



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
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TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

5 April 2012
Trial Day 48

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

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Michiel PESTMAN
Jasper PAUW
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SE Kolvuthy
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. KAING GUEK EAV alias DUCH	Khmer
MR. KARNAVAS	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PAUW	English
MR. PESTMAN	English
MR. PICH ANG	Khmer
MR. SMITH	English
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer
MR. VERCKEN	French

1

1 P R O C E E D I N G S

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues hearing the testimonies of witness

6 Kaing Guek Eav alias Duch, the questions to be posed by counsels

7 for Nuon Chea.

8 Before we proceed to the counsels for Nuon Chea, the Chamber

9 wishes to inform parties to the proceeding in Case File 002 that

10 the hearing of the testimony of this witness will proceed until

11 the next -- early two days of next week.

12 Judge Lavergne has some health concern that he may not be able to

13 attend the whole proceeding now and that Judge Fenz is here to

14 replace him. She will remain -- she will remain on the Bench

15 until Judge Lavergne is better and be well to come back to take

16 his position. We have applied this practice as guided by the

17 Internal Rules of the ECCC.

18 [09.06.55]

19 We would like now to proceed to counsel for Nuon Chea to proceed

20 with their questioning.

21 MR. PESTMAN:

22 Thank you, Mr. President. Good morning to everyone.

23 Yesterday, we tried to make the interface work; we didn't manage

24 in the end. I sent an email to all the parties. I hope it has

25 arrived with an attachment including all the documents we would

2

1 like to rely upon today. I see everyone nodding so I suppose it's
2 okay.

3 I will continue and go straight to the next document, which is
4 the first document on the list. I suppose I do not have to read
5 out the numbers anymore.

6 My request is whether I'm allowed to put this particular
7 document, which is a note to a confession, on the screen and give
8 a hard copy to the witness.

9 MR. PRESIDENT:

10 Counsel, could you please identify the document's reference, its
11 ERN number? This is for the purpose of the transcript and record.
12 Otherwise, the relevant information concerning these references
13 will never be recorded properly.

14 MR. PESTMAN:

15 It's document D43/IV-Annex 11, Khmer 00173883, English 00583931,
16 French 00280047.

17 [09.09.17]

18 MR. PRESIDENT:

19 Court officer is now instructed to bring the document and hand it
20 over to the witness.

21 QUESTIONING BY MR. PESTMAN RESUMES:

22 Q. Duch, my question will not surprise you: Are you familiar with
23 this document?

24 MR. KAING GUEK EAV:

25 A. Yes, I am familiar with the document.

1 Q. Maybe you can tell us -- summarize us what the note says. And
2 with "the note", I mean the text which has no box around it. Can
3 you tell us briefly what it says and who wrote it?

4 A. This -- this letter was accompanied and sent by the secretary
5 of the zone -- Zone 801 to the Office of 870.

6 Q. And am I correct to say that this is a note accompanying a
7 confession or maybe even two?

8 A. Yes, it is true.

9 [09.11.52]

10 Q. The note is addressed to Office, or Committee 870. Can you
11 tell us who that could be or what that could be?

12 A. 870 Committee is what written in the top of the note -- on the
13 top of the note, and it's not really 870 Committee Office; no
14 office is mentioned here.

15 Q. But do you know who -- whom this note was addressed to?

16 A. Pol Pot was in charge of 870 Committee.

17 Q. Thank you. Could you now read out the text in red -- in the
18 red box, please?

19 A. On top, it reads "aan haoy" in Khmer, which -- which means
20 "already read" in English. Then the date is the 19th (sic) of
21 April 1978, and the final line reads: "Follow a trail."

22 Q. Can you tell the Court who wrote this particular annotation,
23 according to you?

24 [09.14.24]

25 A. I am convinced that this annotation belongs to Nuon Chea.

4

1 Q. You say "I'm convinced"; are you absolutely sure? You have no
2 doubt at all?

3 A. No, I don't; I have no doubt.

4 Q. I'm asking you because yesterday, at one point, you said that
5 you "assumed" that a certain annotation was made by Nuon Chea.

6 This is not an assumption; you are sure?

7 A. I am sure.

8 Q. Can you explain to the Court why you are sure, why you have no
9 doubt at all that it -- that this is Nuon Chea's handwriting? Can
10 you put that into words?

11 A. I note the handwriting -- the style of handwriting normally
12 done by Nuon Chea.

13 And, secondly, the abbreviation, "aan haoy", in Khmer, or
14 "already read", in English, which is the normal expression Nuon
15 Chea would like to put on the -- in his annotation.

16 [09.16.23]

17 And, thirdly, after the 25th of October 1977, he was the only
18 person who had the authority to contemplate general affairs,
19 including Santebal matters, and this letter dated the 9th -- this
20 annotation was dated 19th April 1978. He would be in charge when
21 Pol Pot was busy.

22 Q. Thank you. You testified about this particular document before
23 the Investigating Judges. Do you remember talking about this
24 document?

25 A. No, I don't.

1 Q. I thought so.

2 I would like to quote from your statement before the
3 Investigating Judges, which is document number D117; Khmer ERN
4 00239834, English ERN 00242876, and French ERN 00239824. I will
5 quote what you said about this particular annotation to the
6 Investigating Judges: "Already read, 19 April 1978, to be
7 continued."

8 That was your translation at the time of the annotation.

9 [09.18.55]

10 "I don't know who wrote that, but it was not Pol Pot, whose
11 handwriting was similar to mine, like Son Sen's and Vorn Vet's.
12 Perhaps Nuon Chea wrote it, but that is just my assumption,
13 because I did not see his handwriting often."

14 Do you remember saying this to the Investigating Judges, now?

15 A. This statement was recorded before the Investigating Judges,
16 and I still fully recollect what I stated back then.

17 Q. But can you explain, then, to the Court why at the time you
18 were not sure about the handwriting and now you have absolutely
19 no doubt? I find it hard to reconcile those two statements.

20 A. The way I reported to the Investigating Judges is based on the
21 balance between yes and no. First, I thought that this
22 handwriting could have not belonged to Brother Pol or Khieu, so I
23 made an assumption that it could have been written by Brother
24 Nuon. And back then I did not gather enough documents to assist
25 me with my -- with my view, so later on I became clear.

6

1 [09.21.23]

2 Q. You said -- or you told the Investigating Judges that you did
3 not see Nuon Chea's handwriting very often; is that correct?

4 A. Before the 7 of January 1979, I saw his writings on very few
5 letters, about four letters I kept in my home. Later on, I never
6 seen any of his annotations. And later on, in 1989 or 1990, at
7 K-18 Office, I noted some of his further annotations in which he
8 would annotate the abbreviation of "aan haoy", or "already read,"
9 and I already learned some new documents concerning his writing
10 before the Co-Investigating Judges as well.

11 Q. On the 20th of November 2009, you wrote, in response to
12 questions put to you by the Investigating Judges, the letters
13 you mentioned just now contained "just several words" -- and that
14 is a quote, for the record, I take from document D121/6.2; Khmer
15 00408238, English 00434349, and French 00408249.

16 [09.23.58]

17 You wrote at the time that those letters you received from Nuon
18 Chea contained "just several words"; is that correct?

19 A. Yes, it is.

20 Q. And I would like to quote another document, D87, or E3/61;
21 Khmer 00195564, English 00195573, French 00195582, where you said
22 -- you told the Investigating Judges that you could not remember
23 what those few words said; is that correct?

24 A. Yes, it is. It means that I do not remember the content of the
25 letters Nuon Chea sent to me.

7

1 Q. So those letters with these few words, there is, if I'm
2 correct, approximately 30 years before you saw the annotations of
3 Nuon Chea -- the annotations you claim are written by Nuon Chea
4 on the confessions; am I correct?

5 A. Mr. President, could you direct counsel to shorten the
6 statement and be more specific? And the early portion of the
7 statement could be repeated.

8 [09.26.45]

9 Q. I was trying to establish how much time had elapsed between
10 the letters you received -- you claim you received from Nuon
11 Chea, when you were at S-21, and the moment you saw his
12 annotations on the confessions in your own case, the annotations
13 you claim were written by Nuon Chea. How much time elapsed
14 between those two moments?

15 A. I was under Bong Nuon's supervision from 1978 until March or
16 April -- I guess it's March 1999, when Nate Thayer obtained a
17 document concerning the confession of Kung Kien, alias Eung Vet;
18 he presented the confession to me.

19 [09.28.25]

20 In that confession, it contains my annotation, Son Sen's, and
21 Brother Nuon's annotations. I recognized Son Sen's writing.
22 Indeed, I recognized my own writing. So Brother Nuon wrote very
23 few words; he indicated that the documents were to be sent to 33
24 or 35.

25 And only very few people who could annotate on such piece of

1 confession.

2 And Brother Son -- Son Sen also noted that a copy would be sent
3 to Nuon Chea. So the annotation on that confession, you know,
4 with -- with some kind of calculation, you can see my writings
5 and Son Sen's writing, and the other annotation could have been
6 for Nuon Chea. And by way of calculating the time lapsed, it is
7 about 21 years.

8 Q. So your statement, if I am correct, is that you recognize Nuon
9 Chea's handwriting or you recognized Nuon Chea's handwriting when
10 Nate Thayer showed you that document, despite the fact that you
11 hadn't seen his handwriting for what you say now is 21 years, in
12 a couple of short messages you cannot remember anything about; is
13 that what you're trying to say?

14 A. Mr. President, there are a lot of problems with this question.
15 May I be lengthy, a bit, with my answer?

16 [09.30.56]

17 The letters wrote -- written by Nuon Chea, that were sent to me
18 in 1978; that was when I saw Nuon Chea's handwriting with my own
19 eyes.

20 Besides, the matter dealt with the confessions of Kung Kien,
21 alias Eung Vet. I, from S-21, wrote that to Brother Khieu, and
22 Brother Khieu annotated the letter which reads: "Sent to Brother
23 Nuon." So it reflected clearly that the letter was to be sent to
24 Brother Nuon.

25 And after Brother Nuon read the letter, he annotated the letter,

1 that the letter was to be sent to 33 -- Sector 33 or Sector 35.

2 So that's what I remember.

3 MR. PRESIDENT:

4 (No interpretation)

5 MR. SMITH:

6 Sorry, I didn't hear the translation. But, good morning, Mr.

7 President. Good morning, Your Honours. Just for the record, the

8 document the witness is referring to is IS 5.42. Thank you.

9 [09.32.53]

10 BY MR. PESTMAN:

11 Q. Duch, I put it to you that you're unable to recognize Nuon

12 Chea's handwriting, that you, in fact, never recognized Nuon

13 Chea's handwriting, but that you look at the date on the document

14 or the date of the annotation and, if it isn't Son Sen's

15 handwriting or your own handwriting, you simply assume it's Nuon

16 Chea's handwriting; isn't that the case?

17 MR. PRESIDENT:

18 Witness should not answer the question yet; just wait until you

19 hear the decision from the Chamber because the Chamber now notes

20 the Lead Co-Lawyer is on her feet.

21 [09.33.43]

22 You may proceed, Counsel.

23 MS. SIMONNEAU-FORT:

24 Mr. President, I really have the feeling that we're not dealing

25 here with a question, but with a conclusion that my colleague

10

1 wishes to draw from the questions that he asked before.

2 And I think this is completely inappropriate to make this kind of
3 remark at this stage, and I'd like to object before he finishes.

4 And I think that the Chamber must remind him that he is there to
5 put questions, and not to share his comments.

6 MR. PRESIDENT:

7 Counsel Michael Karnavas, you may proceed.

8 MR. KARNAVAS:

9 My apologies. Good morning, Mr. President. Good morning, Your
10 Honours. And good morning to everyone in and around the
11 courtroom. The only reason I wish to respond is because I think,
12 if that is the position that is taken at this point by some of
13 the lawyers on the other side, then we're in for a very lengthy
14 trial.

15 [09.34.54]

16 This is classic cross-examination. Yesterday, I pointed out that
17 there is a procedure called putting your case to the witness. I
18 believe the controlling case is Brown vs. Dunn. This is a
19 procedure that is used at the ICTY and elsewhere. In fact, it is
20 in the rules that counsel must put his case to the witness; it is
21 absolutely necessary. This was something that was injected into
22 the rules at the ICTY by the former Judge May who passed away
23 during the Milosevic Trial.

24 There is nothing wrong with the question; it gives the -- the
25 witness an opportunity to explain. It is an open-ended question,

11

1 and the witness can accept or deny it. But I think this is the
2 way cross-examination is done. The rules provide for a
3 confrontation process, as was reminded to us yesterday by one of
4 the civil party lawyers, that this is an adversarial proceeding.
5 And it is perfectly appropriate to ask questions in this fashion.
6 And, I think, to rule otherwise would be inappropriate. Thank
7 you.

8 [09.36.16]

9 MR. PRESIDENT:

10 The International Co-Prosecutor, you may proceed.

11 MR. SMITH:

12 Thank you, Your Honours. We agree with the Defence.

13 I think it's appropriate that their case be reasonably put to the
14 -- to the witness. As long as the question's not inflammatory, or
15 provocative, or antagonistic, the -- the thrust of the Defence
16 submissions should be able to be put, as long as it's based on a
17 reasonable foundation. And I think it's reasonable for the
18 Defence to put it to the witness.

19 And also, as my learned colleague for the Ieng Sary defence team
20 has said, it gives the witness an opportunity to comment on that
21 issue, which may well be an issue that you'll be dealing with at
22 the end of the case. And to be able to have that witness comment
23 on the issue directly, it enables Your Honours to balance and
24 weigh out the evidence more directly.

25 [09.37.26]

1 MR. PRESIDENT:

2 International Counsel for Mr. Khieu Samphan, you may proceed.

3 MR. VERCKEN:

4 Thank you, Mr. President. Good morning. I just wanted to confirm
5 that, indeed, making suggestions -- or suggesting things to a
6 witness is something that is common practice before the ICTR,
7 before the ICC. This is a way to allow the witness to react and
8 to respond to certain arguments, even if these arguments might
9 not please the witness. This is the way it is done.

10 MR. PRESIDENT:

11 Yes, Lead Co-Lawyer for civil party, you may proceed.

12 MS. SIMONNEAU-FORT:

13 Mr. President, I would like to say again that we're not, here, at
14 the ICTY; we are at the ECCC.

15 [09.38.21]

16 This is a questioning session and not a cross-examination. And
17 Judge Cartwright reminded us of this the other day.

18 And I'd like to indicate that I'm not at all opposed to the
19 witness' comments; I'm opposed to the lawyer's comments. And this
20 was not a question he asked; it was a comment.

21 And I noticed, in the days that preceded, that, each time the
22 civil parties would resort to these kinds of conclusions during
23 the questions, the Defence challenged us. And I would like this
24 rule, therefore, also to be applied to the Defence. Thank you.

25 [09.39.06]

1 MR. PRESIDENT:

2 Mr. Pestman, do you have anything to say in order to reply to the
3 objection?

4 MR. PESTMAN:

5 I hope at the end of the day I'll get some extra time for my
6 questioning because this is taking a lot of time. I would urge
7 the Trial Chamber to take a speedy decision so I can continue.

8 MR. PRESIDENT:

9 The Chamber will not give you any additional time. You originally
10 asked for 15 minutes, and later you asked for one hour. The
11 Chamber decided that only 15 minutes is given to you as an
12 additional time. The Chamber will note any time spent on the
13 objections raised.

14 We will try to be very firm with the time limit for today's
15 proceeding and the future proceedings.

16 (Judges deliberate)

17 [09.42.23]

18 MR. PRESIDENT:

19 The Chamber decides on the objection made by the Lead Co-Lawyers
20 for civil parties concerning the last question put forward by
21 defence counsel for Nuon Chea to witness Kaing Guek Eav, alias
22 Duch. The objection does not stand.

23 Witness shall answer to this question.

24 However, before we proceed, the Chamber would like to inform the
25 parties that, at the ECCC, the Chamber will not practice the

14

1 adversarial proceedings that was -- or are practiced at ICCR
2 (sic) or at ICTY. So we will have to be clear on this issue that
3 witness shall answer this question, but we are not following the
4 practice at ICCR (sic) or ICTY.
5 Parties are also reminded, especially Mr. Michael Pestman, that
6 they should put simple questions because the general knowledge of
7 Cambodian people may not be that equal to the general knowledge
8 of peoples in other developed countries. So, if the question is
9 complicated, this may be difficult for the witness to understand
10 and answer the question accordingly. As a result, we may not have
11 the answers to the questions. So, in order to ascertain the
12 truth, it does not mean that the question has to be complicated.
13 [09.44.59]

14 What we want from the witness is to allow him to answer on the
15 basis of his knowledge and his experiences.

16 Perhaps the witness does not remember the question; and counsel
17 is now advised to put the question again so he can answer to the
18 question.

19 BY MR. PESTMAN:

20 Q. Duch, would you like me to repeat the question?

21 MR. KAING GUEK EAV:

22 A. Mr. President, counsel should obey the order of the Court.

23 Q. I'll just repeat the question: Duch, to put it simply to you,
24 I do not believe you're able to recognize Nuon Chea's
25 handwriting; I believe that you simply assume it is Nuon Chea's

15

1 handwriting based on the date of the annotation on the document;
2 isn't that the case?

