



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 29-Nov-2011, 13:12
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TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

23 November 2011
Trial Day 3

Before the Judges: NIL Nonn, Presiding
Silvia CARTWRIGHT
YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Claudia FENZ (Reserve)

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
Arthur VERCKEN
KONG Sam Onn
Jacques VERGÈS

Trial Chamber Greffiers/Legal Officers:
DUCH Phary

For the Office of the Co-Prosecutors:
CHEA Leang
William SMITH
Andrew CAYLEY
YET Chakriya

Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
LOR Chunthy
MOCH Sovannary
HONG Kimsuon
CHET Vannly
Barnabé NEKUIE
Patrick BAUDOIN
Emmanuel JACOMY
Nushin SARKARATI

For Court Management Section:
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
MS. CHEA LEANG	Khmer
MR. IENG SARY	Khmer
MR. KARNAVAS	English
MR. KHIEU SAMPHAN	Khmer
MR. KONG SAM ONN	Khmer
The President, JUDGE NIL NONN	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer
MR. VERGÈS	French

1 PROCEEDINGS

2 (Court opens at 0902H)

3 (Judges enter courtroom)

4 MR. PRESIDENT:

5 Please be seated. The Court is now in session.

6 [09.03.10]

7 Yesterday, moment before we adjourned the day's session, counsel
8 for Ieng Sary made a request that Ieng Sary allowed to make his
9 statement. The Chamber has already ruled that Ieng Sary could do
10 so today. The security personnels are now instructed to bring
11 Ieng Sary--

12 MR. ANG UDOM:

13 (No interpretation)

14 MR. PRESIDENT:

15 Please be seated. Mr. Son Arun, you may now proceed.

16 MR. SON ARUN:

17 Thank you, Mr. President.

18 On Monday, I already introduced the two lawyers who have just
19 taken an oath, Mr. Andrew Ianuzzi and another lawyer. I would
20 like the Court to recognize Mr. Andrew Ianuzzi today, because,
21 during the first hearing, you indicated that you would need
22 documented proof.

23 MR. PRESIDENT:

24 Indeed, we are now reviewing the documents, and that the
25 documents have to be translated into three languages, and perhaps

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1 this is not yet the appropriate time for such recognition. We
2 already noted that the documents have been reviewed, but we have
3 not signed on the documents and they have not been available in
4 the three languages of the Court as yet.

5 [09.05.15]

6 Counsel Ang Udom, you may now proceed.

7 MR. ANG UDOM:

8 Mr. President, Your Honours, during today's session Mr. Ieng Sary
9 has a statement to make, but he allows me to read it on his
10 behalf, if Your Honours allow. This statement is about a page and
11 a half long, so it won't take much of the Court time --perhaps
12 two to three minutes -- for reading this.

13 (Judges deliberate)

14 [09.06.55]

15 MR. PRESIDENT:

16 The Chamber unanimously decides that the statement shall not be
17 read on behalf of the Accused since he is present. He should do
18 it.

19 The security personnel are now instructed to bring Ieng Sary to
20 the dock.

21 Ieng Sary, you -- rather, the personnel, security personnels are
22 also allowed to place Ieng Sary on the wheelchair if needed.

23 (The accused Ieng Sary is taken to the dock)

24 [09.08.55]

25 Mr. Ieng Sary, you may now proceed.

1 MR. IENG SARY:

2 Good morning, Mr. President. Good morning, Your Honours. Good
3 morning to everyone else here today and to all those follow the
4 proceedings.

5 [09.09.31]

6 In 1996, I received a royal pardon and amnesty. The then Co-Prime
7 Ministers negotiated the Royal Pardon and Amnesty. The National
8 Assembly approved the Royal Pardon and Amnesty, and the former
9 King, Norodom Sihanouk, granted the Royal Pardon and Amnesty. I'm
10 very exhausted. I, perhaps, cannot continue reading it because my
11 heart does not allow me to continue reading. I don't know how I
12 can do it. Perhaps you allow me to break a while? I may do it
13 again after this.

14 MR. PRESIDENT:

15 How many more paragraphs have you got to read? Counsel Ang Udom,
16 can you advise the Court how many more paragraphs he needs to
17 continue reading?

18 MR. ANG UDOM:

19 Due to this fact, may we be allowed to read this statement on his
20 behalf, please?

21 MR. PRESIDENT:

22 The Chamber has already ruled on this and that you are not
23 allowed to read this on his behalf.

24 [09.11.37]

25 We know that he has short breath, but we will allow him some

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1 time to break, and he can make the most of his time to read his
2 statement, which is about one page and a half, as we have been
3 informed by his counsel.

4 (Short pause)

5 [09.12.38]

6 MR. IENG SARY:

7 The former King, Norodom Sihanouk, granted the Royal Pardon and
8 Amnesty.

9 Your Honours decide that, based on the jurisdiction of this
10 special tribunal, that the Royal Pardon and Amnesty does not
11 apply. Though I disagree with the Trial Chamber's decision, I
12 respect the Trial Chamber's authority in rendering it.

13 With the deepest respect, I am troubled by the Trial Chamber's
14 refusal to grant a stay until the Supreme Court Chamber rules on
15 this matter.

16 [09.14.43]

17 I cannot respect this decision, especially since the Trial
18 Chamber could have issued its decision in a time fashion. Nothing
19 prevented you. I have been in custody for more than four years,
20 waiting for this trial. It will now begin with a major legal
21 issue not having been fully resolved.

22 Because the Trial Chamber is not acting correctly, I am of the
23 opinion that I should not participate in this trial until the
24 Supreme Court Chamber has ruled on the Royal Pardon and Amnesty.
25 However, out of respect for this institution, I will continue to

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1 participate as I have always done so since I was charged,
2 arrested, and brought to the ECCC detention facilities, down in
3 Phnom Penh, on the 21st of November 2011. Signature: Ieng Sary.

4 [09.17.34]

5 That's all for me, Your Honours.

6 MR. PRESIDENT:

7 Thank you, Mr. Ieng Sary.

8 Counsel Ang Udom, you may now proceed.

9 MR. ANG UDOM:

10 My apologies, Mr. Ieng Sary has made some mistakes in his reading
11 of the text: the term "anuwat" in Khmer; he said "anukroa". I
12 think it is really a minor correction and I think, if the Court
13 allows, I may read the whole paragraph again for the Court.

14 [09.18.48]

15 Paragraph 2:

16 "Your Honours decided that, based on the jurisdiction of this
17 special tribunal, that the Royal Pardon and Amnesty does not
18 apply. Though I disagree with the Trial Chamber's decision, I
19 respect the Trial Chamber's authority in rendering it."

20 MR. PRESIDENT:

21 You indicated there are only two terms that you need correction.

22 Can you please clarify?

23 MR. ANG UDOM:

24 "With the deepest respect -- in paragraph three -- I am troubled
25 by the Trial Chamber's refusal to grant a stay until the Supreme

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1 Court Chamber rules on this issue."

2 I think the terms "until" and "apply" that have not been said
3 correctly in Khmer.

4 MR. PRESIDENT:

5 Thank you, Counsel. Security personnels are now instructed to
6 take Nuon - rather, Ieng Sary back to his seat.

7 (The accused Ieng Sary leaves the dock)

8 [09.21.14]

9 Next we would like to proceed to counsel for Khieu Samphan, and
10 Khieu Samphan to be able to make his response to the opening
11 statements by the prosecutors.

12 Security personnels are now instructed to bring Khieu Samphan to
13 the dock.

14 (The accused Khieu Samphan is taken to the dock)

15 MR. PESTMAN:

16 Your Honours -

17 MR. PRESIDENT:

18 Counsel for Nuon Chea, you may now proceed. Please be very brief
19 because we do not want any interference into the allocated time
20 as already decided to be offered to the counsel for Khieu
21 Samphan.

22 Counsel -- rather, Mr. Khieu Samphan, could you please be seated?

23 MR. PESTMAN:

24 I'm sorry to interrupt, Your Honours. I'll be short.

25 [09.22.55]

7

1 Yesterday, we were told we were not allowed to finish our
2 response to the prosecutor's opening statement. We would like to
3 object, for the record, to that ruling and we would like you to
4 reconsider it.

