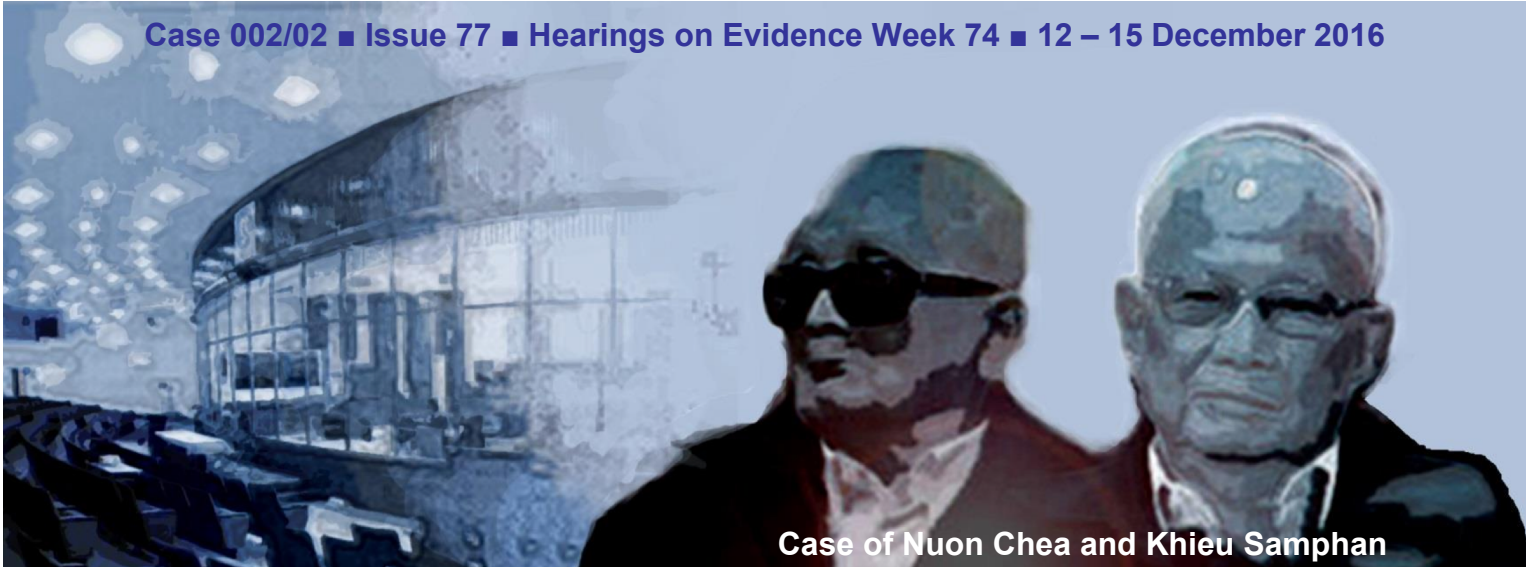


KRT TRIAL MONITOR

Case 002/02 ■ Issue 77 ■ Hearings on Evidence Week 74 ■ 12 – 15 December 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)

*“At Choeung Ek, among the 426 bones... we could
only find one skull that was not the result of
torture or beating with tools.”*

- Expert Witness Mr. Voeun Vuthy

I. OVERVIEW

This week began with Witness Mr. Norng Nim, a former bodyguard and driver for East Zone leader Sao Phim, testifying via video-link from Tboung Khmum Province about alleged purges in the East Zone. The Witness was unable to confirm several key parts of his prior statements, or provide significant detail about Sao Phim’s relationship to the Vietnamese or any coup that may have taken place in 1978. Witness 2-TCW-823 followed with testimony about his time in DK’s naval Division 164, under the command of Meas Muth.¹ The Witness, testifying under protective pseudonym, told the Chamber about the treatment of Vietnamese vessels found in DK waters, and also of his marriage during the regime. Third to testify this week was Expert Witness Mr. Voeun Vuthy, director of archeology for the Ministry of Fine Arts.² Voeun Vuthy conducted a study on human remains found at Choeung Ek, Kraing Ta Chan, Wat Prasat Padei and Kok Prech and was able to explain his scientific process to the court, as well as describe trauma he found on the remains. The Expert did not conclude his testimony this week, and will return in January to be questioned by the Defense for the final time. On Thursday, the Trial Chamber heard from 2-TCW-971 via video-link from Oddar Meanchey.³ He testified to being a member of the third wave of troops from the Southwest Zone sent to the Northwest Zone in early 1978. At the end of the week, the Trial Chamber adjourned for a two-week recess and will continue evidentiary hearings in Case 002/02 on Wednesday 4 January 2017.

II. SUMMARY OF EXPERT AND WITNESS TESTIMONY

Three fact witnesses and one expert witness testified before the Trial Chamber this week in Case 002/02. The three fact witnesses testified about internal purges in DK’s East and Northwest Zones. Mr. Voeun Vuthy, the ninth expert witness to testify before the chamber in Case 002/02, told the court about his study of remains found at the Choeung Ek and Kraing Ta Chan execution sites.

A. Summary of Testimony of Norng Nim

65 year old Witness Mr. Norng Nim was the first to testify this week, telling the Court about his knowledge of Sao Phim's relationships with other CPK leaders, and about his loyalty to the regime.⁴

1. Knowledge of Sao Phim

Norng Nim testified to being a distant cousin of East Zone Secretary Sao Phim, related through Sao Phim's younger brother Ta Dul, also known as Prak Thet. The Witness said Ta Dul encouraged him to join Sao Phim's defence unit, which he did in 1970.⁵ From 1970 until Sao Phim's death in 1978 the Witness lived and worked with the East Zone leader, serving as his driver and bodyguard. The Witness told the Court that Sao Phim came regularly to Phnom Penh "to meet Pol Pot."⁶ When prompted with an earlier statement, the Witness confirmed that he had seen Sao Phim meet with Vietnamese people at Ta Kuk mountain, however he could not remember who was present at these meetings, nor when they occurred.

