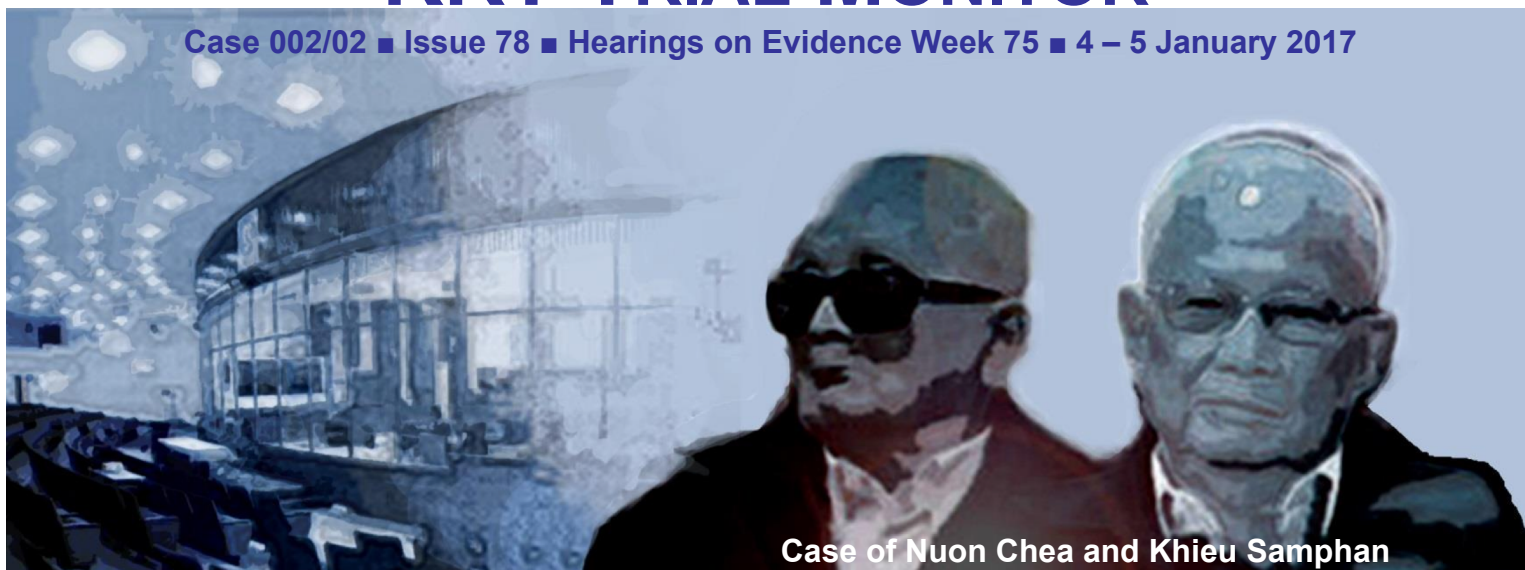


# KRT TRIAL MONITOR

Case 002/02 ■ Issue 78 ■ Hearings on Evidence Week 75 ■ 4 – 5 January 2017



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  
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*“They treated people like they would farm animals.  
A farmer doesn’t want his oxen to die,  
but doesn’t care about his oxen’s death the same as his children”*

- International Co-Prosecutor Nicholas Koumjian

## I. OVERVIEW

This week the Trial Chamber reconvened after a two-week recess over the New Year period, holding key document presentations on the role of the Accused.<sup>1</sup> Only the Defense Team for Khieu Samphan chose to present documents this week, and was assigned two court sessions to do so on Wednesday morning.<sup>2</sup> On Thursday afternoon, the Office of the Co-Prosecutors (OCP) was given one court session to respond to the documents presented by Khieu Samphan’s international Counsel. During his response, international Co-Prosecutor cited documents not used in Khieu Samphan’s original presentation, which elicited objections from that Defense Team. The Chamber decided to allow the OCP to continue in this manner, and will provide the Khieu Samphan Defense with the opportunity to rebut next week.