5 As was explained yesterday to us, you inferred that our client
6 had waived his right to respond. That inference was wrong, on
7 which I, of course -- a waiver is a right that can never be
8 waived -- never be inferred to have been waived. It has to be
9 done unequivocally, as I'm sure you're aware of.

10 [09.23.39]

11 I understand our application for disqualification was not well
12 received, and I understand we did not make ourselves popular with
13 this Court, but I think -- and I believe that that should not
14 mean that our client and that my national colleague and me should
15 be deprived of the right to respond to the opening statement.

16 I understand Khieu Samphan is seated. We can continue our
17 response after the Khieu Samphan team has finished; that would be
18 my suggestion.

19 [09.24.25]

20 MR. PRESIDENT:

21 Let the Chamber clarify again. Yesterday, we made it clear
22 already that your counsel and your client had a half day to make
23 your statement, but one hour was used by the Accused Person and
24 that the remaining of the time was not used wisely by the
25 counsel, even repeated attempts by the Chamber to remind the

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1 counsel. And for that reason, your allocated time has expired on
2 the late afternoon of yesterday, so you have no more time
3 allocated to make such a statement, and I hope the message is
4 already clear.

5 [09.25.21]

6 Next, we would like to proceed to counsel for Khieu Samphan and
7 Mr. Khieu Samphan himself to make his statement.

8 Mr. Khieu Samphan, you are allowed to remain seated while reading
9 your statement, if you wish. You may now proceed.

10 MR. KHIEU SAMPHAN:

11 Good morning, Mr. President, Your Honours.

12 [09.26.00]

13 My sincere respects to all the monks in the public gallery and my
14 compatriots, fellow Cambodian citizens.

15 During the last two days, we have heard the opening statements by
16 the Co-Prosecutors within this Court. I am not much knowledgeable
17 of these procedures. Through my surmise, I can see that no one
18 understands these procedures very well because the Court has set
19 up everything only to facilitate its work for this trial.

20 [09.27.19]

21 The terms "Extraordinary Chambers", as it indicated, I believe
22 that such terms shall not be interpreted for the purpose of
23 providing evidence in response to what have been alleged. For the
24 last two days, however, I have felt that things seem to stray
25 beyond my expectation.

1 At the beginning of the hearing, I have noted that the
2 Co-Prosecutors have conducted the guess-work with regard to the
3 accusations. The pre-emptory claims have been made and, more than
4 that, there are a lot more generalizations in it.

5 [09.28.50]

6 Today, Your Honours and Mr. President have given the floor --
7 given me the floor. How am I expected to respond to Mrs. Chea
8 Leang, the National Co-Prosecutor, who has failed to indicate any
9 names of the witnesses in her statement? And more frequently, she
10 has quoted only anonymous testimony. I cannot respond to that
11 unless she has indicated clearly to the facts and evidence.
12 How can I respond to the National Co-Prosecutor when most of her
13 presentation mainly relied on the extracts from books and
14 newspapers? As far as I know, historians, journalists,
15 chroniclers or novelists are not judges. None of these people
16 have taken an oath to become an investigating judge in order to
17 support the charges or to dismiss the charges in their opinion.

18 [09.31.04]

19 The journalists that you cited in your presentation are not
20 legally bound by the law. Of course, they are entitled to be
21 wrong, to be biased, and to be partial, and to express their
22 opinions freely, without thinking in details on any particular
23 issue.

24 May I remind you, Madam Co-Prosecutor, that, after 17 April 1975,
25 a France newspaper, "Le Monde", published an article entitled

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1 "Phnom Penh Liberated". I believe you would surely criticize me
2 if I take the opportunity to rely on that article in the
3 newspaper. For that reason -- which leads me to believe that, as
4 Madam Co-Prosecutor have read too many articles from the
5 newspapers, you seem to fully believe that I committed this crime
6 or that crime, which are of course my main concerns because this
7 case involves me personally, it is not a conference or a
8 political meeting.

9 Also in regard to this point, your colleague, the International
10 Co-Prosecutor, made a joke of the fact that, during the
11 Democratic Kampuchea regime, Khmer people did not have the right
12 to have a fair trial as the trial being conducted today.

13 [09.34.07]

14 What type of trials that I shall be given 36 years after what
15 happened by merely relying on anonymous witnesses, various
16 newspapers articles, and books written by journalists?

17 The Co-Prosecutor records that, while I was a student, I joined
18 in the meetings organized by the communist students in Paris. You
19 seem to allege that the joint criminal enterprise that I was
20 alleged to be involved with my co-accused, commence from that
21 time.

22 Mr. Co-Prosecutor, may I remind you that, while in Paris, I also
23 studied, and as a result, I also wrote my doctoral thesis on
24 economics; it was a success. In fact, I was interested in the
25 Communist doctrine and I also studied about those theories. So

11

1 what--

2 Today you may see it as a joke. However, I shall remind you that,
3 at that time, Communism is the one movement that gave hope to
4 million youth around the world. What I actually wanted at that
5 time is the best experience for my country -- that is for
6 Cambodia.

7 [09.37.46]

8 Mr. Co-Prosecutor, by alleging me that I am representing the
9 malignant forces, you would lead people to believe that my youth
10 was that of a murderer.

11 However, you still attempted to fabricate by raising that, after
12 my completion of my study in France, I returned to Cambodia
13 concealing my vicious connection and try to show the gentle side
14 of myself. And it is, as you presumed, based on this trickery of
15 mine that I was elected to be people's representative twice and
16 subsequently appointed by Sihanouk as the State Secretary.

17 While listening to you, I questioned myself. Do you in fact
18 believe what you say, or maybe you are blinded in your idea as
19 you really attempted just to punish me at whatever cost? You
20 seemed to wanting everybody to listen to your fairy-tale, to the
21 point that you said the evidence would show that I am a phantom
22 because the government officers suspected that I was a leftist,
23 and I was in panic and fled to the forest by myself.

24 [09.41.10]

25 However, Mr. Co-Prosecutor, you forget that my leftism, as you

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1 raised, is my opposition against Lon Nol and his clique, whom
2 were mistakenly called -- recalled by Sihanouk in 1969, at the
3 time that the coup d'état was about to be prepared to topple the
4 King Sihanouk.

5 You seem to believe that what I say is wrong. If that is the
6 case, why don't you invite the King Sihanouk to join the dock
7 with me?

8 Mr. Co-Prosecutor, you seem to forget that, between January 1970
9 and August 1973, that is the period of two and a half years, the
10 United States carpeted the small Kampuchean territory with bombs,
11 outnumbered those numbers of bombs the alliance used during the
12 Second World War everywhere, including the two big bombs dropped
13 on Hiroshima and Nagasaki.

14 [09.44.00]

15 Could you imagine what my country faced after such a bloody
16 killing and war? You may assist in thinking what the future is
17 and what's like for Cambodian people and the country as a whole
18 during such carpet bombing. No, I can see you cannot make such an
19 imagination.

20 When you think of something that would benefit you, that is for
21 the period between '75 and '79, you just ignored or fabricate the
22 context within that period of history.

23 Regardless you like or dislike it, majority of Cambodian people
24 gave their support to us for our opposition against the Lon Nol
25 regime. Regardless you like it or not, we established the

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1 resistance movement against the depression during the coup d'état
2 made by Lon Nol in 1970 and, at the time, the Vietnamese war
3 ignited in Cambodia.

4 [09.46.05]

5 I myself was given the responsibility to liaise with the King
6 Sihanouk, and the resistance inside the country, and the
7 leadership of the Communist Party of Kampuchea. Is that a crime?
8 I was accused of assisting Pol Pot to come into power, but
9 personally I clearly know that I contributed to the national
10 reconciliation in order to defend my country, to be a nation with
11 a sovereign, independent both toward the United States, to the
12 Communist Vietnam, who always tries to find all sort of means to
13 include Cambodia into the Chinese -- into the Indo-Chinese
14 Federation controlled by Vietnam.

15 In such a situation, how dare that you claim that I had the idea
16 of wanting to destroy the Cambodian people, whom I loved the
17 most, and more than everything else and whom I tried to defend
18 through my entire life?