2. Relationship Between Sao Phim and Ruos Nhim

Norng Nim was asked extensively about Sao Phim's relationship with Northwest Zone Secretary Ruos Nhim. The Witness described the pair as having a "good relationship," and said he personally accompanied Sao Phim to the Northwest Zone twice, although he clarified that he never attended meetings there himself, only acted as a guard outside.⁷ When going to the Northwest Zone, Sao Phim always met Ruos Nhim at his house close to Psa Leu in Battambang Town. Norng Nim recalled that when Sao Phim and Ruos Nhim greeted each other, they would shake hands, hug, and chat, adding that they would tease each other with nicknames.⁸ The Witness recalled Ruos Nhim visiting Sao Phim in the East Zone about twice a year, and said the pair would meet either at the riverfront, Tuol Preab, Suong, or the Samrong worksite. He recalled that Ruos Nhim would stay for 2 or 3 days, and would usually come with about 10 bodyguards. The Witness said he knew Ruos Nhim's son Cheal well, because he would often come to visit the East, and he recalled Cheal's marriage to Sao Phim's daughter Sy as taking place in either 1975 or 1976.

3. Roles of Heng Samrin and Heng Samkai

The Witness testified about working as a courier and bringing messages to Heng Samrin from the rear during the 17 April 1975 take-over of Phnom Penh.⁹ He said he knew Heng Samrin well because they had both fought against Lon Nol forces prior to 1975. Norng Nim testified that at the time, Heng Samrin was part of the General Staff in charge of overseeing a warehouse, and his superior was Sao Phim. While he saw Heng Samrin often, the Witness usually did not have time to talk to him. He also testified about the role of Heng Samkai, Heng Samrin's brother, who was the chief of the courier's office in the East Zone. The Witness said that Heng Samkai rarely came to see Sao Phim, and only met with him when there was "something important to settle."

4. Visits of other Senior Leaders to East Zone

The Witness also testified about visits of several senior DK leaders to the East Zone. He said that he saw Vorn Vet visit the East Zone, but did not see him with Sao Phim and Ruos Nhim together at the same time. Norng Nim also told the Court that Pol Pot visited the East Zone once after 17 April 1975, but the Witness did not see this himself. He first said that he had never seen Nuon Chea, however, later, when answering questions from the Civil Parties, he stated that Nuon Chea went to visit the East Zone quite often, and that he saw him doing so on four or five occasions.¹⁰ The Witness also confirmed seeing Khieu Samphan and Ieng Sary in the the East Zone, and said they were hugged and greeted by Sao Phim on arrival. He also

said he would accompany Sao Phim to visit Keo Samnang in Prey Veng Province.

5. Sao Phim's Journey to Phnom Penh and Arrests of East Zone Cadres

International Co-Lawyer for Nuon Chea, Victor Koppe, asked Norng Nim about 25 May 1978, which Counsel Koppe described as the date of a *coup d'état* orchestrated by Pol Pot. While the Witness stated that he did not know about the significance of this date or any *coup d'état*, he testified about an incident two weeks before Sao Phim's death on 3 June 1978. He said at this time there were arrests and disappearances of many people in the East Zone, particularly those in leadership positions. Norng Nim described arrests taking place at worksites, various offices and other places throughout the East Zone, and said he never saw anyone who was arrested again. Norng Nim also testified about Sao Phim's final trip to Phnom Penh shortly before he died in June 1978. Although he did not personally accompany the East Zone leader, the Witness recalled that Sao Phim had only brought about 10 bodyguards, and no soldiers, with him on this journey, and said his aim was to "find out the truth" from the senior leaders in Phnom Penh as to why arrests were being carried out in the East. The Witness described Sao Phim as an "honest person," pointing out that he had chosen to go to the capital rather than flee. Norng Nim testified that he was not aware of the circumstances of Sao Phim's death and that they had been separated before. After being prompted by his previous statement, Norng Nim confirmed that he had formed an army of 300 soldiers from different units to fight against the Center forces and defend the people in the East Zone. However he claimed not to have been directly involved in any combat, and said he fled to Kampong Thom shortly afterwards.¹¹

6. Witness Demeanor and Credibility

There were a number of discrepancies between the Witness's in court testimony and his prior statements to DC-Cam.¹² When confronted with these, he generally confirmed the prior statement and excused himself as having a poor memory, which is not uncommon due to the Witness's age and the amount of time that has passed since the events in question. Norng Nim appeared to be more forgetful when asked questions about arrests of East Zone cadres or possible *coup d'état* plans in the East Zone. On one occasion Counsel Koppe pressed the Witness on his poor memory, asking him: "Why are you forgetful? You spoke to DC-Cam a year ago and you remembered... quite well then. What happened in between?" However, this did not prompt any additional information. Later, international Counsel for Nuon Chea appeared to suggest that the Witness was using his poor memory as an excuse, asking "Why are you now seemingly afraid to speak about this?"¹³ In addition to his seemingly poor memory, the Witness also changed his testimony during the course of the day on a number of occasions.¹⁴ It is possible that testifying via video-link created an additional obstacle to the Witness's ability to engage with the court process, particularly as he appeared to have poor hearing and the WESU staff member sitting with him had to repeat questions on a number of occasions.

B. Summary of Testimony by 2-TCW-823

Second to testify this week was Witness 2-TCW-823, who spoke under protective pseudonym due to his involvement in ongoing cases at the tribunal.¹⁵ As a battalion commander on the maritime border with Vietnam, the Witness was able to provide testimony on regular frontier engagements with Vietnamese naval forces. He also provided testimony relating to the role of Khieu Samphan and the regulation of marriage.

1. Joining Revolution and Role in Division 164

The Witness told the court that he joined the revolution at the village level in 1970. He explained that many other villagers were joining the revolution at the time, and he joined because "the atmosphere was fun." The same year, the Witness joined the sector-level forces in Kampot. Later he was transferred to the Southwest Zone's Division 3, and participated in the

liberation of Phnom Penh on 17 April 1975 with this division. After liberation, he returned to Kampong Som, where he commanded Battalion 560, in Regiment 63 of naval Division 164. He told the Chamber his 300-man battalion was based at Koh Ses and Koh Thmey islands and was tasked with guarding the maritime border with Vietnam.¹⁶ He explained that his troops were not instructed to “invade” Vietnam but “we had to protect our own territory... if they had come to attack us we would have had to counterattack.” When asked by the assistant prosecutor how he and his forces had known where the borders were, he said they based this on a map provided by the divisional headquarters, however he also admitted that, “We had no expertize on how to demark the boundary.”