## II. SUMMARY OF KEY DOCUMENT PRESENTATIONS

The seventh set of key document presentation hearings in Case 002/02 were held this week. As usual, the Defense for Nuon Chea chose not to participate in hearings, while the OCP and CPLCL decided against presenting their own documents.<sup>3</sup> Khieu Samphan’s team used the opportunity to present documents that spoke to the overarching policies of the Communist Party of Kampuchea (CPK), in addition to Khieu Samphan’s individual role.<sup>4</sup>

### A. Documents Presented by Khieu Samphan Defense

International Co-Lawyer for Khieu Samphan, Anta Guissé, presented key documents related to the role of the Accused for two sessions on Wednesday morning. In addition to documents related specifically to the role of her client, she also spoke in detail about the general policies of the Communist Party of Kampuchea (CPK).

## **1. Existing Prejudices and Hardships in Cambodia Before 1975**

Anta Guissé began her document presentation by drawing the Chamber's attention to the situation in Cambodia prior to DK. She started by referring to Michael Vickery's book *Cambodia 1975 to 1982*, which describes the poverty of rural areas prior to 17 April 1975, and explains a deep division between those who lived in the cities and those who lived in villages. She argued that Vickery's book demonstrated the division existed prior to the DK's designation of "new" and "base" people, and went some way to explaining why people living in the countryside treated newcomers with suspicion after 1975.<sup>5</sup> Anta Guissé continued to make the link that the policies of the CPK were not that dissimilar from the experiences pre-1975 in regards to the practices of medicine. She pointed out that Cambodian peasants used a variety of herbal concoctions in which they had great faith. In his book, Vickery writes that those he interviewed were "alarmed" by abscesses resulting from poorly given injections during DK, however notes that he witnessed the same issue in 1960 in Kampong Thom Province. The first segment of Counsel Guissé's presentation thus presented CPK policies as not dissimilar to those that had existed prior to that period, or at the very least in line with social norms at the time.

## **2. CPK's Ultimate Aim to Improve Living Conditions**

Moving on, Anta Guissé next presented a series of contemporaneous documents to argue that the CPK policies had not intended to cause hardship but rather to improve living conditions of the rural areas. To this end she cited an October 1975 edition of Party magazine *Revolutionary Flag* which stated: "Among the parties of our own powers, the promotion of people's living standards is one of the most important duties in our immediate and long term efforts." Khieu Samphan's international Counsel argued that societal changes adopted by the CPK, including establishing cooperatives, was meant to establish equally shared resources nation-wide. She pointed out that it was in the best interests of the leadership to have a population with sufficient food to eat, as this would mean they could work harder for their country and also meant it would be more likely they would support the revolution. In one edition of *Revolutionary Youth*, cadres were instructed that if there were food shortages and the people were hungry, the cadres "must suffer it and must take measures in order to find solutions for the population." Counsel Guissé quoted from a number of such issues of *Revolutionary Flag* and *Revolutionary Youth* which mention the need to improve the living conditions of the people, arguing that this indicates that it was truly a priority for the CPK and, by extension, her client.

## **3. Zone Autonomy from Center**

Following on from the argument that official publications encouraged cadres to act in the best interest of the people, counsel Guissé argued that those cadres who acted cruelly or out of self-interest did so against specific instructions from the Center. She argued that such behavior was "morally condemned" by the Party, again highlighting that treating people poorly would have been counterproductive to morale and to the revolution generally. Next, Anta Guissé presented an article entitled 'Re-evaluation of the Role Played by Senior Leaders and Local Authorities and the Crimes Committed during the DK Regime,' written by Stephen Heder.<sup>6</sup> The excerpts she chose to read from this article related to instructions given to cadres during DK to treat "new people" in a "flexible and indulgent" way, and to assist them in adapting to rural life. She also used this article to demonstrate that, despite instructions to provide a guaranteed food ration to the population, local cadres would often send more rice to the Center for export in order to ingratiate themselves with the leadership. Thus, she argued, low food rations went against the policy of the Center, as did mistreatment of "new" people. Next, Counsel presented Roeland Burgler's paper *Eyes of the Pineapple* which spoke of local cadres engaged in the black market, explicitly against the policy of the CPL. Anta Guissé concluded from this that there was an absence of ideological attitude among lower level cadres, who were outside the control of the Center and could distort their policies for their own gain.