3 A. Mr. President, I assume or claim on a lot of bases.

4 [09.46.43]

5 One, the one who has the obligations to annotate on S-21
6 documents included Son Sen, Nuon Chea, and Pol Pot; no one could
7 annotate the documents of S-21. That is the competence of the
8 upper echelon, and no one breached such obligation.

9 Secondly, for the documents that I referred earlier, regarding
10 the confession of Kung Kien that counsel provided the identity,
11 as the annotation of Son Sen wrote that it was to be sent to Nuon
12 Chea, so it was clear that that other annotation was that of Nuon
13 Chea.

14 Thirdly, I am not completely lost and I am not saying on -- in my
15 capacity as a professional, but I have seen some Nuon Chea
16 handwritings. So, together with my understanding of the
17 competence of the upper echelon and my experience as I have seen
18 some writings of Mr. Nuon Chea, I can assert that the annotations
19 belong to Nuon Chea. And I end my answer to you here.

20 Q. Thank you.

21 [09.48.35]

22 A few minutes ago, when responding to one of my questions, you
23 said: "I was under the supervision of Nuon Chea from 1978 until
24 1999." When exactly, in 1978, did you come under Nuon Chea's
25 supervision?

16

1 A. Mr. President, may I indicate that I became under the direct
2 supervision of Brother Nuon from the 15 August 1977. I already
3 told the Court this, and counsel should understand this. We have
4 talked about a number of letters that Brother Nuon sent to me.
5 And I indicated a while ago that I considered '78 because it
6 makes it easy to do the calculation of the durations that you
7 asked me, that I referred to the annotation of Brother Nuon Chea
8 on the confession that Nate Thayer showed to me. So I considered
9 the year -- or I counted the year from 1978. Between that
10 duration, I received letters, approximately three or four
11 letters, from 1978. So there is nothing that I am trying to
12 change here, let us be clear.

13 [09.50.29]

14 Q. On the 20th of March 2012, here in Court, you told the Judges
15 that Son Sen was relocated to Neak Loeang on the 15th of August
16 1978. That date was misinterpreted in English into 15th of April
17 1978, but I checked the transcript, and the witness said the 15th
18 of August 1978.

19 Duch, is it correct that Son Sen was moved or relocated to Neak
20 Loeang on the 15th of August 1978?

21 A. Mr. President, can - can you be shorter in your question so
22 that it is clear?

23 I would like to answer only to the last part of your question.
24 The last part, you asked me whether Son Sen went to Neak Loeang
25 on the 15th of August 1977, and I say yes.

1 Q. On the 5th of June 2002, you testified before the
2 Investigating Judge of the Military Court, here, in Phnom Penh.

3 [09.52.10]

4 That is the document I mentioned on the -- the second document,
5 which has, as a number, D288/6.51/4.41 (sic). The Khmer ERN is
6 00320808; and the English ERN is 00327353; and I was unable to
7 find the French ERN for this document.

8 Do you remember testifying before the Military Court?

9 (Short pause)

10 Should I repeat the question?

11 A. What is your question? I only heard your narrative.

12 You talked about the date. How could I remember the date?

13 Can you put the document on the screen? And can you give me the
14 hardcopy of the document?

15 Now we are talking a matter before the Military Court.

16 Q. I will read the document to you, your quote on the date you
17 alleged Nuon Chea took charge of S-21.

18 [09.54.12]

19 "When..." I quote from your answer:

20 "When Nat was Chairman, Pang and Lin came down to S-21 only once
21 or twice, but after Nat left, Pang and Lin came down to S-21
22 often, especially after Nuon Chea came down to take personal
23 charge at S-21. These two could go anywhere. On the 15 of July
24 1977, Nuon Chea came down to S-21."

25 That is what you told the Investigating Judges. Do you remember

1 that?

2 MR. SMITH:

3 Your Honour, Mr. President--

4 MR. PRESIDENT:

5 Yes, International Co-Prosecutor, you may proceed.

6 MR. SMITH:

7 (Microphone not activated)

8 [09.55.12]

9 MR. PRESIDENT:

10 Please activate your mic. Otherwise, other parties cannot hear,
11 and there won't be any interpretation.

12 MR. SMITH:

13 Thank you, Mr. President. I just would ask that the document be
14 placed on the screen.

15 And if the witness needs a hardcopy, I think it's reasonable that
16 he gets it. As Your Honour knows, he's testified for about 300 or
17 so hours in relation to these proceedings. The Judges and the
18 parties have all got the documents in front of them. We can check
19 the accuracy. I think it's reasonable that the witness, who's
20 prepared - who's expected to provide answers, should be able to
21 look at the document and - and provide those answers. There's no
22 reason why he should be in a worse position than the parties and
23 the Judges.

24 [09.56.06]

25 MR. PESTMAN:

19

1 Your Honours, if I may respond to that, I'm more than willing to
2 refresh the memory, but I would like to hear the answer first to
3 my question: Does Duch remember this, saying this to the
4 Investigating Judges? And then I will provide the witness with a
5 copy in order to refresh his memory.

6 MR. SMITH:

7 Your Honour, in relation to that, I mean, the Defence are reading
8 an English translation of the document; it's not the actual
9 document itself, so--
10 Words matter. And I think it's reasonable that if this witness is
11 expected to give an accurate answer, that he be able to sort of
12 see the answer that was given in his own language rather than
13 something that's been converted in English. As you know, the
14 translations are not always direct. And these are important
15 points.

16 [09.57.02]

17 MR. PRESIDENT:

18 What has been raised by the Prosecution is accurate.
19 So, before we proceed with questioning to witness concerning this
20 document, counsel for Nuon Chea is now instructed to provide the
21 witness the hardcopy of the document which is in Khmer and to
22 display the document onto the screen as well.
23 For the purpose of the transcript, defence counsel is instructed
24 to identify the document that you intend to use to ask questions
25 to witness.

1 MR. PESTMAN:

2 I believe I already did; I gave the Khmer ERN and the document
3 number. It's the last document number I gave.

4 MR. PRESIDENT:

5 Can you indicate it again? Can you remind everyone again about
6 the ERN number?

7 [09.59.25]

8 MR. PESTMAN:

9 I believe the ERN number in English is 00327353, and the Khmer
10 ERN is 00320808 to 09.

11 My case manager will put up the relevant excerpt on the screen if
12 you give us permission to do so.

13 MR. PRESIDENT:

14 I already gave order that the document be put up on the screen.

15 BY MR. PESTMAN:

16 Q. Duch, can you identify - or find the text which we have
17 highlighted on the screen, in the document you have been given?

18 (Short pause)

19 [10.01.40]

20 Duch, can you confirm that the text I just read out is an
21 accurate translation of the original Khmer version of the
22 document?

23 MR. KAING GUEK EAV:

24 A. The translation of the text is accurate.

25 Q. Thank you. Did Nuon Chea ever come down to S-21, as you told

21

1 the Military Court?

2 A. Nuon Chea never came down to S-21, while Son Sen went there
3 four times. So, with this exact date, I have been caught off
4 guard.

5 Q. Did Nuon Chea take charge of S-21 on the 15th of July 1977?

6 A. It was the 15th of August 1977 in which Nuon Chea took charge
7 of S-21 and - and me. Before, it was Son Sen.

8 Q. Thank you.

9 I would like to refer to another document, number IS 20.20; Khmer
10 ERN 00172210 -- I've written it down on my list; English,
11 00002622; French, 00384725. It is the interview by Nate Thayer,
12 whom you mentioned several times today, for the "Far Eastern
13 Economic Review".

14 [10.04.43]

15 In this interview, you are quoting, saying the following -- and I
16 would like to quote you. It's not in translation; it's the
17 original language. You told Nate Thayer, according to this
18 interview, that: "After [the] liberation (in 1975), I reported
19 directly to Son Sen. In July 1978, I was transferred to Nuon Chea
20 when Son Sen went to command the fighting in the east with the
21 Vietnamese."

22 The date 1978 is mentioned twice in that particular interview. Do
23 you remember saying that to Nate Thayer during that interview?

24 MR. PRESIDENT:

25 International Co-Prosecutor, you may now proceed. And, Witness,

1 could you please hold on a second?

2 MR. SMITH:

3 Again, Your Honour, whether the witness requires a hardcopy -- I
4 think if he requires one, I think he should be given a hardcopy
5 of the Khmer, as a matter of course. He may not feel in a
6 position that he is able to ask, but I would ask that a hardcopy
7 be provided, unless the witness believes it's not necessary.

8 [10.06.40]

9 MR. PRESIDENT:

10 Thank you.

11 Counsel is now instructed to hand over the hardcopy of the
12 document in Khmer to the witness.

13 BY MR. PESTMAN:

14 Thank you.

15 Q. If the court officer can help us, we have a copy of the
16 translation, and I believe it's also put on the screen. If the
17 Court gives permission, everyone can see the Khmer version of the
18 interview.

19 MR. KAING GUEK EAV:

20 A. I just mentioned about Nate Thayer in this courtroom. I talked
21 to him just a few words, but he put several words of mine --
22 which was not mine in his article.

23 The date stated in Nate Thayer's document is not accurate.

24 Q. You know that that particular interview was also tape
25 recorded; don't you?

1 [10.08.46]

2 A. When Nate Thayer met me, I did not notice any recorder, but
3 Nic Dunlop did take video footage of our encounter, and
4 Christophe Peschoux did also take the recording of our interview.
5 Nate Thayer was seen coming somewhere near Mr. Peschoux, and I
6 don't know whether he had recorded our interview.

7 Q. Now that you mention Christophe Peschoux, he also states -- or
8 interviewed you, and the written record of that interview quotes
9 you as saying that Nuon Chea took over in 1978, and not in 1977.
10 Do you remember telling Peschoux that it was 1978?

11 MR. SMITH:

12 Again, Your Honour, I would ask that the copy be provided to the
13 witness.

14 MR. PESTMAN:

15 I notice that the witness and the prosecutor only ask for copies
16 of statements if they contradict what Duch has said earlier.
17 But I have a hardcopy.

18 [10.10.32]

19 MR. SMITH:

20 Your Honour, that's not correct. The Prosecution, throughout the
21 whole presentation of his testimony, has been providing
22 hardcopies and copies on the screen for the witness.
23 That's inappropriate.

24 MR. PESTMAN:

25 I have a hardcopy for the witness.

1 MR. PRESIDENT:

2 International Co-Prosecutor's observation is appropriate.

3 From now on, any party wishing to put any document before the

4 Chamber, whether party wishes to seek confirmation from the

5 witness being cross-examined, counsels or party -- the party is

6 advised to request that the materials be put up on the screen and

7 that hardcopies be produced to the witness.

8 [10.11.37]

9 At the same time, assistant to the counsel should be allowed to

10 project the document on the screen immediately when the request

11 by the party who is on his feet requesting the Chamber for the

12 document to be put to the witness or other individuals concerned

13 or subject of the examination in this courtroom.

14 Court officer is now instructed to bring the document to the

15 witness.

16 And assistant to the counsel for the defence team is now advised

17 to put up the document on the screen.

18 BY MR. PESTMAN:

19 The Khmer ERN of this particular page is 00160879. The English

20 ERN is 00185055.

21 Q. Could you read the text, please, in the red box after number

22 6, please?

23 MR. KAING GUEK EAV:

24 A. I would like to read it as follows: "In 1978, he was sent to

25 the battlefield in the East, and Nuon Chea came to take his

25

1 position. He was then my superior in charge of the work, and he
2 -- and I had to send the confessions to him."

3 [10.14.00]

4 Q. Duch, do you remember that two days ago, when I started asking
5 you questions, I asked you whether you ever got the date of 15th
6 of August 1977 wrong, and you answered: "I'm never mistaken." Do
7 you remember saying that?

8 A. Could the President ask counsel to repeat the question? Is it
9 the 17th of August or any other specific date?

10 MR. PRESIDENT:

11 Counsel is now advised to repeat the question so that witness is
12 aware of the content of the question and be ready to respond
13 accordingly.

14 BY MR. PESTMAN:

15 Q. I will. Duch, two days ago, I asked you whether it is possible
16 that you got the date wrong, and I was talking about the 15
17 August 1977. I asked you specifically: "Do you ever get that date
18 wrong?" And you said: "I am never mistaken; I'm absolutely sure
19 about that date." Do you remember saying that?

20 [10.15.49]

21 MR. KAING GUEK EAV:

22 A. I met Bong Nuon from the 15th of August 1977. I never talked
23 to any other people referring to any other dates other than the
24 15th of August 1977. And I remember when the prosecutor asked me
25 about the superiority of Son Sen and Nuon Chea, and I still stand

1 by my position that I have never been mistaken when it comes to
2 that exact date, the 15th of August 1977, when Nuon Chea was my
3 superior.

4 Q. Can you then explain to the Court and to the others why, in
5 1999, you said "July 1978", in 2002, you said "15th of July
6 1977", and here, in Court, on the 20th of March, you said the
7 "15th of August 1978"? How can you explain that you got the date
8 wrong, when you're absolutely sure?

9 A. For that reason, I asked for the tape recording Mr. Christophe
10 Peschoux took when I gave that interview to him. I never been
11 given such recordings for my review. So, to be precise and to be
12 fair, I should be given the tapes Mr. Christophe Peschoux took
13 that time, and the Court should also be given the copies.

14 Q. Duch, I put it to you that that event you described many times
15 did not occur, and that that is the reason why you keep mixing up
16 the date; isn't that the case?

17 [10.18.27]

18 A. I never, ever said any other things other than saying that I
19 met Brother Nuon from the 15th of August 1977. If counsel wishes
20 to challenge this, then counsel is advised to compel the relevant
21 documents you cited from. For example, how many documents does
22 the date -- the 17th of July, for example -- contain in those
23 documents? Then you can bring to us.

24 Q. I put it to you, Duch, that Son Sen remained your superior
25 even after his departure to the eastern front and that you never

1 reported or received instructions from Nuon Chea; isn't that the
2 case?

3 A. I never said that I never reported to Nuon Chea. I said for
4 sure that I still kept some contacts with Son Sen. We met on the
5 radio communication once a month or once a fortnight, but when I
6 reported to Nuon Chea, it was very regular: once in three days or
7 once in five days I would meet Nuon Chea. And I did never say I
8 did not report to Nuon Chea but to Son Sen. I think that was not
9 my words.

10 [10.20.44]

11 Q. Duch, to shift to a different topic -- the liberation of Phnom
12 Penh -- during the investigation, you briefly mentioned the
13 liberation of the city in 1975. Among other things, you listed
14 the troops that participated in the attack on the city on the
15 17th of April, and you mentioned troops from the East Zone, the
16 former North Zone, Special Zone and the Southwest Zone.
17 My question to you is: Do you know who was in control of those
18 troops in 1975?

19 A. Those who were in control of the army, according to the Party
20 Statute and the real practice, the supreme persons were Pol Pot
21 and Nuon Chea. And in the battlefields, there were secretary of
22 each respective zone who would be deployed: in the North, Koy
23 Thuon and Ke Pauk; the Special Zone, Son Sen; and the Southwest,
24 Ta Mok and Chou Chet; the East must be under the supervision of
25 Secretary So Phim. But that is a principal.

1 Q. Are any of those zone commanders you mentioned still alive?

2 [10.22.55]

3 A. Each commander of each zone has already passed away.

4 Q. Did you hear about conflicts that occurred between the various
5 divisions who occupied Phnom Penh after the 17th of April – April
6 1975?

7 A. There was no conflict between armies.

8 Q. Do you know Heng Samrin?

9 A. I know him now as the President of the National Assembly of
10 the Royal Kingdom of Cambodia.

11 Q. Have you ever met him?

12 A. I saw him on TV.

13 Q. Are you familiar with the long interview he gave to Ben
14 Kiernan in 1991, during which he described in detail the
15 liberation of Phnom Penh and his role in the liberation of the
16 city?

17 A. I have never known the person named Ben Kiernan.

18 [10.25.23]

19 Q. Are you familiar with an interview of Heng Samrin where he
20 describes his role in Phnom Penh, irrespective of the person who
21 took the interview?

22 A. Could you please clarify to me who had the interview with Bong
23 Rin?

24 Q. That's the person you say you don't know, Ben Kiernan.

25 I will go and move on to my next question.

1 The document containing the interview is number D313/1.2.406.1.

2 The pages are confusingly numbered, but the pages I would like to
3 refer to start at 35 to 44. The Khmer ERN is 00713945 to 54. The
4 English ERN is 00651878 to 83. And the French ERN is 00743349 to
5 54. Those pages contain a detailed description of Heng Samrin's
6 role in the liberation of Phnom Penh.

7 [10.27.12]

8 MR. SMITH:

9 Your Honour, just a--

10 MR. PRESIDENT:

11 International Co-Prosecutor, you may proceed.

12 MR. SMITH:

13 As Your Honours have ruled, if a document is not familiar to a
14 witness, the specific contents of those documents -- of that
15 document should not be put to the witness, but the general
16 subject matter can be put.