2. Treatment of Vietnamese and Thai Boats Intercepted by DK Forces

The Witness’s battalion was based near DK’s maritime border with Vietnam. He said his troops most commonly encountered small Vietnamese boats, and said he never saw Thai boats. Although he said his instructions were not to fire on fishing boats, the Witness told the Court that many boats pretended to be fishing boats but were actually armed. He explained that whenever a boat was armed, it was assumed to be a military vessel. The Witness said his battalion would engage in fighting when confronted with armed boats, although he claimed that it was “usually” the Vietnamese boats who fired first.¹⁷ He said he never received specific instructions on how to deal with Vietnamese refugees, because not many came near to where he was stationed.¹⁸ He explained that his team’s instructions were to defend themselves and not to initiate combat, saying: “We did not want to cause war because we were small.”

3. Marriage

The Witness testified to being married in 1976. He explained that he had made a request to the regiment to arrange his wedding to his wife, who he claimed also provided her consent. The Witness said he was not aware of any forced marriages in his area, but nevertheless described the wedding as a “contradiction of tradition,” and said it was possible that forced weddings took place in other regions.¹⁹ At the ceremony, there were approximately 30 to 40 couples, including youths, cadres, and soldiers. The Witness said he and one other soldier were handicapped. Meas Muth and Doem presided over the wedding, and encouraged couples to build their life together and to love each other. The Witness said that there was no mention of consummation on the wedding day, but “as part of their policy at the upper level, they had such a plan.” He said the policy to “increase our force in order to defend our country” came from the “upper echelon,” although he appeared to have come to this conclusion on his own, as he said this was not explicitly mentioned at meetings, nor at his wedding.

4. Meetings with Senior Leaders

While stationed at Koh Thmey and Koh Ses, the Witness periodically attended meetings at the division headquarters in Kampong Som where Meas Muth would speak, and if he was absent, his deputy, Doem, would take over. At Kampong Som he saw a vehicle that he heard belonged to Khieu Samphan, but never saw Khieu Samphan himself. The Witness also told the Court about study sessions he attended at Olympic Stadium in Phnom Penh in 1976 over three to four days. He recalled that Pol Pot was the only speaker at the sessions, although the Witness also saw Son Sen present. The topics covered at the session were defense and construction of the country, economic and logistic issues, particularly those relating to food supplies. In December 1978, when the Witness was transferred to work in Phnom Penh, he attended a meeting with Khieu Samphan and another cadre named Chhum.²⁰ The Witness recalled being instructed to prepare to evacuate workers from the Ministry of Handicrafts into the forest in order to prepare themselves to fight the incoming Vietnamese forces.²¹

5. Witness Demeanor and Credibility

The Witness was forthcoming in his answers and generally did not stray outside the scope of the question. Generally, his memory appeared to serve him well, and he was able to distinguish between information he knew firsthand or from others. His testimony on the attitude of the military towards the Vietnamese military appeared consistent with previous testimony.

C. Summary of Testimony by Voeun Vuthy

This week Cambodian archeologist Voeun Vuthy testified as an Expert Witness, telling the Court about the study he conducted on the remains found at Choeung Ek and Kraing Ta Chan execution sites mainly.²² The Expert currently works for the Ministry of Fine Arts as Director of Archaeology, Pre-History and Cambodian History. Due to additional time being granted to the Defense Teams to question the Expert, he will return in 2017 to conclude his testimony.

1. Academic Background and Work History

The Expert studied anthropology at the University of Fine Arts in Cambodia before studying in Japan, Italy, and the University of Hawaii. He specializes in the study of human remains and bone conservation. He has studied the Angkorian era and prehistoric Cambodia, travelling to different regions around the country. From 2013 to 2015 he participated in an analysis of bones found at the Choeung Ek Genocidal Center. He explained that his interest in this period stemmed from losing his father and six other family members during the DK period, saying: “It is my duty... that cannot be forgotten and we have to acknowledge it.” Most recently, Voeun Vuthy has conducted a study of crime sites in four places: Choeung Ek, Wat Prasat Padei, Kok Preh in Takeo Province, and most recently Kraing Ta Chan.²³ In addition to his personal motivation, the Expert explained that he aimed, through his research, to both “compound historical documents” and to assist future generations in understanding their history and preventing a recurrence.

2. Number of Remains Found at Choeung Ek

The central part of questioning this week focused on the Choeung Ek bone study. Voeun Vuthy told the Court that between 2013 and 2015 his team of 16 experts examined bones that had previously been exhumed by the Office of Propaganda and Culture, and found 6,426 crania and 63,112 individual bones.²⁴ Of the 6,426 crania, 1,611 were female and 4,798 were male.²⁵ Voeun Vuthy explained that his team had expected to find approximately 7,500 crania. This expectation had been based on information he had about how the remains had initially been kept: exhumed by Vietnamese medics in 1983 and stored in a wooden stupa for three to five years, before being moved to a concrete stupa in 1987 or 1988. He explained that because of this process, and the lack of care taken to protect the bones, he had expected some of the original 8,985 crania counted by the Vietnamese team to have deteriorated, leading him to estimate they would find about the discrepancy between the 8,985 crania recorded by the Vietnamese, the 7,500 he expected to find and the 6,426 he eventually found, and he was able to provide a range of reasons as to why the number was lower than expected.²⁶

3. Identification of Remains

The Defense Team for Nuon Chea asked a series of questions to ascertain how Voeun Vuthy and his team were able to distinguish which remains found at the Choeung Ek site were of people killed during the DK regime, rather than before or afterward. In response the Expert described the rigorous process used by his team using scientific methods that allowed them to determine age, sex, and to a certain extent how victims had died.²⁷ Voeun Vuthy said he also conducted interviews with people who had been at Choeung Ek during the regime, including Him Huy.²⁸ As the site had been a Chinese graveyard prior to the DK regime, the Defense

Team pressed the Expert on how he was able to differentiate those graves from victims of the DK regime. Voeun Vuthy explained that this was relatively simple, as the Chinese bones were buried “in proper coffins” “well built” graves, and thus their remains were in a better condition than those who had been buried in mass graves and who had clear marks of injuries on their bones.

