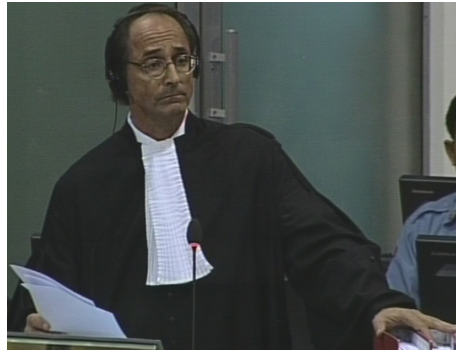




**The Case 002 Trial Continues:
Conclusion of Testimony from Peoudara Vanthan and Testimony of Witness Prak Yut**

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Michael Karnavas, international counsel for Ieng Sary, continues the defense's questioning of DC-Cam representative Peoudara Vanthan.

On Wednesday, January 25, 2012, the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (ECCC) resumed its hearing on evidentiary issues with a third consecutive day of testimony from Documentation Center of Cambodia (DC-Cam) deputy director Peoudara Vanthan. Prior to Mr. Vanthan's testimony, all three ECCC Case 002 defense teams had vigorously challenged the neutrality of DC-Cam, which researches the history of the Democratic Kampuchea (DK) period in Cambodia.¹ During the previous day's questioning, the defense teams for accused Nuon Chea and Ieng Sary had both questioned Mr. Vanthan concerning the goals, policies and documentation processes in place at DC-Cam. At times, this questioning became rather adversarial, with the defense teams arguing that Mr. Vanthan was not directly answering questions and challenging Mr. Vanthan on DC-Cam's neutrality as an institution.

DISCLOSURE: DC-Cam is a sponsor of the Cambodia Tribunal Monitor, and its director, Youk Chhang, serves as co-managing editor. The author of this blog post currently works with DC-Cam as a legal advisor.

¹ For more information on DC-Cam's work, see www.dccam.org.

Continued Questioning of Witness Peoudara Vanthan by Ieng Sary Defense

Wednesday’s proceedings began with continued questioning of Mr. Vanthan by Ieng Sary international defense counsel Michael Karnavas, who began by revisiting the issue raised the previous day of whether DC-Cam maintains specific files “dedicated” to individual Case 002 accused. Mr. Vanthan stated that there is no specific file on each accused maintained at DC-Cam. Mr. Karnavas then displayed a document (see Figure 1 below) provided to the ECCC Defense Support Section (DSS) by Mr. Vanthan himself that included compiled documents concerning accused Ieng Sary.

DC-CAM FILES: IENG SARY						
Compiled by Veithien P. Dara						
Date of Doc	Category	#Page	From	To	Persons Involved	
06-Oct-75	Report	3	Kiet Chhon	N/A		
09-Oct-75	Minute of the Standing Committee Meeting	32	N/A	N/A	Co-accused Van (Ieng Sary) assigned to charge in favor both Party and State.	
02-Nov-75	Minute of the Standing Committee Meeting	44	N/A	N/A	Participant: Pol, Nuon, Vi Khieu, Thuch, Douan, He Yem.	
26-Jan-76	Telegram # 78	2	N/A	Official #70 and Vy	Copy for Pol, Nuon, Van Douan	
27-Jan-76	Telegram #79	3	N/A	Brother	Copy for Pol, Nuon, Van Douan	
29-Jan-76	Telegram #81	1	N/A	Brother	Copy for Pol, Nuon, Van Douan	
02-Feb-76	Minute of the Standing Committee Meeting	2	N/A	N/A	Participant: Pol, Nuon, Vi Khieu, Thuch, Douan, He Yem.	
22-Feb-76	Minute of the Standing Committee Meeting	4	N/A	N/A	Participant: Pol, Nuon, Vi Khieu, Thuch, Hean, Do.	
28-Feb-76	Minute of the Standing Committee Meeting	14	N/A	N/A	Participant: Pol, Nuon, Vi Khieu, Thuch, Hean, Do.	
07-Mar-76	Telegram	2	Ya	Brother	Copy for Pol, Nuon, Vi Khieu, Thuch, Douan	
08-Mar-76	Minute of the Standing Committee Meeting	4	N/A	N/A	Participant: Pol, Nuon, Vi Khieu, Thuch, Douan, He Yem.	

Figure 1. Record of DC-Cam files on Ieng Sary, provided by DC-Cam to the ECCC Defense Support Section.

