



Details of the Evacuation of Phnom Penh Revealed Amidst Clashes Over Use of Evidence
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In today's hearing at the Extraordinary Chambers in the Courts of Cambodia (ECCC), former Khmer Rouge soldier and security center guard Kong Kim *alias* Keu testified on issues including the events surrounding and following the evacuation of Phnom Penh.

The witness repeatedly stressed that, having held a very low position in the Revolutionary Army of Kampuchea (RAK) and being stationed in a small area, he knew little about activities, commanders, and policies beyond those to which he had been specifically exposed. International Co-Counsel for Nuon Chea Jasper Pauw seized on this to suggest that Khmer Rouge division commanders during the evacuation of Phnom Penh, such as current National Assembly President Heng Samrin, would have been better placed to testify on the evacuation of Phnom Penh and military structure at the time than a "simple foot soldier" like the witness.

Mr. Pauw also made a contested attempt to put to the witness excerpts from an expert document on the case file, namely journalist Philip Short's book *Pol Pot: Anatomy of a Nightmare*, with the Trial Chamber ruling that such evidence should not generally be used to begin lines of questioning put to a witness, especially when the expert had not yet testified before the Court and was slated to do so at a later date, as in Mr. Short's case.

Military Operations and Structure

In the morning session, it was the turn of the Lead Co-Lawyers for the civil parties to question witness Kong Kim before an audience of approximately 200 high school students from Kandal province, and a small group of foreign volunteers working with different organizations in Cambodia. National Civil Party Co-Lawyer Chet Vanly advised Mr. Kim that in her questions,

she would be referring to Mr. Kim's prior interviews with both the Office of the Co-Investigating Judges (OCIJ) and the Documentation Center of Cambodia (DC-Cam).¹

Ms. Vanly then asked Mr. Kim when he began working as a messenger. Mr. Kim responded that the group chief appointed him to the role when he joined the Khmer Rouge in 1974, and he carried out this role at Prek Kdam. Back then, he wore a black uniform with car tire sandals and conveyed messages between the battlefield rear and the front and "carried the wounded from the battlefields to the offices and then to the rear." He worked together with other messengers; and while he did not carry a gun, other people did, he said; he was around 15 years old at the time.

Mr Kim testified that there were messengers for companies, battalions, and regiments, formed together in squads of three to five. They conveyed messages from the front to the rear in areas including Anglong Kragan, Trapeang Preay and Thom village. Upon delivery of a message, Mr. Kim continued, "there was no acknowledgement or signature ... I conveyed the message back from the front battlefield to the rear." Messages were conveyed verbally.

At this point, Trial Chamber President Nil Nonn intervened, advising Ms. Vanly that questions needed to be based on the facts in question, namely evacuations, and that Ms. Vanly had wasted 10 minutes questioning the witness about the pre-Democratic Kampuchea (DK) period.

Moving on, Ms. Vanly asked Mr. Kim if he had performed any other roles than messenger during the DK period. Mr. Kim said, "Initially when I joined, I was appointed as a messenger so I could get used to the conditions. Later on, I joined the fight at the front of the battlefield." At the time, young people, especially young men, were recruited to the Khmer Rouge military, he recounted; Mr. Kim received military training when he was stationed for a month at the Cheung Preah district. He added that he became a unit chief after the fall of Phnom Penh.

Asked to describe the military structure, Mr. Kim said:

I was a unit chief or squad chief under the command of the platoon chief, by the name of Ponn. The platoon was under the control of the company. The company was headed by Yim. As for the regimental division, I only knew the designated number, but I was not familiar with the command structure. ... In the division, from the sector controlling the three provinces, Oeun was the division commander, and Song was the regiment commander 53, and then there was battalion number 32. ... In one regiment, there was one special battalion but I didn't know who was in command ... Chut and Song were the commander of a regiment.

As for Center divisions, the witness knew the designated number of only the one in which he had participated, namely Center Division 310. He did not know, however, if this division fell under any other divisions, as he was only familiar with the levels below division level.

¹ These interviews have the document numbers D166/74 and IS19.96, respectively.



Turning to the attack on Phnom Penh, Ms. Vanly asked if there were arrangements for different attack headquarters. Mr. Kim replied that he did not know, “but I knew that a meeting was held in order to inform about the gathering of all forces for the final attack on Phnom Penh.”

With respect to military disciplinary measures, Mr. Kim recalled, “Everything was strict. We would not go anywhere freely. At the front battlefield, we focused on the attack, and at the rear, we stayed at the barracks.” Violations of discipline were not an issue during the attacks at the front battlefield, he added.

Mr. Kim could not shed any light on the senior leadership of the military, as he was, he repeated, only familiar with lower levels of the military.

The Attack on Phnom Penh, Its Evacuation, and the Aftermath

Probed about meetings and plans to attack Phnom Penh, Mr. Kim said:

The meeting was organized for the commanders from the platoon leaders upward. Those commanders of companies or platoons would then relay the information to the lower level subordinates. ... The plan was to gather overall forces for the final attack on Phnom Penh and to gain forces. ... For the final attack, all the forces had to be gathered as one, including those reserve forces at the rear. However, some forces needed to be ready for the wounded.