#### **4. CPK Trade Policies**

Next in her presentation, Anta Guissé addressed the trade and foreign relations of DK. She emphasized the commercial exchanges the regime had with other countries to outline that even the DK could not function without commerce with the outside world. As a result of Cambodia having no industry, this trade had to be with its agricultural products, mainly rice. In Francois Pouchaud's *Cambodia Liberated*, agriculture was seen as an economic tool to receive foreign currency. Without it, Cambodia could not purchase medicines or anything else to industrialize the country. Counsel Guissé again argued that this was all in aid of improving living conditions for the population. She continued by citing a December 1976 – January 1977 edition of *Revolutionary Flag*, and argued that work quotas were thus intended lead to increased rations and an improved economy, allowing the Cambodian population to increase to approximately 15-20 million. Ante Guissé particularly focused on the relationship between DK and China in the final key document, Philip Short's *Pol Pot: History of a Nightmare*. In particular, the extract she read was about the economic and military cooperation with China in building Kampong Chhnang Airfield. Short described the relationship as "purely pragmatic." In 9 February 1976, Standing Committee meeting minutes describe \$3,000,000 in aid given by Yugoslavia to DK to purchase medical supplies, which Ante Guissé argued demonstrates CPK policy to improve living standards and boost productivity within Cambodia.

#### **5. Khieu Samphan's Knowledge of S-21**

Finally, Counsel for Khieu Samphan emphasized that there were many aspects of conditions in DK of which her client had been unaware at the time. She specifically cited an interview leng Thirith gave to American journalist Elizabeth Becker, in which she said she and Khieu Samphan had only heard of the existence of S-21 Security Center when the two of them had attended a conference in Cuba in the 1980s.

#### **B. OCP Response to Khieu Samphan Presentations**

On Thursday afternoon, the Office of the Co-Prosecutors gave their responses to documents presented on Wednesday by the Khieu Samphan Defense on the role of the Accused. The overall argument made by the international Co-Prosecutor in his response was that, regardless of whether the CPK, and by extension the two Accused, had explicitly intended people to die during the regime, they had been "simply indifferent to suffering."

##### **1. Rebuttal of Existing Prejudices Argument**

International Co-Prosecutor Nicholas Koumjian addressed claims made by the Khieu Samphan Defense that the mistreatment of "new" people was not a policy of the Center, but rather was a natural result of existing prejudices held by those in the country against those from the city. To address this, first Mr. Koumjian pointed out that none of the city people had gone to the countryside by choice, referring to a *New York Times* article "Three Unlikely Cambodian Allies Map War on Vietnam," published on 9 July 1982, in which Khieu Samphan admits he was part of the decision to forcibly relocate people from the cities to the countryside. Mr. Koumjian continued by asking "if people were treated equally, why did the Center create distinctions between people?" referring to unspecified editions of *Revolutionary Flag* which differentiated people in cooperatives into "full rights, candidates and deposittee members." The OCP's argument was therefore that the CPK explicitly created distinctions between people, and that these distinctions led to effective "second class citizenship" for many.

##### **2. Response to Eyes of the Pineapple**

The OCP specifically responded to the Khieu Samphan Team's use of Roeland Burgler's dissertation *Eyes of the Pineapple*. Mr. Koumjian noted that he was unable to learn much

about this work or the qualifications of the author, but found that it did not involve any original research. After pointing out its potential lack of probative value, Counsel Koumjian then read excerpts from Burgler's book that contradicted Khieu Samphan's argument that the Center did not have control over the zones, saying the Center was unable to admit its mistakes, and did not allow any criticism of its policies.

### **3. Center's Authority over Zones**

Nicholas Koumjian quoted Ben Kiernan's work *The Pol Pot Regime* when addressing the Khieu Samphan Team's claims that the Center had limited control over what happened in the zones and lower levels. The OCP argued that while zone and regional leaders at the district level had authority, leaders were all ultimately loyal to the Center, as they had been hand-picked for their positions.<sup>7</sup> The OCP acknowledged that it made sense for the Khieu Samphan Defense to defend the policies of the CPK leadership, however Counsel reiterated that while starvation was not the conscious objective of the Khmer Rouge leadership, the regime was indifferent to the people's suffering. Koumjian argued that they exercised powers of ownership over the population, and that "a farmer doesn't want his oxen to die, but doesn't care about his oxen's death the same as his children."