After some translation confusion relating to the terms “file” and “folder,” Mr. Vanthan stated that DC-Cam has “folders” on each accused and that these were created to assist researchers who came to DC-Cam seeking information. After being accused of being “less than truthful” in his previous testimony, Mr. Vanthan testified that DC-Cam does not organize documents by their relevance to any accused upon receipt.

Mr. Karnavas then showed Mr. Vanthan an email purportedly from author Peter Maguire to DC-Cam director Youk Chhang, referencing the “Ieng Thirith file.” This document was followed the production of another email copy – this one dated 1998 and sent from Youk Chhang to Khmer Rouge scholar Ben Kiernan and carbon copied to author Helen Jarvis that had a handwritten annotation on it stating “Dara, for NC file.” Mr. Vanthan acknowledged the contents of this annotation, prompting a prosecution interjection for the production of case file document number for the email document.

Mr. Karnavas explained that the document had not been entered into the case file and provided a hard copy of the document to the prosecution. He then asked Mr. Vanthan to read out the annotations on the document again. This led to a testy exchange between Mr. Vanthan, who appeared annoyed at being asked to repeat himself, and Mr. Karnavas, who did not appreciate Mr. Vanthan’s perceived reluctance to cooperate during questioning.

The Chamber then intervened and Judge Sylvia Cartwright stated that normally documents not on the case file are not typically used for questioning in civil law jurisdictions and then asked Mr. Karnavas for a further explanation about the provenance of new email document.

Mr. Karnavas explained that the email document was only obtained by the Ieng Sary defense the afternoon of the previous day and could not be put onto the case file. He declined to provide the identity of the individual who provided the document, however, explaining that he had provided assurances of confidentiality to this person. After further discussion between the Chamber and parties, Mr. Karnavas argued that the document goes to the credibility of Mr. Vanthan as a witness, as it impeaches his previous testimony that DC-Cam does not create accused-specific files.

Eventually, Chamber President Nil Nonn sustained the objections against use of the email document, stating that all evidence must be submitted to the case file prior to its use.

Mr. Karnavas accepted this ruling and noted that the document would be submitted for inclusion in the case file. He further noted that the Ieng Sary defense would probably use this document in the future when DC-Cam director Youk Chhang testifies and noted that the Chamber had indicated it would call Mr. Chhang as a witness, apparently confirming recent speculation on this subject.

Following this exchange, Mr. Karnavas turned back to the issue of what, if any, “analysis” of authenticity and reliability is done on documents received by DC-Cam. This line of questioning prompted another objection from the prosecution, which argued that Mr. Karnavas should not be permitted to ask Mr. Vanthan for legal opinions. This objection was sustained, and Mr. Karnavas rephrased by asking Mr. Vanthan about documents found by DC-Cam in the National Archives of Cambodia. Mr. Vanthan responded that DC-Cam did not request any formal statement regarding the previous chain of custody for documents received from the Archives, but Mr. Vanthan did indicate that he asked the custodian of the documents at the Archives about how the documents came into the possession of the Archives.

Upon further questioning on this topic, Mr. Vanthan stated that DC-Cam did not request official documentation from the Archives about the original source(s) of the documents because the Archives is a well-established institution that keeps its own records and is still in existence. Thus, such official information is still available at the Archives, and Mr. Vanthan suggested that, if the defense wants further information on the chain of custody of DC-Cam documents collected from the Archives, it should question a representative from the Archives itself.

Next Mr. Karnavas asked if DC-Cam has any official protocol it uses to record information on the chain of custody for documents received from individual donors. Mr. Vanthan responded that the questions DC-Cam asks donors depends on each particular document and who provided it. He further stated that documents from individuals are typically provided directly to DC-Cam director Youk Chhang, who then turns the documents over to Mr. Vanthan to catalogue. Upon further questioning, Mr. Vanthan explained that he did not personally receive any documents from scholars. As Mr. Chhang typically receives such documents, Mr. Vanthan maintained that he cannot comment on the provenance of such documents.