17 And so I think it's - I think it's useful and important for the
18 defence counsel to indicate which document he's referring to, but
19 certainly, if he's moving to the next step of quoting passages or
20 significant specific details from that document to the witness,
21 Your Honours have ruled that that is not appropriate to do that,
22 but the general - the general substance can be put.

23 [10.28.08]

24 And I would submit that that's a good ruling, to the extent that
25 all these documents that are being put before the Chamber,

30

1 certainly, by the Prosecution, Your Honours haven't ruled on the
2 admissibility of those documents. And certainly, until such time
3 that it becomes evidence in the case, the value of the document,
4 of course, is something less in terms of the proceedings, and
5 particularly in relation to the fact that the defence counsel for
6 Nuon Chea have objected against any documents being put before
7 the Chamber without the witnesses being called.

8 We would submit that by -- introducing specific details of that
9 document through a question is introducing evidence of -- which
10 they, in fact, want rejected.

11 [10.29.04]

12 But going back to the particular point, Your Honours have ruled
13 that only the general substance can be put, but not the specifics
14 of the statement, particularly as it is not evidence before the
15 Chamber until Your Honours have ruled on the matter, which
16 obviously the parties are still awaiting -- your decisions on the
17 written record.

18 MR. PESTMAN:

19 If the prosecutor is suggesting that Heng Samrin should be heard
20 as a witness, we fully support that request.

21 And I will not go into great detail; I will ask some general
22 questions about the document and about the facts mentioned in the
23 document.

24 MR. PRESIDENT:

25 Please be seated, Counsel.

1 (Judges deliberate)

2 [10.36.06]

3 MR. PRESIDENT:

4 Please stand up, Counsel.

5 The document that you referred to, that you intend to use to put
6 questions to the witness, is it in Case File 002?

7 MR. PESTMAN:

8 Yes, I believe it is. The number I gave is, I believe, a number
9 from our case file.

10 MR. PRESIDENT:

11 Yes, Judge Cartwright.

12 JUDGE CARTWRIGHT:

13 It may be an English matter, Mr. Pestman, but when you say "I
14 believe" it sounds a little unsure to me. Are you certain that it
15 is on the case file, please?

16 [10.37.04]

17 MR. PESTMAN:

18 Maybe the prosecutor can assist me.

19 MR. SMITH:

20 Yes, Your Honour, it's on the case file. It's on the
21 Prosecution's list which we put before the Chamber and it's also
22 been objected to by the defence counsel for Nuon Chea.

23 MR. PESTMAN:

24 Well, we also put it on our list, and as far as I know, the
25 prosecutor has not objected to it.

1 MR. PRESIDENT:

2 The court officer is instructed to take the hardcopy from counsel
3 and bring it to witness for examination--

4 (Judges deliberate)

5 [10.38.03]

6 MR. PRESIDENT:

7 Hold on. Court officer, you are not supposed to take that
8 document.

9 Counsel, because the document that you refer to is an interview
10 between an individual with -- and Samdech Heng Samrin and this
11 witness was not present during the interview, which means he does
12 not know about the procedure of the interview itself, so counsel
13 can put general questions to this witness, but you are not
14 supposed to refer to particular portions of the interview.
15 Likewise, witness is supposed to listen to questions from counsel
16 and shall not answer to the question on the basis of
17 particulation -- rather, on speculation. If the witness
18 understands the questions asked by counsel, witness shall answer
19 the question, but the witness is not supposed to guess on the
20 answer of the questions.

21 Yes, Counsel, you -- go ahead.

22 [10.39.45]

23 MR. PESTMAN:

24 Thank you, Mr. President. I understand the ruling.

25 I'm looking at the clock and I notice that it is past the time

1 you usually break up. Is it a good moment to break up now, or
2 would you like me to continue with my general questions?

3 MR. PRESIDENT:

4 You should continue until you finish that point.

5 BY MR. PESTMAN:

6 Q. Duch, do you know what Heng Samrin's position was at the time
7 Phnom Penh was taken?

8 A. Mr. President, at the Liberation Day, Brother Rin was the
9 deputy secretary of the Region 3. I reported this to the
10 Co-Investigating Judges as well. It was the Division 3 in the
11 East Zone.

12 [10.41.04]

13 Q. Are you sure it was Division 3, and not Chakrey's first
14 division?

15 A. Mr. President, Brother Rin was the deputy secretary of
16 Division 3, in East Zone, and the secretary of the division was
17 named Peou Hak.

18 Q. Do you know the name of Heng Samrin's younger brother who also
19 was a military commander involved in the liberation of Phnom
20 Penh?

21 A. Mr. President, I know his brother's name was Thal.

22 Q. Do you know what his role was during the liberation of Phnom
23 Penh?

24 A. Mr. President, Comrade Thal was secretary of the navy position
25 in Neak Loeang. It was called Division 290.

1 Q. And who was secretary of the Second Division from the Eastern
2 Zone?

3 A. Mr. President, I am not aware of that.

4 [10.43.47]

5 Q. Did you know, Duch, that the city was divided into several
6 areas when the city was liberated, in April 1975 -- was separated
7 into different areas with zone troops in command of each of those
8 areas? Did you know that?

9 A. Mr. President, I came to Phnom Penh on the 20th of June 1975.
10 Later on, I knew that I lived in an area which was liberated by
11 Division 703, who protected the safety of Phnom Penh, and the
12 area was within -- no, the Division 703 was on the North of Phnom
13 Penh, and the area that I lived was in Division 702. So the whole
14 Phnom Penh was divided into different areas, or sectors,
15 according to the divisions which came to liberate and who later
16 on protect the safety of Phnom Penh.

17 Q. Thank you. Heng Samrin also told Ben Kiernan that troops were
18 not allowed to go into areas controlled by other troops.

19 [10.45.57]

20 MR. SMITH:

21 Your Honour, I think, Mr. President, you've given an instruction
22 to counsel, that he could refer to the matters contained within
23 the interview, but not the specifics.

24 Now, I mean, if he took the author out of it, if he took the
25 person that took the interview out of it and just left it to the

1 substance, that's what Your Honours has stated already.

2 So I would ask that counsel would just keep to the substance, the
3 general substance, but not to the specifics of what this witness
4 said.

5 Your Honours still haven't ruled on the witness statements on
6 this issue.

7 MR. PESTMAN:

8 Q. I'll rephrase: Have you any knowledge about the city being
9 divided into various zones and the troops in those zones, areas,
10 not being allowed to go into other areas controlled by other
11 troops? Did you know that?

12 [10.47.17]

13 A. Mr. President, allow me to repeat what I reported to the
14 Court. Zone -- the Phnom Penh Zone was divided in accordance with
15 the division which liberated the zone, and they were supposed to
16 protect the area that they liberated.

17 And as for the principle that people were not allowed to walk
18 freely, that was the principle, or the policy of the Party. I was
19 in the Special Zone, and I was not supposed to come to Phnom Penh
20 Zone. Otherwise, I would be arrested if I did not have the letter
21 -- or if I did not have the pass. If, for example, rode on our
22 motorbike freely, our moto would be confiscated.

23 Q. We just talked about Heng Samrin and his brother, Thal, two
24 commanders who participated in the liberation of Phnom Penh.

25 Do you know -- that's my question: Do you know whether there are

1 any other division commanders or deputy commanders who
2 participated in the attack and the liberation of Phnom Penh who
3 are still alive today?

4 [10.49.14]

5 A. Mr. President, chief of the divisions who went to liberate
6 Phnom Penh was one thing, and chiefs of the divisions of other
7 zones was the other thing. The troops - or, rather, those who are
8 still alive include Muth, or Meas Muth, and another one is Sou
9 Met. Khem Pin, I'm not sure about that, but I heard that he
10 already died. Comrade Dy is probably alive, too. They were all in
11 the Central Division.

12 In July 1975, the Central Division requested that troops from
13 different divisions or zones were to come together to form a
14 central division.

15 Q. No other commanders you are aware of are that still alive,
16 from other zones?

17 A. Commanders who are alive today could be many. But the
18 commanders back in 1975 are all dead. The one who is still alive
19 is Brother Rin, the one you are asking me about.

20 Q. Thank you. According to him, in 1975, there was no such thing
21 as an order to kill or smash Lon Nol leaders. Would you agree? Or
22 wouldn't you agree?

23 [10.51.56]

24 MR. SMITH:

25 Your Honour, I object to the question.

1 He – again, defence counsel is putting specifics of the statement
2 to the witness.

3 He can put the -- he can rephrase the question in another way,
4 but certainly, at the moment, this is not evidence before the
5 Court. And obviously we are seeking that evidence to be placed
6 before the Court, but we are waiting for your decision.

7 And what counsel is doing is attempting to lead evidence of these
8 other statements through this witness.

9 I would just ask that defence counsel follow the direction of the
10 Trial Chamber, that it be left to the substantive matter rather
11 than juxtaposing one witness's evidence against – against this
12 witness.

13 [10.52.47]

14 MR. PRESIDENT:

15 Defence Counsel for Nuon Chea, you are reminded again.

16 And I thank the observation made by the Co-Prosecutor, once
17 again.

18 I hope that the principle of professionalism that counsel should
19 try the best to follow the direction from the Chamber.

20 Counsel can put general questions without referring to any
21 specific portion or part of the interview or the written record
22 of the interview of another person to put questions to this
23 witness or any other witnesses. This is a reminder, Counsel, and
24 it seems that it is easy for counsel to remember this issue.

25 MR. PESTMAN:

1 Thank you, Mr. President.

2 That would conclude my section on the liberation of Phnom Penh.

3 [10.54.19]

4 I can move on to the next topic, but maybe it's the right moment
5 to break up.

6 MR. PRESIDENT:

7 Right, it is now appropriate for us to adjourn. We will break for
8 20 minutes and we will be back at 15 past 11.

9 Security personnel is now instructed to escort the witness back
10 to the waiting room for the witness and return him to the
11 courtroom by 11.15.

12 Yes, I note the national counsel for Mr. Ieng Sary is on his
13 feet. You may proceed, Counsel.

14 MR. ANG UDOM:

15 Good morning, Mr. President. Good morning, Your Honours. Mr. Ieng
16 Sary would like to waive his right to be present in this
17 courtroom for the whole day's proceedings but to continue the
18 proceedings remotely, from the holding cell, due to his health
19 reason, especially his back pains and his leg pains.

20 [10.55.34]

21 MR. PRESIDENT:

22 Having heard the request of Mr. Ieng Sary that has been made
23 through his counsel, which waives his rights to be present today
24 in this courtroom and to follow the proceedings remotely, from
25 the holding cell, through audio-visual means, for the rest of

1 today's proceedings, due to his health reason, the Chamber grants
2 the request. It has been made through counsel, waiving his rights
3 to be present in this courtroom and to follow the proceedings
4 remotely, from the holding cell, downstairs.

5 The defence counsel is required to submit the written waiver to
6 the Chamber, with the thumbprint or signature from the accused
7 person.

8 The AV Unit is now instructed to live the proceedings to the
9 holding cell so that the Accused can follow the proceedings
10 remotely for the rest of today's proceedings.

11 Security guards are now instructed to bring Mr. Ieng Sary to the
12 holding cell, downstairs, for him to follow the proceedings from
13 remote means.

14 The Court is now adjourned.

15 THE GREFFIER:

16 All rise.

17 (Court recesses from 1057H to 1120H)

18 MR. PRESIDENT:

19 Please be seated. The Court is in session.

20 The Prosecutor, you would like to take the floor? Just go ahead.

21 MR. SMITH:

22 Thank you, Mr. President. Just one brief matter; it's in relation
23 to interview IS 20.19.

24 It was put to the witness that, in that interview, he stated
25 that, in 1978, when Nuon Chea replaced Son Sen, on the basis of

40

1 that that appeared in the interview with Chris Peschoux. Your
2 Honours, I have advised defence counsel that that quote has come
3 not from the interview transcript itself, it's come from some
4 notes that are attached to the interview but are not reflected in
5 the transcript of the interview themselves. As to how that
6 information appears in the notes, it's unclear, but I just wanted
7 to clarify for the record that the transcript doesn't state that;
8 it's in fact some notes that are attached to the interview, in
9 terms of the transition from Son Sen to Nuon Chea.

10 [11.22.16]

11 And just one other matter; in terms of the implication by defence
12 counsel that Heng Samrin is the only commander alive, in relation
13 to the evacuation of Phnom Penh, Your Honours are aware that, in
14 our witness list, we put forward two regiment and battalion
15 commanders, TCW-253 and TCW-356, as proposed witnesses.

16 And we understand Your Honours haven't decided on the witness
17 list for the force transfer part of the case, but just to clarify
18 it for the record that regiment commanders and battalion
19 commanders have been placed on the Prosecution's witness list,
20 and Your Honours, obviously, are still to decide which witnesses
21 would come before this Court. Thank you.

22 MR. PRESIDENT:

23 Thank you for your observation, Mr. Co-Prosecutor.

24 Mr. Pestman, you may proceed.

25 [11.23.21]

1 MR. PESTMAN:

2 Yes. Thank you very much, Mr. President. Just to clarify the
3 issue, I was working with the French transcript of the notes.
4 The Prosecutor is right when he says that the bits we quoted
5 earlier this morning are not from the interview; these notes are
6 attached to. They are notes of an interview, as the document
7 says, that took place in Ta Sanh, Samlaut, on the 28th and the
8 29th of April 1999. And the original notes are in French, and I
9 believe these notes are taken by Christophe Peschoux. And I also
10 believe that this is the interview Duch referred to several times
11 during his testimony.

12 With regard to the commanders, I asked the witness to list the
13 names of division commanders who are still alive. It is of course
14 also interesting to hear a witness statement -- testimony from
15 lower ranking commanders, but the question was aimed at division
16 level, and not at commanders at regiment or battalion level.

17 [11.24.46]

18 And I understand that, apart from Heng Samrin and his brother,
19 the two suspects in Case 003 are also alive and could testify on
20 this particular matter.

21 MR. SMITH:

22 Your Honour, just for the record, the evidence on the case file
23 shows that Heng Samrin wasn't a division commander; he was a
24 regiment commander. So we disagree with the Defence on that
25 point.

1 MR. PESTMAN:

2 We disagree indeed.

3 May I continue with my cross-examination?

4 MR. PRESIDENT:

5 Yes, please.

6 [11.25.47]

7 MR. PESTMAN:

8 Q. Duch, the civil parties showed you several letters Sou Met
9 wrote to you in 1977. You understand which letters I am referring
10 to, don't you?

11 MR. KAING GUEK EAV:

12 A. The letters that Son Sen instructed Sou Met to write to me.

13 Q. Yes, indeed. That's what you stated. And you also told this
14 Court that they were not sent to you directly, but that you
15 received those documents from Son Sen; that's correct, isn't it?

16 A. Yes, it is.

17 Q. This topic was also discussed during your own trial, at
18 length, I believe. And in the Judgement, this Trial Chamber
19 stated-- And I would like to quote from this Judgement, and I
20 would like you to ask -- to ask to react to the Judgement. This
21 Trial Chamber stated that -- your explanation about those letters
22 -- that -- I quote -- these letters were given to you "by Son Sen
23 personally lacks credibility".

24 [11.27.52]

25 What is your response to that particular quote from the

1 Judgement?

2 MR. SMITH:

3 Mr. President?

4 MR. PRESIDENT:

5 Yes, please.

6 MR. SMITH:

7 The objection is based not on the fact that the allegation can't
8 be put; however, to ask this witness to comment on your decision,
9 it's really not appropriate that he does that.

10 But if they – if he wants to put the substance of the allegation
11 to the witness, he can do that and respond to that, but to ask
12 the witness to comment on your Judgement, I don't think it
13 furthers the issue factually, which you'll have to decide in this
14 case.

15 He can put the basis -- or that finding as a proposition, but I
16 don't think this witness should be put in a place where he has to
17 comment on how you've judged the proceedings. That's not
18 appropriate.

19 [11.29.00]

20 MR. PRESIDENT:

21 Yes, Counsel Karnavas?

22 MR. KARNAVAS:

23 Thank you, Mr. President. Your Honours, again, good morning. I
24 disagree with the Prosecution.

25 As we – as you all may recollect, we had requested both from the

1 Trial Chamber and from the Prosecution to lay out what specifics
2 both the Trial Chamber and the Prosecution believed that this
3 particular gentleman was less than honest and truthful about
4 during the course of the proceedings in 001. We did so because we
5 wanted to be able to confront him.

6 [11.29.49]

7 We believe that it is entirely appropriate to ask the gentleman
8 to comment on where the Prosecution says that they believe that
9 he was less than honest and less than forthcoming in his previous
10 trial, what he thinks. If he maintains that he was absolutely 100
11 per cent truthful, then, obviously, it goes to the gentleman's
12 credibility.

13 The same would go for the Trial Chamber, to ask for us to ask the
14 gentleman -- to put to him that the Trial Chamber found him to be
15 less than honest, less than forthcoming, less than truthful and
16 for him to give his opinion. It's putting the case to the
17 witness.