19 [09.48.16]

20 What you had raised on Monday and Tuesday are monumentally
21 biased. When listening to you, based on those senseless stories
22 in order to convince people to believe that they are the truth, I
23 have the feeling that you really want my head on the block,
24 either through the superfluous trial or through the affront,
25 through the victims whom you declare to defend them.

14

1 As a matter of fact, the only thing that I feel better about
2 after listening to you for so long is your acknowledgement that,
3 before the liberation of Phnom Penh on 17 April 1975, the city
4 was about to become the major disaster for human lives. You
5 acknowledged that, at the time, there was nothing to eat and
6 there was no medicines. As I have already stated, majority of the
7 people fled from the vicious bombing by the United States to
8 shelter in the city in the expectation that they would receive
9 the protection. When you spoke all those words, even if I did not
10 have even a minor responsibility for the decision to evacuate the
11 people from the city, I still have a small hope, as in my mind I
12 think you would not proceed to charge me based on the situations
13 that you acknowledged, that is the chaotic situation at the time.
14 This situation already existed before my arrival in Phnom Penh
15 city.

16 [09.52.26]

17 However, my hope was short-lived. Then you talked about the
18 thousands of pages of documents, and to you it seemed those
19 numbers of thousands of pages are actually the evidence.
20 On the other hand, everybody should have access to those
21 thousands of documents, and yet those thousands of documents have
22 yet to be translated, either into English, or into French, or
23 into both.
24 Moreover, had you, yourself, read all those documents? It is hard
25 for me to believe that you have. And if you were to have read

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1 them all, do you still maintain your position and allege that I'm
2 a member of the Standing Committee of the CPK, when there is not
3 even a single document identifying me as a member of the Standing
4 Committee and when you only have 19 of the records of the
5 meetings, which could be in the number between 150 to 200
6 meetings to be held between 1975 and 1979?

7 [09.54.48]

8 If you have read the case file, are you're still in the opinion
9 to claim that, amongst those documents, there must be evidence to
10 support your allegation, at the time during the 19 meetings, that
11 you have in your hand as evidence, that I in fact participated in
12 14 out of those 19 meetings? I spoke only twice on the very
13 subject under my responsibility, and it had nothing at all to do
14 with the crimes that you alleged against me.

15 Mr. Co-Prosecutor, why there is no document confirming that I am
16 an official member of the Standing Committee? Why there is no
17 document confirming I am the Head of the Political Office 870?
18 There is nothing else besides the fact that I am not a member of
19 the Committee, that I am not the chief of the Political Office
20 870. That is the truth, regardless -- whether you like it or not.

21 [09.57.35]

22 I noted, when reading your recent indictment, that the
23 prosecution had invented an expression, the term "Party Centre".
24 On Monday and Tuesday, I listened with some concern as you
25 employed this term once again as a way of avoiding the

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1 distinctions which bother you but which nonetheless existed at
2 the time.

3 Thus, you would have the public belief that everybody is lumped
4 together in the same bag, but it's a lie, a manipulation. In
5 fact, you know very well that Democratic Kampuchea was very
6 structured, compartmentalized and had a penchant for secrecy.

7 Mr. Co-Prosecutor, you will also say that the fact that I was
8 appointed the President of the State Presidium of the Democratic
9 Kampuchea committed me to a joint criminal enterprise; in which
10 case, why are you not prosecuting King Norodom Sihanouk?

11 You are nonetheless bound to be aware that this presidium was
12 mere window dressing, to the extent that it never even met. What
13 criminal enterprise can be -- or rather can one belong to if one
14 has been and continues to be a phantom?

15 [10.01.17]

16 You also stated that I must have been aware of the conditions
17 endured by Cambodians during the period and the examination
18 because I visited the dam work sites.

19 But do you really think, Mr. Co-Prosecutor, that, when I visited
20 these work sites alone or accompanied by the King, workers were
21 being murdered in front of us with hoes or bullets in the back of
22 the neck?

23 At that point, your words seemed just as absurd as when, the day
24 before, the National Co-Prosecutor had had claimed that Angkar
25 gave individual instructions for forced marriages and personally

17

1 monitored them to see that they were physically consummated. Of
2 course, I wasn't a member of Angkar, but I imagine that, with a
3 country to run, its members had other things to do than check if
4 people were having sex. The comment is derisory, and I am almost
5 ashamed to put it into words; I only do so to give you an answer.

6 [10.04.12]

7 The Co-Investigating Judges and a few journalists have taken me
8 to task for having changed my views over time in my statements
9 and in my books. It is true that I have developed, and that
10 development took place in keeping with the knowledge I was
11 gaining and my meditations on this period of history. Is my
12 thought process to be held against me as well? I find that hard
13 to believe.

14 My lawyers advise me to restrict my comments to events as I saw
15 and knew them at the time of the facts. But, Your Honours, I
16 would ask you to bear in mind that it's not always easy, because
17 36 years have gone by since 1975, and in 36 years, a man learns
18 and changes.

19 [10.06.45]

20 Despite everything I have said, I continue to hope that this
21 trial will at least give me an opportunity to explain to the
22 Cambodian public how it is possible for me to have occupied an
23 official senior position in Democratic Kampuchea without having
24 been a part of the decision-making process and without having
25 been informed of all that was happening in our country, of all

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1 the horrors that Madam Co-Prosecutor told us about on Monday the
2 21st of November.

3 I have pledged before my nation that I will do my best to
4 participate in this proceeding, and I will try to live up to that
5 pledge. However, I believe that the more procedures at the Court
6 evolve, the more the monks and the public see, understand, judge
7 the issues by yourselves.

8 Thank you very much.

9 [10.09.22]

10 MR. PRESIDENT:

11 Thank you, Mr. Khieu Samphan.

12 Security personnels are now instructed to take Khieu Samphan back
13 to his allocated seat.

14 (The accused Khieu Samphan leaves the dock)

15 [10.10.00]

16 In order to ensure the smooth flow for statement by Khieu
17 Samphan's counsel, we may take 20 minutes break. We'll resume
18 after this to hear the statement made by counsel for Khieu
19 Samphan in response to the opening statements by the
20 Co-Prosecutors.

21 (Judges exit courtroom)

22 (Court recesses from 1010H to 1033H)

23 (Judges enter courtroom)

24 MR. PRESIDENT:

25 Please be seated. The Court is now back in session.

19

1 We shall now give the floor to the defence team of Khieu Samphan
2 to continue with their brief response to the opening statements
3 made by the Co-Prosecutors.

4 The co-defence counsel, you are reminded you have half a day for
5 your brief response. Due to some interruption, we can proceed
6 until 12.20.

7 [10.34.39]

8 MR. KONG SAM ONN:

9 Thank you, Mr. President.

10 Good morning, Your Honours. My sincere respect to Venerable
11 Monks. Good morning, my compatriots, Cambodian people, and good
12 morning to everyone.

13 Before I touch upon the issues, I'd like to make a brief
14 observation. I have already been recognized on Friday by the
15 ECCC, and now it is my turn to make my brief response, and this
16 sudden time constraint put some pressure on me to provide an
17 effective brief response to the opening statements made by the
18 prosecution.

19 However, what the defence team has done so far has some benefits
20 for me to continue with the proceedings, and I'd like now to
21 proceed with my brief response.

22 [10.36.09]

23 After having heard the charges presented by the prosecution in
24 the opening statements against my client, Mr. Khieu Samphan, I
25 understand and acknowledge it is a difficult process to allege my

1 client, based on the facts that the crimes have been committed
2 for so long. What will be debated in this Court will subsequently
3 reveal the truth, based on the testimonies by witnesses or
4 evidence, to reveal what happened 36 years ago. That means we
5 rely on the surviving documents or the memory of the witnesses.
6 Due to this time lapse, memory probably cannot be completely
7 relied upon.

8 Both the inculpatory and exculpatory evidence will be restricted
9 due to the time passage.

10 [10.37.34]

11 The prosecution rest their allegations relying on the texts of
12 authors, or journalists, or researchers. Those texts have not yet
13 verified whether they represent the facts.

