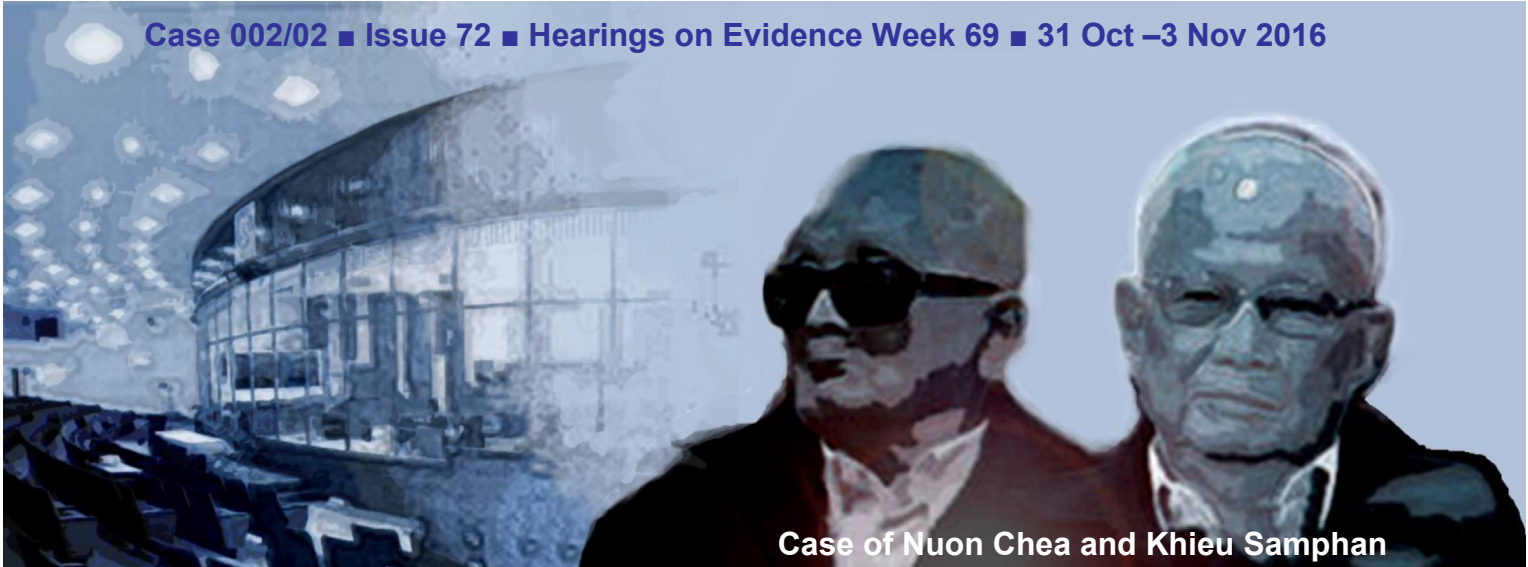


KRT TRIAL MONITOR

Case 002/02 ■ Issue 72 ■ Hearings on Evidence Week 69 ■ 31 Oct –3 Nov 2016



Case of Nuon Chea and Khieu Samphan

A project of East-West Center and the WSD HANDA Center for Human Rights and International Justice at Stanford University
(previously known as the UC Berkeley War Crimes Studies Center)

*“Vietnam was a bigger country, a bigger army. It had more weapons.
Our intervention was to contain them and slow their advance.
We did not have the ability to push them back to their country.”*

- Witness Ieng Phan

I. OVERVIEW

This week the Trial Chamber heard from two witnesses on the nature of armed conflict and also held the presentation of key documents on the same subject. Witness Mr. Ieng Phan, testified about his knowledge of incursions into Vietnam as well as his knowledge of alleged rebellion plans in the East Zone. Witness 2-TCW-1065, testifying under a pseudonym due to his role in ongoing investigations, then testified about his role as a military medic in the East Zone and his belief in Sao Phim's loyalty to the DK regime. 2-TCW-1065 testified that Pol Pot carried out a “coup d'etat” in the East Zone on 25 May 1978, which forced the Witness to join forces with the Vietnamese to fight against the Khmer Rouge. On Thursday the Office of the Co-Prosecutors (OCP) and Defense Team for Khieu Samphan presented their key documents related to the segment on the nature of armed conflict, including contemporaneous telegrams and meeting minutes as well as academic sources.¹ Responses to these documents will be heard next Monday.

II. SUMMARY OF WITNESS TESTIMONY

Two witnesses were heard this week, both on the subject of the nature of armed conflict. First, Ieng Phan, from Ang Ta Saom Commune, Tram Kak District, Takeo Province, testified about his role in the Southwest Zone military and border conflicts with Vietnam in which he took part. Next 2-TCW-1065 testified about his relationship with Sao Phim as well as incursions into Vietnam. He will conclude his testimony next week.

