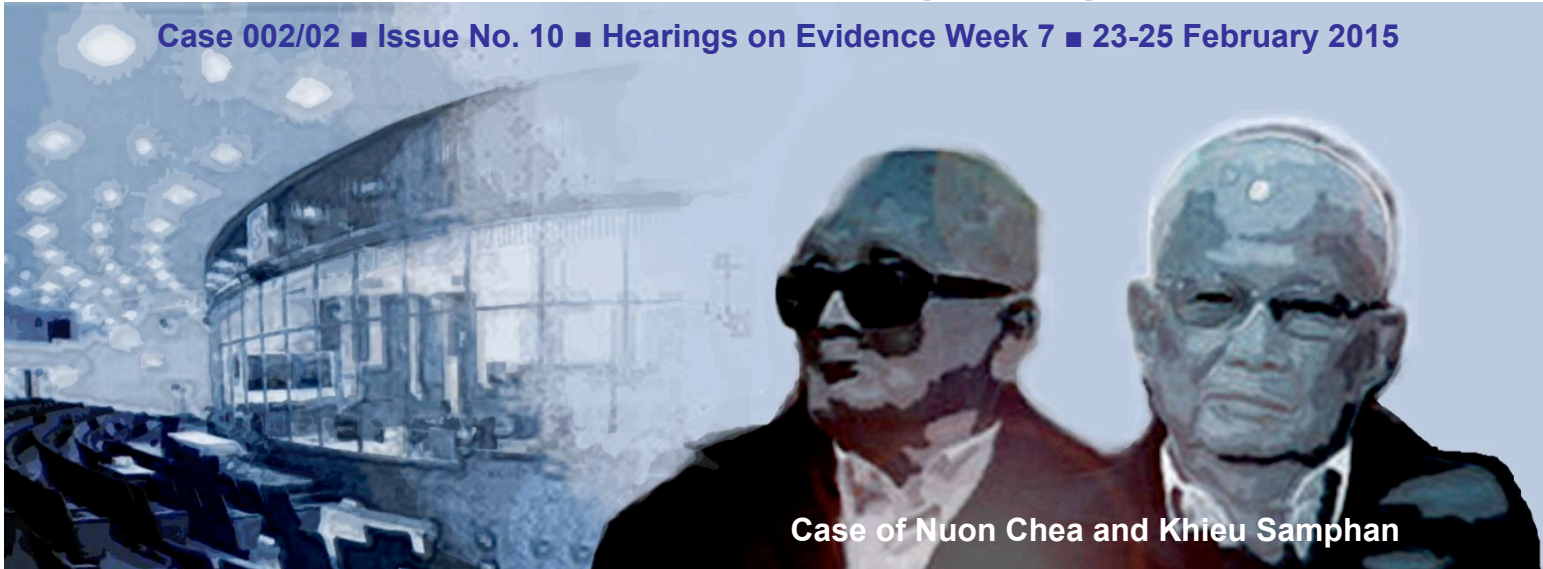


KRT TRIAL MONITOR

Case 002/02 ■ Issue No. 10 ■ Hearings on Evidence Week 7 ■ 23-25 February 2015



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), 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)

*When I went to my house, I spent a short visit to Kraing Ta Chan, just to say hello,
and it was kind of a routine when I rode my bicycle to my house, then I would drop by...
But I didn't pay particular attention to the Center itself,
or the details of what was happening in the Center.*

- Witness Phann Chhen

I. OVERVIEW

Although the week was cut short by a day due to the need for the Parties to review new evidence in Case 002/02, the trial proceeded efficiently the rest of the week, as two former Khmer Rouge cadres from Tram Kak District testified. The first, Mr. Srei Thôn, gave details of his experience as a guard at Kraing Ta Chan Security Center, where he claimed to have acted only as a guard on the outer perimeter, and occasionally as a typist. The second witness, Mr. Phann Chhen, described his role in Tram Kak prior to 1975, and he provided information on conditions at the Security Center in the DK era. However, he categorically denied any personal involvement in the prison's operations, even as the Parties confronted him with statements from himself and others, suggesting he was the Security Center's first chief. The Parties raised few objections or procedural issues this week, although a recurrent debate over Defense Counsel Victor Koppe's use of the courtroom's document interface surfaced briefly in two hearings. This report summarizes the Trial Chamber's continued management of Case 002/02 as it progresses well into its first segment with the illuminating testimony of these former cadres.