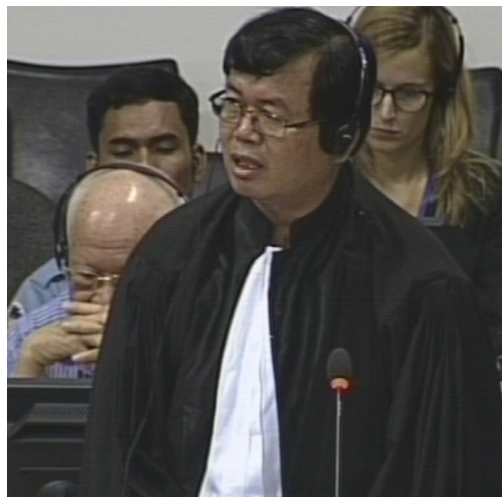
As for documents from the Cambodian Ministry of Interior, Mr. Vanthan testified that he personally went to the Ministry to receive such documents. Mr. Karnavas then asked whether the Ministry simply gave the documents to DC-Cam or whether DC-Cam actually entered the

Ministry and was provided full access to their archives. Mr. Vanthan responded only generally, stating that the permission letter DC-Cam received from the Cambodian government allows the Center to collect DK period documents from anywhere within the country.

Mr. Karnavas then turned to the archive of former Cambodian King Norodom Sihanouk. Mr. Vanthan stated that he was unsure if DC-Cam made any efforts to access this archive to search for DK period documents.

When asked about efforts by DC-Cam to gather documents from foreign governments, Mr. Vanthan stated that DC-Cam director Youk Chhang authored an open appeal letter that was transmitted to many countries, requesting that the recipient governments send any documents related to the DK period in their possession to DC-Cam. He stated he is unsure whether governments responded to these requests and noted that Mr. Chhang himself is in a better position to answer such questions.

This concluded questioning by the Ieng Sary defense, and the floor was turned over to the Khieu Samphan defense to put questions to Mr. Vanthan.



National lawyer Kong Sam Onn takes the lead on questioning witness Peoudara Vanthan for the Khieu Samphan defense.

Questioning by Khieu Samphan Defense

Khieu Samphan national defense counsel Kong Sam Onn then proceeded to question Mr. Vanthan, beginning with some general questions about Mr. Vanthan's experience and the history of DC-Cam as an institution. These initial questions repeated much of the basic information elicited during the previous two days of questioning.

During this questioning, Kong Sam Onn asked for the precise name of the Yale University project which initially formed DC-Cam. Mr. Vanthan affirmed that the name used was the "Cambodian Genocide Project" in English but noted that, when he began working at DC-Cam in 1995, the office in Phnom Penh was already referred to as the "Documentation Center."

Next, Kong Sam Onn asked Mr. Vanthan whether DC-Cam's work includes activities that can be labeled as "investigative" in nature, specifically the "forensic program." Mr. Vanthan responded that forensic tasks are conducted by other individuals and he cannot comment on their work, noting that the names of the forensic project team members are available on DC-Cam's website.

As for DC-Cam's Mass Grave Mapping project, Mr. Vanthan stated that the project is not empowered to "investigate" as it has no judicial authority but has been collecting information on mass graves in Cambodia as part of its overall work. When asked what he thinks of the Mapping project, Mr. Vanthan responded by simply stating, "I think it is good!", prompting laughs among the courtroom audience.

Kong Sam Onn then asked about DC-Cam's activities in training judicial police in Cambodia. Mr. Vanthan stated that he was not involved in this activity and thus cannot comment on it.

Following some additional questioning, Kong Sam Onn inquired as to what questions Mr. Vanthan asked donors when receiving documents on behalf of DC-Cam. Mr. Vanthan stated that he generally asked questions about where the documents were found and surrounding circumstances, but did not record the answers to such questions anywhere.

Ieng Sary Retires to the Holding Cell at His Regular Time

Ieng Sary's counsel Ang Udom then rose just prior to the morning break and informed the Chamber that, as has been his habit throughout the evidentiary hearings, Ieng Sary wished to waive his right to be present in the courtroom and to move to the holding cell to follow the proceedings remotely via audio-visual link. The Trial Chamber granted the request, contingent on the receipt of a written waiver from Ieng Sary.

Continued Questioning by Khieu Samphan Defense

Following the break, Kong Sam Onn asked Mr. Vanthan about his activities interviewing survivors of the DK period. Mr. Vanthan testified that he has personally interviewed over 100 individuals, and DC-Cam as an institution has interviewed approximately 1,000 individuals.

Kong Sam Onn then asked about the role of "advisors" to DC-Cam. Mr. Vanthan explained that all advisors who work with DC-Cam are bound by Center guidelines and provide their services free of charge. He further explained that these advisors provide specific expertise to DC-Cam within their individual fields of specialization.

