

Civil Party Application to ECCC Case No. 003/004

Ms. SENG Chan Theory

I, **SENG Chan Theory**, am the first victim Civil Party to be accepted by the Extraordinary Chambers in the Courts of Cambodia (ECCC) in September 2007 upon the arrest of Mr. NUON Chea in September 2007. I am an individual Civil Party and Representative of the ECCC-first-recognized Association of Khmer Rouge Victims in Cambodia (AKRVC) of which Civil Parties of Orphans Class are members in **Case 002**.

In addition to being a Civil Party in Case 002, I am now applying to become a Civil Party in Case 003/004 against the five named individuals under investigation by the ECCC Office of Co-Investigating Judges, in particular against military commanders **Mr. MEAS Muth** and **Mr. SOU Met** who commanded respectively the Navy and Air Force of Democratic Kampuchea (“**DK**”), in addition to their roles and responsibilities for the **common purpose and design** in the arrests and executions specifically in their respective divisions and generally **for the whole of Cambodia**.

I believe Mr. MEAS Muth and Mr. SOU Met bear “**individual responsibility**” in that they knowingly, directly and substantially contributed to the crimes under investigation of which I am a victim and a witness. International legal precedents state that establishing individual responsibility is most straightforward when a defendant actually committed the criminal act in question. However, individual responsibility can also be established through other forms of criminal participation, such as ordering the criminal conduct, participating in a **common design or purpose** to commit the crimes (**joint criminal enterprise**), or otherwise **aiding and abetting the crimes**. In effect, they were also policymakers along with the senior Khmer Rouge leaders of Mr. NUON Chea and Mr. SON Sen.

Mr. MEAS Muth, as Secretary of Central Committee Division 164 which incorporated the DK Navy, and Mr. SOU Met, as **Secretary of Central Committee Division 502** which incorporated the DK Air Force, occupied senior positions within the DK hierarchy, by virtue of which they were able to influence the development and implementation of Communist Party of Kampuchea (“**CPK**”) policies directly and, in most cases, through their subordinates.

According to **ECCC Case 002 Closing Order*** (Part One V. *Military Structure*), “the Revolutionary Army of Kampuchea (“**RAK**”) was a core institution within the CPK governed

Democratic Kampuchea. CPK policy relied heavily on the implementation of its goals by forceful means, making the military an important part of its government apparatus (Para. 113).”

As part of its responsibility for internal security, RAK carried out purges under the orders of the CPK Center (Closing Order: Participation of RAK in Purges, para. 146).

“The Military Committee acted as an organ of the Party Center and thus ensured control of the RAK by the Party Center. The Central Committee and Military Committee sometimes met in joint session to decide on military matters, **effecting a unified strategic command over the armed forces** (Closing Order, para. 120)”

Again according to Case 002 Closing Order, the RAK “established two combined field commands that each exercised command over several divisions. **Both were established in the East Zone (where I was a victim from Nov. 1975 to Jan. 1979)**. The first of these field commands was located on Route 1 in Sector 23. It was commanded by Mr. SON Sen and comprised of Divisions 703, 340, 221, 460, and 805, 210, 230, 250 and 270. The second field command was located on Route 7, also in the East Zone. It included Division 207 (ex-Division 310), Division 603 (ex-Division 450) Division 280 and Division 175 **plus elements of Division 502**” (para. 130) **(under the command of Mr. SOU Met)** and forces of the Central Zone (former North Zone).

The evidence canvassed by Professor Stephen Heder and international lawyer Brian D. Tittmore in their report *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge* of June 2001 (“**2001 Report**”^{***}) suggests that the lines of civilian and military leadership within the CPK were not entirely distinct, with some officials playing dual roles within their areas of jurisdiction, including Mr. SOU Met and Mr. MEAS Muth, as Secretaries/Chairmen of CPK Military Divisions (2001 Report, p. 49).

The evidence reviewed by Prof. Heder and Mr. Tittmore also suggests that Mr. MEAS Muth and Mr. SOU Met took part in this conduct with the required mental element (*mens rea*) of individual responsibility, namely **knowledge of the executions and other atrocities that were occurring throughout Democratic Kampuchea and of their own contributions to those atrocities**. Evidence of such knowledge includes confessions, regional reports and other documents that were marked for transmission to certain of the seven officials named in the 2001 Report by Prof. Heder and Mr. Tittmore that make specific reference to instances of arresting, interrogating, torturing and “smashing” suspected CPK enemies. This evidence also includes reports apparently authored by Mr. SOU Met and Mr. MEAS Muth that refer or allude to the arrest and execution of traitorous cadre and other “enemies” within the official’s regional jurisdiction. These documents reviewed by Prof. Heder and Mr. Tittmore, together with the significant number of lower-level cadre under each official’s authority who were arrested and transferred to S-21, constitute substantial evidence that **these officials were aware of the atrocities perpetrated within their jurisdictions and elsewhere and, moreover, that they**

were aware that their own acts or omissions contributed to the atrocities (2001 Report, p. 52).