18 He has maintained steadfastly that, throughout his interviews
19 with the Office of the Co-Investigative Judges, speaking with the
20 Prosecution, speaking in his own case, and speaking here, that he
21 has been 100 per cent truthful, albeit he has qualified it that
22 on occasion he might have drawn conclusions, having gotten things
23 mixed up.

24 Nonetheless, I think it is perfectly appropriate to put it to the
25 witness.

45

1 If we're here to get to the truth, this is the opportunity to do
2 so through this gentleman. And, after all, it is the Prosecution
3 who has claimed over and over again that this particular witness
4 is in a unique -- I believe that was the word that we've heard
5 half a dozen times, if not a dozen times -- a unique position to
6 fill us in on the facts. Well, that's what we're here for, Your
7 Honours.

8 [11.31.24]

9 So I think it's highly appropriate.

10 MR. PRESIDENT:

11 International Co-Prosecutor, you may now proceed.

12 MR. SMITH:

13 Your Honour I think Defence Counsel for Ieng Sary has missed the
14 point. It's not a question of whether or not the witness should
15 be asked whether he's being truthful. I mean, he can be asked
16 whether he's being truthful, and we don't - we don't object to
17 that.

18 Also, it's not a question of whether the Defence or any party has
19 a right to put their case to the witness. We've submitted that
20 the parties do have a right, so that Your Honours can comment --
21 you can take note of their answers on the direct points. We
22 completely agree with that.

23 [11.32.16]

24 But what we disagree with is asking the witness to comment on
25 your opinion.

1 If Defence would like to show a contradiction or evidence from
2 the transcript of Case file 001 to the witness and ask him to
3 comment on that, we have no objection to that. But what we do
4 object to is Defence Counsel saying to the witness: What do you
5 think about the Trial Chamber's opinion? That's really not going
6 to further -- it doesn't put the case to the witness.

7 He can put the substance of the -- of the allegation or of the
8 finding to the witness, he can state -- he can state, which I
9 believe he's quoting from the Judgement: Look, I put it to you
10 that you had significant influence with regards to the rest of
11 people from S-21. He can also put other factual allegations that
12 may have been found in the Judgement. But he shouldn't be asking
13 the witness as to what he thinks of your opinion. That becomes
14 speculation, it becomes argument.

15 [11.33.28]

16 He needs to stick to the facts, and his case can be squarely put
17 in that manner and then his answers will be more useful than
18 having a witness having to comment on how you think.

19 MR. PRESIDENT:

20 Counsel Michael Karnavas, first, before we proceed to Mr.
21 Pestman.

22 MR. KARNAVAS:

23 Very briefly because I don't want to waste time and get into a
24 debate.

25 It was precisely for those reasons, Your Honours, that we filed a

1 motion, early on, requesting the Prosecution to lay out exactly
2 where they believe the witness had been less than truthful. The
3 Prosecution's response was: Well, of course we're not going to
4 ask or produce any evidence where we believe the witness was less
5 than truthful. But they never came up with specifics.

6 [11.34.24]

7 Now they're telling us: Find it within the transcript; which is
8 why we are in a position where we have to ask a general question:
9 The Prosecution and the Trial Chamber have concluded that you
10 were less than honest; what do you think about that? And then he
11 can answer the question, and perhaps, based on the answer, there
12 may be more specifics.

13 But I think there's nothing particularly onerous about asking a
14 general question and we should not be forced to try to figure out
15 what the Prosecution had in mind when it determined that the
16 gentleman was being "less than candid" in what appeared to be, in
17 my humble submission, more like a change of plea hearing that
18 lasted eight months, as opposed to a trial where there was an
19 adversarial process. Thank you.

20 MR. PRESIDENT:

21 Mr. Pestman, you may now proceed.

22 [11.35.25]

23 MR. PESTMAN:

24 Thank you, Mr. President. I'm just trying to be helpful. I'm
25 giving this witness the opportunity to respond to an important

1 conclusion in your Judgement, which, I assume, was based on the
2 evaluation of all the facts presented in that particular case.

3 MR. PRESIDENT:

4 Counsel may be seated. The Chamber is in deliberation.

5 (Judges deliberate)

6 [11.37.20]

7 After the deliberation, the Chamber now rules that the objection
8 by the Co-Prosecutor is sustained.

9 Witness is not asked to respond to the question by Mr. -- the
10 last question by Mr. Pestman.

11 Chamber wishes to remind counsel to avoid going to the same kind
12 of questions like this. Witness is not asked to speculate on the
13 decision made earlier by the Trial Chamber.

14 And to clarify things, I would like to hand over to Judge Silvia
15 Cartwright; things are rather complex.

16 JUDGE CARTWRIGHT:

17 Thank you, President. The summary of what the President has just
18 ruled is that the Chamber upholds the -- or sustains the
19 objection from the prosecutors.

20 The question that -- questions that may be put to this witness
21 can include the allegations that Nuon Chea defence wishes his
22 comment on. There is nothing to be gained by asking for his views
23 on the Chamber's decision. It is the allegations themselves that
24 are the important matter.

25 And if I - if I could just, with the President's permission, add

1 at this stage that it does get very confusing for the Bench when
2 there is an objection made, a response, then the objection is
3 replied to, and then the responders both want a right of reply.

4 [11.39.27]

5 If you want to reply to an objection, then please make that clear
6 before the floor is given to the person -- the party who has made
7 the original objection, so we only have one round of argument.

8 Thank you, President.

9 MR. PESTMAN:

10 I would now like to show, with the permission of the Chamber, a
11 short fragment of a documentary film made by Rithy Panh, which
12 contains a long interview with the witness. I've been told that
13 the film is ready to be shown. It's a fragment of a very recent
14 documentary, and I'm asking the Court for permission to show this
15 short fragment.

16 MR. PRESIDENT:

17 International Co-Prosecutor, you may now proceed.

18 MR. SMITH:

19 Mr. President, we haven't seen or heard of this document before
20 from the Defence. I don't think it's on the case file. It hasn't
21 been provided in the list that you provided last night. This is
22 the first we've heard of it.

23 [11.40.57]

24 Your Honours, I mean, in terms of placing new documents before
25 the Chamber, you know, Rule 87.4 applies and it requires the

1 Defence to establish why that couldn't have been done before with
2 due diligence. We're not sure when this film first came out and
3 whether or not they've exercised due diligence to place it on the
4 case file, and so, until the Defence can establish the criteria
5 for Rule 87.4, we would object to the - to the showing of the
6 movie.

7 These trials are large trials. If parties just produce documents
8 by complete surprise, it won't lead to the good, efficient
9 management of proceedings.

10 And so, unless that can be established properly, I would ask that
11 this be shown at a later time, until the parties have been
12 properly notified.

13 [11.42.05]

14 MR. PESTMAN:

15 Your Honours, if I can reply, I believe the documentary is called
16 "Master of the Forges of Hell"; it's a very recent documentary. I
17 would like to show this fragment which contains part of an
18 interview with the witness; it's nothing else.

19 I want to show it to the witness; I don't want to put it before
20 the Chamber. I don't think Rule 87 applies. I'm not trying to
21 establish the authenticity of the fragment; I don't want to put
22 it on the case file; I want to use that particular fragment to
23 impeach this witness. And I believe that I don't have to put it
24 on the file, that it does not have to have a case file number.

25 [11.42.54]

1 And if I remember correctly, for example, when the director of
2 DC-Cam was interviewed, or examined in Court, both the prosecutor
3 and counsel for the civil parties used the website -- which is
4 not on the case file, has no number, and we were not warned that
5 they were going to do that -- used the website DC-Cam has and, in
6 one case, even a PowerPoint presentation from that website to
7 examine the witness.

8 What I'm doing is exactly the same as what both the prosecutor
9 and counsel for the civil parties have done in the past. I'm not
10 trying to put this document before the Chamber; I'm not trying to
11 prove the authenticity or the reliability of the document. I just
12 wish this witness to respond to what he says on that particular
13 fragment.

14 MR. PRESIDENT:

15 International Co-Prosecutor, you may now proceed.

16 MR. SMITH:

17 Mr. President, we agree that there are -- circumstances can arise
18 where documents become significant at a later time, in relation
19 to the -- testing witnesses credibility. So we're not suggesting
20 that every document has to be placed before the Chamber.

21 [11.44.18]

22 Certainly, counsel for Nuon Chea hadn't made it completely clear
23 for what purpose he was using this document, whether he wanted to
24 place it before the Chamber or, alternatively, just to confront
25 the witness.

1 But what we would say is that we assumed that the Rithy Panh film
2 was available before last night, and the Defence provided a list
3 of documents that they would use today, and that document, I
4 believe, wasn't on that list. And so that was in - it didn't,
5 sort of, follow the Trial Chamber's order -- firstly, that
6 documents be made available 24 hours and, secondly, made
7 available the day before. So we can only wonder why that one was
8 left off the list. So it's really -- it's ultimately a matter of
9 notice. And the Defence had this document and they left it off
10 the list.

11 That's why at this point -- it may be relevant, but at this point
12 we would object to it, at least until we've actually seen the
13 document.

14 [11.45.28]

15 MR. PRESIDENT:

16 Counsel, you may now proceed.

17 MR. PESTMAN:

18 The reason it's not on the list is because there's no reference
19 number, no document number, so there was no point putting it on
20 the list.

21 MR. PRESIDENT:

22 The objection by the Co-Prosecutor is sustained.

23 Counsel is therefore not allowed to put up this film; even any
24 portion of it is not allowed for this time being.

25 MR. PESTMAN:

1 I have a request for clarification. When can we show it, this
2 particular fragment of the film? We can supply the prosecutor
3 with a copy of the film and we can show it later today. It's only
4 a one-minute fragment.

5 (Judges deliberate)

6 [11.47.42]

7 MR. PRESIDENT:

8 We would like to hand over to Judge Silvia Cartwright to respond
9 - to clarify concerning what counsel for Nuon Chea just
10 indicated.

11 JUDGE CARTWRIGHT:

12 Thank you, President. Counsel will need to make an application
13 pursuant to Article 87.4 to admit a new document.

14 If that--

15 Would you mind standing, Mr. Pestman? Thank you.

16 If that application is successful, then you will be able to show
17 the documentary then, but you must comply with the provisions of
18 Article 87, and in particular 87.4. Thank you.

19 MR. PESTMAN:

20 We'll come back to this after the break. I think that's the best
21 thing to do. I'm confused -- that's all I can say at this
22 particular moment -- because we were told on more than one
23 occasion that we did not have to put documents we wish to use for
24 cross-examination on any list.

25 [11.49.08]

1 If that - if we were informed wrongly, then -- or if this
2 information was incorrect, then it's important that we are, you
3 know, told so. I'm really confused.

4 I will continue with my questions.

5 BY MR. PESTMAN:

6 Q. Duch, on the final day of your trial, you asked this Trial
7 Chamber to acquit and release you. As your counsel at the time
8 explained -- Kar Savuth -- he said that you should be acquitted
9 because you only obeyed the CPK, and the CPK was the culprit; was
10 the criminal behind all the scenes.

11 Could you explain to the Court what was actually meant by those
12 words?

13 [11.50.42]

14 MR. KAING GUEK EAV:

15 A. I did ask for this and I based this argument on the objective
16 of the establishment of the ECCC. Because the Court is -- or has
17 the jurisdiction to prosecute senior leaders and those who were
18 most responsible for the crimes committed during the Democratic
19 Kampuchea regime, and I felt that I never fall within these
20 categories because those who were my superiors were Son Sen, Nuon
21 Chea, and Pol Pot. And I did ask for that.

22 Q. I put it to you, Duch, that you have a tendency to shift the
23 responsibility for your own actions and choices onto others. And
24 I put it to you that blaming Nuon Chea for the crimes committed
25 while you were in charge of S-21 is part of a pattern of

1 behaviour. And I put it to you that Nuon Chea was never in charge
2 of S-21 or gave you any orders; Nuon Chea was simply the person
3 you decided would take the blame and absolve you of
4 responsibility when Son Sen disappeared from the stage. And I put
5 it to you -- and then you can react -- that you cannot accept
6 responsibility for your own actions and that, in fact, you are a
7 liar; you even fabricated your own confession.

8 [11.53.06]

9 MR. PRESIDENT:

10 International Co-Prosecutors, you may proceed.

11 MR. SMITH:

12 Mr. President, the main objection is that the question is a
13 series of at least five questions, and, I think, for anyone it's
14 -- would be complicated to determine what, in fact, the accused
15 (sic) is answering to.

16 What I would suggest, that the questions be broken down to, if
17 it's -- if it was five questions, to five questions.

18 Then, the other objection is the broad allegation, at the end,
19 that the witness is a liar. That's a very, very broad allegation
20 and it really doesn't specify what is he not telling the truth
21 about. The witness has testified on numerous matters, and just to
22 come out and say "you're a liar" is quite -- it's just far too
23 general to achieve a useful answer.

24 So I would ask that counsel break it up into five questions and
25 take away the allegation that he's a liar.

1 And other than, if he's got something to say, "you're not telling
2 the truth about a particular point", put that point to him.

3 Otherwise, it's not very helpful to the Chamber.

4 MR. PESTMAN:

5 I'll follow the prosecutor's suggestion and I'll split up what I
6 just--

7 [11.54.45]

8 MR. PRESIDENT:

9 We thank you very much, indeed, for your alert and that you know
10 that you should rephrase your questions.

11 And you indicated the phrase in which you indicated the term that
12 you should not use to the witness at this time, and you should
13 avoid it.

14 And the Chamber wishes to inform you that the assessment of the
15 value of the evidence put before this Chamber is the task of the
16 Chamber. Whether the Chamber is convinced or not by having
17 reviewed the evidence, it is up to the discussion of the Chamber
18 solely. And this will be done during deliberation, after parties
19 have already made their closing arguments.

20 [11.56.05]

21 The Chamber has noted your words on second occasion already.

22 Yesterday and today, you used these terms time and again. The
23 Chamber hopes that -- as a professional international counsel,
24 you should have not used the terms in the first place, and that
25 we do not want these gestures to be influential in our system as

1 well.

2 MR. PESTMAN:

3 Thank you, Your Honour. Let me summarize and then give the
4 witness the opportunity to respond.

5 BY MR. PESTMAN:

6 Q. I put it to you, to use your own words, Duch, that you are
7 dishonest and that you are blaming Nuon Chea for crimes you
8 committed and only you are responsible for.

9 MR. SMITH:

10 Mr. President--

11 MR. PRESIDENT:

12 International Co-Prosecutor, you may now proceed.

13 [11.57.37]

14 MR. SMITH:

15 Again, Your Honour, I think we get back to that position of
16 ambiguity.

17 It's two questions. He says: I put it to you, you are dishonest.

18 And the second question is: You're blaming Nuon Chea for his
19 activities.

20 What I would suggest is that counsel ask the question: You are
21 not being truthful when you provide evidence of Nuon Chea's
22 involvement in S-21. Then, the issue of truthfulness relates to a
23 particular question, not a broad question: You are dishonest.

24 BY MR. PESTMAN:

25 Q. Duch, did you understand my question?

1 MR. PRESIDENT:

2 Counsel, you are now advised to respond to -- or reply to the
3 Co-Prosecutor first, before you proceed to put question to the
4 witness.

5 [11.58.49]

6 The Chamber is about to rule on the objection by the Prosecution.
7 If you don't have a say on this, then the Chamber will rule that
8 the objection by the Co-Prosecutor is sustained and that witness
9 shall not respond to your last question.

10 MR. PESTMAN:

11 I believe my question was completely clear. I stated that I
12 believe this witness is dishonest when he testifies about Nuon
13 Chea's role, just like the prosecutor said, and that he blames my
14 client for crimes he has committed, and that he has a tendency to
15 do so throughout his life. And I just want him to comment to that
16 statement and I think I should be allowed to ask that question.

17 [11.59.41]

18 MR. PRESIDENT:

19 The Chamber has already ruled on this, that witness shall not
20 respond to the question because the term "dishonest" seemed to be
21 used time and again to disgrace the honour of the witness, and
22 that witness is not supposed to give his speculation on any of
23 his -- in any of his responses.

24 And, again, I wish to reiterate that the Chamber has the
25 discretion to review the probative value of the evidence after

1 parties have already made their closing statements.

2 MR. PESTMAN:

3 I have no further questions.

4 But just for the record, I was not the one who used the word

5 "dishonest" first; that was the witness when he referred to me. I

6 was just quoting that witness when I used that word. Thank you.

7 [12.00.49]

8 MR. PRESIDENT:

9 Counsel Karnavas, you may now proceed.

10 MR. KARNAVAS:

11 Thank you, Mr. President. I just wish to comment because we're

12 going to be here for the next couple of years on this issue --

13 this trial.

14 And it seems to me that, with all due respect, the Prosecution,

15 in -- the prosecutor himself, in his opening statement, called

16 the accused "killers", and there was no reaction from the Bench.

17 I think that's inappropriate.

18 To suggest now that we cannot put to the witness a general

19 question that he is dishonest or has been dishonest, in my humble

20 submission, is incorrect.

21 [12.01.35]

22 Now, it's a matter of technique and it's a matter of how you

23 phrase the question. And I agree with the prosecutor that at

24 times it's much more useful for the Bench to ask questions that

25 have -- that are trying to elicit only one fact as opposed to

60

1 compound questions because then, even if you get an answer, the
2 question is: Is it to the first part, the second part, the third
3 part, or whatever? So that's that point.