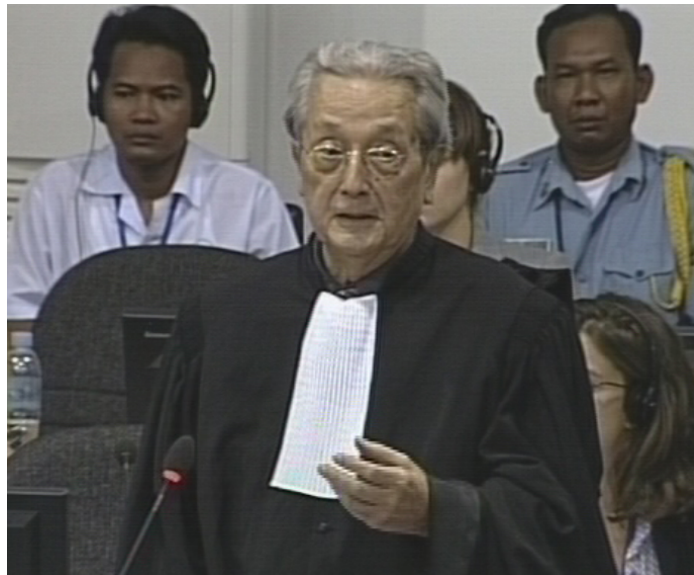
When asked about the "purpose" of recruiting advisors at DC-Cam, Mr. Vanthan stated that these advisors assist in the Center's work, particularly when specialized knowledge or training is necessary. He further noted that DC-Cam is not "bound" by any advice given to the Center by its advisors.

Counsel Kong Sam Onn then asked whether DC-Cam's advisors are ever asked to produce documents for the Center and displayed a document from DC-Cam on the courtroom monitor. The document displayed was the cover page of a document entitled *Documenting the Crimes of Democratic Kampuchea*, authored by Professor John Ciorciari, a legal advisor to DC-Cam, in

collaboration with DC-Cam director Youk Chhang.² Kong Sam Onn then asked whether Mr. Ciorciari had conducted analysis of the documents of DC-Cam. Mr. Vanthan responded by simply reiterating that expert advisors, such as Mr. Ciorciari, provide advice to DC-Cam on various matters, but the Center is in no way bound by this advice.

Next, counsel asked Mr. Vanthan to read out a portion of the article in English. Mr. Vanthan declined, stating that he is more comfortable using the Khmer language only. The Chamber then intervened and instructed Kong Sam Onn and other parties to cease requesting that Mr. Vanthan use English, as he has the right to use Khmer exclusively should he so choose.

Kong Sam Onn then read out a portion of the article that utilized the term “documentary evidence” to describe the holdings of DC-Cam and subsequently handed the floor over to his international colleague Jacques Verges to continue the questioning.



Jacques Verges, international counsel for Khieu Samphan, continues the examination of DC-Cam representative Peoudara Vanthan.

Mr. Verges began by exploring financial contributions to DC-Cam. He asked Mr. Vanthan how he can be sure that private donations to the Center are made “without conditions” when Mr. Vanthan himself had stated previously he was unsure of financial matters. Mr. Vanthan responded that he does indeed know the identities of DC-Cam’s donors but not the specific amounts each one pledged and that he could not list all donors from memory.

Mr. Verges then asked whether DC-Cam would continue working with a donor who believes that “all of the crimes were committed by the Americans.” Mr. Vanthan responded only generally, stating that all of DC-Cam’s donors require transparency and efficiency and that the Center has been fully audited. Mr. Verges then argued that there is “a secret here which is problematic,” stating that perhaps Mr. Vanthan needs to be “cured of amnesia.”

² This document is a chapter in a book on Khmer Rouge legal accountability, edited by Beth Van Schaack and Jaya Ramji, entitled *Delivering Justice for the Crimes of the Khmer Rouge* (London: Mellen Press, 2005).

The prosecution then objected to the form and relevance of the questioning by Mr. Verges, stating that DC-Cam's public website lists all of DC-Cam's donors and that this list is quite long and "not in controversy."

Despite the prosecution's objection, Mr. Verges pressed on but was quickly rebuked by Chamber President Nil Nonn, who chastised Mr. Verges for suggesting that Mr. Vanthan may need an examination of his memory, noting that Mr. Vanthan is receiving translated questions and reminding Mr. Verges to use appropriate language in the courtroom.