For the attack on Phnom Penh itself, Mr. Kim said he was assigned responsibility for the Anlong Kragnan location, which was under the command of Yim, who was “the chief of the platoon” Mr. Kim was a “front battlefield combatant ... engaged in one-on-one fighting.” He stated that he did not know who among the “upper echelon” authorized delivery of supplies to the combatants.

The president again advised Ms. Vanly that her questions were straying from the relevant facts and that the civil parties would not be granted additional time for questions. Ms. Vanly asked Mr. Kim about the division for which he was responsible, to which Mr. Kim responded:

After the victory in Phnom Penh, I received my order from the company level to be responsible for a stretch of road from Wat Phnom to Chroy Chongva Bridge.² There were three platoons in charge of that stretch of road. We were also responsible for guarding, day and night. We saw nobody else except the company and military commanders.

² This bridge is colloquially referred to as the Japanese bridge.

As for the evacuation of civilians, Mr. Kim detailed how “immediately after the victory, both the civilians in Phnom Penh and the soldiers were kind of confused.” He continued:

Initially, I did not go up into the houses; however, there was an announcement by mobile loudspeakers for people to descend from the upper floors and that they had to leave. Later on, after the situation became calmer, there were still some remaining civilians and soldiers on the upper floors of the houses, and some of the soldiers threw grenades, so there were some sporadic clashes here and there. ...

During the chaotic situation ... there were a lot of civilians on the road during the first three days. Then it became a little bit less in a week’s time, and then it became even less in two weeks’ time ... [until] there were only pockets of people remaining on the upper floors of houses.

After the evacuation, Mr. Kim did not travel around Phnom Penh but only stayed in the location he had been assigned to monitor. In that location, he “cleared the road, cleaned up the houses.” Were these roads littered with dead bodies? Ms. Vanly questioned. Mr. Kim denied this. He “only saw dead bodies on the roads leading to Phnom Penh during the fierce fighting, but when I was tasked to cleaning the roads in Phnom Penh, I never saw dead bodies again.”

Mr. Kim had not known the senior leaders of the Khmer Rouge, but was ordered to protect them and foreign diplomats including Korean diplomats. His “small role was only to control the very confined block” at Kilometer 6. He did not know that the French embassy was in the vicinity, although he did know the Cuban embassy was. Asked whether any chaotic situations happened at the Cuban or Korean embassies, Mr. Kim denied this, saying that “the situation was quiet.”

“During the course of the evacuation,” Mr. Kim said, “I had no idea where people would be sent to, because I was a soldier and I was in charge of making sure that the people were taken out of the city.” Ms. Vanly asked whether Mr. Kim had ever heard appeals to bring back officials³ to rebuild the city. Mr. Kim said that he was not aware of this and “we never saw them return.”

Ms. Vanly next asked Mr. Kim to advise the Court of the identity of his superiors.⁴ Mr. Kim said that he “heard about their names in the forest. When I came to Phnom Penh, I heard about Mr. Khieu Samphan as a leader.”

Moving to his time at a prison near Wat Phnom, Mr. Kim said, “This prison was located to the southeast of Wat Phnom,” but he could not recall its precise location or name, though he did know it was not near the Phnom Penh railway station. While working at the prison, he did not see any superiors visiting, “other than the chief of the company or the platoon.”

After the removal of his initial commanders Oeun, Song, Yim,⁵ and Pao, Mr. Kim was “also removed and transferred to Kampong Chhnang” to work at the airfield. He added, in response to

³ This is presumably a reference to Lon Nol officials.

⁴ It is presumed that there was a more explicit reference to the most senior leaders here, but this was not reflected in the English translation.

⁵ This name was omitted from the English translation.

repeated questions from Ms. Vanly, that he did not know who replaced his commanders. Neither did he know who sent him to Kampong Chhnang, but “believed that they must be the chiefs of the companies and platoons.”

Returning to his time at the prison, the witness testified that there were no incidents of escape, but stated that “as a guard, we were instructed to shoot any prisoner that escaped, and if we failed to shoot or arrest an escaping prisoner, then we ourselves would be jailed instead of the escapees.”

Taking over from her colleague, International Civil Party Co-Lawyer Beini Ye redirected Mr. Kim to the period after the fall of Phnom Penh and Mr. Kim’s time as a squad leader, asking whether he had to make reports on the activities of his squad. Mr. Kim said that he “had to make a regular report, but the report was not regular in fact, because we had little to report.” He added:

We only stood guard to protect ourselves from the attack of the enemies. There was not much work or a busy schedule. There were no visits of senior leaders to the city to keep us busy. ... After checking the remaining people, and if we noted that people remained and we were at the location, then we had to make a report to the head of the platoon or company, but I rarely met these chiefs. ... The head of the company was a person by the name of Ren, and Ponn was in charge of the platoon, and Yim, too. ... If we noted that people remained, indeed people who were brought down from their apartments, they had to be sent to the company. They would be taken from there, but we did not know what happened next. ... I know what happened to my platoon. There were meetings in the platoon, but I never joined meetings at the company level, so I don’t know much about what happened in the company.

All three squads in a platoon would join platoon meetings to discuss “strengthening our group to guard and clean and evacuate the remaining civilians,” Mr. Kim recalled. He “heard of a person by the name of Oeun from Division 310 who rendered orders all the way from the division to the platoon, company and squad.” He did not know, however, from whom Oeun received his orders.