II. SUMMARY OF WITNESS TESTIMONY

The Chamber heard the testimony of two witnesses this week. Witness Srei Thôn completed his testimony from the week before and provided his observations as a former guard at Kraing Ta Chan Security Center (**KTC**).¹ He continued to testify under certain protective measures agreed upon by the Chamber and the Parties. Witness Phann Chhen also appeared, and he detailed his experiences as a former Khmer Rouge cadre in Tram Kak District, although he repeatedly denied he had any position at the Security Center.

A. Summary of Testimony by Witness Srei Thân

Mr. Srei Thân continued to testify under protective measures agreed upon by the Chamber and the Parties, including non-disclosure of the Witness' address, and not making his image available to the public. The Prosecutor continued his examination of the Witness on Monday, with the Defense and Civil Party lawyers concluding their questioning by the morning of Tuesday, 24 February.² During his testimony, the Witness was confronted with allegations that he had been involved in rapes and killings while he worked as a guard and typist at Kraing Ta Chan Security Center. He consistently denied these allegations, calling them "untrue and fabricated."

1. Experiences as a Guard and Typist at Kraing Ta Chan Security Center

Mr. Srei Than was a Khmer Rouge soldier under Regiment 13 in the Southwest Zone, and he testified that his commanders ordered him in a unit of six soldiers to guard the "re-education office 105," known as Kraing Ta Chan Security Center. According to the Witness, his unit was tasked with guarding the outer perimeter of the security office, and they reported to army officials, not the prison chiefs. He explained that his six-man unit was initially assigned to a post one kilometer away from the security office. A year later, his unit was asked to move to an inner gate approximately 150 meters outside of the main office. The Witness testified that the main compound had two gates at the West and the East; his role at the western gate included accepting new prisoners brought to KTC by commune militia. He also testified that he never heard any loudspeakers or gunshots while working at the prison, but he admitted that when he was posted at the inner gate, he had been able to hear the screams of prisoners under interrogation.

Regarding his role as a typist at Kraing Ta Chan, Srei Thân testified that when his unit was posted at the inner gate, he had been asked directly by the prison chiefs, Ta Ann or 'Big Duch', to occasionally assist in typing documents. He explained that he was assigned to turn handwritten confession notes or lists of prisoners into typed reports, which then received signatures from security center officials before submission "to the Party." However, the Witness denied attending interrogations or observing torture, restating that he only heard screams from the interrogation rooms. The Witness stated that he had been assigned in 1978 to depart from the security office to another post with the District military.

2. Witness Responds to Allegations Against Him

Both the OCP and the Defense confronted Srei Thân with allegations implicating him in the rape of women and massacres of prisoners at KTC. They referred to the previous testimony of Civil Party Soy Sen, a former KTC prisoner from 1974 to 1979, who testified that 'Little Duch', was one of the cruelest of the guards at the Security Center, and was involved in the rape and murder of two women from a mobile unit, as well as the murder of two young children.³ The Witness had previously acknowledged he formerly held the alias 'Little Duch,' and he admitted that he knew Soy Sen was present at KTC, but he emphatically denied these allegations. Srei Thân responded that, whenever there were killings, his unit was assigned to stand outside the perimeter of the prison. Although he claimed never to have witnessed the killings, he was able to confirm that children and women were sometimes killed at the prison. The Witness also stated, "As for the answer stating that I was ordered to kill people, I could not respond to that question." Under later questioning, he clarified that he could not respond to this question "because I did not do it, and I did not know about it, so how could I respond?" Srei Thân denied that he was "wicked" or "cruel," and he explained that Soy Sen's accusation that he raped a female prisoner was "fabricated," because DK's morality codes prohibited "sexual rape."