The Expert testified that almost all bones dating from the Khmer Rouge regime had marks of wounds from being killed or tortured, particularly “slamming” on their skulls, however he added that there was no way of determining how long before death a person may have had sustained such trauma. According to the Expert’s study, trauma was almost universal among the victims at Choeung Ek: “Among 6,426 bones, we could only find one skull that was not the result of torture or beating with tools.” In order to determine how victims died, Voeun Vuthy and his team studied the bones under microscope and then created a range of tools and weapons to attempt to mimic the marks found on the crania. He said they found that about 10 different tools had been used at the site, including axes, iron bars, knives, iron rods and square wood.²⁹ The number of individual marks of trauma found on crania ranged from two to nine. Counsel for Nuon Chea asked the Witness how he could ascertain, as he did, that some victims had been “brutally tortured” before their deaths. In response, Voeun Vuthy explained that when he saw repeated peri-mortem head injuries, he concluded that these were the result of torture.

Interestingly, 1,686 bullet wounds were found by his team, despite both Him Huy and Toy Teng testifying that people were not shot at Choeung Ek.³⁰ To ascertain whether a chemical had been used on a victim, the team looked at the transformation of colors on the bone. The Expert Witness testified that if the victim died from chemical poisoning, usually the skull becomes darker and the lips also change color. Ear cutting was also common according to Voeun Vuthy, who told the Court that this was visible as when ears are cut off, scars usually remain on the bone next to the ear. The Expert explained that he could tell some victims had died shackled or tied up because the strings or shackles had been found on the bones.

4. Study of Kraing Ta Chan

In addition to the study at Choeung Ek, the Witness was also questioned about his study of the Kraing Ta Chan Security Center, which is also a crime site in Case 002/02.³¹ The Expert stated that before he was involved in the project, only 200 skulls were kept in a stupa there. When his team analyzed the area, they eventually found 1,904 crania and 3,108 other remains from 11 pits at Kraing Ta Chan.³² Voeun Vuthy was asked to explain why his numbers were much lower than the 10,042 individuals who are said to have died there. The Expert explained that this larger number originated after people exhumed the pits in 1982 “to search for remaining clothes,” and the “head of the community” estimated the number. Again, the Expert suggested that the amount of time that had passed between the original exhumation and his own study could have seen the deterioration of the remains, as the site was left unguarded and unattended until 1998.³³

5. Witness Demeanor and Credibility

The Expert was polite and respectful to all Parties, and answered all questions put to him in a thoughtful manner. He was able to clearly explain the methods he had employed in his analysis, and he did not appear to have a problem repeating himself when pressed on these. One persistent issue during the Expert’s testimony was his use of photographs that he had brought with him to illustrate his points. As he had not informed Parties beforehand that he would use these documents, the Chamber had to remind him repeatedly to either refrain from referring to the pictures, or to describe them aloud for the court records. Although this posed procedural difficulties, it appeared to indicate the Expert’s enthusiasm to testify and his willingness to explain his profession to others in laymen’s terms.

D. Summary of Testimony by 2-TCW-971

Witness 2-TCW-971, who began to testify on 9 December 2016, continued his testimony on 15 December via video-link from Oddar Meanchey Province.³⁴ The Witness testified that he was a teacher in Takeo Province between 1975 and 1977 and that he subsequently joined the commerce section in Tram Kak District.³⁵ The Witness told the Court he was scared of being accused of being a traitor because of his teaching past, and said many of his relatives had died during the regime.³⁶

1. Moving to the Northwest Zone and Conditions on Arrival

The Witness testified that, on Ta Mok's orders, he and his supervisor Ta Chay went from the Southwest to the Northwest Zone on 1 January 1978 to assess people's living standard there, having heard they were starving and being mistreated.³⁷ He said that his group was the third to be sent, however he was unsure of when the previous two had gone there. The Witness said when he arrived in Doun Tiev in the Northwest Zone, people had enough to eat: "in the cooperatives, people ate normal meals, but in mobile units, they ate differently." He explained that those in the mobile units had less to eat, but he said this was due to difficulties transporting food, not intentional policies. The Witness also added that the rations appeared better in the Northwest Zone than in Tram Kak when he had lived there. After 10 days in Doun Tiev he moved to Thma Koul, part of Bavel District in the Northwest Zone's Sector 3. Here he said rice was not being distributed to the people, but rather kept in a warehouse at Thma Koul market.³⁸ He said that on discovering this, he distributed the rice to the villagers, even though it was not of good quality. In this area he also saw people being overworked, and said he therefore gave instructions for those at mobile and children's units to return home. When asked whether he was aware of the arrests of the leadership in Bavel District such as District Secretary Chhen Chhorn, *alias* Chhun, in June 1978, Chea Ke, *alias* Kim, and Pov Sieb in January 1978, the Witness said he was not aware, since he was at a very low rank. He said he did not even know who the former district chief was.

2. Witness Demeanor and Credibility

During his testimony, the Witness generally attempted to answer questions to the best of his knowledge. The Witness often explained his inability to answer certain questions about rice quotas or exports as being due to his low rank and that he would not be "allowed to know these matters." When he did not understand a particular question, he said so, and he appeared to clearly differentiate between information he learned from others and what he had seen himself. Despite numerous technical glitches throughout his video-link testimony creating delays and lengthy pauses, the Witness patiently responded to questions put to him, and asked for clarification when required.

III. LEGAL AND PROCEDURAL ISSUES

On the last day before the two-week judicial recess, a number of legal and procedural issues were raised by Parties. Most significantly, a lengthy debate was held over whether to call two additional witnesses requested by the OCP on the role of the Accused, which both Defense Teams vigorously contested. Debates were also held over the admission of a report on trauma and questions relating to the targeting of the Khmer Krom.

A. Debate over Calling Additional Witnesses on Role of Accused

On Thursday Parties held a lengthy debate over the OCP's request to call two additional witnesses on the role of the Accused, pursuant to Internal Rule 87(4).³⁹ Nicholas Koumjian argued for the OCP that these two witnesses could provide brief testimony about interactions they had apparently had with Khieu Samphan. He said the two should be heard because over

half of the 10 witnesses originally scheduled to testify in this segment had not appeared, either due to health or other reasons. The CPLCL had no objections, however each Defense Team took position to strongly oppose this request. Counsel for Khieu Samphan objected to the last minute request, saying it contradicted the Trial Chamber's memo setting out a deadline of 1 September for submitting Internal Rule 87(4) requests. Counsel Guissé quoted at length from the Chamber's memo, in which it says:

The Chamber considers that the parties, including the Co-Prosecutors, have had sufficient opportunities to seek evidence during the three-year judicial investigation, throughout the 2011-02913 trial in Case 002/01 and the current proceedings from October 2014 to present.⁴⁰

