer this question because, as the defense counsel knew “very well,” it was not relevant.

Mr. Pauw asked for a better reason from the Court for preventing the witness from answering his question because his team’s “alternative theory” was that “hundreds of thousands” of people were killed under the K-5 Plan, making the question “relevant and exculpatory”; he asserted that simply pointing to the temporal jurisdiction would not do in this case. The president responded that as Mr. Pauw himself acknowledged, the issue was outside both the Court’s temporal jurisdiction and the capacity of the witness to testify, and therefore the defense counsel could not ask questions on it. President Nonn added, “You move on. If you do not have any further questions, you may hand over the floor to the other defense teams.” Mr. Pauw indicated that he would move on, but added that this was only because “I am prevented from pursuing this exculpatory line of questions.”



Mr. Pauw then noted the witness had said the district in which these bodies were located was far from his location. Asked what this meant, Dr. Chhunly said, “At the district level, the district office was far from the village where I resided. That’s what I meant. Actually it was not too far,

³² The relevant ERNs are 00678932 (in Khmer), and 00369813 (in English).

³³ This report has the document number D140/1/1.

but the administrative structure that was close to the people was the commune committee.” Mr. Pauw asked the witness if he knew what happened at district level in the Democratic Kampuchea. The witness denied this, advising that this was because they were not allowed to move around or would “run an inherent risk.”

Political “Brainwashing” Sessions in Vietnam and Clashes in the Courtroom over Relevance

In the witness’s book, Mr. Pauw continued, the witness described an incident in which three officials attended a Vietnamese brainwashing course and said that he himself went on a six-month brainwashing course.³⁴ Mr. Pauw asked the witness what he learned in that brainwashing course. However, before the witness could respond, Mr. Abdulhak objected that as he recalled, this course occurred well after the DK period and was thus irrelevant.

Mr. Pauw nevertheless read the passage that referred to the witness having just come back from the tenth session of a brainwashing course in 1986 in Bavet district.³⁵ He continued, explaining that this matter was relevant because his team maintained that the Vietnamese had an agenda regarding who should be prosecuted over events that transpired during the DK period, something Professor David Chandler³⁶ had also acknowledged. Mr. Pauw asserted that this issue was relevant and “would be relevant in any court in the world” as it affected the credibility of this witness and his sources of knowledge. He insisted that the defense must be allowed to explore this issue.

International Co-Counsel for Ieng Sary Michael Karnavas rose at this point. Supplementing Mr. Pauw’s comments, he said that the witness had indicated writing his book 25 years after the event and not consulting any material and that he had admitted to the Vietnamese attempting to brainwash him and discussing “all sorts of things” relating to the Chinese and Kampuchea Krom. What the Vietnamese taught the witness might affect what the witness wrote 25 years after the events, Mr. Karnavas argued. Furthermore, he added, on August 6, 2012, Suong Sikoeun was permitted to discuss matters that went beyond 1979,³⁷ noting that, when pertinent and relevant, the Chamber clearly had been flexible in allowing parties to do so.

Mr. Abdulhak responded that if there were a legitimate basis to question the witness’s biases, the Office of the Co-Prosecutors (OCP) would not have objected, but this was instead a “wild claim that because of alleged policies of other world governments,” a claim “which basically has no foundation in fact” and does not present a proper defense for Mr. Chea or Mr. Sary.

Mr. Pauw responded that there was a foundation for the line of questioning since the witness stated that he had been attending brainwashing sessions related to political issues, and this case was a political case. In addition, he asserted, it was important to note that brainwashing sessions apparently took place. The defense was not making this up; this witness testified about it, and the

³⁴ The relevant ERNs are 00678926 and 00678933 (in Khmer), and 00369807 (in English).

³⁵ The relevant ERN is 00369814 (in English). No Khmer ERNs were supplied.

³⁶ Professor David Chandler, a noted expert on Cambodian history, testified at the ECCC in Case 002/1 in July 2012. Cambodia Tribunal Monitor reports on this testimony are available at: <http://www.cambodiatribunal.org/blog/archive/201207>.

³⁷ Cambodia Tribunal Monitor’s blog post of the testimony of this Khmer Rouge-era intellectual is available at <http://www.cambodiatribunal.org/blog/2012/08/witness-provides-broad-range-testimony-during-his-second-day-examination-prosecution>.

witness might be one of the few people in the world who could testify about this issue, he concluded.