The witness testified that before he joined the Center unit, the military was classified by zone, although soldiers ultimately did belong to the Center. This prompted Ms. Ye to ask about the difference between belonging to the Center and the zone. Mr. Kim said that just before the attack on Phnom Penh, some soldiers were assigned to attack the provinces, and some assigned to attack Phnom Penh. After the attack, he continued, zone soldiers were transformed into soldiers of the Center, although they remained in the same units and there were no new recruits.



Finally, Ms. Ye asked Mr. Kim for more details on his involvement to clear houses and roads. The witness said that as for clearing roads, this meant “making the roads clean” within their designated blocks or area” so as to “receive some visiting guests.” Regarding clearing houses, soldiers “were not allowed to go into houses,” other than those where the soldiers were staying.

Judge Jean-Marc Lavergne took the floor and asked the witness whether, in the context of his activities prior to the capture of Phnom Penh, the witness participated in or was aware of the capture of other cities such as Kratie or Uddong. Mr. Kim denied this as his unit “was obliged to concentrate and know only about the target we were attacking: in this case, Phnom Penh.”

As for the order to evacuate Phnom Penh, Judge Lavergne inquired whether this order was issued immediately after the capture of Phnom Penh, and for what reason did Mr. Kim think it was issued. Mr. Kim replied that they “did not receive such an order. The order we received was mainly to attack Phnom Penh. ... Then when I approached Phnom Penh, I noted that people were on the move already.” Pressed by Judge Lavergne on his knowledge of the evacuation order itself, Mr. Kim replied that he learned about people being evacuated when he “was stationed at the target area and we were asked to carry out the evacuation plan in that area.” However, he did not know the evacuation plan in advance or the “intention of the upper echelon for such evacuation.”

Mr. Kim also did not know much about announcements to evacuate Phnom Penh but knew there were mobile units who disseminated them. He did not hear the full announcements, he said, but he could recall that they invited “residents to leave the city temporarily so that they could prepare the city.” However, the witness could not shed much light on those mobile units or the equipment they used, but for the fact that they had loudspeakers and vehicles, as the units’ operations related to a “decision of the upper echelon.”

Judge Lavergne next asked about the areas to which the witness had been assigned. Prior to the fall of Phnom Penh, Mr. Kim responded, he was assigned to an “area between Prek Kdam to Phnom Penh. After the fall of Phnom Penh, I was assigned a section from Wat Phnom to the north,” adding that Division 310 was stationed there as well. The latter location was “to the west of the riverbank [... and] areas in Tuol Kork were also part of the parameters under my division.”

The witness was asked about the fate of any public buildings in his area, but he did not know about this. Judge Lavergne pressed on, however, asking Mr. Kim about whether he knew, for example, about the National Bank of Cambodia, or about hospitals in the area. The witness replied that the Preah Ket Mealea hospital was in his area. Judge Lavergne asked whether evacuation orders applied also to that hospital. Mr. Kim denied knowledge of this, as he knew only that the hospital was “cleaned out,” after which his “wounded soldiers were transferred to that hospital.” Nor did he know what its cleaning out entailed. “After the liberation,” the witness said, “there were no civilians being treated at that hospital, only the soldiers who had participated in the attack on Phnom Penh and had been wounded.” Mr. Kim did not know if Division 310 was in charge of ascertaining if public hospitals had been “cleaned,” and stated that he generally did not know about buildings or “iconic locations” in the area.

Judge Lavergne sought the witness's clarification on his earlier mention of the Korean and Cuban embassies and diplomats. Mr. Kim obliged, stating that those embassies were "under the protection" of his squad. He continued, "My duty was to protect those embassies at the outside parameters of the embassies. I did not enter the embassies." He did not know if people were still inside the embassies at the time, although he did know that diplomatic representatives had set up in Phnom Penh informally. This prompted Judge Lavergne to ask whether the witness had any responsibility for the control of foreigners. Mr. Kim denied this and added that he "never saw any foreigners."

The judge asked Mr. Kim if he knew someone who occupied a position in Division 310 by the name of Nhem. Mr. Kim said that he knew only Ta Oeun, and did not know the identity of his deputy commanders.

Moving on, Judge Lavergne inquired as to whether the witness listened to the radio before entering Phnom Penh. Mr. Kim denied listening to the radio either before or during the attack on Phnom Penh, instead receiving his orders from his direct superiors. In particular, and in response to a question from the judge, the witness did not hear about a list of "seven super traitors" who were to be captured, and the names "Sirik Matak [or] Long Boreth"⁶ meant nothing to him.



Khmer Rouge soldiers entering Phnom Penh, April 1975. (Source: Documentation Center of Cambodia)

Noting that Mr. Kim had testified as to cleaning the streets with a view to "receiving guests," Judge Lavergne asked what Mr. Kim's role was in the guests' reception. Mr. Kim responded that it was "security within my assigned parameter ... But I did not accompany guests ... I only provided security to them." Asked about the Royal Hotel, Mr. Kim said he did not know it or where it was located. "However, to the west of Wat Phnom and to the north of the garden, there were big hotels there," he added.

⁶ There was a third name mentioned, but this was unclear in the English and Khmer translations.