14 As we're all aware, some texts were only produced several years
15 after what happened.

16 And I'd like to seek the Bench's attention to focus on three
17 points in relation to the allegations raised by the prosecution.

18 One, to verify whether the acts committed during the Democratic
19 Kampuchea regime, from the 17 April '75 to the 6 January 1979,
20 which fall under the temporal jurisdiction of the ECCC, are
21 actually the offences as such. As a defence counsel, I do not
22 reject that certain acts were committed during that regime. The
23 question is whether the acts are offences falling under the
24 jurisdiction of the ECCC.

25 The prosecution stated that, based on the Law on the

1 Establishment of the ECCC, this Court has jurisdiction to examine
2 Articles 4, 5 and 6 of the ECCC Law, which is the foundation of
3 the charges.

4 Number 3, even if the acts committed under the jurisdiction of
5 the ECCC and they are indeed the offences, the question to be
6 asked is whether my client Khieu Samphan is responsible for those
7 acts or offences.

8 [10.40.35]

9 For that reason, the presentation of evidence shall be clearly
10 beyond reasonable doubt, which is, as we all know, the burden of
11 the prosecution to do so.

12 What I can foresee regarding the overview of this case is that it
13 seems this is a trial between the Communist ideology and the
14 Western Ideology. Why? Because, when the events happened during
15 the Democratic Kampuchea regime and as he mentioned, as Mr. Khieu
16 Samphan mentioned, a lot of events happened during his youth.
17 Communism was sprayed everywhere throughout the world, and for
18 more than half a century, such a Communist ideology has
19 subsequently disappeared and emerged was the Western Ideology.

20 [10.42.17]

21 The issue of the passage of time would have a great impact on the
22 application of law. During the DK period, political violence was
23 regarded as a simple matter for politicians. In Cambodia, there
24 is a saying: When you are playing with politics, you win -- if
25 you win, you become a King, and if you lose, you die or go to

1 prison. So political violence existed within the context of the
2 society, human society, not only in Cambodia, due to the
3 differences in their ideological tendency and their choices of
4 adherence to politics.

5 That when we talk -- in hindsight, now let me refer to what
6 happened now and the issue of globalization. What happened
7 happened a long time ago, and some nations have a strong belief
8 that we can actually benefit from the experience through those
9 conflicts and ideologies. The new ideology, based on the modern
10 development, supersedes what happened in the past.

11 The question we so ask is that: The human rights condition, for
12 example freedom of speech, in one regime, with only one party in
13 power, can be universal and non-restricted? Of course not.

14 [10.44.41]

15 A real example is that in Cambodia, after the fall of the
16 Democratic Kampuchea regime, at that time, that is merely after
17 the fall, Cambodia was known as People Republic of Cambodia. And
18 for that regime, do you think that freedom was given to every
19 citizen? Of course not. At that time, it was the transitional
20 period, and based on that, the transition cannot be done in one
21 go, it is a gradual effect. And until 1993, when we have the
22 Constitution acknowledging the right of the people and the
23 political right, and -- political offences were eliminated. And
24 based on this, the spirit of the Constitution, which is a result
25 of the Paris Agreement in 1991, it gives the right to the people

1 to establish their political parties and to participate in the
2 political activities.

3 [10.46.34]

4 What I want to say is that, Your Honours, the application of the
5 law at the present time on an act that occurred half a century
6 ago is a complicated issue. We cannot rely on our current view to
7 be fully applied to what happened many, many years ago.

8 Your Honours, regarding my client, Mr. Khieu Samphan, I'd like to
9 make the following observations. Indeed, the prosecution raise
10 some background of Mr. Khieu Samphan. And just before the break,
11 we heard his response regarding his background. And as we can
12 see, there are a number of good points of the assistance of Mr.
13 Khieu Samphan through his youth to his current age. And what are
14 those good points that we can see?

15 Mr. Khieu Samphan is an intellectual who started a doctoral
16 degree and obtained such a degree overseas. Khieu Samphan also
17 actively involved in the activities of building the country
18 during the Sangkum Reastr Niyum. He was also a people
19 representative and was appointed as the State Secretary, which is
20 a very high status within the government.

21 [10.48.40]

22 In addition, his participation in liberating the country through
23 the movement of Democratic Kampuchea is not intention to destroy
24 the country. As he informed Your Honours, he was charged in
25 liaising with DK and King Sihanouk after the coup d'état by Lon

1 Nol in 1970.

2 So his active involvement in liberating the country, which he
3 failed, and the control of foreign countries was a proper one,
4 based on the view at that time, because, as a citizen of a
5 country, the idea of patriotism is a major one. If someone loves
6 the country, that person will be liked by the rest of the
7 citizens of the country, and of course that spirit remains 'til
8 today. For that reason, his involvement resulted in victory. This
9 does not mean he alone brought about the victory.

10 And finally, when the victory was achieved by his involvement and
11 the Democratic Kampuchea team, what happened to Cambodia?

12 The prosecution presented some points regarding this matter; for
13 instance the evacuation of people, forced labour, and some other
14 acts. The question we shall ask is that whether those acts are
15 under -- or are in the hands of Mr. Khieu Samphan. Of course, you
16 would remember that Mr. Khieu Samphan was appointed the President
17 of the State Presidium after the resignation of Sihanouk.

18 [10.51.53]

19 At that point, Cambodia seems to have two former Heads of State:
20 one was the King Sihanouk, and two, my client, Mr. Khieu Samphan.
21 Your Honours, I'd like to present a brief biography of my client,
22 which was prepared by the Public Affairs Section of the ECCC. I'd
23 like to seek your permission to do so.

24 MR. PRESIDENT:

25 Yes, you may proceed.

1 [10.53.00]

2 MR. KONG SAM ONN:

3 In that biography, which was published by the ECCC on its
4 website, it -- I'd like to read the relevant page: "In 1975 he
5 was appointed [Head of State of Democratic Kampuchea]."

6 I believe that Your Honours and everyone would review this
7 paragraph. I think this is a defect by the Public Affairs Section
8 of the ECCC. When it states that Mr. Khieu Samphan was appointed
9 the Head of State or the President of the State Presidium, was
10 not in 1975, but it was a year after, that is one year after the
11 resignation of King Sihanouk.

12 And I would like to seek Your Honours to issue an order for the
13 correction on this point. To the layperson, it seems this is just
14 a minor mistake, but it could have a dire consequence on the
15 actual history of Cambodia.

16 [10.55.11]

17 Let me touch upon this issue that is on the responsibility of Mr.
18 Khieu Samphan as the Head of State of the Democratic Kampuchea. I
19 believe the prosecution already heard the statement read by Khieu
20 Samphan, (inaudible) he was the Head of the Democratic Kampuchea.
21 And why the King Sihanouk is not summoned to appear before this
22 Chamber? What is the difference?

23 I believe this Court cannot summon the King Sihanouk to provide
24 clarification on this issue. However, I believe his handwritten
25 notes have been published regarding his life and affairs, and

1 that can be used by the Chamber.

2 As the Head of State of Democratic Kampuchea during the first
3 year, the King did not have any real power to administer
4 Democratic Kampuchea regime. And what happened when Khieu Samphan
5 replaced him? What kind of power that Khieu Samphan was given by
6 Democratic Kampuchea? Of course, we cannot forget the Democratic
7 Kampuchea Constitution which was adopted, and there was also one
8 article stating about the President of the State Presidium.

9 [10.57.26]

10 I'd like to urge Your Honours to see the actual role and
11 authority that Khieu Samphan has as Head of State of Democratic
12 Kampuchea and what kind of activities that he actually performed
13 in exercising his authority given by the DK.

14 I believe the prosecution would not have any evidence to prove
15 that the Head of State of the DK had his own office or cabinet to
16 function. For the Head of State representing a country with no
17 real office, no support staff or secretariat, and only by
18 himself, can that Head of State exercise his authority?

19 Point number two regarding other roles presented by the
20 prosecution, for instance that Mr. Khieu Samphan is the Head of
21 the Political Office M-870, I think there is some
22 misunderstandings in the allegations raised by the prosecution.

23 [10.59.35]

24 Actually, Office M-870 was used during the DK period relying on
25 two offices: one is the 870 Committee, and one is the 870 Office.