The Trial Chamber judges conferred for a number of minutes, after which the president handed the floor to Judge Silvia Cartwright. She advised that the Chamber had decided to ask a few questions directly to the witness and Mr. Pauw could therefore be seated. Judge Cartwright first asked the witness whether he did indeed use the term “brainwashing session.” Dr. Chhunly reached for his copy of the book, and after thumbing through it, confirmed, “In 1979, I was assigned to attend a political study session for six months. ... For me, I indeed said that that session was more or less like a ‘brainwashing session,’ but this political session did not influence my writing as what the counsel for Mr. Nuon Chea indicated.”

The judge said that this would have been her next question, namely as to the witness’s assessment of the impact of those sessions on his views and writing. Noting that no other judge had any apparent comments on this issue, she advised, “The Chamber has agreed that any questions about the subject matter of these sessions [are] irrelevant to the facts that we are concerned with in Case 002/1.”

After the mid-afternoon break, Mr. Pauw announced that he would respect the Trial Chamber’s ruling but that for the record, the defense’s position was that this matter was still relevant to the issue of the witness’s sources of knowledge, but before he could continue, the president advised Mr. Pauw to proceed to more relevant issues. Mr. Pauw indicated that he understood but wanted to make clear that while his team accepted the ruling, they did not agree with it.

Mr. Pauw then said that his next question would be whether the witness indeed did write that he attended a “six-month” “brainwashing course” in Vietnam.³⁸ The defense counsel cast a sidelong glance at the bench and then, as there was no response forthcoming, explained that he was seeking the Chamber’s permission to ask this question. The president said Mr. Pauw was not permitted to discuss this because the witness had already confirmed it was six months in length.

Mr. Pauw also asked the bench whether he had permission to ask the witness if his brainwashing session followed the brainwashing session attended by the three officials the witness had mentioned, or whether that was also off limits. The president stated again that the Chamber had already ruled that the matter was outside the scope of the proceedings. He instructed Mr. Pauw to move to another topic.

Noting that, according to the witness’s book, the Vietnamese-controlled government in Cambodia after the Khmer Rouge regime had not permitted aid relief to flow through to Cambodian refugee camps,³⁹ Mr. Pauw asked whether the witness’s view was that this action cost the lives of Cambodians. Before the witness could answer, the president again intervened, directing the witness not to continue as it was “really far” from the issues being discussed. Mr. Pauw asserted the question was relevant, because, if part of the deaths attributed to the Khmer Rouge could be attributed to the Vietnamese not allowing aid, then the Khmer Rouge could not be blamed for these deaths. Before Mr. Pauw could continue, however, the president said that the

³⁸ The relevant ERNs are 00678934 (in Khmer), and 00369814 (in English).

³⁹ The relevant ERNs are 00896904 and 00608927 (in Khmer), and 00369791 and 00369808 (in English).

Chamber had offered Mr. Pauw the floor to ask questions relevant to the jurisdiction of the Court and that he was now wasting time. Although pointedly noting that his questions were not irrelevant, the defense counsel agreed again to move on.

At this time, Mr. Pauw directed the witness to another passage in his book in which the witness had said that after the Khmer Rouge regime, the whole of Battambang town was closed and that common people had no right to live there.⁴⁰ He asked the witness whether he was given any reason for this, but before Dr. Chhunly could respond, President Nonn again advised the witness not to answer the question as once again, the question was not relevant. Mr. Pauw asked whether he was allowed to explain why this was relevant, if it was not clear. However, the president cut Mr. Pauw off and instructed him to proceed to other questions if he still had any.

Moving on, Mr. Pauw noted that in the Tabeau report, there was a list of 12 studies on which the author had relied: three of them dated from 1983 to 1984, and seven from 1995 and later. Mr. Pauw then referred to another passage from the witness's book, in which the witness wrote about the K-5 Plan ending in 1989 and that only farmers and rural people could not escape the K-5 Plan.⁴¹ However, before Mr. Pauw could proceed further, the president cut Mr., Pauw off and asked him to try his best to find relevant questions. The president indicated Mr. Pauw had agreed to move on, but noted that the reports Ms. Tabeau referred to were written after 1989 and therefore might have included the K-5 deaths. The president said any event that was outside 1975 and 1979 was beyond the scope of the trial. Mr. Pauw said this was a question about evidence that had been relied on by the OCP in an inculpatory fashion, and Mr. Pauw wanted to test that evidence by asking the witness whether the K-5 plan took place until 1989.

The president advised Mr. Pauw that his time was over, as the witness was not in Court to be tested. Questions to be put were to be those about the witness's experiences and his accounts that are relevant to the facts in this segment of the trial, he instructed. Mr. Pauw asserted that this was exactly his question, but before he could proceed, the president emphatically told him to be seated as the Chamber believed that he had no more substantive questions at this time. "Your time has run out," the president stated. Mr. Pauw was observed still standing and trying to make submissions for some time after this, although as his microphone was cut off, his comments could not be properly heard.