Judge Lavergne inquired whether some soldiers were asked to dress in civilian attire when guests were received and if so, why. Mr. Kim clarified that soldiers dressed in uniform, but some other people, such as “textile workers,” would dress in civilian attire to meet guests. He did not say why. The witness could not remember any specific visiting delegations, for example from China or Korea, adding that in any case, “soldiers were not supposed to know about that. ... As a soldier, we strictly adhered to discipline and orders.” Pressing on, Judge Lavergne queried whether the witness was aware of an impending visit of Prince Norodom Sihanouk. Mr. Kim denied this.

Returning to the witness’s time as a prison guard, the judge sought further details as to the identity of “ordinary prisoners.” Mr. Kim said that he did not know about classifications of prisoners, such as political prisoners. “To me, they were all prisoners,” he said. He then gave a brief description of the prison’s physical structure.

Asked whether there were members of the former Lon Nol regime among the prisoners, Mr. Kim responded that he knew that the prisoners “were not related to the former regime. They were arrested by Angkar, and they were the former workers of Angkar.” He knew the identities of the prisoners because, although he could not ask each prisoner in person, he heard from the interrogators where the witnesses “were arrested and sent from, each zone, for example.” The witness said he “did not understand in detail what could have been the motive behind the arrest,” adding, “I heard briefly when the interrogation took place, but they were tortured. I did not know what kind of wrongdoing or mistakes they had made before they had been arrested.”

Turning back to the issue of the cleansing of Phnom Penh, Judge Lavergne asked if the witness had ever received instructions regarding “war booty.” Mr. Kim responded that he had not. Next, the judge asked if people were searched when leaving Phnom Penh, and if so, what items would be confiscated from them. The witness said that weapons would be seized, but people could keep their “money and other property.” As for whether Khmer Rouge soldiers were made to store food or other items, the witness said that he did not know and added:

The soldiers who came to Phnom Penh did not come to own anything collected in Phnom Penh. We came with a sack of clothes and military equipment. Our group had very few members, and we did not know about how these things would be managed.

Contested Attempts to Refer to Testimony of National Assembly President Heng Samrin

After the morning adjournment, International Co-Counsel for Nuon Chea Jasper Pauw began his questioning of Mr. Kim. Mr. Pauw first turned back to the attack of Phnom Penh, asking how long the witness was in combat before liberating Phnom Penh. Mr. Kim responded:

It took about two months for the front to finally attack and seize Phnom Penh. At the time, there were aerial bombardments. ... Each time, there were between 20 and 30 casualties. ... I was told that the planes were U.S. planes that were given to the Lon Nol side.

As for what Lon Nol soldiers would do to captured Khmer Rouge soldiers, Mr. Kim said that he did not see such incidents “because the Khmer Rouge soldiers were absolute.” He recounted, “If any [Khmer Rouge soldiers] were captured by Lon Nol, they believed that they would be tortured, so for that reason, they fought to their deaths rather than being captured alive.

Mr. Pauw asked Mr. Kim about orders that Mr. Kim might have received when Phnom Penh fell, referring specifically to an interview between current National Assembly president Heng Samrin and Professor Ben Kiernan regarding Mr. Samrin’s command of an East Zone division attacking Phnom Penh on April 17, 1975. In that interview, according to Mr. Pauw, Mr. Samrin had stated, of the period just before the liberation of Phnom Penh:

At that time, we received plans from the Center, from high levels, just to engage in production after liberation to grow rice, to support ourselves, and under no circumstances to ask the population for anything. The army had to support itself, work hard to grow rice and plant other crops to support itself. This was the order to the army. So we worked hard, and in my division, we planted crops and vegetables and even gave some to the people to eat as well.⁷

Mr. Pauw inquired whether Mr. Kim received similar orders to “not ask the population for anything.” At this point, International Senior Assistant Co-Prosecutor Tarik Abdulhak objected that Mr. Pauw’s technique of questioning the witness through using a statement by another person in another unit was improper as the other statement was not relevant and the witness could testify based on his own extensive statements. Mr. Pauw responded that the statement was relevant as Heng Samrin participated in the Khmer Rouge army and went to establishing Khmer Rouge policy that a high-ranking Khmer Rouge soldier had received orders not to ask the population for anything.

The Trial Chamber judges conferred at length after this statement, after which the president announced that the objection was sustained; the defense could not adduce the statement of another witness in questioning Mr. Kim, although he was permitted to pose other questions. Mr. Pauw responded that he did not understand the ruling; did this mean that they were no longer able to pose questions regarding interviews on the case file? Was this, Mr. Pauw asked, another “refinement of the case law of this tribunal”?

International Co-Counsel for Ieng Sary Michael Karnavas interjected that he had used the same technique as Mr. Pauw in the past, without objection from either the Office of the Co-Prosecutors (OCP) or Trial Chamber, and this new approach was “not only confusing but not in the interests of justice.”



⁷ This interview has the document number E3/1568, and the relevant ERNs are 00713958 (in Khmer), and 00651886 (in English).

This interjection prompted Mr. Abdulhak to clarify that they did not object to the use of statements that related to facts on which the witness was testifying, but rather that there was “no nexus” between Heng Samrin’s statement and the witness’s testimony to date. The objection, he said, was that it was not proper to start a new line of questioning based on the statement of another witness. Judge Lavergne then took the floor to clarify the Trial Chamber’s position:

There was a problem with the manner in which the question was asked, in the way a reference was made to an interview of Mr. Heng Samrin. That approach was not appropriate ... because the witness had not been questioned on that topic. Statements by Mr. Heng Samrin are not relevant to this witness’s testimony. ... If the defense wishes to dwell on any inconsistencies observed through the testimony of this witness, they are free to do so.