A. Summary of Testimony by Ieng Phan

Mr. Ieng Phan is 64 years old and currently lives at Sangkae District, Battambang Province.² He joined the Khmer Rouge in 1970 and is currently a two star major general in the Royal Cambodian Army after being reintegrated in 1997.³

1. Background and Involvement in Attack on Phnom Penh

Witness Ieng Phan joined the commune-level military of the Khmer Rouge in Ang Ta Saom Commune in July 1970 and was promoted to the district-level military within one and a half months. A year later he was promoted again to the province-level military in Takeo, within the army of the Southwest Zone. He said he became a member of the Communist Party of Kampuchea (CPK) in 1973. Ieng Phan testified that at the time of the 17 April 1975 attack on Phnom Penh, he was commander of Special Battalion 203 under Division 2 of the Southwest Zone.⁴ His special battalion was subordinate to the division and supervised by Brigade 2, headed by Sam Beth. At this time, Special Battalion 203 was stationed along national roads 3 and 4, and its target was Pochentong Airport.⁵ After the Khmer Rouge took control of the capital he was first sent to farm near Prey Sar for three months and then was sent to Takeo.

2. Fighting in Takeo

While in Takeo the Witness was transferred from Special Battalion 203 to command Regiment 12, Division 2 in the Southwest Zone army; the highest position he held during the regime.⁶ Regiment 12 was posted to the border with Vietnam, and on his arrival in Takeo in late 1976, he was immediately sent to supervise the forces there.⁷ Ieng Phan testified that in early 1977 fighting broke out between Cambodia and Vietnam along the Vien Te canal on the opposite of Phnom Den. His regiment did not take part in these initial clashes but he heard about them from Regiment 11, who said the Vietnamese had entered DK territory and planted mines.⁸ The Witness had been told DK forced tried to negotiate with the Vietnamese: “we tried to stop them but they did not listen,” and after some grenades injured some Cambodians, the conflict escalated. In late 1977 Vietnam entered Takeo, and fighting became more fierce. During this conflict at Vien Te canal, 170 of his troops were killed, and the Witness’s left hand was wounded by a grenade launcher. He said that in his belief Vietnam was larger and better equipped than the Cambodians, so DK had more casualties.⁹ During his time in Takeo as commander of Regiment 12 the Witness participated in a meetings with Ta Mok and Sam Beth “very often.” He said he first met Ta Mok prior to 1975 and the last time he saw him was in mid-1977 when Ta Mok instructed all regiment commanders to “defend our territory” in the East Zone.¹⁰

3. Fighting in Svay Rieng

The Witness said that his was the second group of forces sent to Svay Rieng from Takeo; the first was led by Ta Mok’s son-in-law Raen and was sent in early 1977. After spending time mobilizing his forces, Ieng Phan left Takeo in mid-1978, when fighting was ongoing but less intense. In comparison with his time in Takeo, he described fighting as more intense in Svay Rieng. While there the Witness became head of mobile Intervention Brigade 221, comprising approximately 1,800 soldiers.¹¹ Raen was in charge of the division under which Brigade 221 and the four other brigades sat, and Son Sen was in charge overall.¹² Ieng Phan’s two deputies at the time were Sok Chhieng and Chhean. The Witness said he had not expected that the Vietnamese had already entered the area when he arrived in mid-1978, however when their 35-truck convoy arrived Chork Village in Prasat District, Svay Rieng Province, they were immediately shot at.¹³ Three of the Cambodian trucks were destroyed, and fighting continued day and night with many casualties. He said at this time, civilians had already been evacuated from this area to Kroal Kor and Neak Loeung. After two months in Svay Rieng, Ieng Phan received a head-wound from shrapnel and was hospitalized in Phnom Penh for three months. After recovering, he was sent to Prey Veng, around the beginning of January 1979.

4. Incursions into Vietnam

The Witness was also questioned about whether forces had entered into Vietnamese territory. He said it was a “strategy of war” that when Vietnam entered DK territory, DK forces would then

“hit from behind” in order to force the Vietnamese to retreat. He said his forces did not have instructions to attack Vietnamese territory, and only acted to defend themselves. In terms of specific instances of incursions, the Witness claimed to only know of one occasion when Brigade 703 entered Vietnam’s Tay Ninh Province. He said that Brigade 703 had suffered huge casualties and retreated quickly: “Almost all Cambodians were destroyed from that combat.” Ieng Phan said he had heard of this because his Intervention Brigade 221 was assigned to assist Brigade 703 crossing the border into Vietnam to attack in October 1978, although he clarified that he himself did not enter Vietnamese territory.

5. Meetings and Knowledge of East Zone Rebellion

Ieng Phan said that he would meet with Raen in various locations every three or so days to discuss attack plans, ammunition and logistics. As the division commander, Raen would also attend meetings with the upper echelon and went to Phnom Penh “often,” however the Witness did not attend such meetings himself. Ieng Phan said he heard both Son Sen and Raen speak about “traitors” in the East Zone during meetings, and once he heard Raen announce that Sao Phim had committed treason by joining forces with the Vietnamese. This was the only time he heard of Sao Phim planning any form of rebellious activity. The Witness said that after 1979 he heard that some Khmer forces had been trained in South Vietnam to carry out a guerilla war in the East Zone of DK, however he was clear that he never heard of this during the regime.¹⁴ Ieng Phan told the court that after the re-integration in the late 1990s, some of those who were first or second star generals told him about their training in Vietnam, however he declined to divulge their names and said the conversations had been casual in nature.¹⁵

6. Treatment of Former Lon Nol Soldiers

Ieng Phan testified that people in his unit who were affiliated with high-ranking former officials of the Lon Nol government were re-assigned to raise poultry or plant vegetables; sometimes those with high ranks were sent to be “reeducated.” He denied that they were not taken away or killed, however he noted that they were prohibited from carrying weapons. The Witness also told the Chamber that he had been “scared” of being accused of being affiliated with Lon Nol. Although some of his relatives had been connected to the regime, they were not high-level so they survived.