Turning to the second basis for establishing individual criminal responsibility, the documents Prof. Heder and Mr. Tittmore have analyzed provide evidence of the three principal elements of **superior responsibility** in respect of Mr. MEAS Muth and Mr. SOU Met: (i) the existence of a superior-subordinate relationship; (ii) evidence that the superior knew or had reason to know that his subordinates were committing or were about to commit crimes; and (iii) the superior's failure to take reasonable and necessary measures to prevent or punish the crimes (2001 Report, p. 52).

In this connection, the evidence reviewed by Prof. Heder and Mr. Tittmore indicates that Mr. SOU Met and Mr. MEAS Muth held positions of significant *de jure* authority in the CPK hierarchy, and also exercised *de facto* control over subordinates falling within their jurisdiction. These officials appear to have acquired knowledge of atrocities committed by their subordinates in part through the officials' membership in various CPK committees, including the Standing and Military Committees of the Central Committee, and through the apparent circulation of "confessions", regional reports, and other CPK documents. Finally, Prof. Heder and Mr. Tittmore have not identified any evidence that the senior officials took sufficient measures to prevent the crimes of their subordinates or to punish the perpetrators. Indeed, in several cases, particularly those of Mr. SOU Met and Mr. MEAS Muth, the suspects lauded implementation of the execution policies as necessary steps to protect the CPK against its enemies, *khmang* (2001 Report, p. 52).

According to Prof. Heder and Mr. Tittmore, the minutes of meetings of Central Committee military units as well as various messages between Mr. SON Sen and those units, in 1976 and 1977 Mr. SOU Met regularly and Mr. MEAS Muth occasionally attended General Staff meetings, where they spoke, listened to reports by colleagues, and witnessed pronouncements by Son Sen. These minutes implicate Mr. SOU Met and Mr. MEAS Muth's knowledge of arrests of civilians and CPK cadre as revealed to them by Mr. SON Sen and by division and regimental cadre who attended these gatherings (almost all of whom are now dead), as well as their knowledge of various "smashings" and "sweepings," including of purge victims to whom the especially damning label of "super-traitors" was applied. The following detailed accounts of several of those meetings reveal Mr. SOU Met and MEAS Muth's close involvement in and knowledge of the Party's arrest, interrogation and execution policies, and also reveal pertinent details of those policies as articulated by Chairman of the General Staff Mr. SON Sen (p. 99-100).

Also of significance are reports from military divisions marked for distribution to Mr. NUON Chea (currently detained in Case 002 and one of the seven named in the June 2001 Report by Prof. Heder and Mr. Tittmore) that contained evidence of executions and other atrocities, including war crimes. For example, Mr. NUON Chea was copied on a December 1977 message from the Central Committee **Naval Division 164** Secretary MEAS Muth, in which Mr. MEAS Muth expressed his determination to defend "*the socialist Kampuchean motherland by sweeping*

cleanly away and without half-measures the undercover elements of the enemy, whether the Yuon [Vietnamese] or other enemies” (2001 Report, p. 58).

As such, I hold Mr. MEAS Muth and Mr. SOU Met individually, criminally responsible for the injuries I suffered under Democratic Kampuchea (17 April 1975 to 7 Jan. 1979), in particular during the exodus from Phnom Penh and within the East Zone of Svay Rieng province, bordering Vietnam, including for their roles in contributing to and implementing the common design and purpose in the arrests and executions of which I became a victim and witness. I incorporate the **Appendix: Individual Criminal Responsibility** as articulated by Prof. Heder and Mr. Tittmore in their 2001 Report, p. 114-129.