She continued that in addition to being tardy, the request was “based on arguments that are not properly reasoned.” She pointed out that the OCP was aware of the two witnesses prior to the 1 September deadline and could have requested them at any time,⁴¹ and also noted that of the 10 witnesses scheduled to testify in this segment, 8 of them had been requested by the OCP.⁴² She argued that the proposed witnesses had “peripheral” evidence related to Khieu Samphan and suggested that the OCP was trying to call them now to question them on a range of other topics outside the segment of the role of the Accused. Overall the Khieu Samphan Team argued that the witnesses were not “replacement” witnesses but rather “additional” witnesses, and accused the OCP of trying to “repair any errors they made in the past” via its request. Judge Lavergne pointed out that the Written Records of Interview (WRIs) of the two witnesses in question had already been admitted into evidence, and asked Counsel Guissé whether she really did not want to cross-examine the witnesses on points contained in their WRIs relating to Khieu Samphan. Anta Guissé disagreed with the Judge that cross-examination was necessary for points related to the role of the Accused, saying that if the Chamber did not hear these witnesses in this segment then there was no need to cross-examine them on the contents of the statements.

Counsel for Nuon Chea added to what he called the Khieu Samphan Team's “very relevant arguments,” and also vigorously contested the OCP request on separate grounds. Counsel Koppe repeated previous arguments that the role of the Accused segment seemed to be being used as “some sort of residual” segment, and many other topics were being covered outside the narrow scope of the segment. Like the Khieu Samphan Team, he also pointed to the fact that of the 10 witnesses proposed for the role of the Accused segment, not one of them had been requested by Nuon Chea. Although claiming that the first of the witnesses was low in rank and would likely have limited information of value, he did note that he was the cousin of Eng Tiev, *alias* Phet, who had been accused of treason in the Northwest Zone. Thus, while maintaining their position that the witnesses should not be called, the Nuon Chea Defense added that, if the cousin of Eng Tiev is called as a witness, his Khmer-language interviews with Stephen Heder should be translated as a matter of urgency. Counsel Koppe then moved on to the second witness, a “low ranking cadre from Division 164,” and asked why this witness should be called when the Chamber has repeatedly refused to summons Heng Samrin, who had a much higher rank and more potentially relevant information about the Accused.⁴³

In response, Nicholas Koumjian reiterated that the evidence of the two proposed witnesses would be brief, and thus could not prejudice the Defense Teams, as it would not take long for them to prepare for questioning.⁴⁴ The international Co-Prosecutor also pointed out that Nuon Chea's argument was contradictory: at once criticizing the OCP for questioning witnesses in the role of the Accused segment on other topics, yet also requesting interviews from Stephen Heder to question one witness on a topic that was unrelated to the role of the Accused. The Co-Prosecutor concluded his reply by stating that he would be happy for the Trial Chamber to call Heng Samrin, who he stated, “would be a great witness for the prosecution” and urged all witnesses to cooperate with the Court. At the end of the day, the Chamber issued an oral decision rejecting the OCP request as “untimely” and not in the interests of justice. Written reasons will follow in due course.

B. Admissibility of new DC-Cam Publication

The CPLCL filed an internal rule 87(4) request to admit the appendix to the second edition of a report by the organization DC-Cam called *Cambodia: Hidden Scars: Mental Health Outcomes resulting from Crimes Committed by the Khmer Rouge Regime*, which only became accessible on 23 November 2016. Marie Guiraud, for the Civil Parties, argued that the report was relevant to the moral reparations proposed in Case 002/02, and was reputable as the research was conducted at the medical school at Stanford University. The OCP supported the request, and the Khieu Samphan Team had no observations. The Nuon Chea Defense, however, made a brief statement about the content of the report, claiming that the authors of the report came to “far-reaching” conclusions based solely on Civil Party testimony, rather than personal interviews. He thus questioned the report’s reliability and relevance while conceding that he believed Stanford University to be a reputable institution.⁴⁵ Marie Guiraud responded that Counsel Koppe “seems to be confusing admissibility and probative value” which prompted Counsel to respond that this position seemed to be out of step with the CPLCLs position on admitting transcripts of interviews from Robert Lemkin in the past. Marie Guiraud labelled this comment “inappropriate.” The Chamber will issue a ruling on admitting this document in due course.

C. Khmer Krom

On Thursday, Counsel Koppe asked Witness 2-TCW-971 whether he knew if Ruos Nhim had been arrested because he had killed ethnic Khmer Krom people. Although the Witness answered the question, afterward the international Co-Prosecutor asked Defense Counsel for a reference or to indicate the basis for his question. Counsel Koppe responded that his question was based on interviews conducted by filmmaker Robert Lemkin, the admission into evidence of which the Trial Chamber has previously rejected. During his questioning, Nicholas Koumjian again raised the issue of executions of Khmer Krom people, citing prior testimony indicating such killings occurred in the Northwest Zone after the arrest of Ruos Nhim, implying that he could not have been arrested for arranging such killings. Counsel Koppe pointed out that one event does not exclude the other, and that Ruos Nhim could still have been arrested for arranging executions of Khmer Krom people even if others carried out further killings later. In May 2015 the Trial Chamber issued an oral ruling explicitly stating that the targeting of the Khmer Krom people is not part of the charges in Case 002/02, and that all evidence relating to this issue will be assessed on a case-by-case basis.⁴⁶

IV. TRIAL MANAGEMENT

Over the course of four days this week, the Trial Chamber concluded the testimonies of three witnesses and heard partial testimony of Expert Witness Voeun Vuthy, who will conclude his testimony in the new year.

A. Attendance

Nuon Chea was absent from the courtroom this week and observed proceedings from the holding cell due to his poor health, while Khieu Samphan was present in the courtroom throughout the week. Duty Counsels Moeung Sovan, Chan Sambo and Mam Rithea were appointed to sit their respective clients, Norng Nim, 2-TCW-823, and 2-TCW-971 either in courtroom or from their province via video-link, in order to provide counsel on their privilege against self-incrimination.⁴⁷

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

Parties: Son Arun, national Defense Lawyer for Nuon Chea, was absent on 13 December due to personal issues, however his international counterpart was present to represent their client.