7. Witness Demeanor and Credibility

Testifying with the assistance of a duty counsel, Ieng Phan gave clear and strong responses to questions throughout his testimony. He appeared to follow proceedings closely and usually provided detailed answers, being very precise with locations and numbers. When he was questioned about his knowledge of East Zone “traitors,” he made it clear that his information was either second hand or had been learned after 1979. Ieng Phan declined to divulge the names of other former Khmer Rouge members who had told him they had received training in Vietnam, however he was open about not wanting to divulge this information, saying “I don’t think it is reasonable to say who is who in the courtroom.” He did not appear to withhold any other information.

B. Summary of Testimony of 2-TCW-1065

This week Witness 2-TCW-1065 began his testimony on Tuesday afternoon, however as he is scheduled to testify over 2 days he will conclude next week after the presentation of key documents.¹⁶ 2-TCW-1065 testified under a pseudonym as he is part of ongoing investigations.

1. Background and Role as Medic

2-TCW-1065 testified that he joined the revolution on 29 March 1970, in Samraong District

formerly in Prey Veng Province,¹⁷ after the late King Norodom Sihanouk appealed to the public to rebel against the Lon Nol regime. He said he had been a soldier in Samraong District for one year, after which he received training and became a medic. From 1971 until 1975 he was a medic at district level, and after 17 April 1975 he became chief medic at military hospital 156, under Division 4, based in Ngor Village. He said that the initial commander of Division 4 was Ta Phorn, later replaced by Heng Samrin, and Koem and Kri were the deputies.¹⁸ Division 4's headquarters was located at Kraek. The Witness recalled conflict between DK and Vietnam beginning in late 1977, after which he was sent to be a medic at the front battlefield. At that time Sam Neat was his superior, replaced by Chhoeun after his death. He said that although the medics were armed, this was for their own defense, and he himself did not engage in combat at this time. When he was in charge of hospital 156, there were 20 medical staff under his supervision, and in addition to treating wounded soldiers they would also treated civilians living nearby. He said seriously wounded soldiers would be sent to the zone hospital.

2. Incursions into Vietnam and Attack on Barracks 27

In December 1977, Division 4 (which was composed of Units 154, 155 and 156) was tasked with defending DK territory. He said that during this time, troops moved "back and forth" over the border into Vietnam and the medics moved with the troops. The Witness said Unit 156 forces were weaker than the Vietnamese forces, and they were only able to contain their opponents, but unable to make them retreat. On one occasion the Witness' unit was instructed to attack Barracks 27, which was situated slightly farther inside Vietnam. His unit was told there was "no limit or restriction" in their operations, however the Witness told the court they never attacked civilian targets. He said they fought for three days and three nights however eventually had to retreat. Vietnamese forces supported by tanks and fighter planes repelled the Cambodian attack. While his units were forced to retreat, Unit 155, which was stationed at National Road 7, was defeated, which allowed Vietnamese forces to take National Road 7 and attack the Witness's unit from behind. He recalled that Vietnamese forces were able to penetrate 20 kilometers into DK before DK forces were able to successfully halt their advance.

3. 25 May 1978 East Zone Coup and Aftermath

2-TCW-1065 told the court that after Central Zone forces, led by Ke Pauk, arrived in the East Zone on 25 May 1978 to arrest senior cadres, he believed that Pol Pot had launched a coup d'état. He explained that initially he believed the troops were coming in order to assist the East Zone forces fighting the Vietnamese, however began to have doubts when the Central Zone forces began calling cadres to meetings and arresting them. He described the situation after 25 May 1978 as "confusing" and "chaotic" because "there was no clear explanation about who was chief and who was not because many cadres were arrested." Thus he took it upon himself to organize a group of 300 from Unit 156 and 40 soldiers from "the special unit" to fight Pol Pot's forces as well as the Vietnamese. Based in the forest, he and the forces who chose to stay with him subsisted on little food, and would attack DK troops in order to steal their supplies.

4. Creation of National Salvation Front and Return to DK

While based in the jungle, in around November 1978, the Witness said his "espionage group" came across a letter from the Vietnamese saying they wanted to make contact. After meeting with a group of Vietnamese, his group decided they needed to cooperate in order to liberate Cambodia from the Pol Pot regime "who killed the people." The Witness attended an initial meeting in Ho Chi Minh City in late 1978 attended by Heng Samrin and Heng Samkai discussing policy ahead of a bigger meeting planned in Snuol, Kratie Province.¹⁹ The Witness also attended the Snuol meeting, held on 2 December 1978 at which the National Salvation Front was announced, and hundreds or even thousands of civilians and monks were present, as well as high ranking Vietnamese officials. He recalled Heng Samrin reading the "program" of the newly formed Front. After the Snuol meeting the Witness left DK and only returned after 7

January 1979 when he became deputy chief of police in Zone 7, in charge of receiving civilian cadre prisoners of war and educating them on the “policy of the front.” However, after going to Pursat to look for his family who had been evacuated by Pol Pot, he was accused by Vietnamese authorities of trying to escape to Thailand, and he was subsequently imprisoned for eight months.

