

## **“Like Children”: Testimony Sheds Light on Political Training**

By Mary Kozlovski

On Thursday, September 20, 2012, trial proceedings in Case 002 involving the accused Nuon Chea, Ieng Sary, and Khieu Samphan resumed at the Extraordinary Chambers in the Courts of Cambodia (ECCC).

Five days of hearings were previously postponed due to the hospitalization of Ieng Sary, who is still receiving treatment. Ieng Sary signed a “limited waiver,” dated September 18, 2012, of his presence during the testimony of eight witnesses.<sup>1</sup> Khieu Samphan was present in court for the entire day. Nuon Chea was in court for the morning, after which he retired to a holding cell citing health issues.

During the day’s proceedings, the prosecution, civil party lawyers, and the three defense teams questioned new witness Chea Say, with his testimony concluding in the afternoon.

### ***Chamber Details Ieng Sary’s Health Status***

After Trial Chamber President Nil Nonn formally recognized French International Civil Party Lawyer Françoise Gautry, he noted that hearings had been postponed for five days due to Ieng Sary’s health issues. Ieng Sary was treated in the emergency unit at the Khmer-Soviet Friendship Hospital and is still receiving treatment there, President Nonn reported, also noting that a certain witness’ testimony had been postponed because Ieng Sary wished to be present. President Nonn said Ieng Sary had waived his right to be directly present during the testimony of several witnesses and civil parties. In response to an inquiry about the waiver, National Co-Lawyer for

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<sup>1</sup> Ieng Sary’s “limited waiver” is available at:  
[http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E229\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E229_EN.PDF).

Ieng Sary Ang Udom confirmed that Ieng Sary waived his direct presence for certain witnesses, but if their testimony veered from what was in the case file and incriminated Ieng Sary, his defense team would request that the waiver be considered null and void and the court await Ieng Sary's direct presence in court.

### ***Nuon Chea Defense Queries President's Biography***

International Co-Lawyer for Nuon Chea Michiel Pestman said he had been regularly checking the court's website and noticed last week that President Nonn's online biography<sup>2</sup> had been recently "redacted" to remove a reference to "many publications in the field of criminal law." Mr. Pestman said this change was "surprising" as the defense team had requested on numerous occasions –in writing to the Chamber's Senior Legal Officer – a list of these publications and had never received an answer. Mr. Pestman sought clarification on why President Nonn's biography had been changed and that particular reference deleted. "Does this mean President Nil Nonn has not published many publications in the field of criminal law, which I am beginning to suspect?" Mr. Pestman inquired. "If this is the case all this suggests a creative approach to facts unbecoming a judge or a Trial Chamber which is supposed to independently and vigorously pursue the truth."

President Nonn said this was a "minor" issue, but he had compiled some publications – "summary reports" dealing primarily with criminal aspects of the law such as sentencing – for the internal use of national courts and the school for judges that some lawyers suggested should be included in his biography. President Nonn said he wrote many articles on administrative rules for domestic courts and he had experience in that area at the national level. However, he explained, as he had observed the "standard of writing" was much higher at the court, he consulted with the legal officers about potential "controversy" around that portion of his biography compared with other biographies at the ECCC.<sup>3</sup> President Nonn informed the Nuon Chea defense that if they wished to obtain the publications there were copies at the school and they could file a written application with the chamber on the issue. Noting "controversies" regarding oral and written submissions and rulings, President Nonn said he would not allow debate of issues that are not part of the schedule.<sup>4</sup>

### ***New Witness Takes the Stand***

In response to preliminary questions from President Nonn, witness Chea Say said he is 59 years old and lives in Pailin city, Pailin province, where he is a farmer. Mr. Say testified that he is married with four children and studied literature in Year 10 at a pagoda school under "the old education system." Mr. Say confirmed he could read and write Khmer characters, he was not related to any of the accused, and had taken an oath. Mr. Say said he was interviewed once by investigators from the Office of the Co-Investigating Judges (OCIJ) at his home, but he had been visited two or three times by different people. The witness confirmed the record of his interview was consistent with what he told investigators but admitted to having memory problems.

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<sup>2</sup> Nil Nonn's biography is available at: <http://www.eccc.gov.kh/en/persons/judge-nil-nonn-president>

<sup>3</sup> The English translation was unclear in this part of the testimony.