### **4. CPK Policies Around Trade**

The OCP also referred to the Khieu Samphan Defense's argument that the export of goods was "normal" and good for the economy, asking "When your own people are starving, why export rice?" Counsel Koumjian read excerpts from a speech made by Khieu Samphan on 15 April 1977, in which he said they could feed people a sufficient ration allocated by the state, and that there was a good surplus. The OCP argued that the Center was not uninformed about food shortages in the zones, by reference to several telegrams including one from Ruos Nhim on 11 May 1978 where he said that rice given by Angkar would be running out by May 1978. In response to the Defense argument that food shortages were the result of low-level cadre sending too much rice to the Center to try to curry favor, Mr. Koumjian cited information to the contrary from an interview with Toat Thoeun, in which the interviewee said those who did not send sufficient rice to the Center were accused of betraying the revolution.<sup>8</sup>

### **5. Khieu Samphan's Knowledge of Zone Conditions and Activity at S-21**

The OCP also addressed claims made by the Khieu Samphan Defense that the Accused did not know about what was happening in the zones and the starvation of those in the countryside. Counsel Koumjian referred to a document where the late King Father Norodom Sihanouk said that he travelled with Khieu Samphan across DK from September 1975 until April 1976. The late King Father said he saw that the communes were concentration camps, that sleep was not allowed and that people had to work. The late King recalled being ushered back into his car by Khieu Samphan on one occasion where he had alighted in order to go and investigate further.

Nicholas Koumjian dismissed outright the claim made by the Khieu Samphan Defense that the Accused did not have knowledge of S-21 during the regime, saying such a suggestion was "simply incredible." In response to Defense Counsel's reference to the Ieng Thirith interview, he brought up Khieu Samphan's book in which the Accused claims not to have learned about the Security Center until watching Rithy Panh's film *S-21: The Khmer Rouge Killing Machine*, which had not been released until 2003, significantly after he was in Cuba with Ieng Thirith.<sup>9</sup>

The OCP also referred to the Standing Committee meeting minutes of 8 March 1976, in which the North Zone leadership reported to party leaders in Phnom Penh, including Nuon Chea and Khieu Samphan, on matters such as arrests and large numbers of ill people at worksites. Mr. Koumjian also referred to a number of interviews Khieu Samphan had given, where Khieu Samphan had told one journalist that 10,000 people were eliminated during the revolution.



Counsel also cited an interview Khieu Samphan gave to Stephen Heder, in which he spoke of the need “to exterminate enemies of all stripes” and said those who tried to infiltrate the party from within had been dealt with.<sup>10</sup> The OCP argued that these documents showed not only Khieu Samphan’s “knowledge of the killing campaign, but also his active participation, facilitation and instigation of that campaign.”

### **III. LEGAL AND PROCEDURAL ISSUES**

Although hearings were only held over three sessions this week, a significant legal issue was raised. During the second day of key document hearings, an extended debate ensued between the Khieu Samphan Defense and the OCP on the appropriate use of documents.

#### **A. Objections to OCP’s Use of Documents in Rebuttal**

Counsel Guissé objected to Mr. Koumjian’s use of documents almost as soon as he had begun to respond to her key document presentation. Asking for a reference to support his argument, Counsel Guissé argued that documents should not be used in responses to key document hearings when they had not been part of the initial key document presentation. Although Mr. Koumjian argued that this was common practice and that the Defense Team itself had done so in the past, Counsel Guissé denied this and asked the Co-Prosecutor to give her one example of her ever having done so. Judge Fenz intervened to point out that Defense Counsel had “gone beyond” the scope of the segment in her initial presentation and “basically started pleading.” Defense Counsel responded that this was irrelevant to the argument currently being made, and insisted that the OCP was going beyond standard practice by using documents she had not referred to in its response to her. After conferring among themselves, the Bench announced that, while it may be common practice, the Trial Chamber has never explicitly prohibited the use of different documents during responses to key document presentations, as long as they are admitted as evidence. Judge Lavergne, on behalf of the Bench, then offered to give the Khieu Samphan Team a chance to respond to the documents the OCP referred to in their presentation next week.<sup>11</sup> At the end of his response to the key document presentations, Nicholas Koumjian cited a transcript from proceedings on 30 April 2015 in which Kong Sam Onn had used two documents not initially presented by the OCP in its document presentation, pointing out that at that time no Party had expressed an issue with this practice.<sup>12</sup>

### **IV. TRIAL MANAGEMENT**

This week, the Trial Chamber held key document hearings over the course of three court sessions over two days after returning from two-week break of annual judicial recess.