4 Secondly, with respect to the film itself, if I might revisit it
5 a little bit, it appears to us, Your Honours, that that film was
6 released in January 18, 2012, which would have been subsequent to
7 the - to the commencement of the proceedings, and that was in
8 France. Here, in Cambodia, when I first became aware of it, I
9 believe it was released and shown to the public after the Duch
10 Appeal.

11 [12.02.26]

12 So, at least as far as due diligence, it may be something for the
13 Trial Chamber to consider during the break -- during the break.

14 I'm making this on behalf of the -- for the Trial Chamber to
15 consider, that it would appear that the film became available--
16 Granted, efforts should have been made, perhaps, to alert the
17 Trial Chamber, and the Prosecution, and the parties that the film
18 or portions of it, even if it's one minute, was being sought to
19 be admitted.

20 But, I think, in light of the fact that we're still in the
21 growing pains of how to proceed efficiently in this trial
22 process, it may be worth for the Trial Chamber to reconsider its
23 position and consider my submission as an oral application under
24 Rule 87.4 in particular, as was rightly pointed out by Judge
25 Cartwright. Thank you.

1 MR. PRESIDENT:

2 Thank you. International -- rather, Mr. Pestman first; you have
3 the floor.

4 [12.03.35]

5 MR. PESTMAN:

6 May I support the application made by my colleague for the Ieng
7 Sary team, although I maintain that it is not necessary to make
8 such an application, just like the prosecutor and the counsel --
9 counsel for the civil parties made no such application when they
10 showed the website -- the DC-Cam website -- to Youk. I think that
11 you have departed from earlier practice, and we need some more
12 guidance.

13 And just to explain, when we got the film, we received a copy of
14 the film, I believe, two weeks ago, and it took a while before we
15 were able to access the copy because it was in the wrong format.
16 Just to be clear, I said that I had asked my last question, but
17 this afternoon, Jasper Pauw will ask some questions about a
18 different topic, and then my national colleague, Arun Son, will
19 finish, and as predicted, we will finish before the end of the
20 day. But I have finished asking my questions, but we haven't
21 finished asking questions yet as a team.

22 MR. PRESIDENT:

23 International Co-Prosecutor, you may now proceed.

24 [12.04.58]

25 MR. SMITH:

62

1 Thank you, Your Honour. Certainly, in what was raised by the
2 defence counsel for Ieng Sary, our concern with the last question
3 of the defence counsel for Nuon Chea was not so much that he
4 couldn't put to the witness that, on a particular fact or a
5 particular allegation, he wasn't telling the truth, because of
6 this contradiction.

7 Our concern was he had two questions in the one -- "you are
8 dishonest" -- and then he went on further to ask another
9 question. Just to respond to "you are dishonest", that really is
10 speculation. It's not helpful to the Chamber. That was our
11 concern with that question.

12 In relation to the - to the film, our concern is that it just
13 wasn't placed on the list. Your Honour said last night that
14 documents that would be used would be placed on the list for
15 today. I can assure you we wouldn't have objected if that was
16 placed on the list today as required; the Defence were able to do
17 that, regardless of whether it has a document number or not. That
18 was our concern for the lack of notice.

19 [12.06.16]

20 MR. PRESIDENT:

21 Lead Co-Lawyer for the civil parties, you may proceed.

22 MR. PICH ANG:

23 Thank you, Your Honours. I wish to be very brief on the film --
24 the website civil party cited when we put questions to Mr. Youk
25 Chhang and witness from DC-Cam.

1 At that moment, Mr. President, so far as we remember, reminded
2 parties that, before any document be – be put before the Chamber,
3 parties were advised to inform the parties and the Chamber in
4 advance. This reminding was made time and again, so let's be
5 guided by the ruling of the Chamber and by the rule.

6 With regard to the film by Mr. Rithy Panh, counsel for Nuon Chea
7 should have requested the Chamber in advance so that the
8 permission was granted before it can be put up on the screen.

9 [12.07.41]

10 MR. PRESIDENT:

11 Counsel, you may proceed.

12 MS. SIMONNEAU-FORT:

13 I would like to add two things, one thing regarding the DC-Cam's
14 website.

15 We are not -- the ones who presented the website for the first
16 time is the -- is a team that presented -- represented Vanthan
17 that presented it for the first time.

18 Regarding documents, you said that -- yesterday that, to tender
19 documents, you have to make an application -- the Defence has to
20 make an application, and the Chamber will assess the situation.

21 I agree with Mr. Karnavas that we should be able to see the
22 document before it is presented. I think the minimum that we
23 should expect is that rules should be abided by and that the
24 document should be shown before they are presented in Court.

25 [12.08.50]

1 MR. PRESIDENT:

2 We thank you.

3 The Chamber wishes to reiterate our position that we uphold the
4 ruling rendered by Judge Silvia Cartwright on behalf of the
5 Chamber.

6 And to be more clear on this, the Chamber wishes to inform
7 parties that any new evidence parties wish to put before the
8 Chamber, parties shall be guided by Rule 87.4. And to be precise,
9 I would like to read the whole rule as follows:

10 "Rule 87. Rules of Evidence

11 "[Subparagraph] 4. During the trial, either on its own initiative
12 or at the request of a party, the Chamber may summon or hear any
13 person as a witness or admit any new evidence which it deems
14 conducive to ascertaining the truth. Any party making such
15 request shall do so by a reasoned submission. The Chamber will
16 determine the merit of any such request in accordance with the
17 criteria set out in Rule 87.3 above. The requesting party must
18 also satisfy the Chamber that the requested testimony or evidence
19 was not available before the opening of the trial."

20 [12.10.46]

21 And the Chamber asserts that from now we shall not stray away
22 from the guided provision of subrule 4 of Rule 87 concerning
23 evidence.

24 Since it is now appropriate time for lunch adjournment, the
25 Chamber will adjourn, and the afternoon session will be resumed

1 by 1.30.

2 The security personnels are instructed to bring witness to his
3 waiting room and have him returned to the courtroom by 1.30 p.m.
4 Counsel Pestman, you're on your feet. You may proceed.

5 MR. PESTMAN:

6 Thank you. Thank you very much, Mr. President. My client wishes
7 to waive his right to be present during the remainder of the day
8 and would like to follow the proceedings from the holding cell
9 downstairs.

10 [12.11.55]

11 MR. PRESIDENT:

12 The Chamber has noted the request by Nuon Chea through his
13 counsel that he has waived his right to be present in this
14 courtroom and be excused. Indeed, he asks that he be allowed to
15 observe the proceeding from his holding cell during the remainder
16 of the day.

17 The Chamber, therefore, grants such request, the request that has
18 been made through his counsel, waiving his right to be present in
19 this courtroom. The Chamber allows him to observe the proceeding
20 from his holding cell through the video-link for the remainder of
21 the day.

22 Counsels for Nuon Chea are now instructed to produce the waiver
23 signed or given thumbprint by Mr. Nuon Chea immediately.

24 The AV booth is now instructed to ensure that the video-link is
25 connected to the holding cell so that the accused person can

1 follow the proceeding.

2 And security personnels are now instructed to bring the accused
3 persons to the holding cells and have Khieu Samphan returned to
4 the courtroom by 1.30.

5 The Court is adjourned.

6 (Court recesses from 1213H to 1332H)

7 MR. PRESIDENT:

8 Please be seated. The Court is in session.

9 Before handing over to the defence counsel for Nuon Chea to
10 continue his question to this witness, the Chamber would like to
11 make some observation concerning the request made by counsel for
12 Ieng Sary, which has been supported by defence counsel for Nuon
13 Chea, concerning the projection of a video footage.

14 The Chamber requires that counsel submit a written request
15 concerning the projection of this video, pursuant to Internal
16 Rule 87.4. Opportunities will be given to other parties to submit
17 responses, should they wish to do so. The time limit for other
18 parties to submit their responses will be three days.

19 Yes, Defence Counsel for Nuon Chea, the floor is now handed over
20 to you to continue your questionings to this witness.

21 QUESTIONING BY MR. PAUW:

22 Thank you, Mr. President. Good afternoon, everyone.

23 [13.34.55]

24 Q. Duch, I'm going to ask you some questions to which we already
25 know the answers, but I want to make it absolutely clear what

1 these answers are.

2 And my first question to you is: Did you, personally, ever attend
3 a meeting of the Central Committee or the Standing Committee of
4 the CPK in the period of 1975 until 1979?

5 MR. KAING GUEK EAV:

6 A. Mr. President, as a Party member, he or she did not attend the
7 meeting with the Central Committee.

8 Q. Duch, during the regime of Democratic Kampuchea did you ever
9 read the minutes of the Central Committee or the Standing
10 Committee?

11 A. Mr. President, no.

12 Q. Over the past few weeks, we have discussed the following
13 documents several times, but I want to be absolutely clear about
14 this: During the period of the Democratic Kampuchea, did you read
15 the minutes of the Standing Committee dated 9 October 1975 or the
16 minutes of the Standing Committee dated 30th of March 1976? At
17 least some people believe that these are those minutes.

18 [13.36.47]

19 A. Mr. President, during Democratic Kampuchea regime, I never saw
20 this document.

21 Q. Is it correct that you read those documents for the first time
22 during the investigative stage of your own trial?

23 A. What documents are you talking about, Counsel?

24 Q. I'm talking about the documents that are allegedly the minutes
25 of the Standing Committee of 9 October 1975 and 30th of March

1 1976.

2 MR. PRESIDENT:

3 International Co-Prosecutor, you may proceed.

4 MR. SMITH:

5 I think that counsel must have misspoken. The minutes of the 30th
6 of March 1976 were from the Central Committee, not the Standing
7 Committee.

8 [13.38.06]

9 BY MR. PAUW:

10 Thank you, Mr. Prosecutor, for that correction. I misspoke,
11 indeed; my apologies.

12 Q. So I'm talking about the minutes of the Central Committee of
13 the 30th of March 1976.

14 MR. PRESIDENT:

15 Counsel, do you have documents for witness to examine? Because
16 there may be too many documents; did you prepare the documents
17 and have a copy for the witness?

18 MR. PAUW:

19 Mr. President, I have prepared hard copies for the witness, but
20 with all due respect, I'm not going to show this witness those
21 documents. They have been discussed at length, and I assume that
22 all parties in this courtroom, including the witness, are very
23 familiar with the contents of those documents.

24 So, with your permission, I will just move on because time is
25 short. So I will ask my following question.

1 [13.39.18]

2 BY MR. PAUW:

3 Q. During the hearing last Tuesday, April the 3rd, you were asked
4 the following question -- and I quote: "What did Son Sen and Nuon
5 Chea do with the confessions after they received them?"

6 And you answered:

7 "Thank you. Mr. President, the Standing Committee of the Party,
8 in which there was Son Sen and Nuon Chea, was to decide what to
9 do with the confessions. I was not aware of that; it was beyond
10 my competence."

11 Do you stand by that statement?

12 MR. KAING GUEK EAV:

13 A. Mr. President, it is difficult for me to understand from the
14 translation. Can I have the transcript of that part to me?

15 [13.40.21]

16 MR. PAUW:

17 Mr. President, with all due respect, if the witness is going to
18 ask for transcripts and documents on every minor detail, I will
19 need two more days to question this witness. So I ask for some
20 leeway. The witness has clearly understood this is a way to slow
21 down his questioning.

22 I am quoting his own words from two days ago and I ask him to
23 respond to this. So could you please instruct the witness to
24 answer whether he stands by his statements of two days ago?

25 (Judges deliberate)

1 [13.41.06]

2 MR. PRESIDENT:

3 The procedure for showing documents before the Chamber, and as
4 already informed to the parties, the parties should prepare the
5 document in hard copy and provide the witness with that copy
6 before questions can be put regarding the document.

7 Therefore, counsel is instructed to follow the procedure.

8 And the belief is that, when counsel refers to the transcript
9 which has been interpreted several times, there could be slight
10 differences in meaning. If hard copies cannot be provided to the
11 witness, then national counsel of the same team may read the
12 extract in Khmer if the hard copy cannot be obtained in time.
13 Likewise, counsel should be reminded as well that you cannot
14 refer to the unsmoothness of the proceeding and you seek for
15 additional time.

16 BY MR. PAUW:

17 Thank you, Mr. President. I will move on to my next point.

18 Q. You have stated, Duch, before the Investigating Judges that
19 you do not know the details of how the superiors - superiors
20 worked among themselves.

21 My question to you is simple: Do you know the details of how the
22 superiors worked among themselves?

23 [13.44.31]

24 MR. KAING GUEK EAV:

25 A. There are a lot of documents -- there are a lot of documents

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1 during my investigation phase. I think I should receive a copy of
2 those documents or the documents should be put onto the screen.
3 As I have said -- and Mr. President echoed my concerns -- that
4 there may be a problem with the translation.

5 Q. Duch, I'm not asking - I'm not asking about a document; I'm
6 asking you to respond to the question: Did you know the details
7 of how the superiors worked among themselves? Yes or no?

8 A. Thank you. Mr. President, given your last question, I will
9 answer to that. The work of the Central -- Standing Committee
10 cannot be known by me, but in principle I understand that because
11 my superior told me that.

12 [13.45.56]

13 For example, in one meeting, I was told by my superior as to how
14 to work. The meeting was in Chhuk, but it was not possible for me
15 to know everything.

16 Q. You have also stated that, when you were asked whether you
17 knew what Nuon Chea did with the confessions after you had
18 allegedly sent them to him, you have answered: "I do not know."
19 I ask you now: Do you know, Duch, what Nuon Chea did with the
20 confessions after you allegedly sent them to him?

21 Maybe my microphone was not on. Is that correct?

22 (Judges deliberate)

23 [13.47.16]

24 MR. PRESIDENT:

25 This is a repetitious question; witness should not answer that.

1 BY MR. PAUW:

2 Thank you, Mr. President.

3 Q. Duch, you have stated before the Investigating Judges -- and I
4 will ask to put document D86/27 on the screen, you have stated
5 before the Investigating Judges -- and I quote: "I can say that I
6 began to think that this regime was criminal from 1983 on."

7 [13.48.48]

8 And if we can show documents D86/27 on the screen, if the
9 President would give permission for this, I can provide the
10 witness with a hard copy of that particular excerpt.

11 MR. PRESIDENT:

12 The Chamber permits. Court officer is instructed to take document
13 from counsel and bring it to the witness for examination.

14 Could counsel indicate the ERN number for transcript?

15 BY MR. PAUW:

16 English ERN 00195603, Khmer ERN 00195594, and French ERN
17 00195613. I'm -- I'm sorry; I'm misspeaking. I'm looking at the
18 prior documents. The document that I am referring to is Khmer ERN
19 -- the most important one -- 00187653, English ERN 00204342, and
20 French ERN 00186172.

21 [13.50.19]

22 Q. So, if you have seen the document, you have read that --
23 according to the English translation, you -- you stated: "I can
24 say that I began to think that this regime was criminal from 1983
25 on."

1 And my question to you is: Why did it take you until 1983 to
2 realize that the regime of Democratic Kampuchea was criminal?

3 MR. KAING GUEK EAV:

4 A. Mr. President, allow me to read the portion in this document
5 as shown here. I would like to remove the first segment within --
6 within the box because it continues from the last sentence.

7 [13.51.15]

8 "Vorn Vet. On the 2nd of November 1978, I began to fear for my
9 life. I can say that I began -- I can say that I began to think
10 that the regime was criminal from 1983 on. What I mean is that in
11 1983 I participated in a political education session held in
12 Samlaut by Nuon Chea after the official dissolution of the CPK."

13 Q. Thank you. That is also reflected in your statements before
14 the CIJs.

15 My question would be: Why did you not realize this sooner
16 considering that you are the chairman of S-21? Wouldn't have --
17 wouldn't it have made more sense to realize the criminality of
18 this regime while you were supervising a security centre?

19 A. Mr. President, in order to say that a regime is criminal, we
20 need to have a broad knowledge; we can't just say it is criminal.

21 This is my answer.

22 Q. Thank you for that answer.

23 [13.53.27]

24 I would like to move on to the next topic, and that is the
25 research that you have done. I can state that you have done

1 research because you have mentioned this several times before the
2 Trial Chamber. And also, in your statements before the
3 Investigating Judges, you have indicated several times that you
4 have read and studied documents and books relating to the period
5 of Democratic Kampuchea.

6 I'm going to ask you -- I'm going to put before you the names of
7 a few books and I wish -- wish for you to just indicate whether
8 you have read those books or not; a simple yes or no answer will
9 do.

10 And the first question is: Have you read the book "Voices of
11 S-21" by David Chandler?

12 A. Yes, I have.

13 Q. Have you read the book "The Lost Executioner" by Nic Dunlop?

14 A. Yes, I have.

15 Q. Have you read the book "The Gates" by François Bizot?

16 A. I have also read that, but I was not interested in that
17 because the French he used in that book was difficult to
18 understand. I usually teased the authors that he was a poet
19 because his French was imaginary.