<sup>4</sup> President Nonn's comment about "controversies" over oral and written rulings and submissions may relate to a Supreme Court Chamber decision on Nuon Chea's appeal against the Trial Chamber's decision on Rule 35 Applications for Summary Action dated September 14, 2012. The decision is available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E176\\_2\\_1\\_4\\_EN.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E176_2_1_4_EN.pdf)

### ***Prosecution Begins Questioning of Witness Chea Say***

National Senior Assistant Co-Prosecutor Veng Huot began the prosecution’s questioning of Mr. Say by referencing the witness’s previous interviews<sup>5</sup> in which he said he worked at K-12 – part of Office 870 – at the auto-repair unit from 1975 until the Vietnamese came in 1979, where he repaired cars and drove trucks transporting medics and soldiers. Noting that Mr. Say said the head of K-12 was Ta Meal<sup>6</sup> in his interview, Mr. Huot asked if Ta Meal’s full name was Sang Kroeun.<sup>7</sup> Mr. Say said he only knew the name Ta Meal, who supervised the auto-repair unit. Mr. Huot quoted Mr. Say as saying that Ta Meal disappeared in 1978, asking if Mr. Say knew what happened to him after this disappearance. Mr. Say testified that he did not know what Ta Meal did wrong and only learned that he had disappeared. In response to questions about his prior statements, Mr. Say said the deputy head of K-12 was Vuy<sup>8</sup> – though he did not recall his name clearly – and Pang<sup>9</sup> worked at K-12 and Office 870 before he disappeared. Mr. Say said he could not recall who disappeared first or later and did not know who succeeded Pang at Office 870, though the witness mentioned a person named Lin who belonged to an ethnic minority.

When asked where K-12 was located, Mr. Say said that if a person traveled from Chamkarmon<sup>10</sup> past a “Chinese hospital,” K-12 was on the left hand side across from a gas station, and it also had a branch office for auto-repair. Mr. Say testified that there were two groups of people in two sections at K-12 and his unit – tasked with repairing trucks and driving people – was comprised of about 30 people. Mr. Huot asked about information given to Mr. Say on the disappearance of Pang, to which Mr. Say replied that he was not a cadre, only a worker who repaired cars, and if he was a cadre he could have been “executed or disappeared already.” Mr. Huot pressed the witness about information he received on the disappearances of Meal and Pang, to which Mr. Say said no one told them about disappearances and it was something they learned informally from each other when they no longer saw people.



In response to further questions from Mr. Huot about K-12, Mr. Say said K-12 was already established when he began work there, and the majority of people working at K-12 came from the North and East zones. Mr. Say testified that K-12 served as “part of” the auto-repair unit for Office 870 because Pang used to come to speak or work with Ta Meal.<sup>11</sup> When asked about the

<sup>5</sup> The “interviews” appear to refer to Mr. Say’s interview with OCIJ investigators.

<sup>6</sup> The spelling of this name was unclear in the English translation.

<sup>7</sup> The spelling of this name was unclear in the English translation.

<sup>8</sup> The spelling of this name was unclear in the English translation.

<sup>9</sup> During hearings in September, the English translation of the exact roles, spelling, and pronunciation of the names “Pang,” “Ponn,” and “Phang” differed at numerous points. The names are spelled phonetically according to the live English translation. Those who wish to verify the official spelling of any name should consult the official ECCC transcripts. Transcripts of Case 002 proceedings can be found at: <http://www.eccc.gov.kh/en/case/topic/2>.

<sup>10</sup> Chamkarmon is a district in Phnom Penh.

<sup>11</sup> The English translation was unclear in this part of the testimony.

people employed at the auto-repair unit, Mr. Say said they were younger than him and he did not know or remember them well, except Meal and Vuy – the head and the deputy. Mr. Say confirmed that the majority of the workers in the auto-repair unit were removed before 1979, and he heard from other people that some were moved to the train repair and production units.

Mr. Huot inquired if the people in Mr. Say's unit gathered during meals, discussions, or meetings. The witness said people would "chit-chat" after work, sometimes about their work progress, how to repair cars more quickly, food, and other topics. When asked about the number of drivers and auto-repair workers, Mr. Say said there were 30 people in the auto-repair section, but there could have been more people at K-12. Mr. Huot asked about the transportation of cadres to meetings; Mr. Say said lower level cadres would be transported in a "normal vehicle" and if there were many people, they would be transported in a bus. People did not care what kind of transportation was used to accommodate them, Mr. Say testified. In response to queries from Mr. Huot, Mr. Say said as a subordinate he did not know about discussions in cadre meetings and apart from repairing vehicles, he would be asked on rare occasions to transport workers, or garbage to dump sites.

Mr. Huot asked if Mr. Say knew who occupied the guard units for senior leaders, to which the witness said he did not know any bodyguards because he was focused on his work at the auto-repair unit. Mr. Say responded to Mr. Huot that he was not close to the rank of cadre and just a person to be used by others. Mr. Huot cited Mr. Say as saying in his interviews that Office 870 supervised all "K" offices – which were in turn supervised by senior leaders – and inquired if Mr. Say knew who was in charge of Office 870 apart from Pol Pot. Mr. Say said he did not know the people who supervised Office 870 but Pol Pot, as the "top leader," may have been in charge of 870; he acknowledged that he never had "precise information" to support this conclusion, though.