Attendance by the public:

DATE	MORNING	AFTERNOON
Monday 12/12/2016	<ul style="list-style-type: none"> ▪ 111 villagers from Sampov Meas District, Pursat Province ▪ 18 foreign students from Saint Ignatius College, Australia ▪ 10 Civil Parties 	<ul style="list-style-type: none"> ▪ Nine Civil Parties
Tuesday 13/12/2016	<ul style="list-style-type: none"> ▪ 126 villagers from Kandieng District, Pursat Province ▪ Two foreign observers ▪ Six Civil Parties 	<ul style="list-style-type: none"> ▪ Five Cambodian staffs from Department of Archaeology, Ministry of Culture and Fine Art, Cambodia ▪ Six foreign observers ▪ Six Civil Parties
Wednesday 14/12/2016	<ul style="list-style-type: none"> ▪ 160 students from Ang Metrey High School, Sam Rong Tong District, Kampong Speu Province ▪ 23 foreign observers ▪ Nine Civil Parties 	<ul style="list-style-type: none"> ▪ Six foreign observers ▪ Nine Civil Parties
Thursday 15/12/2016	<ul style="list-style-type: none"> ▪ 200 military trainees from the Cambodian Royal Army Institute, Bosedth District, Kampong Speu Province. ▪ 10 Civil Parties 	<ul style="list-style-type: none"> ▪ 200 military trainees from the Cambodian Royal Army Institute, Bosedth District, Kampong Speu Province. ▪ 10 Civil Parties

B. Time Management

This week the Trial Chamber demonstrated flexibility in adjusting its schedule in order to conclude the testimonies of three witnesses and partial testimonies of an expert witness over the course of four days. After the decision to admit newly translated documents related to the Expert Mr. Voeun Vuthy, the Trial Chamber adjourned early on Tuesday 13 December in order to give Parties time to review the documents overnight. On 14 December, the Trial Chamber granted one additional session to the Defense Teams to question the Expert who would be scheduled to appear in the week of 9 January 2017 as the Expert was unavailable to continue his testimony later this week.⁴⁸ The Chamber also delayed the appearance of 2-TCW-1042 this week when it became clear that the testimony of 2-TCW-971 would not finish much before the end of the day on Thursday. The Chamber will take its annual two-week break for the end of the year, and will reconvene on 4 January 2017 with key document hearings on the role of the Accused.⁴⁹

C. Courtroom Etiquette

There were no significant breaches of courtroom etiquette this week.

D. Translation and Technical Issues

The Trial Chamber managed some minor translation issues and significant technical issues this week. During the testimony of Norng Nim via video-link from Tboung Khmum, the President instructed the WESU staff member assisting him to repeat and explain several questions to the aging Witness who appeared to have poor hearing. On 13 December, the Trial Chamber reminded the Expert Witness Voeun Vuthy to simply convey his explanation slowly related to technical terminologies and numbers in order to allow the court interpreters to more accurately translate his testimony. Technical glitches plagued the video-link testimony of Witness 2-TCW-

971 on 15 December. Last week his testimony had to be suspended due to technical problems. This week problems continued, however Parties persisted, and ultimately his testimony was concluded successfully that day.

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 12/12/2016	9:05	10:13-10:30	11:42-13:30	14:06-14:29	16:05	4 hours 32 minutes
Tuesday 13/12/2016	9:01	10:15-10:37	11:17-13:29	-	14:34	2 hours 59 minutes
Wednesday 14/12/2016	9:02	10:20-10:38	11:43-13:30	14:46-15:07	16:16	4 hours 48 minutes
Thursday 15/12/2016	9:09	10:10-10:28	11:53-13:38	14:41-14:58	15:49	4 hours 20 minutes
Average number of hours in session				4 hours and 9 minutes		
Total number of hours this week				16 hours and 39 minutes		
Total number of hours, day, weeks at trial				1021 hours and 23 minutes		
268 TRIAL DAYS OVER 77 WEEKS						

*This report was authored by Michael Chen, Hanna Daych, Allison Hendriks, Amanda Huynh, Caitlin McCaffrie, Vuthy Nin, Lina Tay, Sathapor Thorn 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 ECCC)	<i>The Case of Kaing Guek Eav alias “Duch”</i> (CaseNo.001/18-07-2007-
Case002 Samphan	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu</i> (CaseNo.002/19-09-2007-ECCC)
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

¹ MEAS Muth was charged in absentia in Case 003 on 3 March 2015 and in person on 14 December 2015. The case remains under investigation.

² Expert Witnesses are sought to provide insight and clarification on specific issues of a technical nature deemed necessary to the proceedings. (see Internal Rule 31(1)). An expert is appointed through a judicial order specifying their exact assignment (see Internal Rule 31(3)). The Chamber has decided that the role of Expert Witnesses is to enlighten the Chamber on specific issues of a technical nature, requiring special knowledge in a specific field. Experts are entitled to provide their opinions and may give speculative answers insofar as they are informed by the Expert’s broader knowledge about a topic (see Trial Chamber, “Decision on Assignment of Experts” (5 July 2012), E215, [hereinafter **DECISION ON EXPERTS**]). However, this Decision also provides that “Expert Witnesses may not express opinions on ultimate issues of fact, as only the Chamber is competent to make a judicial determination on the issues in the case.” The July 2012 Decision relied on international jurisprudence (for one example, see Trial Chamber, *Prosecutor v. Karemera*, Decision on Joseph Nziirorera’s motion to limit the scope of testimony of expert witnesses Alison Des Forges and Andrew Guichaoua (21 August 2007), ICTR-98-44-T, para. 3). Previous Witnesses who appeared as Experts were Mr. Stephen MORRIS; Dr. Peg LEVINE; Ms. Kasumi NAKAGAWA, Mr. Henri LOCARD, Mr. Alexander HINTON, Mr. YSA Osman, Ms. Elizabeth BECKER, Mr. Richard DUDMAN. For summaries of their prior expert testimony please see: CASE 002/02 KRT TRIAL MONITOR, Issue 70, Hearings on Evidence week 67 (17 – 20 October 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 69, Hearings on Evidence week 66 (10 – 13 October 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 67, Hearings on Evidence week 64 (13-16 September 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 61, Hearings on Evidence week 58 (1-4 August 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 60, Hearings on Evidence week 57 (26-29 July 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 48, Hearings on Evidence week 45 (21-24 March 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 47, Hearings on Evidence week 44 (14-17 March 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 43, Hearings on Evidence week 40 (9 – 10 February 2016); CASE 002/02 KRT TRIAL MONITOR, Issue 15, Hearings on Evidence week 12 (30 March – 3 April 2015); CASE 002/02 KRT TRIAL MONITOR, Issue 8, Hearings on Evidence week 5 (9 – 12 February 2015).