3. Witness Demeanor and Credibility

Although Witness Srei Thân appeared to try his best to provide answers, his responses often varied and contradicted themselves, and some issues were left more muddled by the end of the examination. On multiple occasions, he replied, “I do not know” or “I cannot respond to the question.” He notably provided such responses more frequently when asked specifically about his own personal actions at the Security Center. When Judge Lavergne asked the Witness a more open-ended question about how he looked back on his experiences at KTC, Srei Thân described his unpleasant memories and his “regret” for what happened to prisoners. However, he also took the occasion to emphasize that he was not a cadre, and that he did not know or remember much. He compared himself to a horse with eye-guards, so that it “can see only one direction, not the other way.” However, his statements were contradictory; he denied he personally saw any crimes, yet he also was able to more generally explain the crimes that allegedly occurred at KTC. For example, he testified that he never witnessed torture or executions, but he confirmed a prior statement to OCIJ that 99% of people who entered the Security Center were ‘smashed’. The Parties consistently sought to clarify if the Witness received orders at Kraing Ta Chan from his military unit superiors or from prison officials. He tried to distance himself from prison officials, repeating that he only took orders from military superiors. He also appeared to minimize his own admissions that he received orders from Ta Ann and Duch to assist with typing reports and letters, characterizing this work as just occasionally “lending a hand.”

B. Summary of Testimony by Witness Phann Chhen

Witness Phann Chhen was born in 1932. He is retired and lives in Anlong Veng, Oddar Meanchey Province. The Witness largely testified on his knowledge and experiences relating to Kraing Ta Chan Security Center.⁴ He detailed his position as chief of Kus Commune, with jurisdiction over KTC village prior to 1973, as well as the subsequent transformation of the village into a detention facility. The Witness also discussed the individuals overseeing KTC Security Center, including those who conducted interrogations of prisoners, and his observations of the DK regime’s treatment of ethnic groups in the Southwest Zone.

1. Experiences and Positions at Kraing Ta Chan and in the Southwest Zone

Prosecutor Srea Rattanak began questioning Phann Chhen on his position as Kus commune chief, after the Khmer Rouge “liberation” of Takeo Province, and before 17 April 1975. The Witness stated that he was in charge of organizing meetings, social and cultural activities, and education in the villages of the commune, including Kraing Ta Chan village. He claimed the village was “taken away” by the District for use as a security center in 1973. He asserted that he was not a chief of Kraing Ta Chan after this date, but the Prosecutor referred to his own OCIJ statement in which he declared Ta Ann as his deputy chief at KTC. The Witness rejected his own OCIJ statement, that of former District 105 Chairman Chhim, and the prior testimony of Civil Party Soy Sen, all of which alleged that his role between 1973 and 1975 had been that of first Chief of the Security Center. Throughout his testimony, Phann Chhen frequently claimed to be recalling “second hand information,” and he insisted that he had remained “far away” once KTC became a prison. Confronted with testimony by Civil Party Soy Sen, alleging that ‘Ta Chhen’ had participated in the interrogation upon his arrival at the prison,⁵ the Witness denied the claim. He insisted that he merely observed cadres Ann and Phy conducting interrogations such as these. When questioned specifically about Soy Sen, the Witness asserted that his own intervention had in fact spared Soy Sen’s life. He explained that he had pitied Soy Sen and used his own authority to “ask people” not to harm “the young boy.” The Witness also explained that he had authority, as member of a District refugee committee, to release a group of 40 prisoners from KTC, for they had only committed “minor offenses” and he pitied them. Phann Chhen claimed this prisoner release had led to his reprimand and death threats, but that Ta Mok ultimately protected him. He confirmed his prior statement to the OCIJ, that he

believed Ta Mok was "Brother Number Two" in the DK hierarchy. The Witness said he met Ta Mok at twice-monthly "open" meetings, during which he claimed to have received "secondhand information" on KTC after having left there for Kampong Speu in 1974. Phann Chhen testified that he had gained his knowledge of events at the prison through occasional visits there during his travel back to Takeo Province for these meetings. He initially characterized these visits as part of his responsibility as Kus Commune chief to supply the Security Center with food, but he later explained that he would "drop by" on bicycle trips from his assignment in Kampong Speu to his home in Takeo. He stated that he would "chit-chat" at the gates of KTC with "friends," characterizing the visit as an opportunity "just to say hello" rather than to observe what was happening at the Security Center. However, he also claimed it was on such an occasion that he witnessed Ann and Phy use 'hot' and 'cold' techniques during the interrogation of a prisoner. The Parties also asked the Witness about treatment of minority ethnic groups such as the Vietnamese and the Cham, and he explained that the DK policy espoused hatred of them. He insisted that there were almost no Vietnamese in his commune, and he testified that they were not discriminated against, but he also explained that he had pitied one Vietnamese girl and adopted her.