1 The documents that the prosecution will show would be confusing
2 whether those documents were sent to M-870 as an office or to
3 M-870 as 870 Committee.

4 As the prosecution indicated the structure within M-870 and the
5 DK regime, it represented the Standing Committee. The Standing
6 Committee is the one who conducted daily activities on behalf of
7 the DK regime, and the Office 870 is merely a political office
8 with one person in charge, monitored and reported.

9 [11.01.08]

10 It seems to be a coincidence that Mr. Khieu Samphan sat together
11 with one person who was in charge of Office 870, and there lies
12 the confusion that the office belonged to him.

13 When documents were sent from zones or sectors to this office,
14 then the confusion - confusion started.

15 During the DK period, there is no modern means of communication.

16 Messages were sent as letters, or typewritten letters, or

17 handwritten letters, and there was no computer, there was no

18 modern telephone system as we have at the present day. So the

19 level of communication was limited. So what are the actual levels

20 of communications which we can rely upon? Currently, during these

21 Internet errors, information can be passed on or through

22 immediately, but unfortunately just one -- biography of my

23 client, there is already a mistake. Of course, there have been

24 numerous publications regarding his biography, and there are

25 still mistakes during this time. Can you imagine discrepancies or

1 mistakes made during such time?

2 So what can the Chamber believe where's all those documents that
3 will presented by the prosecution? What is the level of
4 credibility?

5 [11.03.43]

6 During the time of the presentation of charges by the
7 prosecution, sometimes they seem to went further, that they seem
8 to already made their own conclusion, like their final statement,
9 and some witnesses were mentioned to support their arguments.
10 I think the debate proceedings have yet to be started, so I will
11 not respond to those testimonies or the witnesses' arrest by the
12 prosecution.

13 Also, in the Cambodian domestic practice, the opening statement
14 by the defence counsel never happened before. I believe this is a
15 good measure. It will be good if it can be adopted in the
16 criminal proceeding in Cambodia that is allowing such a
17 proceeding in the domestic practice.

18 So the critical aspects of the opening statement on the defence
19 side could be inadequate because of this very reason.

20 [11.05.42]

21 I'd like also to bring some points in my response to the opening
22 statements of the prosecution.

23 Concerning the forced evacuation, the prosecution alleged that
24 Mr. Khieu Samphan must have knowledge of it and that they will
25 show the evidence and testimonies from witnesses that Mr. Khieu

1 Samphan is one of those responsible for such forced evacuation.
2 However, what I see is contradictory to what has been raised by
3 the prosecution. In order for an evidence to be accepted in this
4 Court, it has to be consistent with the acts occurred.
5 We acknowledge some acts, cruel acts, were committed during the
6 DK period. However, the presentation of evidence that Mr. Khieu
7 Samphan was involved and responsible for those acts is a separate
8 matter. We will wait until the presentation of the evidence
9 beyond reasonable doubt by the prosecution. As they claimed in
10 their opening statements, that my client -- that they, the
11 prosecution, will bear the burden of presenting the evidence
12 beyond a reasonable doubt.

13 [11.07.57]

14 The issue whether my client has a knowledge of the events is an
15 important issue. The prosecution applied a form of allegation
16 against my client that is a joint criminal enterprise principle.
17 That means, if one of those people within his team committed an
18 act and that he was aware of it, he shall also be responsible. I
19 do not want to touch upon all the elements of the joint criminal
20 enterprise.

21 [11.08.47]

22 So based on the view of the prosecution, that the hands of the
23 criminals did not have any black stains on them but they are
24 within the ocean of blood. Their hands are clean but there was an
25 ocean of blood, not even a blood pool, but an ocean of blood. I

30

1 think it seems like this is an exaggeration by the prosecution to
2 make it seem that the Accused had to be responsible for those
3 gigantic crimes committed.

4 What do we mean by the "ocean of blood"? What is the size of the
5 ocean? You can look Tonle Sap; Tonle Sap is a very big river but
6 it is not called an ocean. An ocean of blood, whether -- can it
7 be as big as the Tonle Sap Lake?

8 Sometimes the prosecution seems to play with words to support
9 their arguments in their charges. Of course, playing with words
10 is not ascertaining the truth. It's just displaying the art of
11 using a language, and that illustrates widely in theatre or at
12 cinema.

13 And I'd like to bring this observation to Your Honours that it is
14 to actually see beyond the play of words expressed by the
15 prosecution in order to support their allegations.

16 [11.11.23]

17 The issue of forced labour.

18 I listened to the charges rendered by the prosecution, that my
19 client had knowledge of the forced labour and that he also
20 participated, as he also went for site visits. However, as stated
21 by my client this morning, he went to certain locations not to
22 inspect the work, but it was a visit. On some occasions, he was
23 required to accompany the King Sihanouk for a visit.

24 So the question is: When such a visit occurred, can we actually
25 prove what happened of all those people in the Democratic

31

1 Kampuchea regime? Can we prove the acts for such a visit? What
2 Khieu Samphan witnessed was only scenes which was already
3 pre-arranged. It was pre-arranged in order to indicate to him
4 that what happened at the (inaudible) was actually the
5 development in the country.

6 [11.13.25]

7 Can we also ask the question whether Khieu Samphan can intervene?
8 Of course, the prosecution will claim that my client was
9 involved, and what happened at that time was in the knowledge of
10 my client, and that he also actively participated, but the
11 reality is different.

12 What we can say is the distinction in his authority, what he was
13 allowed to know and what he was not allowed to know. He could not
14 know everything. In particular, the situation during the DK
15 period was one that one shall only be mindful of his or her own
16 work. It means one has to mind his or her own business and nobody
17 else. That was the restriction.

18 And for that reason, nobody else cared about any other -- any
19 work or anybody else. They only paid attention to his or her own
20 assigned work. And that's based on instructions or orders given
21 from the upper echelon, and the one who had to implement it had
22 to do so within his or her own responsibility.

23 [11.15.30]

24 Another point that the prosecution raised is the purges of the
25 cadre internally, regarding the decision made on the 30 of March

1 1976, that within certain zones or areas the responsibility was
2 for those at that leadership level at that location. They have
3 the authority to smash the enemies within their respective
4 location, for example at a Ministry or Office.

5 And the prosecution put the responsibility of arrest, for example
6 of the arrest of Pang, on the responsibility of Khieu Samphan.

7 [11.16.36]

8 What you showed, rely on that decision and that Mr. Khieu Samphan
9 shall be responsible, cannot be accepted. Why? Because, if you
10 only look at the title of the decision, it seems the only word
11 "smash" is there, but when you look at the entire content of that
12 letter, you will also see other points, it's not only about a
13 smashing. This does not mean that in one zone, when one person
14 disappeared or killed, then the chief of that zone had to be
15 responsible; there had to be evidence indicating the acts
16 committed and the intent to commit an act. Of course, we are
17 aware of the legal requirements of the element of committing a
18 crime.

19 [11.18.16]

20 The prosecution also presented their statement regarding the
21 genocide of Cham and Vietnamese and also the war crimes against
22 the Vietnamese. We can only access these allegations when the
23 time comes for the debating on those evidence. For that reason, I
24 will not respond at this moment to those charges.

25 I'd just like to say that genocide does not merely involve the

1 killing of people. Not every killing is a crime, and not every
2 killing is a murder, and not every murder is a genocide. So we
3 need to analyze the subjective and the objective elements of the
4 crime in order to see whether there is any guilt.

5 [11.19.54]

6 Another point raised by the prosecution: that the Democratic
7 Kampuchea regime virtually enslaved everyone in Cambodia at the
8 time. Of course, we cannot fully accept this allegation.

9 If you refer to the entire Cambodian population, including my
10 client, Khieu Samphan, it means he was also enslaved during that
11 period. And it means -- at that time Pol Pot was alive, so Pol
12 Pot was also a slave; is that so? So this is just like a one fit
13 all, which is incorrect. We cannot say it's a one size fit all,
14 we have to know the concrete number, for instance. For example,
15 on the deaths of people during Democratic Kampuchea, I did not
16 hear any evidence from the prosecution of the exact number of the
17 deaths during the Democratic Kampuchea and what are the causes of
18 those deaths. And I hope the prosecution will indicate the actual
19 number of deaths.