³ 2-TCW-971’s testimony began last week however was prematurely halted due to a poor internet connection in Oddar Meanchey. For a summary of his previous testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 76, Hearings on Evidence week 73 (5-9 December 2016) pp. 5-6.

⁴ Witness NORNG Nim (2-TCW-1070) was questioned in the following order: President NIL Nonn; international co-lawyer for Nuon Chea, Victor KOPPE; international co-prosecutor Nicholas KOUMJIAN; national lead co-lawyer for Civil Parties, PICH Ang.

⁵ NORNG Nim confirmed that the defense unit consisted of 12 members and was led by Chek, with Choeuk as the deputy. He said the defense unit was "well equipped."

⁶ It was unclear from his testimony how he knew Sao Phim was meeting Pol Pot, as he also testified that on arrival in Phnom Penh, Sao Phim would be collected and driven away in another vehicle.

⁷ Counsel Koppe repeatedly confronted the Witness with a prior statement in which he said that he and Sao Phim visited the Northwest Zone more often than Ruos Nhim came to visit the East Zone, however the Witness appeared unable to confirm this or the frequency of these trips.

⁸ NORNG Nim said that Sao Phim would jokingly call Ruos Nhim "Ah Siam" and Ruos Nhim would likewise call Sao Phim "Ah Yuen. In Khmer the prefix 'Ah' translates as 'contemptible', 'Siam' refers to people of Thai ethnicity and 'Yuen' to people of Vietnamese ethnicity, often in a derogatory way.

⁹ When asked by Counsel Koppe whether Heng Samrin was involved in the evacuation of Phnom Penh, the Witness responded "Yes, he did participate in liberating people from Phnom Penh."

¹⁰ He elaborated that Nuon Chea met with Sao Phim in private and that he did not know what the meetings were about and could not hear any details. However, initially he had said he only heard his name, never saw his face, during the regime.

¹¹ Counsel Koppe first asked the Witness what he had done after Sao Phim's death, and when the Witness did not respond that he had created the army of 300 troops, Mr. Koppe responded: "Mr. Witness, if I were you I would also give answers like this, but isn't it true that you created an army?"

¹² For example, the witness first answered that he never saw Sao Phim meeting with Vietnamese while in his DC Cam statement he had described going with Sao Phim to meet Vietnamese guests. When questioned he replied that he did see the Vietnamese when they came into Cambodian territory and said that "of course" they met with Sao Phim. In another instance, the witness testified that Ruos Nhim and Sao Phim went to visit each other an equal number of times, despite his DC Cam statement reading that Sao Phim went to visit Ruos Nhim more often. Later, the witness was asked about the role of Mao Pok, to which he responded that he did not know who Mao Pok was. When the witness was then read a part of his DC Cam statement in which he mentioned Mao Pok, the witness then replied that he did know who Mao Pok was and his position in the DK army.

¹³ International Co-Lawyer for Nuon Chea Victor Koppe questioned Norng Nim about about the 25 May 1978 coup and referenced a July 2015 interview with DC Cam when the witness had testified about this event. Norng Nim responded that he did not know about the coup and is very forgetful now. He stated that he spoke about the coup to DC Cam a long time ago and could no longer remember the details. Mr Koppe suggested that the witness was avoiding the subject because he was afraid of repercussions from answering honestly but the witness maintained that he did not know about the coup or could no longer remember.

¹⁴ For instance, when questioned by International Co-Lawyer for Nuon Chea Victor Koppe about Nuon Chea's visits to the East Zone, the witness testified that he had heard of Nuon Chea but never seen him. Later, when questioned by Lead Co-Lawyer for Civil Parties Pich Ang about Nuon Chea, the witness stated that he saw Nuon Chea on four or five occasions and that he visited the zone "quite often".

¹⁵ Witness 2-TCW-823 was questioned in the following order: President NIL Nonn; assistant prosecutor Joseph Andrew BOYLE; national lead co-lawyer for Civil Parties, PICH Ang; international co-lawyer for Nuon Chea, Victor KOPPE; international Judge Claudia FENZ; international judge Jean-Marc LAVERGNE; international co-lawyer for Khieu Samphan, Anta GUISSSE.

¹⁶ The Witness explained that he was based at Koh Ses "because it was adjacent to Koh Tral." Koh Tral is the Khmer term for the Vietnamese island now known as Phu Quoc. The Witness testified that there were no Vietnamese forces on Koh Ses or Koh Thmey but they were stationed at Koh Tral.

¹⁷ He testified that Vietnamese soldiers were usually armed with AK-47 assault rifles and B-40 rocket launchers.

¹⁸ Despite saying he never received explicit instructions regarding the treatment of refugees, he did say that: "To my understanding, refugees were not seen as enemies since they fled from Vietnam to other countries and were not armed, so how could we fire on them?"

¹⁹ He also added that "I do not know whether the wedding was organized according to foreign culture, but it was different to Khmer tradition."

²⁰ The Witness was unable to provide an exact date of his arrival in Phnom Penh or this meeting, but he estimated it was about 10 days prior to the Vietnamese arrival in Phnom Penh.

²¹ 2-TCW-823 explained that when the Vietnamese arrived, he hastily executed this evacuation plan, instructing various factories to flee west towards Battambang.

²² Expert Witness Mr. VOEUN Vuthy (2-TCE-1062) was questioned in the following order: President NIL Nonn

²³ He elaborated that at the Kraing Ta Chan worksite he was the director and "call person" leading the work group on analysis and conservation of analysis on the victims' remains.

²⁴ The Expert explained that only 86 of the more than 100 pits at Choeung Ek had been exhumed by the Ministry as some were flooded in the rainy season and therefore unable to be studied. He said the Office of Propaganda and Culture had exhumed the bones after banning 'ordinary villagers' from exhuming them to use the clothes. Voeun Vuthy and his team thus examined the bones contained in the memorial stupa at Choeung Ek, rather than exhuming the bones themselves.

²⁵ More specifically, the team found: 11 male and 2 female skulls of people between the ages of 3 to 8 years old; 241 skulls. In the 8 to 19 year-old bracket (of which 74 were male and 167 female); 3,884 skulls in the age range of

20 to 34 years (of which 2,845 were male, 1,127 were female and 12 could not have their sex identified); 2,613 skulls between 35 and 48 years old (1,894 male, 718 female 1 undetermined); 273 skulls between 50 and 69 years of age (245 male, 27 female and 1 undetermined) and 18 skulls of people over the age of 70 (14 males and 4 females).