5. Relationship with Sao Phim

According to the Witness, he and Sao Phim were distant relatives and they met three or four times a year whenever the Witness was able to visit family members working in the Ministry of Agriculture in the East Zone headquarters.²⁰ Although he and Sao Phim usually only discussed their family, on one occasion they discussed the *coup d'état*, and the Witness told Sao Phim that he believed Pol Pot was responsible for the betrayal. According to the Witness, Sao Phim did not believe him, and hypothesized that Son Sen had initiated the coup: “he said if Pol Pot was a traitor, Pol Pot would have told him.”²¹ The Witness then recounted what he had heard of the fate of Sao Phim from Sao Phim’s nephew Oeng. After 25 May 1978, Sao Phim went to Arei Ksat with his messengers, including his nephew Choeuk, to confirm whether or not Pol Pot was responsible for sending Central Zone forces to kill East Zone cadres and civilians. Both messengers were arrested and Sao Phim subsequently committed suicide, but not before telling people “to stand up and rise up.” When asked, the Witness strongly denied Sao Phim had carried out a coup, and said he had no knowledge of any connections Sao Phim may have had with Vietnam. He also denied that Sao Phim’s revolutionary alias was Chhun, which has been suggested by both the OCP and Defense Teams.

6. Witness Demeanor and Credibility

2-TCW-1065 appeared to be an eager Witness, regularly providing long answers that often went beyond the limit of the question. He appeared to have strong opinions about the relationship between Vietnam and Cambodia, for example when he was questioned about border towns, and he listed a number of villages: “If you look for them now they are not there... If you don’t believe me go and see the situation on the ground.” He was usually able to differentiate between information he knew himself and the experience of others, and was clear about the source of his information.²² When provided with telegrams or maps to comment upon he appeared to peruse them closely, even studying them overnight on Tuesday.

III. SUMMARY OF KEY DOCUMENT HEARINGS

On Thursday the Trial Chamber heard presentations of key documents by the OCP and Khieu Samphan Defense for the segment on the nature of armed conflict.²³ The Nuon Chea Defense did not participate and the LCLCP had no documents to present, but they reserved their right to respond to the documents next Monday.

A. Documents Presented by OCP

Deputy International Co-Prosecutor Dale Lysak presented the key documents related to the nature of armed conflict for the OCP. He argued that the documents he presented demonstrated that the DK regime seriously encroached on Vietnamese territory, and did not engage in negotiations, and thus were largely responsible for the armed conflict.

1. Reasons for Border Conflict and Attempts to Negotiate

Mr. Lysak first presented two statements issued by the DK and Vietnamese governments on 31 December 1977, describing the same event from their differing perspectives. The first was a statement from the DK Standing Committee describing Vietnamese attacks that had been ongoing since September and claimed: “despite the above-mentioned criminal acts, DK has

always had the stance of making friends with Vietnam, and tried to solve problems peacefully.” The second document was a response from Vietnam to the above statement, listing multiple attacks by Cambodian armed forces and regular incursions by DK forces into several areas of Vietnamese territory, including populated and economic zones, since the beginning of May 1975. It stated that Vietnam had attempted to negotiate a resolution, however meetings were always postponed by the Cambodians.²⁴ Seven telegrams were also presented, mainly communication between Ney Saran *alias* Ya, the Northeast Zone Secretary, and the Center discussing border conflict.²⁵ 26 March 1976 Standing Committee meeting minutes were presented. These minutes mentioned negotiations between DK and Vietnam, but noted that DK soldiers in Monduliri were still attacking Vietnam.²⁶ Mr. Lysak also presented 14 May 1976 Standing Committee meeting minutes which began with a report from Ney Saran describing a proposal from Vietnam to halt clashes in Monduliri in order to pave the way for negotiations.²⁷ In addition to these contemporaneous documents, Mr. Lysak also presented excerpts from academic works including Nayan Chanda’s Brother Enemy and Ben Kiernan’s The Pol Pot Regime.

2. Escalation of Conflict and Cutting Diplomatic Ties

The next series of documents described an increase in conflict toward the end of 1976. Minutes of a meeting held on 16 December 1976 between Son Sen and Division 920 were presented. The minutes indicated that Son Sen had given instructions for forces at the Monduliri border to “attack and destroy them bit by bit so they will not be able to rest,” and that he had encouraged the use of bamboo spike traps. The OCP also presented an excerpt from Stephen Morris’s book Why did Vietnam Invade Cambodia?, which describes hostility between the countries. The book also argues that DK responded to Vietnam’s withdrawal by intensifying their fighting, rather than negotiating as expected. A statement issued by the DK Minister of Foreign Affairs stated that the DK Government had decided to “provisionally break off foreign relations with Vietnam effective 31 December 1977.” Numerous telegrams and reports on the border situation were presented, including one from the DK Ambassador to Vietnam, which stated: “the fact that the Kampuchean army committed such transgressions, slaughtering, burning and smashing, is not something they’re raising in reports, but for which there is clear and irrefutable evidence.” Telegrams presented originated from not only the East Zone but also from DK’s naval Division 164, Kratie’s Sector 505, and Kampot. One telegram described stated that DK forces had killed more than 1,000 Vietnamese troops after invading the territory in September 1977. Articles from Revolutionary Flag and news broadcasts from Bangkok Post and Vietnam News Agency were also presented as key documents.²⁸

B. Documents Presented by the Defense for Khieu Samphan

International Co-Lawyer Ante Guissé for Khieu Samphan presented their key documents related to the nature of armed conflict over two sessions on Thursday. She argued that the documents demonstrated conflict between Vietnam and DK was instigated by Vietnam, and even if this was not the case, the understanding throughout the international community was that Vietnam was aggressive and invasive, so it was reasonable for the DK regime to assume Vietnam would attack and respond accordingly.