20 [13.55.34]

21 Q. Have you read the book "Cambodia: Year Zero" by François
22 Ponchaud?

23 A. I have read some of it; only a few pages.

24 Q. Have you seen the movie by Rithy Panh, "S-21: The Khmer Rouge
25 Killing Machine"?

1 A. I have watched two pieces of footage by Rithy Panh, but I do
2 not remember the titles.

3 Q. Moving on from books and movies, is it correct that in your
4 own trial, the following persons testified: Craig Etcheson, David
5 Chandler, Raoul Jenner, and Nayan Chanda?

6 A. I met them.

7 Q. Does that mean that they testified in your trial, just to be
8 absolutely clear?

9 [13.57.22]

10 A. I saw them. I met them. It was over there.

11 Q. You may know that your case before the ECCC was called Case
12 001, and it's separate from Case 002 where my client is standing
13 trial. You are also a suspect in Case 002; have you had access to
14 the case file of Case 002 -- to the documents on the case file in
15 Case 002?

16 MR. KAING GUEK EAV:

17 Mr. President, I have never been accused as one of the accused
18 persons in Case 002. I was accused in Case 001. Can counsel
19 inform the Court and the people of Cambodia clearly about this?

20 MR. PRESIDENT:

21 Counsel, can you check your question again? The witness is not
22 one of the accused in Case 002. It has been announced the accused
23 persons in Case 002 is -- everything has been clear.

24 BY MR. PAUW:

25 Mr. President, to clarify this point, Duch has been a suspect in

1 Case 002. He has been questioned as a suspect in Case 002, and I,
2 therefore, assume that he has had access to documents in Case
3 002.

4 [13.59.10]

5 Q. So, with that clarification, Duch, have you had access to
6 documents in Case 002?

7 MR. KAING GUEK EAV:

8 A. Mr. President, as for Case 002, I was one of those who
9 provided information to the Office of the Co-Investigating
10 Judges. We had plenty documents of that.

11 Q. I will leave this question for now; I note that the witness is
12 not answering it.

13 But I will move on to the following point, and that is the
14 question whether you, Duch, used David Chandler's book, "Voices
15 of S-21", when you were trying to answer questions by the
16 Investigating Judges in your own case?

17 [14.00.47]

18 A. I responded to questions posed to me by Co-Investigating
19 Judges; some questions extracted from Mr. David Chandler's book.
20 I have not cited the substance of the book as the base for
21 supporting my responses. I talked to the Co-Investigating Judges
22 on how David Chandler wrote or compiled the information in his
23 book.

24 Q. Thank you.

25 Duch, I will now move on to the next segment of my questions, and

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1 that involves some answers that you provided when interviewed by
2 the Co-Investigating Judges.

3 And I ask the President for permission to show document D90; it's
4 a statement before the Investigating Judges, 25th of June 2008.

5 Khmer ERN 00198873, English ERN 00198882, and French ERN
6 00198890.

7 [14.02.22]

8 Do I have permission to show this document on the screen?

9 MR. PRESIDENT:

10 You may proceed. Court officer is now instructed to hand over the
11 hard copy from counsel to the witness.

12 BY MR. PAUW:

13 Q. I asked the witness to read the part that is in the box, and
14 while he is doing this, I will read out in English what the
15 English translation says - says, so everyone understands what the
16 answer is. The answer by Duch here is that -- to the question is:
17 "I must first indicate that I had a better knowledge of the
18 situation today compared to last August or last December. Indeed,
19 as I went through the case file, I understood better the
20 organization of the regime; in particular, I realized that what I
21 called the Committee of the Working Group in charge of Office
22 870, at my previous interviews, was, in reality identified as
23 S-71."

24 [14.03.44]

25 Duch, I do not care about the contents of these statements. My

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1 question is the following: Do you agree with me that your study
2 of the case file improved your understanding of the organization
3 of the regime of Democratic Kampuchea?

4 A. It is correct. Here, I responded to the Co-Investigating
5 Judges concerning the structure of S-71 and I did say that my
6 knowledge has improved concerning the structure of S-71.

7 Q. The following document I want to show you is D86/25; the
8 English ERN is 00185474, Khmer ERN is 00185466, and the French
9 ERN is 00185481. It is a statement before the Co-Investigating
10 Judges on the 29th of April 2008. And I ask permission to show it
11 on the screen.

12 MR. PRESIDENT:

13 Counsel, could you please repeat the ERN numbers in three
14 languages because you were rather fast when reading out the
15 number and the interpreter have missed portion of the reading;
16 could you please repeat?

17 [14.06.10]

18 And court officer is now instructed to bring the document from
19 counsel to witness, and the document can be now put on the
20 screen.

21 So, Counsel, please repeat the numbers.

22 BY MR. PAUW:

23 Thank you, Mr. President, my apologies. I tend to get excited
24 when I read out ERN numbers, but I will try to be slower. English
25 ERN is 00185474, Khmer ERN is 00185466, and the French ERN is

1 00185481.

2 Q. And as the witness has already received a copy of the
3 document, I will read a question as put by the Investigating
4 Judges. The Investigating Judges ask Duch: "You told us you would
5 give us your written observations on your 1999 interview and on
6 David Chandler's book, "Voices from S-21", and we still have not
7 received anything."

8 [14.07.23]

9 And you answer -- and it's your answer that interests me:

10 "Regarding David Chandler's book, there are many important
11 excerpts; particularly, the one concerning a decision dated 30th
12 of March 1976 regarding the crimes ordered at S-21." End of
13 quotation.

14 Duch, do you remember that David Chandler's book speaks about the
15 decision of the 30th of March 1976?

16 MR. KAING GUEK EAV:

17 A. Yes, I do.

18 Q. Do you remember what David Chandler's book states about this
19 decision?

20 A. I remember only a phrase that this has been the first written
21 record left over concerning the people who were authorized to
22 smash; that's what I remember.

23 Q. Thank you.

24 [14.09.02]

25 And then I would now like to move on to the next document which

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1 is document D238; it is an interview with the Investigating
2 Judges of November 10, 2009. English ERN 00403888, Khmer ERN
3 00403877. And French ERN is 00403897.

4 Can I get permission to show this document on the screen and show
5 it to the witness?

6 MR. PRESIDENT:

7 You may proceed, but we seem to have not received the ERN in
8 Khmer clearly yet; could you please repeat it?

9 BY MR. PAUW:

10 Yes, Mr. President, to be absolutely sure, I'll quote from the
11 actual document; it's 00403877.

12 [14.10.40]

13 Q. And while the witness is reading in Khmer, I will again
14 provide the English translation. It's an interview that deals
15 with the confession of a certain Khek Bin alias Sou. And I want
16 to quote the part where Duch states the following:

17 "To summarize concerning the use to which this confession was
18 put, I transmitted the document to Son Sen via his messenger. Son
19 Sen must have prepared the document and asked Pol Pot for a
20 decision. I do not know whether the note by Nuon Chea was written
21 before or after Pol Pot's decision. I think, although this is not
22 clearly stated in the document, that Nuon Chea was responsible
23 for ensuring that Pol Pot's decision was properly implemented
24 and, therefore, sent the decisions to various zones."

25 [14.11.37]

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1 And now we get to the part that I want to ask you about. Here,
2 you state, Duch -- and I quote:

3 "In fact, I am drawing my conclusions on the basis of the
4 decisions of 9 October 1975 and the 30th of March 1976. Every
5 week, Son Sen had to prepare documents on security matters and
6 submit them to Pol Pot for a decision."

7 And then a bit further down, you state: "But I'm only sharing my
8 conclusions based on the situation I was in; that is to say, from
9 a certain distance."

10 So, if you have read the documents, you state that you are
11 drawing your conclusions as to what happened to this specific
12 confession of Khek Bin on the basis of the Standing Committee
13 decisions of 9 October 1975 and the 30th of March 1976.

14 Duch, is it fair to say that you are assuming that certain things
15 happened to this confession simply because you assume that this
16 is how the system worked?

17 MR. KAING GUEK EAV:

18 A. I think the statement you put to me was too lengthy and could
19 you please be more specific to any particular paragraph or line?

20 MR. PRESIDENT:

21 Counsel for the civil party, you may now proceed.

22 MR. PICH ANG:

23 Thank you, Mr. President. May Mr. President advise counsel for
24 Nuon Chea to be slower when reading his and that the document
25 should be up on the screen to the correct portion? Otherwise, it

1 would be misleading.

2 MR. PRESIDENT:

3 We also noted a moment ago that the text on the screen was not
4 like the one was reading by counsel and we also noted that later
5 on, after the message was read out, the portion relevant was seen
6 up on the screen. So we noted that this problem was already
7 fixed.

8 [14.14.21]

9 And, Duch, you seemed to have not wearing -- have been wearing
10 the glasses; what happened to you or?

11 MR. KAING GUEK EAV:

12 Mr. President, my glasses broken. It was broken a moment ago. It
13 was fixed, but now it is broken again, unfortunately.

14 MR. PRESIDENT:

15 Court officer, could you assist the witness so that he can have
16 proper glasses to read the text? Because we find that witness is
17 struggling to read the text from the computer screen without the
18 glasses.

19 [14.15.27]

20 Counsel for Nuon Chea, you may continue, but please be brief in
21 your question and -- so that witness is able to respond to you
22 precisely.

23 BY MR. PAUW:

24 Q. Duch, I will ask the question more simply. In this answer, you
25 state -- when you're talking about this particular confession,

1 you state -- I quote: "In fact, I am drawing my conclusions on
2 the basis of the decisions of 9 October 1975 and 30th of March
3 1976."

4 What do you mean with that statement?

5 [14.16.40]

6 MR. KAING GUEK EAV:

7 A. I don't know what could be in the upper part of the text, but
8 now we are talking about the final part which I indicated I noted
9 the decisions on the 9th of October 1975 and the other one on the
10 30th of March 1976. Pol Pot assigned Son Sen to be in charge of
11 the general staff and security matters. With regard to the 30th
12 of March 1976, Pol Pot also made the decision regarding who had
13 the authority to smash; the Central Committee, the Standing
14 Committee of zone, and general staff, and the other one. This is
15 my conclusion concerning the final part of the text and this is a
16 general norm.

17 Q. Sorry, you -- the last part, what you just said was translated
18 into English: "This [was] the general norm." Could you explain
19 what you mean by that statement?

20 A. By "general norm," I referred to the decision on the 30th of
21 March of 1976; the decision that was implemented throughout the
22 country as a general norm. And the decision on the 9 of October
23 1975 was also part of the general decision to be implemented
24 throughout the country. Son Sen was in charge of general staff
25 and security matters all across the nation.

1 Q. On the same topic, I would like to show you, again, documents
2 D228 and the English ERN -- excuse me, the English ERN is
3 00398231 until 00398233, Khmer ERN is 00398224 until 00398225,
4 and the French ERN is 00398239 and the following pages.

5 [14.19.40]

6 You already have this document in front of you.

7 And my question is -- If you have the hard copy in front of you.

8 And I would like to quote the boxed text which starts with a
9 question from the Co-Investigating Judges: "We have shown you the
10 confession of Phal, Chairman of the A3 Brick Factory, under
11 control of the Ministry of Industry, who was arrested on the 7th
12 of July 1977."

13 And regarding this confession, you state:

14 "My analysis is that this document was sent to Nuon Chea by Son
15 Sen who kept a copy. It was probably Nuon Chea who made the
16 decision for the arrests in Division 703 only making a summary
17 report to Pol Pot."

18 [14.20.39]

19 The Investigating Judges then point out the fact that no trace of
20 such a summary report to Pol Pot is found in the case file, and
21 then you answer:

22 "You have called my attention to the fact that we have found no
23 trace of a summary report to Pol Pot. Let me recall that all
24 problems were to be reported to Pol Pot. The decision of 9
25 October 1975 specified that any individual decision must be

1 brought to the knowledge of the collective and the decision of
2 the 30th of March 1976 provided for a weekly meeting during which
3 Nuon Chea undoubtedly made his report to Pol Pot." End of the
4 quotation.

5 Duch, I read this statement and I see you using words as "my
6 analysis is" or "it was probably Nuon Chea". When you are
7 confronted with a summary report that is not found, you state
8 that this report must have been -- must have existed because Nuon
9 Chea undoubtedly made this report to Pol Pot.

10 [14.22.03]

11 I ask you, Duch -- and this is my question: Is it fair to say
12 that you base your analysis on an assumption as to what happened
13 in Democratic Kampuchea and, more specifically, the leadership of
14 Democratic Kampuchea?

15 MR. PRESIDENT:

16 Counsel for the civil party, you may now proceed.

17 MR. PICH ANG:

18 Mr. President, I am afraid I am so confused by the very long
19 statement and questions, and I think witness himself is
20 overwhelmed by this very long statement and non-specific
21 questions.

22 Could the President advise counsel to be more specific than this?

23 MR. PRESIDENT:

24 Your observation by the counsel for the civil party is
25 appropriate. We also note that the witness may have problems

1 following what counsel is putting to him.

2 [14.23.32]

3 If counsel wish to put or to ask witness to read the text, then
4 allow him some time to read it so that he can understand your
5 question and purpose of the questioning.

6 And the counsel should be advised again that in Cambodia,
7 although today we are developing our knowledge, in the past was
8 very limited. We were not well-educated as those of you who are
9 in the Western countries or in European countries. So your
10 questions should be framed briefly, more specific, and focus on a
11 particular portion of the text so that the witness is able to
12 respond accordingly and precisely.

13 Counsel -- rather, Co-Prosecutor, you may proceed.

14 [14.24.41]

15 MR. SMITH:

16 Thank you, Your Honour. Just for clarity's sake, the witness was
17 pointed to the passage that started off: "My analysis is that
18 this document was -- went to Nuon Chea..." But perhaps, if the
19 witness -- so that the witness can have the full understanding of
20 his answer, that the witness refer to the previous sentence
21 beforehand, where it states, on the upper-right hand corner -- he
22 wrote "703", and under the square on the middle, he marked "To
23 Brother Nuon, one copy, 11th of November 1977".

24 That part of the passage wasn't put to the witness. So all I
25 would ask is that, perhaps, if the witness could review that

1 passage in light of the question that was asked.

2 MR. PAUW:

3 Mr. President, I understand the prosecutor's objection and I
4 understand his concern for the possible misunderstanding by the
5 witness; I want to make sure that I -- that was never my
6 intention.

7 [14.25.43]

8 Just one thing that I have to note, and that is that I am
9 surprised that parties which object to questions being asked of
10 this witness before the -- this witness has indicated that he's
11 not understanding the question or not able to answer. This
12 witness, in particular, is a very sophisticated witness with a
13 high degree of sophistication, especially in the field of
14 interrogations, and I do not think that he needs to be helped by
15 either the prosecutor or the civil parties.

16 Having stated that, I noticed that my time is running out and I
17 will just drop this last question. And I will -- to leave time
18 for my Cambodian co-counsel, Mr. Son Arun, I will just end by
19 putting the following statement to Duch.

20 [14.26.50]

21 BY MR. PAUW:

22 Q. Duch, you've stated on numerous occasions, both before the
23 Investigating Judges and before this Trial Chamber, that you do
24 not remember certain things because it was so long ago, and I
25 understand this; it is a long time ago.

1 I submit that your testimony has made some other things clear and
2 I put it to you that you have no personal knowledge of what
3 happened in Standing Committee; you have no personal knowledge of
4 what happened in the Central Committee; you do not know what
5 happened to the confessions after you sent them out, you just
6 speculate. You do not know what the roles and activities of Nuon
7 Chea were in the Central or Standing Committee. For your
8 statements, you rely on what you have read afterwards, mixed with
9 what you may or may not remember. You rely on these minutes of
10 the Central Committee and the Standing Committee which you read
11 30 years after they were allegedly adopted and you assume that
12 this is how things actually worked in the leadership of
13 Democratic Kampuchea.

14 [14.28.04]

15 You've studied books by scholars and you have seen movies, and
16 you have incorporated that knowledge and made it your own.

17 And my question to you is: Isn't it fair to say that the best way
18 to summarize your knowledge at the time of Democratic Kampuchea,
19 the best summary of that knowledge was given by yourself on the
20 20th of March 2012, where you said: "However, if you really want
21 me to only talk about what I knew back then, I'm afraid I may not
22 have anything to tell the world about this because I was confined
23 to S-21 in particular."?

24 [14.28.54]

25 MR. PRESIDENT:

1 Co-Prosecutor, you may now proceed.

2 MR. SMITH:

3 Your Honour, the main reason for the objection is that, there
4 were a number of propositions in that question. I would say I
5 would count at least 10 propositions which have been rolled up
6 into one very simplistic question, and that simplistic question
7 stating that he knew nothing else other than inside the walls of
8 S-21.

9 That question doesn't encapsulate the previous 10 facts that have
10 been made, and like with the other national counsel --
11 international counsel for Nuon Chea, the question should be
12 broken up into a series of propositions to get an answer that's
13 helpful.