Mr. Pauw responded that Mr. Samrin’s interview was clear exculpatory evidence and that his team was trying to establish whether the positive policies of the Khmer Rouge Center were transmitted to the lower levels. Judge Lavergne responded that there was no objection to the question but to the use of an assertion by another witness at the very beginning of a line of questioning. If Mr. Pauw found any subsequent inconsistencies, the judge continued, he could then put other questions to the witness on the basis of documents on the case file. There was no general objection to using documents on the case file to lay a foundation for questions, he concluded.

Mr. Pauw proceeded to ask Mr. Kim if he received orders to “not ask the population for anything” and to support himself. The witness responded that when he was a soldier at the front, he did not receive such orders, for example, “not to ask for food from the people.” His orders related only to attacking the enemy.

To this, Mr. Pauw responded that in the interview with Mr. Samrin, a division commander, he stated that the army was to engage in high production levels in order to be self-sufficient and not to ask the people for anything. Mr. Pauw inquired whether the witness knew if Ta Oeun received similar instructions. Mr. Kim said that he knew that a company was “allowed to work in a rice field at Anlong Kragan, however, that was after the attack on Phnom Penh.” Mr. Kim did not know about whether Oeun received such an order, however, as that was outside his grasp.

Mr. Pauw asked whether the witness ever received written orders. The witness denied this, explaining, “During that time, the orders were not in writing. The transmission was through meeting and it was done orally.” Mr. Pauw asked if Mr. Kim reported to his superiors each time he shot an enemy. Mr. Kim responded, “At that time, I was quite young, and I was a combatant, so I did not make any report to the upper echelon. The report was made by my superior.”

Attempted Resistance to the Evacuation of Phnom Penh

In response to further questions, Mr. Kim testified that there were no civilians in the area in which he was stationed in the battlefields of Phnom Penh, as it was on the city’s outskirts, and their barracks were located there. Mr. Pauw then referred the witness to his statement, in his DC-Cam interview, which stated: “Some people in the houses at that time even owned guns. ...

Some people shot at our soldiers first while we were climbing the house, and others threw hand grenades at us while we were walking on the street.”⁸

When asked who the people referred to in his statement were, the witness replied:

There were those people who were living ... on the upper floors, and based on the plans that I received from the upper echelons, we had to clear those houses. ... Those people who were there, they threw grenades at us. Of course, we did not see them. We only saw grenades being thrown at us. ... We saw that among those people — sometimes we saw a group of three or four people — two among them would be dressed in military uniform and others would be dressed in civilian attire. Our order was to smash them. ... After a grenade was thrown from up above at our soldiers, we identified the apartment above from where the grenade was thrown as the location of the enemies.

Mr. Pauw asked the witness who shot at the soldiers while they were climbing houses. “Obviously, these people were soldiers,” Mr. Kim said. “After the ceasefire, or when firing stopped, people who used to be [Lon Nol] soldiers remained soldiers, and some fighting could happen as some individuals could take up arms and fire.” As to the clothes these Lon Nol



soldiers were wearing, Mr. Kim said that, “they were in military uniforms.” The witness did not recall seeing Lon Nol soldiers wearing civilian clothes. But, he continued, “Indeed, there were incidents when the internal Khmer Rouge enemies wore the leftover uniforms of the Lon Nol soldiers, and then we could not identify one another and we mistakenly shot at each other.”

Mr. Pauw inquired whether it was a fair summary of the witness’s testimony of October 24, 2012, that when the Khmer Rouge soldiers were being fired at, the soldiers could shoot, but where only true civilians were present, the Khmer Rouge soldiers would not be permitted to shoot. The witness responded that some civilians were caught in the crossfire between Prek Pnauv and Phnom Penh, but that afterwards, there were nearly no civilians in Phnom Penh.

Referring to the issue of Lon Nol soldiers surrendering or resisting, Mr. Pauw noted that the witness had testified on this issue on October 24 and also in his DC-Cam interview.⁹ He sought Mr. Kim’s clarification on whether it was his experience that if Lon Nol soldiers took off their uniforms, they would be allowed to join the evacuation. Mr. Kim replied:

People had to go through National Road 5, and the population was mixed with soldiers, monks, and other people. For soldiers still seen wearing uniforms, they would only be allowed to walk with the whole population on the condition that

⁸ This interview has the document number 19.96, and the relevant ERNs are 00054835 (in Khmer), and 00633875 (in English).

⁹ The relevant ERNs for the DC-Cam interview reference are 00054839 (in Khmer), and 00633878 (in English).

they surrendered their arms. ... I do not know the upper echelon's policy concerning whether the soldiers were allowed to surrender their arms, but for us, the orders were very precise that as long as the people in uniform were armed and did not surrender their arms, they were subject to be shot at. But if they surrendered their arms, they could mingle with the population and move on.

Asked what belongings people could bring with them on the evacuation, Mr. Kim said that he saw that "people could carry with them their belongings, including jewelry or money, but with the exception of guns." Mr. Kim also saw many carrying "whatever they could find," pushing wheelbarrows with their belongings or pushing vehicles.