#### **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.

**Judge Attendance:** International reserve Judge Martin Karopkin was absent in the courtroom this week, and national Judge Ya Sokhan was also absent due to “urgent issues.” National reserve Judge Thou Mony was appointed to replace his seat.

**Parties:** International Defense Lawyer for Nuon Chea, Victor Koppe, was absent due to health issues this week, but his national colleague Son Arun was present in the courtroom to represent their client.

**Attendance by the public:**

DATE	MORNING	AFTERNOON
Wednesday 04/01/2017	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Boribor District, Kampong Chhnang Province</li> <li>▪ 11 foreign observers</li> <li>▪ 9 Civil Parties</li> </ul>	<i>No proceedings</i>
Thursday 05/01/2017	<i>No proceedings</i>	<ul style="list-style-type: none"> <li>▪ Approximately 150 villagers from Boribor District, Kampong Chhnang Province</li> <li>▪ 17 foreign observers</li> <li>▪ 8 Civil Parties</li> </ul>

**B. Time Management**

After returning from the end of year judicial recess, this week the Trial Chamber held the final key document hearings for Case 002/02 on the role of the Accused. Parties sat in half-day sessions on Wednesday morning and Thursday afternoon due to the majority of Parties choosing not to present documents. After objections from the Khieu Samphan Team over the substance of the OCP's response to their presentation, the Trial Chamber granted Khieu Samphan's Team time next Tuesday to respond.

**C. Courtroom Etiquette**

This week there were no significant breaches of courtroom etiquette.

**D. Translation and Technical Issues**

Overall, there were no substantial issues of the translation and technical interruption in this week.<sup>13</sup>

**E. Time Table**

DATE	START	MORNING BREAK	LUNCH	AFTERNOON BREAK	RECESS	TOTAL HOURS
Wednesday 04/01/2017	9:00	10:08-10:29	-	-	11:33	2 hours 12 minutes
Thursday 05/01/2017	13:31	-	-	-	14:41	1 hours 10 minutes
Average number of hours in session				1 hours and 41 minutes		
Total number of hours this week				3 hours and 22 minutes		
Total number of hours, day, weeks at trial				1024 hours and 25 minutes		
270 TRIAL DAYS OVER 78 WEEKS						

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



**Unless specified otherwise,**

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

**Glossary of Terms**

Case001	<i>The Case of Kaing Guek Eav alias "Duch"</i> (CaseNo.001/18-07-2007-ECCC)
Case002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan</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
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

<sup>1</sup> Key Document Hearings are usually held at the end of each trial segment. The key document hearings allow parties to present each other with the key documents that are relevant to each segment, see Trial Chamber, “Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02” (17 December 2014) E315/1. For a summary of the first set of key document hearings in Case 002/02, on the Tram Kak District cooperatives and Kraing Ta Chan Security Center, see CASE 002/02 KRT TRIAL MONITOR, Issue 17, Hearings on Evidence Week 14 (27-30 April 2015). The next key document hearings were held at the end of the segment on three DK-era worksites; see CASE 002/02 KRT TRIAL MONITOR, Issue 28, Hearings on Evidence Week 25 (24-27 August 2015), and CASE 002/02 KRT TRIAL MONITOR, Issue 29, Hearings on Evidence Week 26 (1-3 September 2015). The third covered the treatment of targeted groups, see: CASE 002/02 KRT TRIAL MONITOR, Issue 44, Hearings on Evidence Week 41 (23-26 February 2016) pp. 1-4; the fourth covered security centers and internal purges was covered in CASE 002/02 KRT TRIAL MONITOR, Issue 62, Hearings on Evidence Week 59 (11-12 August 2016) pp. 5-7 and CASE 002/02 KRT TRIAL MONITOR, Issue 63, Hearings on Evidence Week 60 (15-18 August 2016) p. 4; the fifth covered the regulation of marriage, see CASE 002/02 KRT TRIAL MONITOR, Issue 66, Hearings on Evidence Week 63 (5-8 September 2016) pp. 1-4; and the most recent covered the nature of armed conflict in CASE 002/02 KRT TRIAL MONITOR, Issue 72, Hearings on Evidence Week 69 (31 October – 3 November 2016) pp. 5-8.