14 In the end, what we heard, Your Honour, sounded like a final
15 submission, not a question.

16 [14.29.52]

17 MR. PAUW:

18 Mr. President, I note the prosecutor's objection.

19 MR. PRESIDENT:

20 The Co-Lawyer for the civil parties, you may now proceed.

21 MR. PICH ANG:

22 Thank you, Mr. President, Your Honours. What counsel for Nuon
23 Chea was raising is against the instruction by the President's
24 ruling, and he concluded that witness Kaing Guek Eav alias Duch
25 understands everything, that he could respond to him.

1 [14.30.48]

2 However, apart from counsel and witness, the general public may
3 not be aware of what counsel and witness are now discussing. This
4 case filed before us is not for a few people. It is for the whole
5 nation, and for that reason, the points made should be clear and
6 understood by everyone.

7 MR. PRESIDENT:

8 Counsel for Nuon Chea, you may continue concerning your reply to
9 the objections or observations by two counsels.

10 MR. PAUW:

11 Mr. President, I note the objection. I can rephrase the question
12 in one simple question, if you allow me.

13 MR. PRESIDENT:

14 You may proceed.

15 BY MR. PAUW:

16 Q. Duch, if we want to summarize your knowledge that you had at
17 the time of Democratic Kampuchea of what was happening in the
18 country, would the best summary be your own statement in this
19 Trial Chamber, where you stated: "If you really want me to only
20 talk about what I knew back then, I'm afraid I may not have
21 anything to tell the world."? Is that a fair summary of your
22 actual knowledge at the time?

23 [14.32.48]

24 MR. KAING GUEK EAV:

25 A. Mr. President, a person's answer varies from another person's

1 answer. When I answered to the Co-Investigating Judges were
2 talking about, without understanding the topic discussed at the
3 time, we could not understand the reason why I answered it that
4 way. I did answer it that way. Extracting only a portion of my
5 answer to say it here is not proper. I submit that I do not have
6 the competence to answer these kinds of questions.

7 MR. PAUW:

8 Mr. President, I have no further questions. I will gladly cede
9 the floor to my co-lawyer, Mr. Son Arun, if you allow him. I do
10 notice that the time for the break is here.

11 [14.33.53]

12 MR. PRESIDENT:

13 Yes, Counsel Karnavas.

14 MR. KARNAVAS:

15 Thank you, Mr. President. Just before the break, I just want to
16 raise one issue.

17 I notice that the prosecutor, in particular Mr. Smith, got up on
18 his feet and requested that in the -- under the principle of
19 completeness, that a particular part of the document be read in
20 fairness to the witness.

21 It made me recall that a few days ago I did the same thing. I
22 objected on the grounds that Mr. Smith himself was
23 "cherry-picking" -- I believe that was the word I used -- part of
24 it and requested that another portion be read as well, at which
25 point the retort was: That can be done on cross-examination. So I

1 just point this out because what's fair for the Defence should be
2 fair for the Prosecution.

3 But I do agree with Mr. Smith because that was my objection in
4 the manner in which he was conducting his cross-examination.

5 So I think, as a matter of principle, we should have a rule that,
6 if we're going to quote a part, to put it in context or to give
7 the complete question and answer so that you, Your Honours, can
8 make -- can give the proper weight to whatever is being used in
9 eliciting information from the witness. Thank you.

10 [14.35.14]

11 MR. PRESIDENT:

12 Yes, the International Co-Prosecutor, you may proceed.

13 MR. SMITH:

14 Firstly, Your Honour, as the international counsel is well aware,
15 I wasn't cross-examining the witness. I was examining the witness
16 and certainly not asking leading questions.

17 But as for the point, the question of context, it's -- it depends
18 on the particular answer or the passage that's being put to the
19 witness.

20 [14.35.45]

21 In this instance, the passage that was being put to the witness
22 left out a significant factor which would have led to the
23 witness' answer, whereas the passage that I put to the witness
24 was complete. The fact that there was text before and above that
25 passage doesn't mean it was taken out of context.

1 And so we disagree with Mr. Karnavas' view on that, because, if
2 we want to take it to the extreme, then we'd have to read the
3 whole set of interviews to the witness to keep it all in context.
4 There has to be a reason of -- sort of a level of rationality to
5 what is put to the witness and whether it's complete or
6 incomplete, and we disagree with the assertion by counsel for
7 Ieng Sary.

8 [14.36.47]

9 MR. PRESIDENT:

10 The Chamber notes these observations.

11 It is now appropriate for a short break. We will break for 20
12 minutes and resume at 3 o'clock.

13 Security personnel is instructed to escort the witness back to
14 his waiting room and return him to the courtroom at 3 o'clock.

15 We are now adjourned.

16 THE GREFFIER:

17 All rise.

18 (Court recesses from 1437H to 1500H)

19 MR. PRESIDENT:

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

21 Next, we would like to hand over to counsel for Nuon Chea to
22 continue putting questions to the witness should they wish to do
23 so.

24 [15.01.04]

25 QUESTIONING BY MR. SON ARUN:

1 Good afternoon, Mr. President, Your Honours, and the Court. My
2 co-counsels have already put several questions to the witness. I
3 would like now to put a few more questions.

4 Q. According to the decision by the Central Committee dated the
5 30th of March 1976, page 6, concerning the structure of the
6 Assembly, the government and the State Presidium, the question
7 put on the 3rd of April 2012 by the President, today I would like
8 to refer to the same document. However, I would like to delve
9 into more details concerning the structure of the security
10 centres.

11 My first question to Duch is: If you still recollect, could you
12 elaborate on the structures of the security offices starting from
13 below the ministers?

14 MR. KAING GUEK EAV:

15 A. In the 30th of March 1976 document, there was no mentioning of
16 the security officers. It was in the first paragraph, which
17 states that the decision to smash which was handed down to four
18 groups of people.

19 [15.03.10]

20 Q. I would like to refer to page 6 concerning the organizational
21 arrangement or structures. There are the State Presidium, the
22 government. On Chapter number 1, it is about the Assembly and how
23 it operated.

24 First, all representatives had to remain with the popular masses
25 or their constituents for the State Presidium -- rather, the

1 people representative assembly each held by Comrade Nuon, Phim
2 and Mok and other composition of the organization would be up to
3 the Standing Committee to decide.

4 I would like to ask you this question. Here, it says something
5 about Mr. Nuon Chea as the President of the Assembly. However,
6 when it comes to the State Presidium or the government, rather,
7 we can see Comrade Pol, the first secretary and; Van, deputy
8 prime minister for foreign affairs; Comrade Vorn, deputy prime
9 minister for economics and finance; Comrade Khieu, deputy prime
10 minister for national defence. And according to the later
11 decision by the Standing Committee--

12 [15.05.35]

13 MR. PRESIDENT:

14 Counsel, could you please advise to follow the same practice we
15 have already applied? For example, you may refer to the
16 particular document as you wish, but advise the Chamber and the
17 parties concerning the references of the document and, if
18 necessary, put the portion of your document on the screen so that
19 witness can see. By doing so, we believe that we can expedite the
20 proceedings. There are plenty of documents to be put before us
21 for examination, and I'm afraid that witness may not remember the
22 detail of each and every piece of document. Even a few words used
23 without proper reference would be misleading.

24 [15.06.24]

25 MR. SON ARUN:

1 Thank you, Mr. President. The documents have already been handed
2 over to the witness. Here, ERN in Khmer is 003141; in English,
3 00182813 to 14; in French, 00224346.

4 MR. PRESIDENT:

5 Counsel, could you please be more precise? Is this document
6 bearing E or D number? The title of the document--

7 MR. SON ARUN:

8 (Microphone not activated)

9 MR. PRESIDENT:

10 Please make sure your mic is activated before you speak.

11 [15.07.28]

12 MR. SON ARUN:

13 Document E3/12.

14 MR. PRESIDENT:

15 Thank you.

16 Court officer is now instructed to take the document and hand
17 over to the witness.

18 Assistant of the counsel can now put the document up on the
19 screen if he may.

20 MR. SON ARUN:

21 The document is now up on the screen.

22 MR. PRESIDENT:

23 Counsel, could you please now repeat your question and be more
24 specific to the point you would like to question the witness.

25 BY MR. SON ARUN:

1 Q. Mr. Witness, in this document, there is no mention of Nuon
2 Chea as the top leader in charge of the ministry of -- in charge
3 of security matters, as you indicated earlier. Could you please
4 elaborate on this?

5 [15.09.14]

6 MR. KAING GUEK EAV:

7 A. My first impression is that you did not quote correctly the
8 portion concerning Comrade Khieu. In this document, it is
9 correct. If you read through the upper part of the document, the
10 government shall be that of the Party.

11 I will state that is the truth, and Mr. Son Arun may refer to the
12 statute of the Party as well. The Party of CPK belongs to the
13 worker and peasant class. The Party governs absolutely and firmly
14 over every fragment of the society. So every affair of the Party
15 must have been informed by Brother Pol and Nuon. Brother Pol
16 rendered the orders and Brother Nuon ensured that the orders were
17 well implemented.

18 You should read the documents together with other documents. By
19 picking only just small portions of the document, it is not fair
20 to put such questions to me.

21 [15.10.57]

22 MR. SON ARUN:

23 Mr. President, I have another document concerning the meeting of
24 the Standing Committee on the 9th of October 1977 -- rather,
25 1975. It reads that -- under ERN number -- I think the witness

1 perhaps has been very fluent and quite familiar with the document
2 already.

3 MR. PRESIDENT:

4 Counsel, it is not like the way you believe. We are now guided by
5 our practice and norm, and you should always tell the Chamber and
6 parties the reference number and the hardcopy should always be
7 handed over to the witness for review and you request for the
8 document to be put up on the screen before you can proceed with
9 your questions. Indeed, the Chamber will allow you to project the
10 document as requested up on the screen.

11 [15.12.36]

12 BY MR. SON ARUN:

13 This document is IS 13.2, ERN Khmer 0019108, in English 00183393,
14 French ERN 00292868. In this document, it is the meeting of the
15 Standing Committee and it states the composition of some people
16 in which Mr. Nuon Chea as the person in charge of social action,
17 culture, propaganda and party affairs.

18 Q. My question is: Could witness tell the Court how Nuon Chea
19 could be engaged in security affairs?

20 [15.14.40]

21 MR. KAING GUEK EAV:

22 A. Mr. President, first, I would like to comment on the work of
23 the Party affairs by Nuon Chea. "Party affairs" here does not
24 refer to study sessions. That would be a lie. "Party affairs"
25 mean the recruitment of new members and how disciplinary actions

1 be implemented or imposed on members of the Party who committed
2 wrongdoings.

3 And, I think, only after we read this document with other
4 documents that we could understand this in detail.

5 The person who was in charge of Party affairs shall grasp the
6 biographies and personal history life views of every individual
7 Party member, so it is indeed the task of the deputy secretary
8 who was embedded with this authority. So he had the power to
9 render some sanction or disciplinary measures against members who
10 committed wrongdoing. Pol Pot would be making the decision.

11 And Mr. Son Arun also may refer to this document on page 5, the
12 third line of page number 5. Here, it suggests on page 5 that if
13 the secretary is busy or absent, then the deputy secretary shall
14 be the one who takes his place.

15 So I may read again: "At the same time, when some comrade is not
16 present, some other comrade can replace him if we all have some
17 comrade be responsible for doing so."

18 And the "Party affairs" here involve other tasks other than what
19 you indicated.

20 [15.17.37]

21 Q. Could witness tell the Court about the structure of the
22 security or the defense ministry?

23 A. According to my knowledge and practice and what I heard. The
24 ministry of national defense was in charge -- was charged by Son
25 Sen. At that time they called the national defense ministry

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1 however, Son Sen was the head of the general staff of the CPK's
2 army. They got their own general staff committee.

3 [15.18.32]

4 This committee had the authority to smash according to the first
5 paragraph of the decision made on the 30th of March 1976.

6 However, in the real practice in the military they had their own
7 general staff committee.

8 First, there were three people: Son Sen, the candidate member of
9 the Central Committee, the head of general staff; Men San alias
10 Ya, Deputy of the general staff; and Seat Chhay alias Tum, member
11 of the general staff committee; along with other assistants,
12 including Meas Muth, Sou Met, Nat, Chhaom (phonetic), and Thieng
13 (phonetic), in the logistics. However, since Son Sen was in
14 charge of security, S-21 was under direct supervision of Son Sen
15 regarding security affairs. However, these security matters were
16 under - was under - was the affairs of the Party. Since it was
17 the affairs of the Party, it was under the direct control of the
18 secretary of the Party and deputy secretary of the Party.

19 Q. Thank you. Mr. Witness, you testified on the structure of
20 this. Do you think that this structure could be written somewhere
21 in any document, the document concerning the structure of the
22 security affairs and the -- and others or are you speculating or
23 are you saying, based on your assumption?

24 A. Mr. President, with regard to security affairs, throughout the
25 country there were at least 196 police officers. S-21 was one

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1 among them and I already indicated, in detail, the work of S-21.
2 I do not believe that there is no document relevant to the
3 structure, because I was the one who reported to Son Sen and Son
4 Sen, every now and then, talked about Brother Nuon. And I
5 indicated time and again on this already.

6 [15.21.47]

7 So the Statute of the Party states precisely, on the first part,
8 which is about the principles and sociologic stands of the CPK in
9 the first paragraph, which reads that "CPK belongs to the worker
10 class, and the Party controls in monopoly and absolutely every
11 matter". Here we refer "the Party" to Pol Pot and Nuon Chea.

12 Q. Normally, a government of a country - the line of
13 communication of the Party would start from top down from the
14 prime minister, minister, deputy prime minister, so and so forth.
15 You said that, after Son Sen, there was Men San and other
16 individuals. The work of Son Sen, whether he was at the office or
17 not, if he was absent, then someone else had to shoulder this
18 work.

19 [15.23.20]

20 What you said that Son Sen had to work directly with you and you
21 work directly with him and at some point you dealt directly with
22 Nuon Chea. So my question is whether that is the case. Since the
23 work was operated on a hierarchy core structure so it had to be
24 operated top down or like that or could you tell us in detail
25 what is your opinion concerning this structure? Was it in a mess

1 like that or not?

2 A. You said that every state had its own structure. However,
3 could you please refer to China during the time when Fa Guofeng
4 (phonetic) as the president. The president of the party was the
5 prime minister at the same time. The deputy was the head of the
6 assembly. Li Xiannian was the president. We asked what power Li
7 Xiannian had. What about Li Ying Ning (phonetic)? Did he have any
8 power? They had none. These people were more symbolic because
9 they were senior citizen and they were people who were respected
10 but not people who enjoyed power.

11 [15.25.02]

12 Democratic Kampuchea regime copied the Cultural Revolution in
13 China; the structure was copied from that country. So it's not
14 really in a mess as you indicated, it was properly organized; the
15 general staff had its own structure. They had their own
16 committee.

17 For the security matter, they also had their - their management
18 team, Son Sen, assigned people to work for him. For example,
19 decision to be made had to be done through documents, submission
20 to him first. And though orders rendered from the Standing
21 Committee, then the decision - the document had to go through him
22 and then to us.

23 [15.26.04]

24 Q. Thank you. I noted that you testified that on the 15 of August
25 1977, after Son Sen had left for the East, you indicated that

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1 some important confessions and documents were submitted to Nuon
2 Chea. Could you tell the Court how this happened?

3 According to the state structure, as you indicated, it was copied
4 from China and I'm not – I was not there with you back then to
5 understand the structure, but I want to know whether this was the
6 way security structure was managed. Could you please explain this
7 to us, why this has to be – to go all the way to Nuon Chea, not
8 to the top?

9 A. After Son Sen was absent, Nuon Chea was the one I reported to
10 because he was the deputy secretary. Below Son Sen, there was
11 none who was assigned to handle the tasks except Khieu Samphan if
12 we referred to the structure of the Party. Khieu Samphan was not
13 actually assigned to handle this, for sure. So, by that, Duch
14 would be on top of Nuon – of Son Sen, if by your explanation, and
15 that Nuon Chea had to listen to Duch if by that, but it's not the
16 case.

17 [15.28.13]

18 Q. You just indicated that in the security structure -- you
19 mentioned some names like Men San, like Chhay.

20 A. I think Mr. Son Arun trying to confuse me. I was talking about
21 general staff; I'm not talking about security. As I indicated,
22 security committees were not established all across the country,
23 back then. Son Sen assigned his team to handle some documents so
24 that the documents could be forwarded to Pol Pot who made the
25 final decision.

1 [15.29.09]

2 With regard to the 96 security officers all across the country,
3 the report from these offices had to be forwarded all the way to
4 the Standing Committee and for general staff, they were in charge
5 of weapons and military.

6 Q. From your explanation Mr. Witness, does it mean that no one
7 was under Son Sen? That was why chief of the offices made a
8 support to Nuon Chea?

9 A. It is correct, Counsel. Security across the country reported
10 to the Central Standing Committee, not to Son Sen. And Pol Pot
11 handed those documents to Son Sen so that Son Sen would find it
12 easy to manage. Then without Son Sen it was Brother Nuon who
13 would take care of those documents. All documents from the zones
14 came to Brother Nuon, and he made the decisions. This is the
15 fact.

16 Q. Thank you. From what you know, as you have received the
17 various documents either from Son Sen or Nuon Chea, were there
18 any stamps or signatures from these senior people?