20 [11.21.34]

21 There are numerous causes of death during the Democratic
22 Kampuchea, it's not only about murder, killing or execution. So
23 the loss of lives of Cambodian people at the time was due to
24 various causes, and if one only presumes that it was all the --
25 all at the cause of the Democratic Kampuchea, that is a wrong

1 assumption.

2 When the regime fell, the situation in the country was chaotic.

3 There was no real statistics showing actual number of the
4 population. People died of various causes, and some who survived
5 were probably mistakenly counted as dead. They may have fled to
6 the third countries or to other neighbouring countries, but the
7 statistics show they disappeared from Cambodia, so they were
8 presumed dead.

9 [11.23.02]

10 We can also refer to the actuals encountered by my client, Khieu
11 Samphan, when he left Cambodia in 1967, and that, as the
12 prosecution claimed, he disappeared for a while and then he
13 reappeared. And then it was -- he was referred to as the three
14 ghosts.

15 So we need also to actually assess the situation concretely and
16 firmly, based on actual evidence. Maybe people presumed dead, but
17 in fact they were not. We need to know the exact number of deaths
18 and the actual cause of death.

19 [11.23.58]

20 Another point presented by the prosecution is that this trial is
21 not revenge, but in seeking the truth. It seems to be positive
22 and pleasant to listen to when such a statement is made, but when
23 you come to seeking evidence in a criminal matter, this is
24 inappropriate.

25 If we do not revenge -- do not seek the truth, then we -- there

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1 should be a truth commission as the one set up in Africa. I mean,
2 there will be no criminal charges, no imprisonment. But here,
3 there will be criminal punishment, and the -- one of the four
4 principles of criminal punishment is revenge. There shall be an
5 element of revenge in it.

6 But such a revenge is done legally, based on the law, not a
7 physical exercise or physical attack.

8 When it comes to the presentation of evidence that my client,
9 Khieu Samphan, participated in the Standing Committee's meetings
10 on numerous occasions, that is, based on the 19 meeting minutes,
11 he presented in 14 of them. And in the chart presented by the
12 prosecution, that he was in the third rank in those meetings; it
13 means his presence was at a senior level.

14 [11.26.06]

15 And the prosecution made a conclusion that Khieu Samphan should
16 have known about the decisions made by the Standing Committee as
17 he participated on several occasions. The reality is on the
18 contrary.

19 I'd like Your Honour to carefully examine each meeting's minute.
20 Are they real or are they fake, and why? Those records, or the
21 majority of them, did not have any signature as the one who
22 actually took that minute. There was no indication of the
23 identification or that it is a proper record. It was merely a
24 typewritten record, and of course it could have been manipulated
25 or it could have been typed at a later stage.

1 [11.27.34]

2 We need to put this into real situation, whether we have any
3 doubt on this. Of course, based on the law, if there is any doubt
4 in any evidence, the benefit shall be that of the Accused.

5 To sum up, I'd like to draw Your Honours' attention to a
6 situation that happened during the Democratic Kampuchea regime,
7 the situation which constituted a chaotic environment at the
8 initial stage of the victory by the Khmer Rouge.

9 [11.28.37]

10 You could imagine how such chaotic situation impact on the social
11 fabric as a whole. What caused this chaos? Why anarchy was the
12 matter to be raised at that time?

13 Please be informed that the victory by the DK was resulted from a
14 war, so there could have been the opposing parties in the country
15 at that time. Those opposing parties would take revenge, would
16 kill as -- kill others for that cause.

17 I would like to draw your attention also to another example of
18 what happened at island -- the Diamond Island, during the Water
19 Festival, last year. During very small chaotic situation, the
20 lives, hundreds of lives of Cambodian people perished. More than
21 300 people died. So that only was a very small chaotic situation
22 in a very confined area.

23 [11.30.20]

24 What happened to the chaotic situation in the whole country at
25 that time during the Democratic Kampuchea? We could imagine that

1 the situation would be much deteriorating and worse than this. I
2 have noted several other international events, for example like
3 natural disasters like flood or earthquake. When these happened,
4 people panic and they had to move places. And during such
5 situation, there are -- there could have been other acts, legal
6 and illegal, happen. Even in the United States, so far as I
7 recall, there was a Katrina storm which destroyed several homes,
8 and at that time, the cameraman who was reporting on the scene
9 observed the chaotic situation and observed the looting, anarchy,
10 raping, and so on and so forth. And that happened in the heart of
11 America, and it happened very recently.

12 [11.32.03]

13 What about a situation that happened more than 30 years ago,
14 where people did not enjoy the state-of-the-art equipment to
15 control people?

16 These chaotic situations, indeed, have caused other consequences
17 and other incidents, including the rape, the murder, etc.,
18 because the new Government of the Democratic Kampuchea could not
19 take full control of the situation immediately upon taking over
20 the country, because the competence of the cadres, at that time,
21 were not enough or there was a lack of significant human
22 resources to deal with the appalling situation. There was no such
23 service to assist in a situation where there could be resistance
24 or chaotic situation. So these phenomenons have caused other
25 harms to the ruling by the Democratic Kampuchea when it had not

38

1 installed the proper organized body yet. I refer to the organized
2 body when the institution was well organized or structured.

3 [11.33.45]

4 Last but not least, I would like to have a request or suggest
5 that the Bench review the testimonies of the witnesses the
6 prosecutor will bring before this Chamber by examining the
7 details of them to see whether they are genuine witnesses or
8 genuine evidence to be considered as worth being put before the
9 Court, for example evidence that could have been extracted from
10 torture as those obtained at S-21. And those testimonies could
11 have not been well verified. We don't know whether those who left
12 the notes have written it genuinely.

13 Thank you, Your Honour.

14 MR. PRESIDENT:

15 Thank you, Counsel.

16 The International Council for Khieu Samphan, would you wish to
17 make any statement in response to the opening statement by the
18 prosecutor?

19 You may have the floor now.

20 [11.35.03]

21 MR. VERGÈS:

22 Given the amount of time I have left, Mr. President, it will have
23 to be brief.

24 At the outset, Mr. President, Members of the Bench, prosecutors,
25 Cambodians, let me just have a thought for the forgotten dead of

1 this trial, the victims of the American bombardment, the bombs
2 that fell not only on this country, but also on others.

3 I heard somebody say that these bombs were only loaded with
4 chewing-gum.

5 Let us also think about those children who were born on the Ho
6 Chi Minh Trail, blinded, made deaf and dumb by Agent Orange. I
7 just want the public opinion to remember that these dead have not
8 been forgotten in this trial and that the defence is thinking
9 about them.

10 [11.36.26]

11 I was particularly touched to hear the two statements by the
12 Co-Prosecutors. It sounded like a novel written by Alexandre
13 Dumas about what happened in Cambodia. Unfortunately, it was all
14 based on anonymous testimony and reports by journalists. And as
15 Mr. Khieu Samphan said himself, journalists are entitled to their
16 opinion, but they were all people who were hostile to the
17 Accused. And at the -- when all is said and done, we had a rather
18 fantastical view of reality, namely that an entire people was
19 oppressed by a kind of trinity of these gentlemen, here.

20 Everything, therefore, sprang from the doings of these people.

21 [11.37.36]

22 Unfortunately, this bears no relation to reality. For example, if
23 we had listened to other witnesses, witnesses known by the world
24 over, which the prosecution does not know, for some reason --
25 think of Mr. Bizot, a French researcher, apolitical gentleman who

1 has worked at Angkor, has written a book that everybody knows
2 except the prosecution.

3 And in this book, Mr. Bizot recounts two events which are
4 connected very much to the trial. One is the evacuation of Phnom
5 Penh. He was there. He, himself, was chased out of Phnom Penh,
6 and in his account, he tells us the different kinds of behaviour
7 shown by the soldiers. I haven't got the book in front of me now,
8 but it's easily accessible. And, when you look at it, he
9 distinguished them by their uniforms: some came from one region,
10 who were extremely cruel with everybody, others showed
11 considerable humanitarian delicacy.