2. Witness Demeanor and Credibility

Phann Chhen prefaced his testimony with a disclaimer that, due to his old age, he could not remember everything he had told investigators. He frequently cited this as the reason why he could not provide answers to specific questions. In addition, the Witness claimed that the majority of his testimony regarding KTC was recalled from "secondhand" information rather than from firsthand experience. He repeatedly emphasized that he had stayed "far away from Kraing Ta Chan after it became a prison," even though he admitted his occasional visits. However, Phann Chhen was able to provide confident and adamant responses to questions specifically referring to his participation in crimes or crime sites; he never referred to a lack of memory regarding these accounts. At one point, he declared, 'I mention only the truth, nothing but the truth, because I'm practicing religion.' Although he could ostensibly dismiss references to former District 105 Chairman Chhim and former prisoner Soy Sen's statements as inaccurate, Phann Chhen never satisfactorily explained the contradiction between his testimony and his own statement to the OCIJ regarding his role as chief of Kraing Ta Chan Security Center. Rather, he responded to the Prosecutor's reference to his OCIJ statement by twice consulting his Duty Counsel before attempting to deflect the question. Overall, Phann Chhen's testimony was disjointed and did not appear very credible, as he seemed intent upon minimizing or ignoring any unfavorable details.

III. LEGAL AND PROCEDURAL ISSUES

Defense Counsel Victor Koppe's misuse of the courtroom's document interface in preparation for the upcoming witnesses this week prompted heated exchanges between Mr. Koppe and Prosecutor Dale Lysak, CPLCL Marie Guiraud, and Judge Claudia Fenz. Aside from this matter, however, no other significant legal or procedural issues arose in Court this week.

A. Discussion of Defense Counsel Victor Koppe's Use of the Courtroom Interface

During Mr. Koppe's examination of Witness Srei Thân on February 23rd, Prosecutor Lysak noted that the Nuon Chea team placed "at least 557 documents" on the courtroom interface, and that the numbering "went up to 1300 entries," indicating the interface was technically not capable of handling so many documents. Mr. Lysak explained, "I think the problem may be that they broke the interface," and he called for Parties to act "in good faith," so that they only upload documents that they intend to utilize during questioning. Judge Fenz reminded the Parties that the Chamber was deliberating and preparing guidelines on this issue, after it had been raised one week earlier.⁶ However, she also noted that the Chamber hoped to avoid "micromanaging" the use of documents by relying on the "good faith" of Parties not to "exploit every leeway." Mr.

Koppe responded that he resented any implication that he was “not acting in good faith,” and he aggressively retorted, “I instructed my consultants to put [the documents] on the interface. What is this about bad faith?” When asked, Counsel acknowledged that he planned to use fifteen documents out of the hundreds his team had attempted to place on the interface. Judge Fenz instructed Mr. Koppe to forward these documents to the Parties to ensure they could find them.

Mr. Lysak rose again at the end of Monday the 23rd to note that the Nuon Chea team had listed 752 entries for the next witness, and he asked that the Defense Team “notify Parties by email of the documents they’ll actually use.” The President instructed Counsel to provide such a list prior to the next witness’ testimony. Before the next witness’ testimony the following day, Ms. Guiraud notified the Chamber that her team had not received the required list of documents the Nuon Chea team planned to use in its questioning. Mr. Koppe responded that the number of over 700 entries stemmed from translations of roughly 200 documents, which he insisted the “Civil Parties and surely the Prosecution should know by heart,” and that his team had acted “completely in good faith.” Judge Fenz responded bluntly to Mr. Koppe, asking him to explain “Why, if you’re in good faith, you obviously violated a clear order of the Court.” Ms. Guiraud also responded to Mr. Koppe’s insinuation that the Civil Parties were unprepared, stating, “Everyone’s doing their job. It’s not up to you to tell us how to do our job.” The President concluded discussion of the matter by explaining that the Chamber was continuing to deliberate on its draft instructions, and that the decision would be released shortly.