19 A. Thank you. I only saw a stamp once; it was sealed on leaflets
20 distributed to people. Others were stamps of the Democratic
21 Kampuchea. One was the dry stamp; another one was a wet stamp and
22 they were issued on special pass.

23 [15.32.02]

24 Q. I now move on to another question. You answered to the
25 Co-Prosecutor last week that, if we talk about "the Party", it

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1 was about Pol Pot and Nuon Chea. If we talk about the arrests or
2 smash, it was about Pol Pot and Nuon Chea. If we talk about smash
3 and other major orders it was about Nuon Chea, and so on and so
4 forth.

5 Can you tell the Court what you mean by "the Party"? Is "the
6 Party" a person, is it an abstract entity, or it is rather a
7 theory which was referred to in order to accuse people and to
8 arrest people?

9 [15.33.10]

10 A. Thank you. In theory, "Party" referred to the centralism or
11 the gathering of combatants who joined the Party. At the same
12 time there were core units of the Party, and those include
13 peasants and workers. And even look at the party's that should -
14 as the discipline, the subordinates respected the superiors. The
15 power centralism was in the hands of the Central Committee --
16 that is, it was in the hands of the Party.

17 Q. Could you indicate again was it in the hand of Pol Pot or in
18 the hands of the Central Committee? Can you differentiate between
19 the two?

20 A. Thank you. Mr. President, we used to know each other so we may
21 be too excited. Allow me to answer this. As I said earlier, in
22 theory, Party refers to the meetings that collected those who
23 joined the core pillars of the Party. They were Party members and
24 they had their own roles. We had the super - the superiors who
25 were responsible for affairs across the country or from one

1 congress to another. The other work was in the hand of the
2 secretary of the Party. It was as of the decision on the 9th of
3 October 1975.

4 The secretary was in charge of the overall work.

5 [15.35.58]

6 And the deputy secretary was in charge of the Party's affairs.

7 Given – so given his responsibilities, he had the power to do a
8 lot of thing. And as I indicated was on page 5, line 2. As
9 evidence, when Pol Pot took a rest, Brother Nuon came to replace
10 him. And as for the confession of Kung Kien, Son Sen wrote a
11 document and sent it to Brother Nuon directly and it was Brother
12 Nuon who decided.

13 So he, Brother Nuon, made the decision when Pol Pot took arrest.

14 So, again, when was not available, the other did the work on the
15 other one's behalf. So that was in practice and in short.

16 Counsel asked me what we mean by the word "party". A party is a
17 theory, it is a political force that collected core forces within
18 the party and it followed the idea of the democratic centralism.

19 Q. Can you indicate further whether all Power was in the hands of
20 the secretary or the deputy secretary of the Party? Was it
21 stipulated somewhere in the statute of the Party?

22 A. Mr. President, may I request counsels to examine the statute
23 of the Party? One concerns the discipline of the Party. The
24 subordinates had to respect the superiors and we obeyed the
25 principle of the democratic centralism.

1 [15.38.41]

2 Let me give you an example. In the document issued on the 30th of
3 March 1976, it mentioned clearly that at the cooperative, the one
4 who decided to -- rather at the base, the one who decided to
5 smash was the secretary of the zone. There was an instance that
6 Kang Chap arrested the wife of a relative of Khieu Samphan and
7 when this information was known by Pol, Kang Chap was punished.
8 So Brother Pol said: You had the rights to make the decisions to
9 smash, but you can't decide subjectively.

10 That was why Son Sen always sought comments from Pol Pot and we
11 had a lot of annotations that mention this.

12 Q. Thank you for your answer. And I would like to ask you another
13 question stemming from what you have said -- that is, when we
14 talk about Party, it refers to the secretary and the deputy
15 secretary of the Party. How about at S-21?

16 You are the chief of S-21, and there was a deputy chief of S-21.
17 When we talk about S-21, do we refer to both you and your deputy?

18 [15.40.54]

19 A. Mr. President, yes, it is true. However, the one who had power
20 over others was me. I had the power over Hor, and I followed the
21 principles, the policies of the Party in all cases. That was why
22 the mass population at S-21 called me as the East Brother, and
23 they called Hor as the West Brother.

24 Q. But when it comes to decision making, was it done by you
25 together with Hor like what Nuon Chea had to do; because this is

1 what you call the centralism?

2 A. Mr. President, work that was assigned from the superior was
3 handed over to me and I disseminated the work.

4 There was -- there could be instances where we could express our
5 idea that work was not properly done. And when I was absent, my
6 deputy was in charge, but I would be informed before everything
7 was done. Daily work was done following orders. Everything was
8 done following orders.

9 [15.42.43]

10 Q. I would like to make an analysis and I would like to invite
11 you to join my analysis concerning the meeting -- the minutes of
12 the meeting. When it comes to the distribution of the work, for
13 example, number one, it talks about the delegation of work and
14 the operational process. One, "Secretary -- Comrad Secretary:
15 General responsibility over the military and economy." And number
16 2, "Comrad Deputy Secretary: Party affairs, social action."
17 But it only -- rise it this way and that's not expressed that the
18 person was responsible for this work.

19 A. There was no mistake in the document. The minute takers did
20 not make any mistake. Pol Pot sometimes said this person was
21 responsible for this, but sometimes he did not mention the word
22 "responsible". He only said: This person, this work.

23 He also talked about --

24 (No interpretation)

25 And the word "Party affairs" means that it's to recruit, to

1 promote, and to discipline Party members. We have this evidence
2 here.

3 I believe that Brother Nuon could control the biography of Long
4 Norin clearly.

5 Q. What is your status in the Party as chief of S-21?

6 [15.45.25]

7 A. My status was a committee -- a secretary of the committee at
8 S-21, and this status was equal to the district level.

9 Q. Moving from this, I would like to say is it possible for me to
10 say that it is the same as the regiment level or if you are not
11 at that level, how could you know a lot of issues across the
12 country? How could you come to know about all this? Can you
13 answer my questions?

14 A. Mr. President, allow me to answer this question as follows.

15 The Central Party could assign the assistant officers. If I'm not
16 mistaken, it was stipulated in Article 8 of the Party Statute.

17 That was about the security issue directly supervised by the
18 Central Committee. And as for the logistics, it was to go through
19 Pang. Yes, and if I'm not mistaken, it was stipulated in Article
20 8.

21 Q. Since you worked in the security section, had you ever been
22 under the supervision of Vorn Vet?

23 [15.47.40]

24 A. I was educated by Vorn Vet from 1967, and I met him again in
25 1971. And after he went to the special zone in Phnom Penh, his

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1 house of Phnom Penh, I was with Son Sen. So my history with Vorn
2 Vet began from '73 to '74.

3 Q. After the -- after Phnom Penh was liberated after 1975, did
4 Vorn Vet control the security?

5 A. No, he did not control the security. He controlled the
6 economy. He was on -- in the south.

7 [15.48.54]

8 Q. When Son Sen went to -- was on his mission in the East Zone in
9 1977, on the 15th of August 1977, when Nuon Chea took place, that
10 was what you said, did -- or do you have any evidence -- do you
11 have any official mission letter that proves this, that shows
12 that you communicated directly with Nuon Chea?

13 A. Mr. President, when my superior went to Neak Loeang I was not
14 aware of that. I was not even aware of that.

15 One day, Comrade Lin came to call upon me to work and I went with
16 him, and then I met with Brother Nuon at Suramarit Buddhist
17 School, and I was told that Comrade Khieu went to the
18 battlefield, and so I had to go and work with him. Pang and Lin
19 frequently went to that place. This is the fact, and as for the
20 official letter, there was no official letter. Son Sen did not
21 have any official letter from Brother Pol.

22 When Nat left S 21 and I was to replace him, there was no
23 official letter appointing me or official letter removing Nat, so
24 this was the practice that we had within the Party.

25 Q. When did you read the "Revolutionary Flag"? When did you read

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1 it?

2 [15.51.42]

3 A. Mr. President, allow me to talk about this precisely,
4 comprehensively. The internal "Revolutionary Flag" magazines
5 followed the Chinese magazine. The Chinese magazine was called
6 "Red Flag", and it was written in Chinese. I read the Chinese
7 magazines once in 1967 when I was in Chamkar Leu.

8 Later on, I was detained in prison, and once I was released I
9 went to work at M 13. It was on the 21st of July 1971. So it was
10 in 1972 when I again received the internal magazine.

11 At this time, the magazine was changed -- the title of the
12 magazine was changed from the "Red Flag" to the "Revolutionary
13 Flag", and since then I regularly received the magazines.

14 [15.53.03]

15 Q. So does that mean that you received the "Revolutionary" from
16 the 22nd July--

17 A. I worked at S 21 from the 21st of July 1971, and it was at the
18 end of that year when I received the "Revolutionary Flag".

19 Q. Did you remember the month?

20 A. No, I did not.

21 Q. Did you know the number of magazines that you received, or did
22 you know the total number of the magazines or issues?

23 A. Mr. President, when counsel asks me this kind of question it
24 is very difficult for me to come up with the numbers.

25 I received some "Revolutionary Flag" magazines regularly, every

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1 month, but sometimes two issues were included together as a one
2 special issue, or two months, sometimes three months were, you
3 know, a special issue was published in two or three months. So it
4 is not possible for me to do the calculation for the total number
5 of the magazines.

6 [15.54.44]

7 Q. When you saw and read the "Revolutionary Flag", it means that
8 you are very sure about the magazines. If so, can I ask you to
9 explain the characteristics of the magazines?

10 A. Thank you, Mr. President. These "Revolutionary Flag"
11 magazines, from 1971 or 1972, these magazines were sent or
12 distributed to each zone, five copies for each zone, and then
13 there were people who copied these magazines or reprinted these
14 magazines so that there were enough for every zone. Each copy
15 could be reprinted into 100 copies. We could reprint it -- we
16 could reprint those magazines in red ink, and there was a slight
17 difference when it comes to the shape of the flags on the cover
18 page.

19 Then, in April, we no longer published the "Revolutionary Flag".
20 It was after, I'm not sure by the number of months, but it was
21 after some months we republished the "Revolutionary Flag"
22 magazines again.

23 [15.56.47]

24 Q. You said originally, from 1971 or before that until 1975, the
25 "Revolutionary Flag" magazine was handwritten. After that --

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1 after 1975 the cover page was published in colour. At that time,
2 was it handwritten or was it typed?

3 A. Prior to 1975, the "Revolutionary Flag" was handwritten. The
4 cover page was in red and the pages inside was in black and they
5 were handwritten.

6 After 1975, we had printing house, so we had word art on the
7 cover page and on the pages inside we had prints, but there was a
8 change to the pictures of the flag. We changed from having five
9 flags to only one flag.

10 So, in short, after 1975 the magazines were printed. They were no
11 longer handwritten, and the documents shown to me during this
12 hearing were of course the copies of those magazines.

13 [15.58.52]

14 Q. Thank you.

15 I would like to touch upon the issue concerning the evacuees from
16 the cities.

17 Last week, you testified to the Co Prosecutor concerning the
18 policy that was decided, and you were not convinced that lower
19 echelon people could never understand or know the decision made
20 by the secretary or deputy secretary of the Party regarding the
21 evacuation.

22 My question is: How do you know there was such a decision or
23 policy in place? Did you obtain some documents from the Party or
24 only you heard people say this?

25 [16.00.01]

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1 A. I would like to say that the events happened in Kampuchea.
2 First, the CPK advised us in the "Revolutionary Flag" of the
3 evacuation of the population from Borei, and when the people were
4 evacuated the enemies were deprived of the people to control, so
5 we had an ample opportunity to attack them. The reason we
6 evacuated people was to ensure that they come on our side.
7 Then, in 1974, the CPK won the battle in Udong. At that time, Son
8 Sen ordered me to evacuate a few people to Pursat Province. At
9 that time, there was one person, KW-30, or Uch Sorn, who
10 testified before the Chamber, still survived, and other people
11 also survived the ordeal and some died later.
12 After the event, I was in Amleang. A few days later, I noted that
13 a few people were seen walking on the roads, and I was thinking
14 to myself perhaps these people were volunteers who would like to
15 go to their hometown voluntarily. Later on, I learned that there
16 was an office set up in Amleang to receive the people and to
17 manage the people where they should go next. That's all I know.
18 [16.02.16]
19 And when I came to Phnom Penh, and on the 26th of June -- and I
20 think I can refer to document KNH166 for this. During the study
21 sessions, the first topic of the study session was about the
22 victorious factors. The victorious factors include the great leap
23 forward. Great leap forward means that we were prepared very
24 well. People had to be evacuated. Foreigners, including
25 westerners, had to be -- had to be expelled or sent out of the

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1 country.

2 [16.03.07]

3 And when I attended the study, rather the life views meetings
4 within Division 307, I was reported on the evacuation, that the
5 military used violence against the people. They fired on the
6 villagers. So as I emphasized, the evacuation of people was the
7 preparation for victory of the CPK.

8 Q. How come you called Nuon Chea Brother Number Two? Were you
9 instructed to say so by your superior or it was your handpicked
10 terms just to make sure you feel close to him by addressing him
11 Bong Number Two?

12 A. There was no instruction to any combatant to call me, myself,
13 Brother East or Brother West. The combatants themselves came up
14 with the terms. And Koy Thuon was the only person who told me
15 about Brother Number Two; he used the term.

16 Later on, we learned also that Ta Mok was addressed as Brother
17 Number Four. So this is how the terms came to our mind.

18 [16.05.00]

19 MR. PRESIDENT:

20 Counsel, could you advise the Chamber how much time would you
21 need to finish your questions?

22 MR. SON ARUN:

23 I perhaps need another hour, if Mr. President allows. Perhaps I
24 need one hour on the next -- on -- tomorrow, rather. My
25 apologies, tomorrow is Friday and we don't have hearing. Perhaps

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1 on Monday I may have that hour for finishing my questions?

2 (Judges deliberate)

3 [16.06.09]

4 MR. PRESIDENT:

5 Counsel for Ieng Sary and Khieu Samphan, could you tell the Court
6 how much time you would need to put questions to the witness in
7 order for the Chamber to be able to manage the conduct of the
8 proceedings?

9 Mr. Karnavas, you may now have the floor first.

10 [16.06.38]

11 MR. KARNAVAS:

12 Thank you, Mr. President. Thank you, Your Honours.

13 Well, I would say I would need a day, maybe a day with a little
14 bit more, I don't know. I do know that I have three days to look
15 at everything, condense, and to be able to bring it to a
16 manageable examination without doing too much duplication.

17 Although I must say there may be some instances where I will have
18 to go back and touch upon some issues that were not, to our
19 satisfaction, fully dealt with.

20 But I think I can keep it within one day, and that would give the
21 Khieu Samphan team one day. I may be able to do it in less than a
22 day, but I've scheduled for the entire staff, myself, to work
23 over the next three days to see what has been covered so we can
24 do a very focused -- a very focused examination, in keeping with
25 some of the rulings that have already been made, and so that we

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1 don't lose any time with procedural matters. Thank you.

2 MR. PRESIDENT:

3 Counsel for Khieu Samphan, you may now proceed.

4 [16.07.55]

5 MR. VERCKEN:

6 Thank you, Mr. President. I am in the same situation as my
7 colleague Karnavas. It is true that the privilege we have to
8 speak last makes any forecast complex, because to avoid
9 repetitions I and my entire team will have to spend the next
10 three days reformulating the questions that we have in mind to
11 try to gain time.

12 Be that as it may, it is difficult for me to answer your
13 questions with any precision, but what is certain is that I
14 wouldn't be able to complete my examination in less than a day,
15 including of course the examination by my Cambodian colleague.
16 That is something that is obvious to us.

17 The Tribunal has decided not to sit on the Wednesday and Thursday
18 next week, and that is understandable, but that poses problems to
19 us, although, again, I must say that at this point in time it is
20 quite difficult to say that I will need less than a day at the
21 very minimum.

22 (Judges deliberate)

23 [16.10.12]

24 MR. PRESIDENT:

25 Since it is now an appropriate time for today's adjournment, we

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1 shall now adjourn. However, the Chamber is seized of the request
2 by counsel for Nuon Chea. The Chamber has already scheduled
3 hearings to be conducted on Monday and Tuesday next week.

4 Counsel for Nuon Chea has indicated very clearly that they would
5 prefer two days for questioning the witness. For that reason,
6 since counsel for Nuon Chea have already used their time
7 allotted, we will proceed to counsel for Ieng Sary and Khieu
8 Samphan respectively on Monday and Tuesday.

9 If time is left over from two counsels, then counsel for Nuon
10 Chea may take the advantage of the remainder of the time left
11 over by the counsel, and if not, then we will decide accordingly
12 on the practical circumstance on those days.

13 [16.11.44]

14 The Chamber is now coming to a conclusion for today, and the next
15 session will be resumed on Monday and the hearings will be
16 conducted for two days only next week.

17 Security personnels are now instructed to bring witness to the
18 detention facility and bring all the accused persons to the
19 detention facility and have them return to the courtroom by 9
20 a.m., on Monday next week.

21 The Court is adjourned.

22 (Court adjourns at 1612H)

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