12 [11.38.47]

13 And how can you therefore say that there was this evil trio that
14 was distributing orders to these soldiers? Not at all. The
15 soldiers were behaving in a very distinguishable, individual kind
16 of way. Everything depends on this trilogy; it's just not true.
17 Secondly, Mr. Bizot was fortunate enough, if I can put it that
18 way, to have been arrested by Khmer Rouge in what you would call
19 security operations. He is very well aware of the situation. Ta
20 Mok was in charge, and as far as he was concerned, Bizot was a
21 CIA agent. But Duch refused that, he said no, he talked with
22 Bizot and finally was instrumental in saving his life. So there
23 you have the perfect proof that everything was not this kind of
24 fantastical vision of a trio of people dispensing a nightmare and
25 subjecting an entire people to slavery; it's just not true.

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1 We were asked to recall all of the children who died in the
2 course of the 20th century. Is this something else to be laid at
3 the feet of this trio? Now, we're moving into kind of
4 expressionist film language, but again we are departing severely
5 from the truth.

6 [11.40.45]

7 To close, Mr. President, everybody knows, in this country, that
8 Cambodia went through appalling torment unique to this country.
9 There was a military coup d'état; that military coup d'état set
10 in place a fascist regime. But as far as the prosecution is
11 concerned, this is a republican regime -- well, some republic.
12 And that fascist regime toppled Sihanouk. Sihanouk was toppled by
13 Lon Nol and the CIA, and that was the moment at which my client,
14 Mr. Khieu Samphan, left Phnom Penh to take refuge in the maquis,
15 and suddenly it's -- this presented as if this is some kind of
16 underground communist who pulls off his mask. No, he was marched
17 naked through the street by Lon Nol's agents; you seem to have
18 forgotten that. He was treated in that way by the fascist members
19 of the government that you call republican.

20 And then you've got the American bombings, you've got the
21 Vietnamese and the Thai territorial claims, and perhaps, in such
22 conditions, one can admit that men with their strengths and
23 weaknesses can make mistakes, can commit crimes; but this idea of
24 these bloodthirsty people who wanted only that is totally false;
25 it's just pure literature.

1 [11.42.32]

2 These people, the Khmer Rouge, came to power thanks to who? The
3 resistance? Yes, and a popular movement. And they were toppled by
4 what? By a foreign invasion, let's bear that in mind as well. And
5 you have to know that the regime was not supported by an entirely
6 terrorized people. Yes, they committed crimes, but it is a
7 complete falsification of history to pretend that the entire
8 people was subjected.

9 So, Mr. President, Your Honours, let me simply say that, in this
10 torment that Cambodia went through, men did make mistakes, they
11 event committed crimes, but they are not monsters. What we are
12 talking about is the work of global powers, here, that were
13 involved as well, and there are some who have nothing to
14 apologize for. The Presidents of the Presidium have nothing to
15 apologize for. One, I believe, was called Norodom Sihanouk; the
16 other, I believe, was called Khieu Samphan. And I frankly don't
17 believe these people can be tarred with the brush of being
18 monsters.

19 [11.43.58]

20 Ladies and gentlemen, when you come to judge this reality,
21 remember that you're looking at human beings. They caught -- they
22 were caught up in a holocaust and they suffered and made
23 mistakes, but to paint them as monsters totally responsible for
24 the situation is totally unreasonable. Let us try and be
25 reasonable.

43

1 Remember what Talleyrand said, a Napoleon's foreign minister,
2 another bandit, shall we say. And Talleyrand used to say -- and
3 I'm addressing the prosecution: "Everything that is excessive is
4 vain." Everything you said was excessive, and it's therefore
5 totally vain for the Tribunal to take it into account.

6 I hope I haven't wasted your time. Thank you very much.

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 [11.45.00]

10 The proceedings concerning the opening statements by the
11 Co-Prosecutors and the brief statements by defence counsel have
12 come to an end, and it is an appropriate time for the
13 adjournment. So the session is adjourned as of today, and -
14 Co-Prosecutor, you may now proceed.

15 MS. CHEA LEANG:

16 Thank you, Mr. President.

17 I am on my feet with nothing to respond to the defence counsel or
18 make any further statement, but I wish to add that -- for the
19 following week session, what do we expect from the session? And I
20 would like to make some clarification on this.

21 [11.46.07]

22 Having observed or heard the statements by the three Accused and
23 responses made by the defence counsel for Khieu Samphan, we
24 encountered an issue because there was a meeting in which
25 counsels for Khieu Samphan and Nuon Chea attended, and they said

1 that they would not be able to respond during this stage and
2 that, during the future hearing, it will be session for
3 testimonies, but the two Accused already made it clear that they
4 would not be able to make any comment or respond to such
5 testimonies. And we have found that it is really important that,
6 if the Accused Persons shall testify to some of -- content or
7 respond to testimonies, they need to make it clear for the smooth
8 operation for such a hearing.

9 I have noted three points.

10 Mr. Khieu Samphan indicated today that he would be participating
11 in the proceedings. So I can presume that he will be able to
12 provide testimony during such session.

13 [11.47.39]

14 The second observation is that Mr. Ieng Sary indicated that he
15 will not take part in the proceeding. However, in the contrary,
16 in his statement, he say he would be able to participate in the
17 proceeding. And the defence counsel stated already clearly that
18 Mr. Ieng Sary would not be joining in this testimony. So the
19 prosecutors (sic) have not been clear on this, and we need
20 clarification.

21 Third point. There is no clear indication from Nuon Chea position
22 -- rather in this participation in this testimony. So our
23 question is whether the Accused Person will be able to provide
24 testimonies during the session on the 5th of December. I would
25 like the Bench to enquire the three counsels for the three

45

1 Accused and the Accused themselves, to clarify their position and
2 so that we can really be less ambivalent as to what their
3 position is.

4 The Co-Prosecutors have already indicated in the opening
5 statements, and we would like the Bench to make the ruling on
6 this.

7 [11.49.05]

8 Thank you.

9 MR. PRESIDENT:

10 Counsel Pich Ang, would you wish to make any observation with
11 regard to this?

12 Counsel for the Accused, would you wish to respond to what have
13 been observed by the prosecutor?

14 MR. KARNAVAS:

15 Good morning, Mr. President. Good morning, Your Honours, and good
16 morning to everyone in and around the courtroom.

17 [11.49.46]

18 I'm rather shocked to hear that the prosecutors, both
19 international and national, seem to be confused with the word
20 "participate." Surely, they must know and must have read the
21 Constitution which claims that an accused has fair trial rights,
22 one being the right not to speak or to speak, as well as the
23 right to participate in his own defence.

24 Participating in one's defence does not mean necessarily taking
25 the stand and giving evidence. Participating does mean coming to

46

1 court or watching it by video link as -- with the special
2 proceedings, engaging with his counsel, giving instructions to
3 counsel, and being engaged at every facet of the trial, in the
4 proceedings.

5 [11.50.40]

6 Mr. Ieng Sary, from the very beginning, has been very engaged
7 with his lawyers. He's already indicated in writing, having
8 executed a waiver, that he will not be testifying. We provided
9 this information to the Trial Chamber, one, because we wished to
10 inform you as early as possible for scheduling purposes, given
11 that you had indicated that you wished, at least at this phase or
12 this part of the trial, to have those Accused who wish to testify
13 to be testifying as first witnesses. So we provided this
14 information to your Honours for scheduling, so that, if none of
15 the other Accused, for instance -- because I don't know and I
16 can't speak for them -- do not wish to testify, then clearly
17 there will be a need to ensure that witnesses are available when
18 we're next due to sit. So it was for your convenience.

19 [11.51.50]

20 So let me make it abundantly clear for the two prosecutors who
21 seem to be at a loss of what the word "participation" means: Mr.
22 Ieng Sary will continue to participate and assist in his own
23 defence; he will not be testifying; he's exercising his rights.
24 I cannot speak for the others.
25 Thank you.