Accordingly, the Chamber published its “Directions to the Parties on the Use of Daily Trial Documents Interface” on Thursday, 26 February.⁷ The directive noted the Interface was used to advance the trial in Case 002/01 expeditiously, and it reiterated the requirement that “all Parties upload documents in connection with a witness, Civil Party, or expert before noon on the work day prior to the scheduled testimony.” Although the directive envisaged some flexibility on this, it reminded Parties to request leave from the Chamber for any exceptions, and it asked them to “reasonably” limit their use of the interface to the documents they expect to utilize.

IV. TRIAL MANAGEMENT

This week, the Trial Chamber continued to advance proceedings in Case 002/02, although it shortened the week to three days of hearings in order to provide the Parties with more time to review new documents from Case 004.⁸

A. Attendance

Nuon Chea waived his right to be present in the main courtroom and observed proceedings from the holding cell, while Khieu Samphan was present in the courtroom during all sessions throughout the week.

Judges Attendance: All judges of the Trial Chamber were present throughout the week, with the exception of national Judge You Ottara on 25 February 2015, due to personal commitments. The President announced that reserve national Judge Thou Mony was assigned to replace the Judge until he is available to return.

Civil Parties Attendance: There were approximately ten Civil Parties observing the proceedings each day this week from inside the courtroom.

Parties: All the Parties were present in the courtroom. As was noted by the Greffier on 23 February 2015, Mr. Kong Sam Onn, Defense Counsel for Khieu Samphan, arrived late to that morning’s session.

Attendance by the public: The Court’s international Security Officer remarked to monitors that many of the secondary school students brought to visit the Tribunal are too young to enter the

public gallery, as most first- and second-year students are under the required age of 16. He also observed that even those old enough to attend have trouble understanding the graphic nature of some testimony or paying attention to the proceedings from the public gallery.

DATE	MORNING	AFTERNOON
Monday 23/02/2015	<ul style="list-style-type: none"> ▪ Approximately 260 students from Chea Sim Chhuk Va High School, Khan Sen Sok, Phnom Penh ▪ 7 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 130 students and two teachers from Chea Sim Chhuk Va High School, Khan Sen Sok, Phnom Penh
Tuesday 24/02/2015	<ul style="list-style-type: none"> ▪ Approximately 240 villagers from Tram Kok district, Takeo province ▪ Approximately 100 secondary school students from Westland International School, Kandal Province ▪ 11 foreign observers 	<ul style="list-style-type: none"> ▪ Approximately 200 students from Hun Sen Chum Pu Vorn High School, Phnom Penh ▪ 4 foreign observers
Wednesday 25/02/2015	<ul style="list-style-type: none"> ▪ Approximately 200 students and 10 teachers from Hun Sen Samrong High School, Kampong Speu Province ▪ 2 monks ▪ 3 foreign observers 	<p><i>No public attendance</i></p>

B. Time Management

Prior to this week’s hearings, the Trial Chamber had adjusted its hearing schedule to provide Parties with greater time to review new evidence added to the Case 002/02 dossier from Case 004. The modified schedule included the midday adjournment of proceedings on Wednesday, 25 February, and the cancellation of hearings for Thursday the 26th. When the testimony of Witness Srei Thôn concluded on February 24th, the President promptly announced that hearings would continue instead for a full day on February 25th, and that the scheduled hearing for Tuesday, 3 March, would be diminished to a half-day starting in the afternoon that day. The President noted that the new Witness, Mr. Phann Chhen, is elderly and lives far away in Oddar Meanchey Province, so it was necessary to start and conclude his testimony within the week.

C. Courtroom Etiquette

Apart from the heated exchanges that arose from Counsel Victor Koppe’s use of the courtroom interface (see III.A), the Parties’ treatment of one another was generally positive and respectful.

D. Translation and Technical Issues

This week, the President effectively dealt with minor translation issues and technical interruptions during trial proceedings. However, there was one instance of particularly flawed translation, when the President announced changes to the hearing schedule. The interpreter misstated the dates and times of the changes, and Judge Lavergne intervened to slowly and clearly restate the President’s announcement. The most significant technical fault occurred as a result of Mr. Koppe’s insertion of hundreds of documents onto the courtroom interface, which the other Parties noted could not handle so many documents (see III.A).