1. Cold War Context

Counsel Guissé stated that considering the context of the Cold War, DK was affected by the “Issue of non-aligned countries who belonged to the third world, experienced colonization and thought the issue of sovereignty was very important.” In this way she said it was to be expected that DK felt threatened by a more powerful neighbor. She referenced a speech by Ieng Sary to the United Nations in October 1977 in which he stated that the DK regime was striving for “respecting mutual territorial sovereignty,” and did not wish to have conflict with any other country. Counsel Guissé also provided excerpts from Philip Short, Stephen Morris and Dmitri

Mosyakov arguing that it was not possible for Hanoi to accept the legitimacy of the Pol Pot regime, and thus would always have taken hostile action; including inciting revolution to overthrow Pol Pot or to create a conflict situation where Vietnam would be justified in invading DK. Counsel Guissé also referenced an article of the Far Eastern Economic Review of 3 January 1978, which discussed the breakdown of diplomatic ties between East Germany and the Soviet Union, thus demonstrating conflict throughout the communist bloc. A statement from a spokesperson of the DK Ministry of Information denouncing the attacks of DK in a certain part of Vietnam was read out, as well as a report of the German Ministry of Foreign Affairs from 31 January 1978 analyzing the conflict between Vietnam and Cambodia and finding that Vietnam supported the overthrow of the DK regime even then. FBIS documents, a report of Douglas Pike to the US Congress in October 1978, interviews given by Pol Pot, and a press release from the Ministry of Propaganda were also cited as key documents.

2. Vietnamese Incursions into DK

Counsel began her presentation with a study on borders in Southeast Asia conducted by the Bureau of Intelligence and the National Office of the Geographer in May 1996. The report provided an overview of the history of border conflict between Vietnam and DK, suggesting that the colonial past of the two countries contributed to disagreements.²⁹ Excerpts from Philip Short's Pol Pot: Anatomy of a Nightmare was also presented in order to demonstrate that the conflict between Cambodia and Vietnam existed before the DK period, and that there "was absolutely not a willingness" of DK to "create problems with its neighbor." The author also referenced DK leaders going to Vietnam as a sign of willingness to cooperate and negotiate. With regard to contemporaneous documents, meeting minutes from 2 November 1975 said that even when DK forces withdrew from a particular area, the Vietnamese brought reinforcements and did not respect negotiations. Further, a report of the Australian Ambassador in Hanoi was read in which the Ambassador discussed issues at the border and said that Vietnam had entered Cambodian territory and was slowly moving the border to "pick away" at DK territory. There was a reference to a Revolutionary Flag article, which stated that Cambodia had no intention to attack any country stronger than it, and that if "the Vietnamese side stopped trying to shoot at us" and "invade DK," "friendship could grow and grow stronger over time." Finally, a statement by Pol Pot from January 3, 1978 was read in which he claimed that it was already the end of the DK regime, and that the Vietnamese army was not entering Cambodia to liberate from genocidal regime and famine, but rather occupied Cambodia for its own benefit.

IV. LEGAL AND PROCEDURAL ISSUES

For the fifth week in a row, objections were raised this week over questions seen to be falling outside the scope of Case 002/02. This week these topics were the evacuation of Phnom Penh, which was part of the charges in Case 002/01, as well as incursions into Vietnam.

A. Objections Related to Scope

Defense Counsel for Nuon Chea, Victor Koppe, objected to the questioning of Ieng Phan by Assistant Prosecutor Joseph Andrew Boyle when the Witness was asked about his role in the attack of Phnom Penh on 17 April 1975. Counsel Koppe stated that these questions had been asked of the Witness when he testified before in Case 002/01, and that it was therefore not relevant to the current case.³⁰ Defense Counsel for Khieu Samphan, Ante Guissé, then raised an objection when the Witness was questioned about instructions for screening Lon Nol soldiers in the immediate aftermath of the evacuation of Phnom Penh, as she stated that the questions were repetitive and had also been dealt with extensively in Case 002/01. She observed that Ieng Phan had been called back specifically to give evidence about the armed conflict with Vietnam, and that any other areas of questioning were inappropriate. Mr. Boyle argued that Counsel are allowed to ask any questions that are related to Case 002/02, which includes the treatment of former Lon Nol soldiers. The Trial Chamber sustained the objection,

however, explaining that the previous case already heard this witness's evidence on this matter, and that the transcripts from Case 002/01 "are included in this case."