At this point, Mr. Udom noted that the witness was using phrases such as "not sure" and "not clear" and suggested he be advised to be more precise in his testimony to avoid objections from defense counsel. President Nonn said if the witness testified unclearly, the chamber would determine the quality of that testimony, but it falls to the party examining the witness to put questions to ensure the testimony is straightforward.<sup>12</sup>

Moving on, Mr. Huot inquired if Mr. Say saw Pang often. Mr. Say said Pang occasionally came to "the place"<sup>13</sup> to see leaders – which he heard about at K-12 – and he saw Pang when he sometimes came to inspect work. When Mr. Huot asked where vehicles transporting leaders would be repaired if they broke down, National Co-Lawyer for Khieu Samphan Kong Sam Onn stated that the question was useless as it included the word "if" and the court could not use a response to such a question. President Nonn informed the witness he need not respond to speculative questions.

Mr. Huot then inquired who authorized the use of vehicles to transport important guests – such as representatives from foreign countries – to and from the airport. Mr. Say said K-12 had to transport such visitors, but this fell under the "car unit" and he was in the "truck unit." When Mr.

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<sup>12</sup> The English translation of President Nonn's comment was unclear.

<sup>13</sup> It was unclear which "place" Mr. Say was referring to, but the witness stated that he never went to Office 870.

Huot asked which “K” office provided transport to move people from K-1 to K-3, Mr. Say said he could not recall. Mr. Huot inquired which “K” office transported leaders to meeting venues to make presentations; Mr. Say responded that he did not know much about the transportation of leaders as it was not his main duty.

International Senior Assistant Co-Prosecutor Keith Raynor questioned the witness about the parts of K-12. Mr. Say said K-12 had different sections and involved auto-repair,<sup>14</sup> with K-4 dealing with food and K-6 the medical section. Mr. Raynor asked if there was no other part of K-12 where vehicles were located, to which the witness said K-12 had different sections. Small cars for transporting guests would have their own repair unit within the “car section” and the “truck section” was responsible for carrying garbage, utilities or materials, Mr. Say testified.

In response to a query from Mr. Raynor, Mr. Say said he learned from his colleague that K-12 had trucks transporting supplies to the zones and to cooperatives, but he only drove in the vicinity of Phnom Penh. Mr. Raynor sought confirmation on Mr. Say’s statement to OCIJ investigators that he also drove soldiers and medics within Phnom Penh. The witness said his main duty was repairing vehicles but occasionally he would be asked, for example, to drive medics to a movie, and he had transported soldiers when he was a trainee driver before the liberation of Phnom Penh. Mr. Raynor asked the witness if he knew to what “S-71” referred; the witness responded that Heng Kham Keng<sup>15</sup> asked him about this office and he had never heard of it.<sup>16</sup>



*Khmer Rouge soldiers being transported during the Democratic Kampuchea period.  
(Source: Documentation Center of Cambodia)*

Mr. Raynor inquired if Mr. Say saw Khieu Samphan when he worked at the auto-repair unit. Mr. Say said he saw Khieu Samphan occasionally because Khieu Samphan’s children were staying at K-12 at the time, but the witness did not have any contact with Khieu Samphan. Khieu Samphan was a “senior person” and he dared not approach him, Mr. Say testified. Mr. Say said Khieu Samphan’s children were young – about two or three years old – and were looked after at K-12.

<sup>14</sup> The English translation was unclear in this part of the testimony.

<sup>15</sup> Heng Kham Kheng appears to be an interpreter or investigator, but this was not entirely clear from the testimony as he is also referred to as a researcher.

<sup>16</sup> The English translation was unclear in this part of the testimony, as the witness appeared to cite both “S-1” and “S-21,” but not “S-71.”

When Mr. Raynor asked what Khieu Samphan did at K-12, Mr. Sam Onn interjected, asserting that the question was repetitive and the witness had already responded to it. Mr. Raynor said the objection was unfounded and he had not asked that question. President Nonn concurred with the prosecution and instructed the witness to respond. Mr. Say said Khieu Samphan drove a car to K-12 and he did not see what Khieu Samphan did because he was focused on his work, although he understood Khieu Samphan was visiting his children. Mr. Say reiterated to Mr. Raynor that he did not know details about the transportation of leaders.

### ***Prosecution Quizzes Witness on Political Education***

Citing Mr. Say's interview with OCIJ investigators in which he said he participated in political education many times at the technological institute and at Borei Keila, Mr. Raynor inquired how many times he attended such training. Mr. Say said it was common for leaders to educate subordinates in politics, which emphasized hard work to build the country, economization, and good work performance. Mr. Say said he could not recall how many times he attended such training. Mr. Raynor noted that Mr. Say said in his interview with court investigators that Ta Meal appointed him, to which the witness said the person who supervised the section authorized staff to attend study sessions, which were usually at the technical institute or at Borei Keila. Mr. Say said the 30 staff would take turns attending study sessions. When asked how long study sessions lasted, Mr. Say said political study sessions lasted at least three days and normal study sessions – which were different from political study sessions – would endure for an hour or two. Mr. Raynor inquired if someone would give an introductory talk at the beginning of a political study session. Mr. Say said the “program opener” was usually one of the senior leaders who would give a presentation at the opening of a study session.