Part B: Information about Alleged Crimes (continued from p. 3 of Victim Information Form)

1. I was a *child* victim of forced **Movement of the Population from Phnom Penh – Phase I** (ECCC Case 002 Closing Order: Part One VIII.A. para. 221-261), during which I suffered *inter alia* the “disappearance”/murder of my father KAO Im, a high-ranking military commander of the Lon Nol regime; **Movement of the Population from the East Zone – Phase III** (Case 002 Closing Order: Part One VIII.A. para. 283-294), during which I suffered *inter alia* illegal arrest and illegal detention at **Wat Tlork Security Center** (Closing Order: Part One VIII.C. para. 664-666) later transferred to **Boeung Rai Security Center** (Closing Order VIII.C. para. 665) where I underwent Compulsory Labor as a child, witnessed the murder of a mentally insane woman and suffered the death of my mother and other prisoners, both security centers within the heart of the notorious East Zone during the height of the purges.

2. I, age 4-8, was a child victim of and witness to **CRIMES AGAINST HUMANITY** whereby ranking officers and officials of the Khmer Republic / Lon Nol regime (as well as their subordinates and family members) were targeted because they were considered likely to be hostile to the CPK.
 - Legal elements of **MURDER** of my father, my mother, mentally insane woman, and other prisoners
 - **Wat Tlork and Boeung Rai Security Centers in the East Zone**
 - Para. 1376. “As regards **security centers**, for the entire period of the regime, the personnel of these centers, both directly and indirectly, caused the death of a large number of detainees. In most instances, the prisoners were killed deliberately through a variety of means, including summary execution in or near the **security centers**. Moreover, many prisoners died as a result of torture and ill-treatment.”
 - **Murder of Mother SENG Chen Eat.**
 - **Murder of mentally insane woman.**

- Murders of other prisoners. The Documentation Center of Cambodia estimated that 30,000 lives were lost in Boeung Rai Security Center.
 - **Phase I Movement**
 - **Murder of Father KAO Im**
- Legal elements of **EXTERMINATION** (para. 1381)
 - **Wat Tlork and Boeung Rai Security Centers in the East Zone**
 - Para. 1387. Inhuman conditions. As a child, I was forced to pick dried animal manures among the countless mass graves.
 - Every night, the prison guards shackled the ankles of prisoners, including my juvenile brothers.
 - **Phase I Movement** – during the exodus out of Phnom Penh and during the temporary stay at Wat Champa pagoda, I and my family formed part of the sea of human suffering (starvation, lack of medical treatment, shelter etc.)
- Legal elements of **ENSLAVEMENT** (para. 1391)
 - **Wat Tlork and Boeung Rai Security Centers**
 - Para. 1392. “As regards the *actus reus*, the personnel of these **cooperatives, worksites and security centers** deliberately exercised total control and all of the powers attaching to the right of ownership over of the persons placed there, without them being given any real right to agree.”
 - Para. 1394. “Moreover, in all the places mentioned above, including security centers, the victims were forced to perform work without their consent, unpaid and without the opportunity to reap the direct benefits thereof. Work venues, duration and schedules were imposed. The victims could not refuse to perform any work assigned to them. The work, coupled with the constraints described above, stripped them of their free will, and amounts to enslavement.”
- Legal elements of **IMPRISONMENT** (para. 1402)
 - **Wat Tlork and Boeung Rai Security Centers**
 - Para. 1403. “As regards the *actus reus*, the personnel of these sites intentionally imposed serious, arbitrary deprivation of liberty on the detainees, in violation of legal guarantees.”
 - As set out in the “Factual Findings – Joint Criminal Enterprise” section, “the network of security centers replaced the judicial system in order to facilitate detention based on the presumed dangerousness of individuals as perceived by the CPK authorities”, the “dangerousness of individuals” include me a child victim only seven years old.
- Legal elements of **TORTURE** (para. 1408)
 - **Wat Tlork and Boeung Rai Security Centers**