Later, Counsel Koppe raised a second objection concerning questions relating to conflict within Vietnamese territory, arguing that this topic falls outside the scope of Case 002/02, which excludes crimes that may have taken place on Vietnamese territory. Mr. Boyle responded that it was not possible to talk about the "nature of armed conflict" segment without discussing attacks that took place in Vietnam, and that such incursions were mentioned in paragraph 153 of the Closing Order.³¹ The objection was overruled, and the line of questioning was permitted. Similarly, during the testimony of 2-TCW-1065 Counsel Guissé rose when Judge Lavergne asked questions about incursions into Vietnam, stating that these are "very specific facts outside the Closing Order" and that this is a problem for the defense, as incursions into Vietnam are outside the scope of the Closing Order.³² She further noted that the charges against the accused "specifically exclude anything that happened on Vietnamese territory." Judge Lavergne responded that the armed conflict must be examined on all of its aspects to gain an accurate understanding of what took place, but that the Trial Chamber maintains an understanding that the Accused cannot be held accountable for what took place on Vietnamese territory.

IV. TRIAL MANAGEMENT

Over the course of four days this week, the Trial Chamber concluded the testimony of Ieng Phan and heard partial testimony of Witness 2-TCW-1065, as well as key document presentations all in relation to the segment on the nature of armed conflict.

A. Attendance

This week Noun Chea continued to waive his right to be present in the courtroom, and observed proceedings via video link from the holding cell due to his poor health, while Khieu Samphan was present in the courtroom throughout the week. Duty Counsels Mam Rithea, Chan Sambo and Sok Socheata were also present in the courtroom this week in order to counsel Ieng Phan and 2-TCW-1065 with their rights against self-crimination.³³

Judge Attendance: All Judges of the Bench were present in the courtroom all week.

Parties: Pich Ang, national Lead Co-Lawyer for Civil Parties was absent on Monday and Thursday due to his personal reasons, and on Thursday during key document hearings the greffier noted an absence of Victor Koppe, international Defense Lawyer for Nuon Chea, without having provided a reason to the Chamber. However, their counterparts were present in the courtroom to represent their clients properly.

Attendance by the public: This week marked the first time in three weeks that the Court welcomed back the public to observe proceedings live from the court's public gallery. For the past three weeks the public gallery has been closed due high water level within the ECCC's compound preventing safe access.

| DATE | MORNING | AFTERNOON |
|----------------------|--|--|
| Monday 31/10/2016 | <ul style="list-style-type: none"> Approximately 170 villagers from Bakan District, Pursat Province and Boribour District, Kampong Chhnang Province Nine Civil Parties One foreign observer | <ul style="list-style-type: none"> Nine Civil Parties No public attendance |

| | | |
|-------------------------|---|--|
| Tuesday 01/11/2016 | <ul style="list-style-type: none"> ▪ Approximately 180 villagers and two Buddhist monks from Boribour District, Kampong Chhnang Province ▪ Nine Civil Parties ▪ Five foreign observers | <ul style="list-style-type: none"> ▪ Nine Civil Parties ▪ Three foreign observers |
| Wednesday 02/11/2016 | <ul style="list-style-type: none"> ▪ 10 Civil Parties ▪ Approximately 150 villagers from Birobor District, Kampong Chhnang Province ▪ 2 foreign observers | <ul style="list-style-type: none"> ▪ 10 Civil Parties ▪ 1 foreign observer ▪ No public attendance |
| Thursday 03/11/2016 | <ul style="list-style-type: none"> ▪ 4 Civil Parties ▪ Approximately 200 villagers from Memut District, Tboung Khmum Province ▪ 1 foreign observer | <ul style="list-style-type: none"> ▪ Four Civil Parties ▪ One foreign observer ▪ No public attendance |

B. Time Management

This week, the Trial Chamber managed its time effectively. On Thursday the Chamber delayed the conclusion of 2-TCW-1065's testimony on Thursday in order to begin the key document presentations as. The Trial Chamber will therefore conclude the testimony of 2-TCW-1065 after responses are heard to the key document presentation next Monday.

C. Courtroom Etiquette

There were no significant breaches of courtroom etiquette this week and Parties generally conducted themselves in a respectful manner.

D. Translation and Technical Issues

This week, President Nil Nonn effectively corrected and clarified mistranslations and confusion caused by problems in interpretation. For example, on Monday, the President reminded the English-to-Khmer interpreter and international Assistant Co-Prosecutor Joseph Andrew Boyle to repeat the questions for proper translation of military structures in Svay Rieng.³⁴ On Wednesday the President again corrected the interpreters after international Co-Prosecutor Nicholas Koumjian asked a question about the Vietnamese "Thieu-Ky regime" which was translated into Khmer as "the Turkey regime." There were a few minor technical interruptions and malfunctions of audio channel, however these issues were sorted out quickly and overall proceedings ran smoothly this week.

E. Time Table

| DATE | START | MORNING BREAK | LUNCH | AFTERNOON BREAK | RECESS | TOTAL HOURS |
|-----------------------|-------|---------------|-------------|-----------------|--------|-----------------------|
| Monday 31/10/2016 | 9:19 | 10:16-10:33 | 11:39-13:29 | 14:38-15:00 | 16:01 | 4 hours 13 minutes |
| Tuesday 01/11/2016 | 9:00 | 10:11-10:30 | 11:28-13:30 | 14:41-15:00 | 16:02 | 4 hours 22 minutes |

| | | | | | | |
|--|------|-------------|-------------|--------------------------|-------|-----------------------|
| Wednesday 02/11/2016 | 9:01 | 10:14-10:34 | 11:27-13:29 | 14:40-15:00 | 15:59 | 4 hours 16 minutes |
| Thursday 03/11/2016 | 9:01 | 10:13-10:31 | 11:37-13:29 | 14:39-14:59 | 15:38 | 4 hours 7 minutes |
| Average number of hours in session | | | | 4 hours and 14 minutes | | |
| Total number of hours this week | | | | 16 hours and 58 minutes | | |
| Total number of hours, day, weeks at trial | | | | 953 hours and 27 minutes | | |
| 250 TRIAL DAYS OVER 72 WEEKS | | | | | | |

*This report was authored by Michael Chen, Hanna Daych, Caitlin McCaffrie, Vuthy Nin, Louise Rettweiler, Lina Tay, Sathapor Thom and Penelope Van Tuyl as part of the KRT Trial Monitoring and Community Outreach Program. KRT Trial Monitor is a collaborative project between the East-West Center, in Honolulu, and the WSD HANDA Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in Southeast Asia.