Citing Mr. Say's interview with court investigators in which he stated that Nuon Chea and Khieu Samphan were teachers at the political courses. Mr. Raynor began by asking what Nuon Chea spoke about at such sessions. Mr. Say testified that Nuon Chea and Khieu Samphan focused on economization and hard work in order to build the country and did not teach “anything bad.” Mr. Say said since that time, he felt he should only do “good acts” and help others if needed. When Mr. Raynor asked if Nuon Chea and Khieu Samphan covered the same subjects, Mr. Say said the two men came from “the same family” and spoke on the same subjects, thus the political education was the same. Mr. Say testified that Nuon Chea and Khieu Samphan talked during the three- or four-day training sessions and could stay longer than lower level cadres, because they were senior leaders there to teach people how to work well.

Mr. Raynor inquired if Nuon Chea and Khieu Samphan taught politics clearly. The witness concurred, stating that they spoke about economization and performing good deeds. When Mr. Raynor asked which of the two men was the better teacher, Mr. Sam Onn asserted that the question was speculative. Mr. Raynor voiced his disagreement, and President Nonn instructed the witness to respond to a “rephrased” question by the prosecution. Mr. Say said he could not say which man was better because they were teaching the same political message. Mr. Raynor pressed the point, asking Mr. Say to classify the teaching of Nuon Chea and Khieu Samphan as “good,” “bad,” or “medium.” Mr. Say responded that, based on his analysis, there was nothing bad about the message, such as when you engage in good deeds you experience good consequences. Mr. Say said he could not recall who closed the study sessions and there were many people who opened study sessions. Mr. Raynor asked if Mr. Say felt motivated after

returning from a study session. Mr. Say said they would immediately return to work after the session to put effort into rebuilding the country.

When Mr. Raynor inquired if Nuon Chea and Khieu Samphan's speeches would last for the entirety of a three-day session, Mr. Say said he could not recall but Nuon Chea made most of the presentations and he never saw other instructors besides Nuon Chea and Khieu Samphan. Mr. Raynor asked if Ta Meal ever attended the study sessions. Mr. Say replied that Ta Meal was a cadre and therefore went to study sessions more often than "ordinary members." Mr. Raynor read from Mr. Say's OCIJ interview, quoting him as saying the people who led Cambodia from 1975 to 1979 were Pol Pot, Nuon Chea, Ieng Sary, Khieu Samphan, and Son Sen. When Mr. Raynor sought clarification on the comment, Mr. Say said he knew those people later on when he was told about them but never had personal contact with them during the regime. Mr. Raynor noted that Mr. Say said he did not meet those five people but asked when he came across them, aside from the study sessions. Mr. Say said he never met them face-to-face but, on rare occasions, saw them from a distance – getting out of a car to go to work, for instance. Mr. Say said he saw Nuon Chea, Ieng Sary, and Khieu Samphan but "hardly" saw Pol Pot.

Mr. Raynor asked if the witness ever read *Revolutionary Youth* magazine or listened to radio broadcasts. Mr. Say said he did not read the magazine because he was working and there was a common radio at his office, to which they listened if it was on, but not frequently. No one had a personal radio, Mr. Say said. In response to queries from Mr. Raynor, Mr. Say testified that he heard Khieu Samphan speaking on the radio. Mr. Say said he could not recall what Khieu Samphan said on air, but the same types of messages were broadcast about economization, hard work, building the country, and raising spirits to engage in production.



Mr. Raynor asked if the liberation of Phnom Penh on April 17, 1975, was celebrated. Mr. Say said there were commemorations but he rarely attended such ceremonies as he had to work, and he did not attend any of the commemorations. Mr. Say testified that he could not recall if his colleagues at K-12 patronized the commemorations.

Citing Mr. Say's OCIJ interview, Mr. Raynor questioned the witness about his statement that they were told at political education courses to be cautious, to watch each others' activities, and "keep eyes" on one another. When asked which teacher told the attendees this, Mr. Say said the K-12 chief instructed them to monitor and be vigilant for people who may engage in "chaotic activities" in the workplace. Mr. Say said the message was raised during the small meetings but not at the "big meeting."<sup>17</sup> Mr. Raynor pressed the witness for detail on why they had to be cautious. Mr. Say said that as a principle, they had to be cautious about "unpredictable actions" such as those of enemies "from one unit to another."<sup>18</sup>

<sup>17</sup> The "big meeting" appeared to be a reference to a political training session, such as those at Borei Keila, but this was not clear in the English translation of the testimony.

<sup>18</sup> The English translation was unclear in this part of the testimony.

Mr. Raynor referenced Mr. Say's OCIJ interview in which he mentioned the "hidden enemy," asking if he could explain who those people were. Mr. Say said caution was necessary because they could not see hidden enemies, and if those enemies were visible, they would have been arrested. Mr. Raynor inquired whether Ta Meal told them hidden enemies were in other units. The witness said people were instructed to always be cautious because they could not know where the enemy was – whether they were within their unit or in another unit. When Mr. Raynor inquired if Mr. Say was told what to do if he found a hidden enemy, Mr. Say said that if he saw a person destroying things he would say something but he hardly saw such incidents. Noting that Mr. Say used the word "smashing" in his interview when referring to the destruction of vehicles, Mr. Raynor asked if the word was ever used in connection with people. Mr. Say said "smashing" was not used for human beings because to use that would mean to "degrade a human life." "The smashing or destruction was used on the things, not on the human being," Mr. Say testified.