- Para. 1409. “As regards the *actus reus*, on numerous occasions, CPK cadres through their acts or omissions, deliberately inflicted severe harm and suffering, both physical and mental, during interrogations.” I witnessed and suffered the torture of a mentally insane woman in the courtyard of one the two Security Prisons where I was detained as a child of 7 years old.
 - Para. 1410. “Taking account of all the objective and subjective elements of the case, the treatment to which these people were subjected was so severe that it amounts to torture: the methods used, coupled with the inhumane conditions and the context of terror in the security centers, had very serious physical and psychological effects, and in some cases, resulted in death. Torture was both premeditated and institutionalized as the centerpiece of CPK policy against ‘enemies’”, including me, a child of seven years old.
 - As a child living in the East Zone, I was tortured when a Khmer Rouge village authority pierced my right eye and almost blinded me; the scar on my right eye lid is visible to this day.
- Legal elements of **POLITICAL PERSECUTION**
 - **Wat Tlork and Boeung Rai Security Centers**
 - Para. 1417. “The CPK authorities identified several groups as “enemies” based on their real or perceived political beliefs or political opposition to those wielding power within the CPK. Some of these categories of people, such as former ranking civilian and military personnel of the Khmer Republic, were automatically excluded from the common purpose of building socialism. As for junior officials of the former regime, some were arrested immediately after the CPK took power, because of their allegiance to the previous government, and many were executed at security centers... The entire population remaining in towns after the CPK came to power was labeled as ‘new people’ or ‘17 April people’”.
 - **Phase I Movement** – I as a child of 4 years old was forced with my maternal family members to exit my birth city of Phnom Penh; we were targeted for being a member of the “new people”.
- Legal elements of **OTHER INHUMANE ACTS through “Attacks Against Human Dignity”**
 - **Wat Tlork and Boeung Rai Security Centers and Phase 1 Movement.**
 - Para. 1435. “Regarding the *actus reus*, by depriving the civilian population of adequate food, shelter, medical assistance, and minimum sanitary conditions, the CPK authorities inflicted on victim serious mental and physical suffering and injury, as well as a serious attack on human dignity of similar gravity to other crimes against humanity.”

- Legal elements of **FORCED TRANSFER - Other Inhumane Acts Through Forced Transfer**

- **Phase I from Phnom Penh and Phase III from East Zone**

- Para. 1448. “Considering the facts set out in the sections relating to the **three phases of the movement of the population**, the material facts of the crime against humanity of other inhumane acts through forced transfer have been established. In particular relating to the movement of the population from the city of Phnom Penh following the entry of CPK troops on 17 April 1975 (**phase 1**) [...], and the movement of the population from the East Zone from late 1977 until late 1978 (**phase 3**) [for me, to Wat Tlork and then Boeung Rai Security Centers] – the places where they lawfully resided without grounds permitted by international law.”
- Para. 1449. “With respect to the *actus reus*, victims endured great suffering, or serious mental or physical suffering or injury or a serious attack on human dignity of similar gravity to other crimes against humanity.”

- Legal elements to **FORCED DISAPPEARANCES – Other Inhumane Acts Through Enforced Disappearances**

- **Wat Tlork and Boeung Rai Security Centers**

3. I, age 4–8, am a child victim of and a witness to crimes in the Cambodian **Penal Code 1956** - charges of MURDER and TORTURE of father KAO Im, mother SENG Chen Eat and torture of (the piercing of my right eye with the intention to cause blindness and deformity) and that of mentally insane woman when in prison.

Part C: Application to be Joined as a Civil Party (Injuries) (cont'd from p. 4 of Victim Information Form)

As a direct consequence of the alleged offenses perpetrated by Mr. MEAS Muth, commander of the Navy of Democratic Kampuchea, and Mr. SOU Met, commander of the Air Force of Democratic Kampuchea, I (age of 4-8 years), among other things:

- (a) lost my father, a former Lon Nol / Khmer Republic military commander, who was a victim of forced disappearance and was murdered by the Khmer Rouge;
- (b) was, together with my family, forcibly evacuated from Phnom Penh, to Svay Rieng province;

- (c) was imprisoned in Wat Tlork and Boeung Rai Security Centers in the East Zone for approximately 5-6 months;
- (d) was deprived of access to food, medicine, education and other necessities;
- (e) suffered torture and other cruel and inhuman treatment;
- (f) witnessed other prisoners tortured and murdered;
- (g) witnessed my mother tortured or subjected to cruel and inhuman treatment;
- (h) lost my mother who was a victim of forced disappearance and murdered.

In the circumstances, I personally suffered physical, material, mental and psychological injury.

Additionally, where/when relevant, I would like my information submitted for the Case 002 be incorporated into this application to be a Civil Party in Case 003/004.

References:

* *Closing Order of ECCC Case 002* (Sept. 2010).

** *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge* (Professor Stephen Heder and Mr. Brian D. Tittmore, War Crimes Research Office, American University, June 2011).

*** Civil Party SENG Chan Theory's Application for ECCC Case 002 (Sept. 2007).

**** Background on Civil Party development as stated filed in Pre-Trial Chamber, 17 July 2008.

***** Civil Party SENG Chan Theory's Application to ECCC Co-Prosecutors to be on their Witness List (Feb. 2011).