Unless specified otherwise,

- ☐ the documents cited in this report pertain to the *Case of Nuon Chea and Khieu Samphan* before the ECCC;
- ☐ the quotes are based on the personal notes of the trial monitors during the proceedings;
- ☐ the figures in the *Public Attendance* section of the report are only approximations made By AIJI staff; and
- ☐ photos are courtesy of the ECCC.

Glossary of Terms

| | |
|----------|--|
| Case001 | <i>The Case of Kaing Guek Eav alias “Duch” (CaseNo.001/18-07-2007-ECCC)</i> |
| Case002 | <i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan (CaseNo.002/19-09-2007-ECCC)</i> |
| CPC | Code of Criminal Procedure of the Kingdom of Cambodia (2007) |
| CPK | Communist Party of Kampuchea |
| CPLCL | Civil Party Lead Co-Lawyer |
| DK | Democratic Kampuchea |
| DSS | Defense Support Section |
| ECCC | Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal or “KRT”) |
| ECCC Law | Law on the Establishment of the ECCC, as amended (2004) |
| ERN | Evidence Reference Number (the page number of each piece of documentary evidence in the Case File) |
| FUNK | National United Front of Kampuchea |
| GRUNK | Royal Government of National Union of Kampuchea |
| ICC | International Criminal Court |
| IR | Internal Rules of the ECCC Rev.8 (2011) |
| KR | Khmer Rouge |
| OCIJ | Office of the Co-Investigating Judges |
| OCP | Office of the Co-Prosecutors of the ECCC |
| VSS | Victims Support Section |
| WESU | Witness and Expert Support Unit |

¹ Key Document Hearings are usually held at the end of each trial segment. The key document hearings allow parties to present each other with the key documents that are relevant to each segment, see Trial Chamber, “Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02” (17 December 2014) E315/1. For a summary of the first set of key document hearings in Case 002/02, on the Tram Kak District cooperatives and Kraing Ta Chan Security Center, see CASE 002/02 KRT TRIAL MONITOR, Issue 17, Hearings on Evidence Week 14 (27-30 April 2015). The next key document hearings were held at the end of the segment on three DK-era worksites; see CASE 002/02 KRT TRIAL MONITOR, Issue 28, Hearings on Evidence Week 25 (24-27 August 2015), and CASE 002/02 KRT TRIAL MONITOR, Issue 29, Hearings on Evidence Week 26 (1-3 September 2015). The third covered the treatment of targeted groups, see: CASE 002/02 KRT TRIAL MONITOR, Issue 44, Hearings on Evidence Week 41 (23-26 February 2016) pp. 1-4; the fourth covered security centers and internal purges was covered in CASE 002/02 KRT TRIAL MONITOR, Issue 62, Hearings on Evidence Week 59 (11-12 August 2016) pp. 5-7 and CASE 002/02 KRT TRIAL MONITOR, Issue 63, Hearings on Evidence Week 60 (15-18 August 2016) p. 4 and the fifth and most recent covered the regulation of marriage, see CASE 002/02 KRT TRIAL MONITOR, Issue 66, Hearings on Evidence Week 63 (5-8 September 2016) pp. 1-4.

² Witness IENG Phan (2-TCW-1046) was questioned in the following order: President NIL Nonn; assistant prosecutor Joseph Andrew BOYLE; international co-lawyer for Nuon Chea, Victor KOPPE; judge Jean-Marc LAVERGNE; international co-lawyer for Khieu Samphan, Anta GUISSSE.

³ Ieng Phan confirmed that he and Meas Muth (currently charged in Case 003) were reintegrated into the Royal Cambodian army together. He said that at the time he was informed there would be no charges laid against him for any crimes he may have committed during the DK regime. He said when Meas Muth was reintegrated he was given the rank of major general and became an advisor to the Ministry of Defense.

⁴ Ieng Phan testified extensively about his role in the attack on Phnom Penh and the subsequent evacuation as part of Case 002/01. For a summary of his prior testimony see CASE 002 KRT TRIAL MONITOR, Issue 60, Hearings on Evidence Week 55 (20-23 May 2013) pp. 1-3. The repetitive nature of this questioning is discussed in **SECTION IV. A.** of this report

⁵ Now Phnom Penh International Airport.

⁶ He clarified that Division 2 consisted of Regiments 11, 12, 13 and 14 and he was given command of Regiment 12 in late 1976. Regiment 12 was positioned in Chromos Chrok. Regiments 13 and 14 were based near Phnom Den, towards the border areas in Kampot Province.

⁷ The Witness testified that in late 1976 or early 1977 Division 2 was restructured and became Brigade 210. He said Brigade 210 consisted of between 1,000 and 2,000 soldiers.