²⁶ VOEUN Vuthy also accounts for the discrepancy in skulls as a result of skulls being used to make a map at Tuol Sleng prison, some skulls fell back into the grave pit and some skulls were borrowed for exhibition purposes in Vietnam. In addition, some small pieces of remains may have been counted so the number came to 8985 whereas, Voeun Vuthy and his team only counted big bones and skulls rather than rib bones and fingers.

²⁷ VOEUN Vuthy explained that eyebrow bones and earlobes allowed his team to determine whether the skulls belonged to a male or female. The age of the victim was determined by “looking at line on the scalp.”

²⁸ HIM Huy testified as a witness in Case 002/02. For a summary of his testimony see CASE 002/02 KRT TRIAL MONITOR, Issue 53, Hearings on Evidence week 50 (2-5 May 2016), pp. 5-8.

²⁹ Specifically, he found that there were 28,083 victims’ marks and 4,802 marks were suffered from the iron bar and club, 5,806 from iron tools, 3563 marks from knives, 101 marks of an axe, 900 from bayonets, 758 traces of death from iron poked into the ear and remains concerning chemical elements were 286. “Cleaning rods” were also used to kills victims according to the traces left on the victims’ skulls. He told the Court that the “victim will not die instantly from the cleaning rod but the head will be severely injured.”

³⁰ HIM Huy and TOY Teng both testified as witnesses during the segment on S-21 Security Center. For a summary of HIM Huy’s testimony **FOOTNOTE 28**. For summaries of TOY Teng’s testimony, see CASE 002/02 KRT TRIAL MONITOR, Issue 52, Hearings on Evidence week 49 (25-28 April 2016) pp. 1-3; and CASE 002/02 KRT TRIAL MONITOR, Issue 51, Hearings on Evidence week 48 (18-21 April 2016), pp. 7-8.

³¹ The Expert’s study on Kraing Ta Chan, originally in Khmer, was only translated into French and English on the day his testimony was scheduled to start. In order to give Parties time to review the study, the President asked the Expert some preliminary questions on 13 December and then adjourned early, letting Parties begin their questioning the following day.

³² He explained that some of the 11 pits were outside the boundary fence of the Security Center.

³³ VOEUN Vuthy explained that one of the officials from the Office of Culture or Propaganda had an uncle who died at that location, so he became interested in it in the 1990s, but most people avoided the area as they believed it haunted.

³⁴ 2-TCW-971 was questioned in the following order: international co-lawyer for Nuon Chea, Victor KOPPE; international co-prosecutor Nicholas KOUMJIAN; lawyer for Civil Parties LOR Chunthy; Judge Jean-Marc LAVERGNE.

³⁵ He said the commerce section was under command of office chief Chhoeut, and his own role was to manage the warehouse. He said the commerce office was not a trading office, but one where they stored rice for distribution, and that the office at Tram Kak was not as busy as Battambang.

³⁶ The Witness told the Court about losing many of his family members during the DK regime. His cousins had died whilst fighting against Lon Nol. His uncle, a teacher under during both the Sangkum Reastr Nityum and Lon Nol regimes, died during the DK period but the Witness did not know how or why. He also said that his younger sister died from illness in a mobile unit due to illness and his female cousin was sent to a mobile unit and disappeared.

³⁷ The Witness said he only saw Ta Mok at meetings in Battambang when attended with Ta Chay, and had never met Nuon Chea or Khieu Samphan. He said Ta Mok appeared to be in charge of both the Southwest and Northwest Zones.

³⁸ He said in addition to rice there was also canned fish and cloth being kept in this warehouse.

³⁹ Internal Rule 87 relates to the rules of evidence and Rule 87(4) provides that: “During the trial, either on its own initiative or at the request of a party, the Chamber may summon or hear any person as a witness or admit any new evidence which it deems conducive to ascertaining the truth... in accordance with the criteria set out in Rule 87(3)” which specifies evidence must not be irrelevant or repetitious, impossible to obtain within a reasonable time frame, unsuitable to prove facts, not allowed under law or intended to prolong proceedings. See: Extraordinary Chambers in the Courts of Cambodia, “Internal Rules (rev. 9)” (16 January 2015), p. 67.

⁴⁰ Trial Chamber “Decision on Requests Regarding Internal Rule 87(4) Deadlines” (21 September 2016) E421/4, p 7

⁴¹ According to Counsel Guissé their WRIs had been available since May 2016.

⁴² Counsel Guissé continued that of the eight witnesses requested by the OCP for this segment, only two did not testify. One, 2-TCW-871, was replaced by 2-TCW-823, and the other was Mr. SAR Sarin who declined to continue his testimony of his own accord, see CASE 002/02 KRT TRIAL MONITOR, Issue 76, Hearings on Evidence week 73 (5-9 December 2016) pp. 5-6.

⁴³ Counsel Koppe raised the recently released final verdict of the Supreme Court Chamber which labelled the Trial Chamber’s decision not to call Heng Samrin as a witness as “unreasonable” see Supreme Court Chamber “Appeal Judgment” (23 November 2016) F36, p. 70

⁴⁴ Counsel Guissé responded that calling witnesses at the last minute was not an issue of practicality but one of principle.

⁴⁵ Counsel Koppe in fact said: “We agree with the LCLCP that Stanford is indeed a particularly well reputed institution. As a matter of fact a report that was issued by Stanford’s WSD HANDA Center for Human Rights and International Justice regarding Case 002/01 was a very solid and accurate report.” This report he referred to is: David Cohen, Melanie Hyde and Penelope Van Tuyl, ‘A Well Reasoned Opinion? Critical Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)’ 2015.

⁴⁶ For a summary of this decision, see CASE 002/02 KRT TRIAL MONITOR, Issue 20, Hearings on Evidence week 17 (15-18 May 2015).

⁴⁷ At the beginning of 2-TCW-823's testimony the President stated that Chan Sambo had been assigned as a duty counsel because the Witness had trouble hearing.

⁴⁸ The OCP and LCLCP each expressed no objection to the Defense Teams being granted additional time, while also noting that they would not themselves require extra time.

⁴⁹ Only the Khieu Samphan Defense Team has expressed a wish to present key documents in this segment. The OCP will respond but not present any key documents of their own.