Witness's Knowledge of Higher Levels in the Khmer Rouge Hierarchy

The floor was then given to International Co-Counsel for Khieu Samphan Anta Guissé. She first asked the witness whether he knew Mr. Samphan personally. Dr. Chhunly reiterated his previous testimony, stating, "I have known Mr. Khieu Samphan in his capacity as an intellectual and as the chief of the *L'Observateur* newspaper ... and as a well-known clean official." Ms. Guissé clarified that her question was whether Dr. Chhunly knew Mr. Samphan by name or personally. The witness said that he knew the witness by name.

Had the witness had the opportunity to read *L'Observateur*? Ms. Guissé inquired. The witness said, "I often read his newspaper. It was not very regular, but frequently." As to the types of subjects in the newspaper, Dr. Chhunly said he did not quite remember but recalled that they

⁴⁰ The relevant ERNs are 00678907 and 00678917 (in Khmer), and 00369793 and 00369801 (in English).

⁴¹ The relevant ERNs are 00678932 (in Khmer), and 00369813 (in English).

may have been about “politics, and also the livelihood of the poor people, ordinary people including barbers. ... Some parts of the article were more political but some were very simple.” The witness said that the papers were sold publicly and with the permission of the state.

Moving on, Ms. Guissé asked from whom the witness took instructions during the DK period. Dr. Chhunly advised that, while he was at P-1 and P-2 hospitals, he took instructions from the deputy chief or secretary of Sector 3. These orders were passed down to the lower levels through the head of the respective hospital, he explained.



Ms. Guissé noted the witness’s testimony that he had received mail from Mit Sou stamped Sector 4. She asked whether this was the only such correspondence he received. Dr. Chhunly agreed that he received this letter but noted that he had also received a letter from the Chairman of Sector 3 ordering the witness to work at P-2 hospital. Therefore, Ms. Guissé asked, did this mean he received a total of two letters? The witness confirmed this. Was it therefore correct that the rest of the time, the witness took orders from hospital directors? Ms. Guissé asked. The witness agreed that he received orders from the director and deputy director.

Moving on, Ms. Guissé referred the witness to a passage in his book about a meeting in May 1975 at Kdang Jea pagoda at which Khek Pen *alias* Mit Sou gave a speech. She read, “The speaker was Khek Pen *alias* Mit Sou, chief of Region 4, whom we had seen during the first days of Battambang town. Like any other Khmer Rouge cadre, Mit Sou didn’t present his name and position to the public.”⁴²

Ms. Guissé asked the witness how and when he learned of Khek Pen’s position. Dr. Chhunly explained:

I did not know when Comrade Sou got appointed as the head of Sector 4, but when the Khmer Rouge arrived, Comrade Sou was the only person who came out to talk to the people. I don’t know who appointed him and when he was appointed, but I heard from others that he was assuming the position as Chairman of Sector 4. At that time, “sector” was a new ... codename to indicate a geographic location. ... We actually heard it from one another. Everyone was talking about him, that he was the Chairman of Sector 4.

Did the witness find out why Khmer Rouge cadres did not give their names in public? Ms. Guissé queried. “Usually I noted that during the meeting, the Khmer Rouge cadres never introduced themselves by their names or their statuses. I think this was the culture of the organization,” Dr. Chhunly stated, noting that this was his “observation.”

⁴² The relevant ERNs are 0067878 (in Khmer), and 00369696 (in English).

The defense counsel directed the witness to a different passage on the same speech in which the witness wrote that “Mit Sou did not mention a word about Norodom Sihanouk, Khieu Samphan, Hu Yun, or Hu Nim.” Ms. Guissé asked to whom the witness was referring when he said “we noted that.” Who observed or noted this? Ms. Guissé asked. The witness said he meant “those who were among the audience.” More specifically, Ms. Guissé asked, how such surprise was expressed? The witness said, “At the time, we did not dare ask questions. We did not dare ask who they were or what they did.” Therefore, was it that the witness was the only person who made that observation? Ms. Guissé pressed. Dr. Chhunly said “What we noted was that Sou did not make any mention of Samdech,⁴³ and we were together there. ... I am of the opinion that they shared my [observation]. ... We were wondering but we had to keep it to ourselves.”