Mr. Pauw redirected the witness to the issue of Phnom Penh being divided into different areas after the liberation and sought further details on this. Mr. Kim said that he "had no idea how many [areas there were], and which zone controlled which sections," due to his minor role and confined area of control. This area of control, he clarified, was a small block, and "indeed, it was our task to make sure that the people were evacuated from that area."

At this point, Mr. Pauw moved to ask Mr. Kim why it was that he was not allowed to leave his parameter of control. Mr. Kim explained that there was "a strict order that wherever we remained, we had to remain in that area." He continued, "If we were to step outside that confined area, we would be accused of being ill disciplined and disobeying the order."

There were only seven people in Mr. Kim's group, the witness recalled, as the rest had perished in fighting; they had to control the area from Wat Phnom to the north. He added, "Three groups were in charge of controlling these blocks, and only the superiors would be allowed to move from one place to another." As for the number of blocks in his area, Mr. Kim said, "The blocks under our supervision were very small."¹⁰ As Mr. Kim received travel passes, he knew that Division 310 Commander Oeun "could travel across whole areas, and that whenever he had to pass our block, I would be able to know and help him travel through." Oeun would have been able to travel to different places, but the witness did not know how freely. The witness believed that Oeun could have travelled "to attend meetings or meet other people elsewhere," but he asserted that this was simply a guess.

Mr. Pauw asked if the witness knew what was happening in areas other than the one he was guarding. The witness denied this; he knew only about his own duty to stand guard. This prompted Mr. Pauw to ask whether it was fair to say that Mr. Kim had "very limited knowledge about what was happening in Phnom Penh as a whole." The witness agreed with this on account of his relative youth and lowly position. He was not in a position to know other than what he "was supposed to know" in his lowly capacity.

The defense counsel returned to the issue of Mr. Kim's activities when he entered Phnom Penh, and specifically what region he operated in when he entered Phnom Penh on April 17. The witness explained that during the first three days after he arrived in Phnom Penh, he did not engage in the evacuation of the people, although he saw them leaving. Instead, his task was to

¹⁰ This seems to be a reference to the physical size of the blocks and not to their number.

“move to our location as soon as possible. After that, after the people had already left, we were tasked with cleaning, with removing the remaining people.”

At this point, the president adjourned the hearing for lunch. Mr. Pauw added that Nuon Chea wished to follow the afternoon’s proceedings from his holding cell, which the president granted.

Challenges to the Use of Expert Evidence

After the lunchtime adjournment, Mr. Pauw returned to questioning Mr. Kim in front of a new audience – the population of Chann village, in Tang Krosang commune, Batheay district, Kampong Cham province. Mr. Pauw mentioned Mr. Kim’s former division commander Oeun and asked if he was a good commander. Mr. Kim said that he “could not grasp” this, as he interacted only with the platoon and company level, and occasionally the battalion level; he “never met or spoke to [Oeun] in person.”

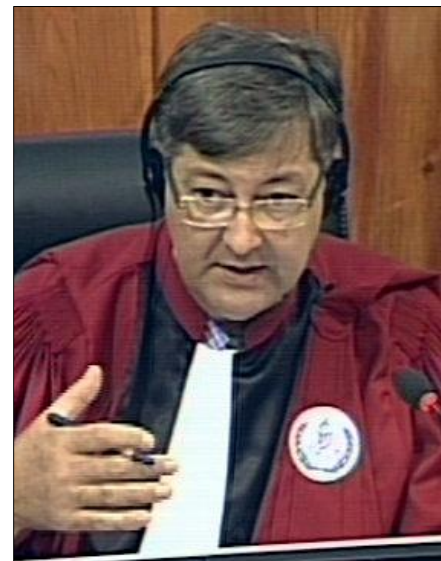
As for Yim, a battalion commander, Mr. Kim “was not close to him” but occasionally saw him “when he came to conduct a meeting at the company level.” He asserted that he “always respected ... and fulfilled” Yim’s orders and regarded Yim as “a firm person who always adhered to instructions. He strictly conveyed orders from his upper superiors to his subordinates.” Mr. Kim did not know Yim’s deputies, but Ren was a company commander who visited regularly and who the witness knew “quite well.”

At this point, Mr. Pauw began to read an excerpt to the witness from Philip Short’s *Pol Pot: Anatomy of a Nightmare*, which stated:

Unlike orthodox Communist states where decision-making is highly centralized and implementation is in theory monolithic, Khmer Rouge Cambodia was unruly. That combination of attributes would prove one of the most enduring features of Pol--¹¹

The president interrupted Mr. Pauw at this point, advising that there was a “technical problem.” The Trial Chamber judges then convened in discussion for some minutes. After this discussion, the president stated that Judge Lavergne would be given the floor to explain the “technical issues” regarding the use of Philip Short’s book, a matter on which the Chamber had already considered and ruled.

Judge Lavergne stated that although the situation was not identical, in last week’s document hearing, it had pointed out that it was not appropriate to use documents written by a witness or expert where that person would subsequently be called to testify. The defense was permitted to use the substance of the document but it should avoid using “complete quotations” from it, he explained. He therefore



¹¹ This book has the document number E3/9, and the relevant ERNs are 00396489 (in English), and 00639818 (in French).

invited Mr. Pauw to rephrase his question. Mr. Pauw responded that this was almost clear but noted that three questions came to mind:

- What was the rationale behind this rule? Mr. Pauw noted that Mr. Short was an expert, and whether or not the things he wrote about were correct would be a question for the people who were there at the time. Mr. Pauw did not see the harm of presenting Mr. Short's theory to the witness as this would surely bring the court "closer to the truth."
- Would it be the case that if the witness testified after Philip Short, he would be permitted to ask questions of Mr. Short's document? If so, what was the difference?
- Parties had, in the past, been permitted to put to witnesses documents written by witnesses and experts, notably Professors Ben Kiernan and Stephen Heder. Thus, what was the rule precisely?