1 MR. PRESIDENT:

2 Thank you, Counsel.

3 Do other defence counsels for the other Accused would wish to
4 make any other observation?

5 MR. PESTMAN:

6 I'm not sure how much time is allotted for my answer, but I still
7 have a response to the opening statement. So if there is some
8 time, I can do my response. As far as our client is--

9 MR. PRESIDENT:

10 We've already indicated that your floor is now to respond to what
11 the National Co-Prosecutor has just indicated momentarily ago,
12 and it is more about whether your client would be testifying or
13 not, it is not about the old story that has already been ruled by
14 this Chamber. If you would like to touch upon this again, you
15 should be reminded that it is not allowed.

16 [11.53.38]

17 Our question is now whether you have any observation with regard
18 to the respond, also to the observation made by the Co-Prosecutor
19 just now, in particular for the convenience of the scheduling
20 order concerning the hearings to be conducted on the 5th of
21 December, and to tell the Court whether your client will be
22 testifying or maintain the exercise of right to remain silent,
23 because your remarks will be beneficial to the arrangement and
24 the flow of the management of the proceedings on the 5th of
25 December. And other irrelevant remarks are not permitted.

1 [11.54.35]

2 MR. PESTMAN:

3 Thank you. That was very helpful.

4 I'm not impressed by the ability of this Court to schedule. All I
5 can say about my client's willingness to answer questions of the
6 prosecutor is that we will cross that bridge when we get there.

7 MR. PRESIDENT:

8 Thank you.

9 Does counsel for Khieu Samphan wish to make any clarification on
10 this?

11 MR. KONG SAM ONN:

12 Your Honours, Mr. Khieu Samphan will be testifying.

13 MR. PRESIDENT:

14 Thank you.

15 MR. KHIEU SAMPHAN:

16 I just wish to clarify that, in the following hearings, I will -
17 I will not yet respond, but I wait until I have heard what the
18 prosecutors would be saying, and it only with the right moment,
19 an appropriate moment, that I will respond, because the burden of
20 proof is at the Co-Prosecutor's side. Whatever accusations they
21 could come up with, they can really present in this Court; I will
22 listen to them attentively and I will see when the opportunity
23 fits for me to respond.

24 MR. PRESIDENT:

25 Thank you.

1 Counsel for -- Lead Co-Lawyer for the civil parties, you may now
2 proceed.

3 [11.56.42]

4 MS. SIMONNEAU-FORT:

5 Thank you, Mr. President. We wanted to hear the views of the
6 defence before we expressed our position, and if silence is a
7 right for each one of the Accused, I believe that the civil
8 parties believe that, out of respect for all of those who are
9 attending this trial, out of respect for the people of Cambodia,
10 who they claim they love "beaucoup" -- very much, the least, I
11 think, we could receive is a few explanations at the outset of
12 the trial. Those explanations would be the very least we could
13 hope for. If they could actually tell the truth, that will be
14 even better.

15 Thank you.

16 [11.57.33]

17 MR. PRESIDENT:

18 Counsel Pich Ang, you may proceed.

19 MR. PICH ANG:

20 Thank you, Mr. President, Your Honours. During the evidence
21 session and as Elisabeth -- Ms. Elisabeth Simonneau-Fort already
22 indicated, it is really important that the Accused Person
23 testifies, because civil parties and victims have been waiting to
24 hear from the Accused what they have to say. And if they choose
25 not to respond, it perhaps presumes that they have admitted the

50

1 guilt already. Indeed, it is the right of the Accused. And given
2 the fact that the civil party and victim have been waiting for
3 long, they should respond.

4 MR. PRESIDENT:

5 Counsel for Ieng Sary, you may proceed.

6 [11.58.46]

7 MR. KARNAVAS:

8 Thank you, Mr. President.

9 I do regrettably have to make the following remarks. It seems
10 that there is a fundamental lack of understanding on the part of
11 both national and international lawyer for the victims as far as
12 what are fair trial rights. There are no qualifiers in those
13 rights. If one wishes to exercise their right to remain silent,
14 they can do so, they need not give any explanations whether it's
15 in a national court or an international court. That I would have
16 expected, at the very least, to have been knowledgeable to -- for
17 the two lawyers to have knowledge of. I don't see how they can
18 possibly represent their clients effectively if they intend to
19 stand up and misstate the law as they're doing right now.

20 [11.59.41]

21 Silence does not mean guilt, and I understand that the civil
22 parties, because they were not afforded an opportunity to give an
23 opening statement -- and let's face it, an opening statement is
24 foreign in this particular jurisdiction, other than in this
25 particular Court -- now they take the opportunity to somehow make

51

1 a public statement for public consumption. They're pandering to
2 the audience. Presumably they know what the law is. They know
3 that an accused has a right not to say anything.

4 The prosecution drafted the introductory submission. We've gone
5 through the process. It is now for the prosecution to meet its
6 burden. The prosecution realizes that and claim that they will do
7 so.

8 [12.00.38]

9 There is no need for me to comment any further on this, but I
10 would appreciate, Your Honours, if in the future the lawyers that
11 are representing the civil parties would not make such grossly
12 inappropriate comments such as when "silence" means "guilt", or
13 explanations are required.

14 Surely my colleague, who comes from a well-trained country where
15 the laws apply, should know better. I would have expected more.

16 Thank you.

17 MR. PRESIDENT:

18 I think there would be no more floor for further response or
19 reply.

20 And lawyers now are advised not to use some kind of warning terms
21 in their expression to the parties, and please be mindful.

22 The parties now should be informed that the sessions -- the
23 issues concerning the arrangements for the hearing sessions have
24 already been discussed at length, and indeed the following
25 session will commence from the testimonies of the Accused.

1 [12.02.30]

2 The Accused will have to testify to all the relevant facts to be
3 put before the Chamber at each stage of the proceeding, and we
4 have already planned to see that some accused person will
5 exercise their right to remain silent with respect to some
6 certain facts or paragraphs in the evidence and that they may --
7 they may not exercise such right to remain silent when time fits.
8 And the parties could have been informed already that why the
9 Chamber does not continue the hearing on evidence as scheduled
10 originally and why it was rescheduled to the 5th of December
11 2011. It is because of these reasons, the reason that we need to
12 properly manage the flow of the proceedings, in particular in the
13 debates on the evidence. To ensure such smooth sessions, we had
14 to do that.

15 [12.04.04]

16 The Chamber has noted that it is very complicated to do this but
17 it has done its best to find the best solution for that.
18 The Chamber has already issued several memorandums to relevant
19 parties with regard to their duties or their roles and
20 responsibilities in addressing some of the questions or
21 testimonies by the witnesses or the victims.
22 The Chamber's still learning from this arrangement, because the
23 Chamber is still considering to see how much time is needed for a
24 witness to testify in each proceeding, because there were --
25 there are a lot of facts. The facts that happened across the

1 whole country, there are more than 500 paragraphs of facts, and
2 that we need to allow appropriate time for parties to wisely
3 challenge each and every fact, and that we have to maintain the
4 purpose of expeditious trial.

5 [12.05.48]

6 So, to conclude, the questions put by the Co-Prosecutor, we can
7 say that parties should be prepared to what has been scheduled.
8 And as long as we follow the flow, and as well -- as long as we
9 have been prepared, we will deal with these problems on the way.

10 We understand very clearly that it has never been easy to do
11 this, but we need every one of us to be prepared for this.

12 We hope that the parties and also the prosecutors understand
13 this, and the Chamber will do its best to inform the parties in
14 order to ensure the smooth proceedings.

15 We have been convinced that we have not envisaged any obstacle to
16 these hearing that is scheduled on the 5th of December. We
17 already believe that such sessions will be conducted smoothly
18 because we have already communicated our message to all parties
19 involved to assist us with this smoothness.

20 [12.07.36]

21 The session on the opening statements and the statements made by
22 the defence counsel have already come to an end, and it is an
23 appropriate time for the adjournment of today's session.

24 The Trial Chamber will be now adjourned, and the session on
25 evidence will take place on the 5th of December, at 9 a.m.

54

1 Parties are -- the public are now informed and invited to
2 participate in the proceedings as scheduled.

3 Security personnels are now instructed to bring the Accused back
4 to the detention facility and bring them back to the courtroom on
5 Monday, the 5th of December, at 9 a.m.

6 The Court is adjourned.

7 (Court adjourns at 1208H)

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