Mr. Raynor sought clarification from Mr. Say on a comment in his interview, which said that K-12 staff members were removed for tempering. Mr. Say said people were removed, but he did not know why. Mr. Raynor asked how many of the 30 people in the auto-repair unit were still working there in 1979. Mr. Say said at the truck unit there were more than 10 of them, with those from the East and North removed. The witness said he was uncertain about his safety because he was from the East.

Mr. Raynor inquired if Mr. Say knew of a man named Ta Sot. Mr. Say said Sot came from an ethnic minority group and occasionally brought a vehicle for repair at his unit. In response to queries from Mr. Raynor about his visits to other "K" units, Mr. Say said he went to the medical unit when he was unwell and occasionally to K-20 – a production unit – to examine the water pump. Mr. Say testified that he went to study sessions and sometimes worked and stayed at K-6 and used to go past K-7, which was located near the Royal Palace. Mr. Say confirmed that this was when he drove around medics and soldiers who came from various zones and stayed at K-6. Most participants in the study sessions would stay at K-6, Mr. Say explained. The witness replied to Mr. Raynor he could not recall attending any meetings at Olympic Stadium. With this response, the prosecution concluded their questioning of the witness.

### ***Civil Party Lawyers Examine Chea Say***

International Civil Party Co-Lawyer Beini Ye started questioning by inquiring about Mr. Say's OCIJ statement, in which he stated that he was ordered to help civilians out of Phnom Penh after it was liberated. Ms. Ye asked when Mr. Say received that order. Mr. Say said that he was still working as a soldier in 1975 and after Phnom Penh was liberated, people had to be evacuated. He did not drive people or remove them from their homes, he testified, but his commander once asked him to protect people on a ship, and he was afraid of drowning in the river. In response to questions from Ms. Ye, Mr. Say said his commander was not in charge of the division but was his superior; he could not recall his superior's name. Mr. Say said he was not told where the orders came from and was asked – while people were already being evacuated – to help people during the evacuation. The witness said he did not recall where the ship came from but he was docked at Prek Puo<sup>19</sup> and was young and initially excited to be on the trip, but later felt afraid.

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<sup>19</sup> The spelling of this location is unclear in the English translation, but Mr. Say later identifies "Prek Puo" as being in Kampong Cham province.



Ms. Ye asked how many civilians and soldiers were on the ship. Mr. Say said he could not recall but noted that the ship could have carried 100 people. Ms. Ye asked if the ship was full of people, to which Mr. Say said there were about five soldiers who would accompany a group of 30 people on each trip. Mr. Say said he only took one such trip and he did not know if there were other ships. In response to queries from Ms. Ye, Mr. Say explained that the soldiers asked to be present to protect civilians, although he did not know what danger they were in. Mr. Say said he could not recall if the soldiers were armed<sup>20</sup>.



Ms. Ye asked if the soldiers conversed with the civilians. Mr. Say said they talked to one another and the people were aware they were soldiers because they were wearing uniforms. In response to questions from Ms. Ye about whether Mr. Say had orders on what to do if civilians refused to board the ship, Mr. Say testified that he had no such orders because people were boarding, or had already boarded, when he arrived with his colleagues. Mr. Say said he was young and followed orders and did not ask questions such as the one posed by Ms. Ye – about who directed civilians to board the vessel. Mr. Say said he did not remember if any civilians refused to board or spoke about not wanting to leave Phnom Penh. When asked what soldiers discussed with civilians on the ship, Mr. Say said they had a “normal conversation” and neither group was angry with the other. Mr. Say said he traveled with the people to Prek Puo in Kampong Cham province, at which point Kampong Cham authorities handled the civilians and he did not know where they went.

Ms. Ye sought clarification that soldiers accompanied the civilians on the entire trip. Mr. Say said the soldiers were with them until they reached their intended destination at which point they were received by local authorities and the soldiers returned. When Ms. Ye asked if they were accompanied for protection despite no apparent danger, Mr. Say responded that as a subordinate, he acted upon orders.

In response to a series of questions about the civilians on the boat, Mr. Say said the people ranged in age – with a family including children as young as three months old; he did not see anyone get sick on the boat and was not aware if people were sick before they boarded. Mr. Say said the people could have been carrying light belongings, but he did not remember any details.