Mr. Abdulhak interjected that while parties were "here to abide by the Chamber's directions," he sought to recommend, on behalf of the OCP, that "provided that there is an appropriate nexus between specific facts" testified by a witness and the relevant document, the OCP would not object to the use of the book in order to test those relevant facts. However, that was not, according to Mr. Abdulhak, the case here. In light of the witness's extensive testimony that he had no knowledge of matters beyond his own division, the prosecutor contended, there could be no purpose in putting this material before the witness now other than to ask the witness to speculate.

Mr. Pauw rejoined that he did not wish to "muddle the issue" but that if he had not been cut off from reading the quotation, that nexus would have become clear. Mr. Pauw then proceeded to read the allegedly clarifying passage from *Pol Pot: Anatomy of a Nightmare*:

Hence the welter of conflicting signals during the evacuation of Phnom Penh:
what was true of the zones was also true at the lower levels.

Again, the Trial Chamber judges conferred at length. Judge Lavergne then responded that the Chamber noted that "the entirety of the quotation ... has already been quoted before" and that the Chamber was of the view that it is preferable not to quote expert analysis extensively. Insofar as an expert has not been heard and would later be heard, he continued, it does not seem appropriate to confirm analysis made by an expert or historian. He concluded that parties had already been directed to ask witnesses relevant questions that hinged on their knowledge and had bearing on the analysis done by an expert, and he hoped, in the future, their decisions would be respected.

Mr. Pauw clarified that he did not, in fact, read the entire quotation and wished to make an oral application for a ruling on the Trial Chamber's rationale that parties were not permitted to quote from such sources, other than that it was simply "not appropriate." Mr. Pauw attempted to move on to a new line of questioning but was cut off by the president, who asked Mr. Pauw to wait while the Trial Chamber judges conferred yet again.

After the judges' conference, Judge Lavergne stated, for the purpose of providing additional clarity:

Quoting the analysis of an expert to lay the foundation for a witness's question is not appropriate. Insofar as that analysis has not been discussed and confirmed with the expert, and so we are not in a position to rely on it, it would be much preferable to start by laying a foundation to the analysis and eventually questioning the witness on the facts that lay that foundation. ... To start with the result is not a good idea. I think that is clear enough now.

“Yes and no,” Mr. Pauw responded. Did this mean that parties could not now use any material from all experts who had written anything on the Khmer Rouge? He asked. In addition, he queried whether he would have been permitted to question this witness on this topic after Mr. Short had testified and explained his analysis. To this, Judge Lavergne responded emphatically:

Listen, you have been told that you can put any questions you wish to the witness on factual elements that are the basis of the expert's analysis as is apparent in the book. However, it is unnecessary to quote that analysis as such unless that expert witness will not be heard before the Chamber. We know, in principle, that Mr. Short will be heard.

Mr. Pauw agreed to move on but said that he hoped they would be granted some extra time on the basis that “it is not entirely our fault” that matters remained unclear.¹²

Returning to the Evacuation of Phnom Penh

Mr. Pauw then turned to the witness's previous testimony to the OCIJ that “some had morals and did not fire; who did not have morals did fire.” Mr. Pauw asked Mr. Kim to clarify whether the reason whether or not a soldier fired on someone depended on the soldier himself. Mr. Kim responded:

On the first day when we approached Phnom Penh, soldiers were exchanging fire, and people had been evacuated. The fighting took place when people were still there. Only after the population of the city had already been evacuated entirely were we ordered not to shoot. So, at the beginning, I could say that people could not hold the fighting because we were in a confused situation and soldiers who were angry, for example after such fierce fighting they also fired their guns – during this time, they were not even punished for firing arbitrarily.

What did Mr. Kim then mean, Mr. Pauw pressed, about the difference between the moralities of soldiers? The witness responded:

To put it simply, people had different personalities and their morals were different. Some who were engaged in the fighting had been angry already, being engaged in the exchange of fire and having experienced the casualties, noting the loss of their colleagues. They were angry. Some could control their anger. Some people even shot at civilians because they were angry. They shot at them.

¹² This written record of interview has the document number D166/74, and the relevant ERNs are 00270164 (in Khmer), and 00278682 (in English).

Mr. Pauw then said that he “would have liked” to question the witness on Philip Short’s theory that what happened in Phnom Penh depended to a large extent on individual commanders but would “forego those questions.”

The defense counsel duly moved on, asking the witness whether, while stationed in Phnom Penh, he knew that some Khmer Rouge troops had come from the East and Southwest Zones. Mr. Kim stated that he heard people had to come to Phnom Penh through particular zones; he heard that the North would be in charge of a particular direction and other zones in charge of other directions. Mr. Kim did not know about the duties of people from different sections, zones, or sectors.