Mr. Verges then asked if Mr. Vanthan remembers at least the names of some of the organizations that have donated money to DC-Cam. Mr. Vanthan indicated that he does remember some donors, naming USAID and SIDA (the Swedish International Development Agency) as examples. Mr. Verges then asked for the names of some of the universities working with DC-Cam. Mr. Vanthan listed Yale University, New South Wales University, Santa Clara University and Rutgers University as examples of such institutions.

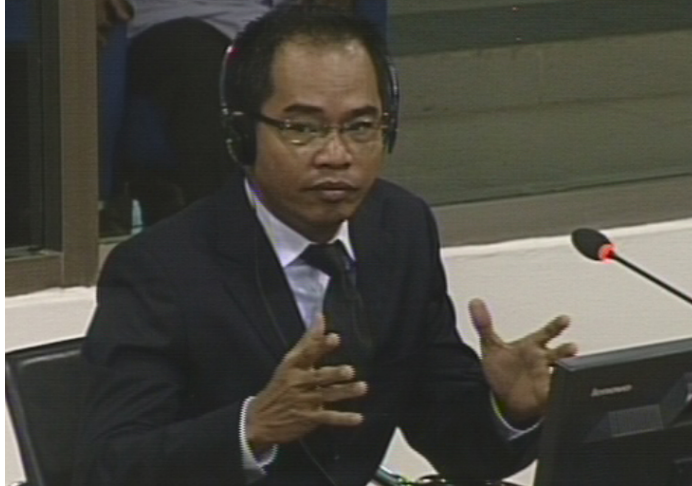
Mr. Verges next asked who authored DC-Cam's questionnaire used for interviewing. Mr. Vanthan responded that Mr. Ciorciari drafted the document originally but that it has been translated to Khmer to be used by the staff during field work.

Next, Mr. Verges asked how DC-Cam can consider documents received from Vietnam as "reliable," stating that the Vietnamese have no expertise in documenting the history of Cambodia. The prosecution again objected, stating that this issue had already been ruled upon by the Chamber and that it was not necessary for Mr. Vanthan to be forced to opine on the expertise of Vietnamese document providers. The Chamber upheld the objection and directed Mr. Verges to change his line of questioning.

In response, Mr. Verges simply moved on, asking about the type of paper used during the DK period. Specifically, he asked whether paper commonly used in Cambodia and Vietnam has changed in the past 25 years. Mr. Vanthan responded that DC-Cam inspects purported DK period paper documents by simply looking at them and that it is typically apparent to the naked eye whether a document is quite old or more recent.

Mr. Verges then stated that he accepted this answer, though it was clear he was not satisfied with the response. He summed up by thanking the Chamber for allowing him to ask questions, even ones that are "political" in nature, clearly alluding to his comments about Vietnam, noting that it is his duty as an advocate to conduct such questioning.

With the conclusion of the defense's questions, the Chamber then thanked Mr. Vanthan for providing his testimony over two and a half days and excused him.



DC-Cam representative Peoudara Vanthan concludes his testimony on Wednesday at the ECCC.

Nuon Chea Retires to the Holding Cell for the Day

Counsel for Nuon Chea then rose prior to the regular lunch break and informed the Chamber that Nuon Chea wished to waive his right to be present in the courtroom and be allowed to follow the proceedings from the holding cell via audio-visual link. The Chamber granted this request, as usual, and reminded the defense team to provide a written waiver with “clear reasons” why Nuon Chea physically needed to exit the courtroom, rather than simply a line requesting to be excused.

Trial Chamber Announces that Afternoon Session Cut Short

When the hearing commenced following the lunch break, Chamber President Nil Nonn informed the parties that the Chamber would adjourn for the day at 2:40 p.m., as the Chamber judges needed to meet at this time and discuss “other matters.”

Chamber Returns to Hearing Substantive Evidence with the Testimony of Witness Prak Yut

The conclusion of Mr. Vanthan’s testimony marked the end of the present inquiry into evidentiary matters in Case 002. The Chamber then called the next factual witness scheduled to testify on the issue of the historical background of the DK period. This witness was Prak Yut, a 67-year-old woman originally from Tram Kok district in Takeo Province who currently lives in Battambang province. Following some preliminary questioning by the Chamber President, the floor was turned over to the prosecution.