### ***Examination Returns to Political Training***

Ms. Ye cited Mr. Say’s testimony in which he said speakers at political study sessions would tell attendees to work hard, and asked what that entailed. Mr. Say said at political education sessions they were treated like children, as opposed to parents – who were their superiors. Mr. Say said they were taught to work well and economize. Ms. Ye asked if speakers mentioned what would happen to people if they did not work hard enough. Mr. Say testified that at the time people would normally be criticized, educated, or refashioned if they did something wrong, not tortured

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<sup>20</sup> Mr. Say said, “Most of the time they were not armed.” It was unclear in the English translation if he was referring specifically to the soldiers on the ships.

or treated badly. Mr. Say said there were frequent evening meetings – which could be convened on a daily basis – as part of the “livelihood meetings” where people would criticize each other and accept criticism. Ms. Ye noted that Mr. Say had said he frequently focused on work and could not pay attention to other things and asked if his understanding of work – and that espoused by the speakers at the sessions – was to be working “non-stop 24 hours a day.” International Co-Lawyer for Ieng Sary Michael Karnavas requested the question be rephrased, arguing that it assumed facts not in evidence and whether the witness was working “24 hours a day” was questionable.

Ms. Ye asked if Mr. Say focused on his work because he was told in political study sessions that he had to work hard. Mr. Say said working hard did not mean he had to work 24 hours a day, as they observed some rest and by 11 a.m. people were allowed to have lunch before resuming. Mr. Say said they worked their best during the allocated time. Civil party lawyers concluded their questioning of Chea Say.

### ***Judge Seeks Clarification on Witness Testimony***

Trial Chamber Judge Jean-Marc Lavergne first sought clarification from the witness that he had never heard of S-21 during the Democratic Kampuchea (DK) regime. Mr. Say confirmed this information and stated that he did not hear about it even after the fall of DK when they went into the jungle. When Judge Lavergne inquired if Mr. Say heard about security centers during the DK period, Mr. Say said at the time he was attentive to performing his tasks well and less interested in knowing about other things. Judge Lavergne asked if he was interested in knowing what happened to people who disappeared from K-12 or other offices. Mr. Say testified that he learned people could be removed and regarded as “elements” and So Phim – the head of the East Zone – was accused of being a traitor. The witness said he was “implicated as an element” because he was from the East Zone and testified that he was afraid he would be killed. When asked why he was afraid if he did not know what was happening to people who disappeared, Mr. Say said he did work his best but he noted that people were disappearing; they did not know where those people went and could not help being worried. If they knew these people were sent to a particular location, he contended, they might have been less fearful. “We only speculated when people had been removed that they could have been moved to other locations, but we could never say that they could have been killed,” Mr. Say testified.

Judge Lavergne inquired what Mr. Say’s wife<sup>21</sup> did during the DK period, to which the witness responded that she cooked and prepared food for foreign visitors and people travelling to the provinces at “House Number 2” at the Ministry of Foreign Affairs (MFA). In response to queries from Judge Lavergne, Mr. Say said his wife used to tell him that her colleagues had disappeared and said that, although he was not in a position to talk on her behalf, he guessed that she must have been fearful.

Judge Lavergne asked if any participant at political training asked the leaders what happened to people who were disappearing. Mr. Say said he could not recall. Judge Lavergne pressed the point, inquiring if it ever occurred to Mr. Say to ask Nuon Chea, for example, what was happening to his colleagues who disappeared. The witness said that as an ordinary person he

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<sup>21</sup> Mr. Say noted that she was not his wife at the time.

could never be close to such senior people. Judge Lavergne said he had no further questions for the witness.

### ***Nuon Chea Defense Team Cites Supreme Court Chamber Decision***

Taking the floor, International Co-Lawyer for Nuon Chea Andrew Ianuzzi quoted from paragraph 21 of the recent Supreme Court Chamber (SCC) decision on their appeal against the Trial Chamber’s decision on Rule 35 Applications for Summary Action, which reads in part:<sup>22</sup>

The Trial Chamber later considered this behaviour, in conjunction with other allegations, to constitute evidence of a “consistent pattern of professional misconduct” and referred this misconduct to the competent Bar Associations. Upon review of the relevant Khmer and English transcripts, however, the Supreme Court Chamber is of the view that this persistence was justified given the Trial Chamber’s lack of clarity relating to the Defence’s applications.

Mr. Ianuzzi inquired if the Trial Chamber would forward this decision to the relevant bar associations, namely the Amsterdam Bar Association and the New York State Bar Association.<sup>23</sup> President Nonn said the chamber had not forwarded the decision to the concerned bar associations and if counsels believed the decision was beneficial to them they could forward the information to the associations themselves. President Nonn told the Nuon Chea defense that if they wished to put an application before the chamber, they must do so in writing.



### ***Nuon Chea Defense Cross-Examines Witness***

Mr. Pestman sought confirmation that Mr. Say could not remember the name of the commander of the unit he served in April 1975. Mr. Say said that prior to the liberation of Phnom Penh, he was attached to a military unit and could recall his senior commander but not his “immediate” commander. He said that at the time the regiment commanders were Ta Met and Ta Sim. In response to queries from Mr. Pestman, Mr. Say said he could not recall the full names of Ta Met and Ta Sim, but Ta Sim was at Koh Souten and Ta Met was in Khsach Kandal and they were in charge of military sector 22, but he could not recall the unit number. Mr. Say testified that his own regiment was numbered 52, but he could not recall the division number. He said he heard indirectly that Ta Sim was transferred to supervise in Kampong Som and he did not know what happened to Ta Met because he was in Phnom Penh by then – and he did not know if they were still alive. With this response, the Nuon Chea defense concluded their questioning of Mr. Say.