The Reputation, Disappearance, and Role of Accused Person Khieu Samphan

National Co-Counsel for Khieu Samphan Kong Sam Onn then took over questioning. He first asked the witness what the “essence” or “trend” of *L’Observateur* was. Dr. Chhunly responded, “In my personal view, *L’Observateur* was a leftist newspaper. It was not a radical leftist. The newspaper wrote mainly about social issues.” What was a “leftist” newspaper? Mr. Sam Onn asked. Dr. Chhunly responded, “If we referred to ‘rightist,’ they referred to liberal words, but ‘leftist’ was pro-Communist.” As to why the witness thought the paper was leftist, Dr. Chhunly said, “There were certain articles which expressed the view of this newspaper,” although he could not remember them. He then elaborated that “*L’Observateur* was not a newspaper that supported social injustice. Instead, the newspaper ran articles about social justice. ... *L’Observateur* did not turn a blind eye to social injustice.”

Mr. Sam Onn asked the witness for his personal observations regarding Mr. Samphan while he was editor of *L’Observateur*. The witness said:

At the time, I was a youth and I had a lot of admiration and a great deal of respect for Mr. Khieu Samphan because I had the view that he acted like an ordinary person. He rode a motorbike like an ordinary person and he was clean; he was not a corrupt person. That’s what I learned about him but since that day, he has disappeared. ... I don’t know [why].



Not only Khieu Samphan disappeared, Dr. Chhunly explained, but Hu Yun and Hi Nim also disappeared at the same time. “Their disappearance was not known to a lot of people. No one knew when they disappeared or from what date they were no longer to be seen,” he said. Asked when Mr. Samphan reemerged, the witness said, “I learned about this when King Norodom Sihanouk was toppled and that Khieu Samphan was not taken away but was in hiding in the jungle.” But he did not know why Mr. Samphan was hiding because, at that time, he was in Battambang.

⁴³ This term refers to Prince Norodom Sihanouk.

Mr. Sam Onn noted that, in the witness's book, Dr. Chhunly described how an individual named Phauri⁴⁴ Sara said he did not oppose the revolution but rather the execution of people and was sad not to win asylum in Thailand.⁴⁵ Asked who Mr. Sara was, Dr. Chhunly said:

Phauri Sara was a minister on several occasions during the then-Prince Norodom Sihanouk's regime. [Around] Khmer New Year in 1976, I saw a Peugeot ... Later on, the driver came out of that place, [and] was the deputy chairman of Sector 3. After washing my hands and legs, I went to see the patient. I did not notice that it was Phauri Sara. I was taken by surprise and paid homage to the prince. I told him I was Comrade Moeun and I was assigned to treat patients at Battambang. Phauri Sara had some kind of medical problems — he experienced or had some seizures.

Mr. Sam Onn noted the witness had said Phauri Sara was the Minister of Culture but that this title was only symbolic. He asked Dr. Chhunly how, to him, this position was only symbolic. Dr. Chhunly explained that, among the Khmer Rouge cabinet of ministers, most of the ministers served in name only but "had no functions." For example, he said, "Chhoeun Prasith was the Minister of Health but he did not hold any function at that time." He continued, "Actually at that time, there was also a Minister of Justice but during the Khmer Rouge time, there was no such justice so there was no need to have a Ministry of Justice."

Next, Mr. Sam Onn asked why Phauri Sara talked about being disappointed to not win refuge in Thailand. Dr. Chhunly responded:

I believe that members of the government of Democratic Kampuchea did not all love Pol Pot. Phauri Sara was no different. He was honest. He discussed his feelings with me. ... During the time, he was admitted to the hospital for a whole month. I never saw him crack even a smile, he was very saddened. Every morning I saw him holding a radio, tuning into the BBC. He did not seem afraid to listen to the radio broadcast every morning.

As to whether Phauri Sara explained why he accepted his title even if it had no power associated with it, the witness did not indicate that he had any knowledge of this.

At this juncture, the defense counsel moved on to the witness's testimony about hearing the resignation speech of Prince Norodom Sihanouk and Khieu Samphan's reading of the constitution. He asked the witness whether the constitution was a draft or the complete version at that time. Dr. Chhunly responded that he did not know. As to when the witness heard the broadcast, he said, "If I'm not mistaken, it was after Khmer New Year in 1976." Mr. Sam Onn inquired whether the witness knew how the constitution was made. The witness said he did not.

At this point, Mr. Karnavas was asked how much time he would need to put questions to the witness. He indicated that he would need approximately an hour. The president therefore advised the witness he would need to return to the Court the following week to continue his testimony and adjourned the hearings for the day.

⁴⁴ This is the phonetic spelling of this name.

⁴⁵ The relevant ERNs are 00678824 (in Khmer), and 00369729 (in English).

As the ECCC national staff will be observing a national holiday for International Human Rights Day on Monday, December 11, 2012, hearings will resume at 9 a.m. on Tuesday, December 11, 2012.