Prosecution Questioning of Prak Yut

Prosecution national counsel Seng Bun Kheang then began questioning by asking Prak Yut about her experiences during the DK period. Prak Yut stated that she joined the Khmer Rouge revolutionary movement because everyone where she lived did so at the time. She further testified that she was very young when she joined the revolution and never attended school and thus does not know much about Khmer Rouge policy.

Prak Yut next testified that she was initially placed in charge of tending cows after joining the Khmer Rouge but was later made chairperson of a Mobile Work Unit. She explained that there were approximately 200-300 individuals assigned to her Mobile Unit, which was tasked with building dams and other work. These individuals were “collected” from the villages, but Prak

Yut did not know how workers were assigned or recruited to the Mobile Unit. She stated that the minimum age for workers in such units was 15 years old.

Next, Seng Bun Kheang asked Prak Yut about specific dams her Mobile Unit worked on, but she did not remember much specific information about such dams. Upon further questioning about living conditions at the worksites, Prak Yut stated that the food ration was “decent” for the people in her particular location.

At this point, international counsel Michiel Pestman for Nuon Chea rose and asked for clarification regarding the time frame of the events being discussed by Prak Yut, stating that it is unclear whether her testimony is relevant to the first Case 002 “mini-trial.”

When asked about the relevant time period, Prak Yut claimed that she cannot recall specific time periods, but it seemed that she was discussing the early 1970s generally. Seng Bun Kheang then proceeded to ask Prak Yut about certain aspects of the previous statement she provided to the ECCC.

This led to a second objection from Mr. Pestman, who argued that if the time period being discussed was after 1975, the testimony is irrelevant to the topic of the historical background of the DK period.

Ieng Sary defense counsel Michael Karnavas then objected as well, arguing that the prosecution was improperly reading the previous statements of the witness into evidence and asking for commentary from Prak Yut, rather than simply using the statement to elicit live testimony.

The Chamber sustained both objections and instructed the prosecution to stay on-topic.

The prosecution then turned its questioning to the topic of various reeducation camps in areas where Prak Yut lived. She recalled several such camps but claimed to have little information about the camps, as authority for the camps was entrusted to others.

As for Communist Party of Kampuchea (CPK) policies and ideology, Prak Yut stated that she did not really understand these topics because she is illiterate. She stated further that she did attend some study sessions but “did not really comprehend much” at the time.

The prosecution then proceeded to ask about Prak Yut’s practice of receiving reports from subordinates and reporting to superiors as a member of Sector 35. Prak Yut testified that “everyone reported about their work” but that she did not know about the reports of others, as they had “different roles.” Upon further questioning, Prak Yut clarified that district-level authorities reported to the sector level.³

When asked whether “immoral conduct” was discussed during meetings, Prak Yut affirmed that this topic was discussed and defined “immoral conduct” as involving “womanizing.” Prak Yut

³ During the DK period, “districts” and “sectors” were both geographic administrative units. Sectors were comprised of multiple districts.

then stated that, at the district level, individuals accused of immoral conduct would be “reeducated.”

She further testified that most meetings concerned building dams and canals and other similar topics. Prak Yut then stated that she was unaware if reports were submitted to the upper levels. As for meetings of sector authorities, Prak Yut explained that the sector secretary would receive instructions from the Zone authorities and then hold meetings at the district level to disseminate instructions.

Prak Yut was next questioned about her assignment in the early 1970s involving women’s affairs. She testified that she held this position until about 1973 in Kampot, and in this role she taught women about their potential and their role to take on certain occupations, such as being teachers. She next testified that she was transferred to Kampong Cham province sometime around 1973, noting that she was unaware why she was transferred at the time.

While in Kampong Cham, Prak Yut testified that she sometimes led training sessions to teach people how to build dams or certain other things, such as sluice gates. She further testified that she became a district chief in Kampong Cham and commune chiefs were assigned by her upon orders by her superior, the sector secretary.

The prosecution then asked about two prison sites in the area, but Prak Yut stated she did not know about the work at these sites, noting that everyone at the time stayed focused solely on their own tasks.

Prak Yut was then asked questions about dam work sites in Kampot. She testified that she mostly did farming at the time and had very little knowledge of work conditions at the worksites.

At this point, the Chamber stopped questioning and adjourned for the day. Chamber President informed all parties that the proceedings would reconvene the following morning at 9 a.m. with the continued testimony of Prak Yut.