E. Time Table

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Monday 23/02/2015	9:01	10:14 – 10:35	11:40 – 13:31	14:30 – 14:51	16:06	4 hours and 32 minutes
Tuesday 24/02/2015	9:02	10:14 – 10:34	11:50 – 13:37	14:49 – 15:12	16:03	4 hours and 31 minutes
Wednesday 25/02/2015	9:01	10:15 – 10:33	11:35 – 13:30	14:43 – 15:02	15:41	4 hours and 8 minutes
Average number of hours in session				4 hours and 23 minutes		
Total number of hours this week				13 hours and 11 minutes		
Total number of hours, day, weeks at trial				92 hours and 3 minutes		
26 TRIAL DAYS OVER 10 WEEKS						



*This report was authored by Johanna Hamark Kindborg, Huy Sambor, Nget Lonh, Daniel Mattes, Lina Tay, Phoebe Sabin, Penelope Van Tuyl, and Oudom Vong as part of AIJI's KRT Trial Monitoring and Community Outreach Program. AIJI 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

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No. 001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</i> (Case No. 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
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
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
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
RAK	Royal Army of Kampuchea
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

¹ See CASE 002/02 KRT TRIAL MONITOR, Issue 9, Hearings on Evidence Week 6 (16-19 February 2015), pp. 5-6.

² Mr. SREI Thôn (2-TCW-944) was questioned in the following order: international assistant prosecutor Dale LYSAK; national Civil Party Lawyer LOR Chunthy; Judge Jean-Marc LAVERGNE; international Co-Lawyer for Nuon Chea, Victor KOPPE; national legal consultant for Nuon Chea, SUON Visal; international Co-Lawyer for Khieu Samphan, Anta GUISSÉ; national Co-Lawyer for Khieu Samphan, KONG Sam Onn.

³ Civil Party Soy Sen detailed a particular incident in which ‘Little Duch’ directed him to collect the bodies of two women who he had just raped and killed. Soy Sen testified that he found two corpses with M-79 bulletheads inserted into their vaginas, and that, when he encountered ‘Little Duch’ upon his return to the prison compound, the cadre was laughing. The Civil Party also identified ‘Little Duch’ as one of the guards who he witnessed brutally kill two young children. He testified that ‘Little Duch’ was one of the “most wicked” of all the prison guards. Soy Sen also confirmed that ‘Little Duch’ was still alive and living in Takeo Province, whereas ‘Big Duch’ died at some point since the end of DK. See CASE 002/02 KRT TRIAL MONITOR, Issue 6, Hearings on Evidence Week 4 (2-6 February 2015), pp. 4-6.

⁴ Mr. PHANN Chhen (2-TCW-852) was questioned in the following order: President NIL Nonn; national assistant deputy prosecutor SREA Rattanak; international assistant prosecutor Dale LYSAK; national Civil Party Lawyer MOCH Sovannary; international Civil Party Lead Co-Lawyer Marie GUIRAUD; Judge Jean-Marc LAVERGNE; national legal consultant for Nuon Chea, SUON Visal; international Co-Lawyer for Nuon Chea, Victor KOPPE; national Co-Lawyer for Khieu Samphan, KONG Sam Onn; international Co-Lawyer for Khieu Samphan, Anta GUISSÉ; President NIL Nonn (for a second time); national Co-Lawyer for Khieu Samphan, KONG Sam Onn (for a second time).

⁵ In his Civil Party testimony, Soy Sen clarified that Ta Chhen was prison chief until after April 1975, when he was transferred to oversee Prison 204, and Ta Ann then took over the position. See Case 002/02 KRT Trial Monitor, Issue 7, Hearings on Evidence Week 4 (2-6 February 2015), p. 6.

⁶ See CASE 002/02 KRT TRIAL MONITOR, Issue 9, Hearings on Evidence Week 6 (16-19 February 2015), pp. 7-8.

⁷ Trial Chamber, “Directions to the Parties on the Use of Daily Trial Documents Interface” (26 February 2015), E341, <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2015-02-27%2014:53/E341_EN.PDF>.

⁸ See CASE 002/02 KRT TRIAL MONITOR, Issue 9, Hearings on Evidence Week 6 (16-19 February 2015), pp. 6-7.