### ***Ieng Sary Defense Questions Witness Chea Say***

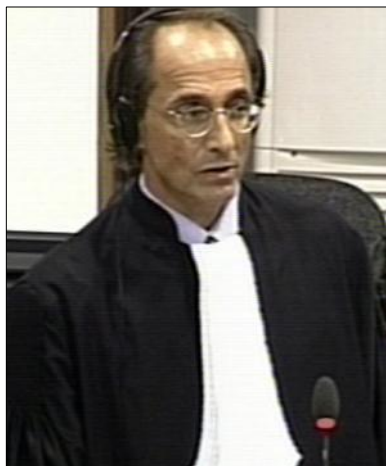
Mr. Karnavas began the Ieng Sary defense’s cross-examination by seeking clarification on whether Mr. Say said investigators came to visit him three or four times and he gave them one interview, which took place on December 11, 2007. Mr. Say confirmed this summary. Mr.

<sup>22</sup> The decision is available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E176\\_2\\_1\\_4\\_EN.pdf](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E176_2_1_4_EN.pdf).

<sup>23</sup> In June, the Trial Chamber sent a letter to the Amsterdam Bar Association and the New York State Bar Association regarding Michiel Pestman and Andrew Ianuzzi respectively, stating that the two lawyers had displayed a “consistent pattern of professional misconduct.” The letter is available at: [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E214\\_1\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/E214_1_EN.PDF).

Karnavas asked if the interpreter present was a former cadre he knew from the Khmer Rouge period. Mr. Say said the interpreter was an intellectual and researcher named Heng Kham Kheng, whom he knew starting from 1983.

Mr. Karnavas said that in a tape recording of the interview, the voice of Mr. Say's wife is audible – which is not reflected in the summary of interview – and inquired if Mr. Say's wife was next to him during the interview and if she was helping Mr. Say with his answers to investigators. Mr. Say confirmed this information. Mr. Karnavas asked if it was correct that the summary of the interview contained information given to him – or investigators – by his wife. The witness concurred, explaining that they were together and discussed certain events, but he said the written record reflected his statements and he did not fabricate anything. Mr. Karnavas asked if



Mr. Say would have minded if the investigators requested that his wife be in a different room while he was being interviewed. Mr. Say said she was nearby while the interview was being conducted under the house.

When Mr. Karnavas repeated his question, Ms. Ye objected that the question was hypothetical. Mr. Karnavas countered that it was not hypothetical because Mr. Say was present at the time. “We’re not in Mars,” Mr. Karnavas said. Mr. Karnavas said the question was based on the circumstances of the location at which the interview took place. The interview was conducted with two people speaking simultaneously and one refreshing the other’s memory – none of which is reflected in the written summary of interview, Mr. Karnavas argued. He said the defense was not

seeking nullification, but the purpose of his question was to assist in assessing the weight to give to the witness’ testimony. He further noted that whether it also points to “continuing irregularities” in the investigation was a different matter. President Nonn instructed the witness to respond to the question.

Mr. Say said that researchers including Heng Kham Kheng and a woman questioned him while his wife was at the house and she sometimes spoke because she has knowledge. Mr. Karnavas asked if he was ever asked questions before this interview by any investigators. Mr. Say said it was the first time he was interviewed by Heng Kham Kheng and the only time he was interviewed by the OCIJ. The defense for Ieng Sary finished questioning the witness.

### ***Defense for Khieu Samphan Continues the Cross-Examination***

Mr. Sam Onn began by asking Mr. Say if all of the 30 workers in his unit at K-12 were repairmen or whether some worked in different teams. Mr. Say said his “truck section” had repairmen and drivers; he could not recall how many drivers and repairmen there were, but said there were more than 10 people in one group.<sup>24</sup> When Mr. Sam Onn asked when he began work at K-12, Mr. Say said he was assigned to live in Phnom Penh prior to April 17, 1975 – with about 40 other workers, including 10 repairmen and 30 drivers – and arrived in the city shortly after the liberation, perhaps on April 22 or 23. Mr. Say confirmed that K-12 was established

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<sup>24</sup> The English translation was unclear in this part of the testimony.

before he arrived in Phnom Penh as there were already repairmen and his group was supplementary to the existing forces.

After Mr. Say confirmed that Meal was his supervisor, Mr. Sam Onn asked about Meal's supervisor. Mr. Say said Pang was Meal's supervisor; Pang was above K-12 because he came to communicate with Meal who supervised K-12. Mr. Say also confirmed to Mr. Sam Onn that he did not know S-71. Mr. Sam Onn inquired how Mr. Say knew that K-12 staff were removed to repair railways or work in rice fields. The witness said he heard through his colleagues and there was no official announcement.