⁸ Ieng Phan explained that there was no telegram communication between the regiments at this time but that when important events took place brigades would convene a meeting to share information. These meetings took place regularly about once every three days, or on an ad hoc basis if special events took place.

⁹ As an example of the differing capabilities of the two sides, the Witness explained the difference between the trenches built by each country: Vietnam built theirs from concrete the DK trenches were built from wood and had to be replaced after each rainy season.

¹⁰ Ieng Phan did not recall Ta Mok ever relaying messages from the upper echelon and said he never mentioned Nuon Chea. He said he never heard the names of members of the upper echelon during the regime because "the leadership was a secret one... I only minded my own business."

¹¹ Ieng Phan said the other brigades in the area at the time were 460, 340, 703 (headed by Dy) and 805 (headed by Phorn).

¹² Raen being in control of military in Svay Rieng was corroborated by Chuon Thi who testified last week, see CASE 002/02 KRT TRIAL MONITOR, Issue 71, Hearings on Evidence Week 68 (24-27 October 2016) pp. 6-7.

¹³ As they had been attacked immediately upon arrival, Ieng Phan's troops had no time to lay traps or mines, and the Vietnamese dropped bombs and rockets from above.

¹⁴ The Witness said that when he was fighting the Vietnamese forces in Svay Rieng he was not able to tell if any among them were in fact ethnically Khmer, but he had assumed that they were all Vietnamese at the time.

¹⁵ He said that some of them had told him that they had left Cambodia since end of 1978 and some went in late 1977/1978 and they are still military commanders at present.

¹⁶ Witness 2-TCW-1065 was questioned in the following order: President NIL Nonn; Judge Jean-Marc LAVERGNE; deputy prosecutor SENG Leang; international co-lawyer for Nuon Chea, Victor KOPPE;

¹⁷ Now in Svay Rieng Province.

¹⁸ The Witness explained that Koem and Kri were arrested at Kraek and Phorn was called away and "disappeared" in 1976, leaving only Heng Samrin in charge.

¹⁹ The Witness said he also met Ouk Bunchhoeun and Pol Saeun, however it was unclear whether this happened at this meeting or on another occasion.

²⁰ When asked, 2-TCW-1065 clarified that his grandmother and Sao Phim's mother were cousins. The Witness said his mother and grandmother-in-law were working at the Ministry and that the East Zone headquarters was based in Suong and later Samraong

²¹ The Witness repeated this story several times and this detail was consistent. He said Sao Phim believed Pol Pot would have told him if he was planning a coup, to which the Witness allegedly responded that those planning to betray someone rarely tell them beforehand.

²² For example he would often finish responses about his own experience by adding "but I cannot say what happened in other zones" or something similar.

²³ The Khieu Samphan Defense does not always present key documents in these hearings. The last time they did so was in the third set of such hearings on the treatment of targeted groups. For the second and fourth sets of key document hearings they responded to documents presented by the OCP and LCLCP however did not present any documents of their own. See FOOTNOTE 1.

²⁴ The statement continued that in a June 1977 letter from the Central Committee of Cambodia "proposed meetings only be resumed after situation returned to normal without further border conflict" and at that exact moment Cambodia increased military attacks and encroachment onto territory in An Giang, Long An and Tai Ning

²⁵ The telegrams ranged in date from November 1974 to April 1977 and also included one sent by the DK Ambassador to Vietnam to CPK leaders.

²⁶ When he testified as an expert witness, Dr. Stephen Morris stated that Vietnam had made attempts to negotiate with DK from the middle of 1977 however these negotiations were shunned by DK. For a summary of his testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 70, Hearings on Evidence Week 67 (17-20 October 2016) pp 4-8.

²⁷ He explained that this was supported by writing by Ben Kiernan in "The Pol Pot Regime" which stated that at these meetings Vietnamese delegates charged DK with "initiating clashes eight times since March including two serious incursions from Monduliri as recently as 7 May". Kiernan also described evidence of Vietnamese reports of the conflict situation being substantially accurate and DK altering reports and cancelling negotiating meetings.

²⁸ A VNA report from 3 March 1978 stated that "Kampuchean troops were ordered to kill all, destroy all, on Vietnamese territory." The Bangkok Post on 1 September 1977 published an article titled: "Refugees Cite Major SRV/Cambodian Clashes and Reprisals."

²⁹ The document stated that the division of territory in the Gulf of Thailand remained unresolved and was merely a "de facto line".

³⁰ Charges in Case 002 are contained in: Office of the Co-Investigating Judges "Closing Order" (15 September 2010) D427 and charges in Case 002/02 specifically are outlined in Trial Chamber, "Decision on Additional Severance of Case 002 and Scope of Case 002/02" (4 April 2014) E301/9/1.

³¹ Closing Order, para 153, p. 41.

³² Charges in Case 002 are contained in: Office of the Co-Investigating Judges “Closing Order” (15 September 2010) D427.

³³ CHAN Sambo assisted 2-TCW-1065 on Tuesday however on Wednesday he was unavailable and thus was replaced by SOK Socheata.

³⁴ On Monday 31 October President Nil Nonn interrupted questions from international Assistant Prosecutor Joseph Andrew BOYLE and told him he “questioning stupidly” and pointing out the interpreter had used the wrong terminology