Khmer Rouge soldiers in Phnom Penh, April 1975. (Source: Documentation Center of Cambodia)

Returning to the area the witness guarded, Mr. Pauw asked whether it bordered on an area occupied by East Zone forces. Mr. Kim responded that his area “was under the control of the North Zone forces.” To refresh Mr. Kim’s memory, Mr. Pauw read again from Heng Samrin’s OCIJ interview, in which Mr. Samrin testified:

On April 17 at 9 a.m., I arrived at the Independence Monument. After liberation, there was a division of responsibility among three divisions from the east. There was my first division, my younger brother’s second division, and Cheou’s third division which fought up to Chroy Chongva with marines. ... After liberation, the responsibility for guarding the big road was divided. From Wat Phnom, right this way along the white line [unclear Khmer roads], the Eastern Zone was on that side, Ta [unclear Khmer words] on that. Because at that time, there was a special zone; a special zone was created with Vorn Vet as secretary and Son Sen as deputy.¹³

¹³ The relevant ERNs are 00713946 (in Khmer) and 00651879 (in English).

Therefore, Mr. Pauw stated, Mr. Samrin said that East Zone forces were on one side of the line, meaning that there must have been East Zone forces close to Wat Phnom. Mr. Pauw asked if this coincided with the witness's memory. Mr. Kim replied, "In Phnom Penh, when we arrived, indeed the division of responsibility was made, and we had to control each block. I was in charge of the area to the north of Wat Phnom. But I don't remember having seen any of the forces you indicated in that vicinity."

Mr. Pauw asked whether the witness knew what East Zone armies did when they entered Phnom Penh. Mr. Kim said that he did not, and "even in my own division, I did not know what happened, for example, between one regiment to another." Neither did he know what happened in the areas controlled by East Zone forces in the months after the liberation of Phnom Penh, because he was in charge of a different block and was not well informed about events after liberation. He belonged to a confined area and did not know much about what happened outside.

The defense counsel inquired whether it was fair to say that the witness knew nothing about what the East Zone soldiers did when they entered Phnom Penh or in their area of control in the months after liberation. The witness confirmed this, adding, "As a soldier, I had to obey the discipline, rules and orders. I had to be on duty at all times. I had to remain in the area. I was not allowed to move around freely."

Asked whether he knew of the fate of Oeun, Mr. Kim said that he did not, "because he was arrested at that time, and I only saw him passing by at the location where I was on duty but I never distributed or disseminated any of his plans to other people" due to the witness's limited area of responsibility. While stationed in that area, Mr. Pauw asked next, did the witness meet any commanders other than Oeun? The witness reiterated that in his "capacity as a low level soldier," he did not meet "senior leaders or the leaders of other sections," such as at regiment and battalion level, and only worked at company and platoon level.

Mr. Pauw asked the witness in which year he left the Khmer Rouge movement. It was 1979, Mr. Kim replied. Between April 1975 and 1979, Mr. Pauw then asked, did Mr. Kim meet any other commander who had participated in the liberation of Phnom Penh? Mr. Kim said that when he moved to work at Kampong Chhnang airport, he met several division commanders including Ta Lvey, Ta Thuok, and Ta Ky¹⁴ who represented Division 502. These people "were in charge of the airfield and ... also talked to us about when they liberated Phnom Penh and when they attacked Phnom Penh from the southwest direction." They were still alive in 1976, but he parted ways with them in 1977 and did not know their fate after this time.

Comparing Testimonies of Commanders and Simple Foot Soldiers

Next, Mr. Pauw asked Mr. Kim whether he thought, based on his knowledge of the Khmer Rouge military structure, that division commanders like Heng Samrin would be able to give the Court more information about what happened in Phnom Penh, for example, what happened in the section for which Mr. Samrin was responsible. Mr. Abdulhak objected to this question on the basis that this question was speculative.

¹⁴ This name was omitted from the English translation.

Rephrasing the question, Mr. Pauw asked who, in Mr. Kim's view, would have had a better overview of events in Phnom Penh during the evacuation and in the months after it: a "simple foot soldier" like the witness, or a division commander. Mr. Kim responded, when further prompted by Mr. Pauw, that he had very limited movement, because he had to guard day and night without rest, in the area assigned to him. Did that mean, Mr. Pauw continued, that Mr. Kim only knew about things in that area?



Mr. Abdulhak objected that this question was "entirely repetitive," noting that the witness had already answered it several times. Mr. Pauw explained that he was "trying to be helpful" to the witness in light of his expressed difficulty with the earlier question. The president interjected, sustaining the objection and directing Mr. Kim not to respond to it.

At this point, Mr. Pauw concluded his questioning by asking the witness whether he would have submitted that division commanders like Oeun and Heng Samrin would better know what happened in Phnom Penh in April 1975 and the months after. Mr. Kim replied, "I have no idea about the plans or the knowledge of the leaders because I only carried out the pacts rendered to us at the location. I never knew their plans or their knowledge."

Both National Co-Counsel for Ieng Sary Ang Udom and National Co-Counsel for Khieu Samphan Kong Sam Onn explained that their teams did not have any additional questions for the witness. The president thanked the witness for his testimony and dismissed him.

President Nonn adjourned the hearing for the day at the earlier time of 2:30 p.m.. Hearings will resume on Monday, November 5, 2012, with the testimony of TCW 690 under questioning from the OCP. There will also be a reserve ready, namely the civil party TCCP 89.