Noting the witness' attendance at political study sessions at Borei Keila and the technical institute, Mr. Sam Onn asked how many of the 30 members of his working group attended sessions with him. Mr. Say said he could not recall their names but they took turns. Mr. Sam Onn inquired if other groups participated in the study sessions. Mr. Say testified that sometimes units under "K" offices – perhaps five or ten from each office – were sent to attend the sessions. Mr. Say explained that there were sometimes cadres at the sessions and sometimes they were specifically for combatants – or there may be a mixture of the two.

Mr. Sam Onn asked about the location of the study session that Mr. Say attended where Khieu Samphan was present. Mr. Say said Khieu Samphan rarely gave instructions at study sessions – which was mostly done by Nuon Chea – and he could not recall if they were held at K-6 or the Soviet Technical Institute.<sup>25</sup> Mr. Say said that when he attended study sessions he encountered Khieu Samphan only once, and it was usually Nuon Chea who chaired the sessions. Mr. Sam Onn asked when Mr. Say first met Khieu Samphan. The witness testified that he saw Khieu Samphan – whom people called Uncle Hem<sup>26</sup> – once from a distance at K-12 when Khieu Samphan visited his children and the witness got to know him at that office. Mr. Say said a person whose name he did not remember first told him who Khieu Samphan was. In response to a query from Mr. Sam Onn, Mr. Say said a driver drove Khieu Samphan, and Mr. Say did not pay attention to the vehicle but he knew Khieu Samphan was not a "fussy person" who cared about what kind of vehicle he would take.

Next, Mr. Sam Onn asked about Khieu Samphan's children. Mr. Say said Khieu Samphan's children were "very young" – about four years old – but he did not know if they were boys or girls. They were taken care of by nannies, Mr. Say testified. The witness also noted that there were other children besides Khieu Samphan's children.

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<sup>25</sup> It was unclear in the English translation if Mr. Say was stating that he had attended multiple study sessions where Khieu Samphan was present.

<sup>26</sup> "Hem" is Khieu Samphan's alias.



Mr. Sam Onn cited Mr. Say's statement<sup>27</sup> in which he used the terms "870 Office" or "Office 870," "Unit 870," and "870 ministry," and inquired about the witness' understanding of the terms. Mr. Say said Office 870 was one of the top offices under the "central office," which supervised other "K" offices, such as K-12. Mr. Sam Onn queried the whereabouts of "870" or "Office 870." Mr. Say said he had not been there but had heard of the unit – which was above K-12 – and recognized the codename. In response to queries from Mr. Sam Onn, Mr. Say testified that he was not sure who the leaders of 870 were at the time, but the "supreme leaders" then were "these uncles"<sup>28</sup> and no others could have been in those positions. Pang was also in charge, Mr. Say said. He also confirmed that this was his "personal observation". When Mr. Sam Onn asked if Mr. Say had any contact with Office 870, Mr. Say said only that he had been told by Meal, who was the head of K-12, that Office 870 was supervising K-12.

Mr. Sam Onn briefly quizzed Mr. Say about his interviews with OCIJ investigators. In response to his queries, Mr. Say said he was interviewed "on several occasions," firstly by Heng Kham Kheng to collect information, then people from the ECCC came to him on two other occasions, including when he was brought to the court. When Mr. Sam Onn sought clarification, Mr. Say explained that firstly, he was interviewed; secondly, he was asked if he would come to the court; and thirdly, he was brought by car to the court. The Khieu Samphan defense concluded its questioning.

### ***Chamber Discusses Upcoming Hearing***

With the examination of Chea Say concluded, President Nonn reported that on Friday, September 21, two separate, non-evidentiary hearings would be held. At the first hearing, two treating doctors of Ieng Sary from the Khmer-Soviet Friendship Hospital would testify on Ieng Sary's medical condition after his admission into hospital, President Nonn said, as the chamber wishes to know if Ieng Sary is able to participate in proceedings. The president explained that the second hearing would involve discussion – including oral submissions from parties – on the testimony of expert witness Philip Short. President Nonn inquired if Nuon Chea and Khieu Samphan wished to participate in the hearings as the chamber felt the sessions were not relevant to them.

Mr. Pestman said he had not discussed the issue with his client but confirmed that he would be present at the hearing, though perhaps not during the testimony of medical experts. Mr. Pestman inquired if the chamber could indicate when the hearing relating to the testimony of Philip Short would begin.

President Nonn asked Mr. Pestman to inform the chamber if Nuon Chea wished to be present as they needed to tell detention facility staff to bring him to the courtroom and he must sign a letter of waiver if he intended to be absent. Mr. Pestman said he was just informed that Nuon Chea would waive his right to be present, but Mr. Pestman would be in court and would like to

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<sup>27</sup> The "statement" appears to refer to Mr. Say's interview with OCIJ investigators.

<sup>28</sup> When Mr. Say said "these uncles," he did not specify to whom he was referring.

participate in the debate on “the right of an accused to be present during his or her trial.” Mr. Sam Onn said Khieu Samphan did not intend to participate in the hearing but the defense team would be present.

President Nonn adjourned the proceedings, which are set to resume on Friday, September 21, 2012, at 9 a.m.