<sup>2</sup> The Khieu Samphan Defense does not always present key documents in these hearings. In the second and fourth sets of key document hearings they responded to documents presented by the OCP and LCLCP however did not present any documents of their own. This is the first time the OCP chose not to present its own key documents. For summaries of prior document hearings see See FOOTNOTE 1.

<sup>3</sup> The Nuon Chea Team has not participated in the key document hearings since they boycotted the second round of hearings. Although they declined to participate actively in proceedings, Counsel Son Arun was present to represent his client in the courtroom this week.

<sup>4</sup> On numerous occasions, international co-counsel for Khieu Samphan, Anta GUISSÉ, explained that she had been told throughout Case 002/02 proceedings to save arguments about CPK policy until the segment on the role of the Accused, and that this was why she focused her presentation thus. On Thursday Judge Fenz asked: “would you agree that you have gone beyond in your presentation? You basically started pleading. We have listened and we have not interrupted, but the role of the Accused would have been more narrow.”

<sup>5</sup> She argued that, as those in rural areas had adapted and could live well in those conditions, they could not see why others, for instance those evacuated in April 1975, could not adapt and surmised that it was due to laziness and corruption.

<sup>6</sup> Anta Guissé reminded the Chamber that Mr. Heder had testified as an expert witness in Case 002/01 however despite her team requesting that he reappear as an Expert in Case 002/02 he had not been called. For a summary of Mr. Heder’s Case 002/01 testimony, see: CASE 002 KRT TRIAL MONITOR, Issue 67, Hearings on Evidence Week 62 (8-11 July 2013) pp. 2-4 and CASE 002 KRT TRIAL MONITOR, Issue 67, Hearings on Evidence Week 62 (8-11 July 2013) pp. 1-6.

<sup>7</sup> Nicholas Koumjian specifically argued that, although Counsel Guisse had cited Philip Short’s book to back up her argument, elsewhere in his book he also argued that those in the zones were ultimately loyal to the center.

<sup>8</sup> Toat Thoeun was the adopted son of Ruos Nhim and was interviewed by filmmaker Robert Lemkin.

<sup>9</sup> Ieng Thirith was alleged to have held the position of DK Minister of Social Affairs and was initially charged along with Khieu Samphan and Nuon Chea in Case 002, however was found unfit to stand trial on 13 September 2012 due to dementia and she passed away on 22 August 2015.

<sup>10</sup> Nicholas Koumjian pointed out that the language used by Khieu Samphan in this interview echoed the language used by Pol Pot and Nuon Chea, indicating their close relationship and like-mindedness.

<sup>11</sup> Initially the Bench suggested such a response should be heard the very same day, however the Khieu Samphan Team argued that 21 of the 26 documents cited by the OCP had not been cited by the Defense and therefore they would need more time to prepare their response. Ultimately it was decided that they could do so next week.

<sup>12</sup> Dale Lysak, for the OCP, at the time said: “I just want to note for the record that neither of the last two documents that are being discussed are documents we presented. These are documents that were on the list of documents Khieu Samphan’s team wished to present. I actually have no objection... but I just want the record to be very clear.” See Trial Chamber “Transcript of Trial Proceedings 30 April 2015, Trial Day 276” (7 May 2015) E1/295.1, p. 53 and CASE 002/02 KRT TRIAL MONITOR, Issue 17, Hearings on Evidence Week 14 (27-30 April 2015) p. 9.

<sup>13</sup> The only noteworthy exception was on Wednesday when there was an error of translation regarding pronunciation of Khmer name spoken by Counsel Anta Guissé; however, the French-to-Khmer interpreter managed to correct the issue French to Khmer interpreter corrected Khmer name ‘Chhunk Rin’ to ‘Touch Rin’ during Counsel Anta Guissé’s presentation on key documents.