



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 17-Apr-2012, 12:56
CMS/CFO: Kauv Keoratanak

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

9 April 2012
Trial Day 49

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

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Michiel PESTMAN
Jasper PAUW
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy
Roger PHILLIPS
DUCH Phary

For the Office of the Co-Prosecutors:

SENG Bunkheang
William SMITH
VENG Huot
Vincent DE WILDE D'ESTMAEL
PAK Chanlino
PICH Sambath

Lawyers for the Civil Parties:

PICH Ang
Élisabeth SIMONNEAU-FORT
Barnabé NEKUIE
Emmanuel JACOMY
LOR Chunthy
CHET Vanly
Marie GUIRAUD
Lyma NGUYEN
TY Srinna

For Court Management Section:

UCH Arun

INDEX

MR. KAING GUEK EAV, alias DUCH

Questioning by Mr. Karnavaspage 1

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 |
| MS. NGUYEN | English |
| THE PRESIDENT (NIL NONN, Presiding) | Khmer |
| MR. PESTMAN | English |
| MR. SMITH | English |

1

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 As we scheduled for today's hearing, the floor should be given to

6 Mr. Ieng Sary's defence to pose questions to witness Kaing Guek

7 Eav, alias Duch.

8 Before the Chamber hand over the floor, we would like to inform

9 that Judge Lavergne is better and is in good health so that he

10 can participate in today's proceeding.

11 [09.02.44]

12 The floor is now given to Ieng Sary defence team to question the

13 witness. You may proceed.

14 QUESTIONING BY MR. KARNAVAS:

15 Good morning, Mr. President. Good morning, Your Honours. And good

16 morning to everyone in and around the courtroom. And welcome

17 back, Judge Lavergne. Good morning, sir.

18 Q. First, I would like to begin by asking you some general

19 questions, and then we will go into certain documents which we

20 will provide to you in hard copy, and also we have them available

21 electronically, and for your convenience we have marked the

22 portions that we would like you to focus on.

23 [09.03.39]

24 So let's start with the period back then, when you were working

25 at S-21. As I understand it, your activities during that period

2

1 of time were rather limited to your functions related to S-21; is
2 that correct?

3 MR. KAING GUEK EAV:

4 A. Thank you. Good morning, Mr. President. What the counsel said
5 is correct.

6 Q. And your movements were also limited.

7 A. The movement in terms of where I can move was, yes, limited.

8 Q. And as for your knowledge, that was limited as well.

9 A. Yes, it was limited.

10 Q. Okay. I'm told that we don't have translation in French, so
11 let me repeat the question, and hopefully we can get the
12 translation going because this is slowing us up.

13 [09.05.31]

14 Your knowledge was limited; if you could repeat your answer, sir,
15 I would most appreciate it.

16 A. Mr. President, my knowledge was also limited.

17 Q. Your level, as I understand it, was sort of in the middle. You
18 were mid-level cadre, not at the bottom but, certainly, not at
19 the top; correct?

20 A. Mr. President, yes, that is correct.

21 Q. And from listening to your testimony, it is fair to say that
22 you, at all times, tried your level best to behave as expected.

23 A. Mr. President, I'd like to clarify one thing with the counsel.
24 Are you referring to a particular person or individual? Could you
25 state your question precisely?

1 MR. PRESIDENT:

2 Counsel, it seems that the witness does not get your question.

3 Could you please repeat your last question and put it more

4 precise? It could be due to the translation or the technicality

5 in posing the question by yourself.

6 BY MR. KARNVAS:

7 Thank you, Mr. President.

8 [09.07.40]

9 Q. I am speaking about your overall behaviour. We'll go into the

10 specifics, but in general you tried to behave according to the

11 rules as you were expected.

12 MR. KAING GUEK EAV:

13 A. Mr. President, my behaviour in this courtroom is of the

14 understanding in order to answer the questions put by the

15 Chamber, and this is my stance.

16 Q. Well, maybe something was lost in translation because I'm

17 referring to when you were at S-21. You followed the rules; you

18 followed instructions; would that be correct?

19 A. Thank you, Mr. President. If we refer to that time, I tried my

20 best to adhere to the lines and instruction -- and also the

21 Party's line -- and adhere to the instructions from my superior,

22 including Son Sen and Bong Nuon.

23 [09.09.26]

24 Q. Thank you very much. And I take it from also reading what you

25 have told the Investigative Judges and what you've said here that

4

1 at the time the level of fear was rather high.

2 A. The level of my fear was high, and it became more intensified
3 when the Party decided to arrest You alias Hong, the deputy
4 director of the commerce section, and he was brought to S-21.

5 I became terrified when Brother Nuon ordered me to smash the
6 remaining prisoners on the 1st of April 1979. I was so shocked
7 that I could not move out of my house.

8 Q. Thank you. And I take it, it was out of fear; that's one of
9 the reasons why you endeavoured to do nothing that would cause
10 suspicion or cause your arrest; is that correct?

11 A. That is correct.

12 [09.11.28]

13 Q. And getting to the confessions that you were instrumental in
14 obtaining, you tried your level best to ensure that the
15 confessions had information that was expected; correct?

16 A. My duty, at the time, was to lead the centre in order to
17 obtain the confession which are objectively correct and that's
18 what we tried.

19 Q. All right. Well, certainly, as you sit here today, you're not
20 suggesting; are you, that the confessions told the objective
21 truth; right? You're not suggesting that?

22 A. Previously, I already clarified that I would not accept
23 everything as truth or untruth. Let me give you a concrete
24 example, if the President does not mind.

25 Q. I might not be interested in concrete examples because we've

5

1 heard them and I don't mean to be rude or to interrupt you, but
2 we'll get there one -- step by step.

3 [09.13.39]

4 Let me put it this way. You knew that the confessions contained
5 what can only be characterized as lies; correct?

6 A. The confessions, as I stated, cannot be presumed all lies or
7 all were true.

8 Q. Would it be fair to say, sir -- and I'm not passing judgement
9 on you, but would it be fair to say that at least with certain
10 individuals, you were told in advance of what needed to be in the
11 confessions?

12 A. As a principle, the people arrested by the Party were
13 determined by the Party as enemies; S-21, therefore, needed to
14 have the person acknowledge that they made mistakes and that they
15 were guilty as enemies presumed by the Party and arrested by the
16 Party. That is the general practice, in particular, at S-21 and
17 it was also a common practice in all the police centres.

18 [09.15.54]

19 Q. Right. And I guess part of the information was to get someone
20 to acknowledge that he was or she was CIA, KGB, or under the
21 influence of the Vietnamese; correct?

22 A. The enemies, as determined by the Party, who were arrested,
23 interrogated, and smashed were first, the CIA agents; two, the
24 KGB agents; and three, the Yuon agents, who swallowed the
25 territory of Kampuchea and who committed the genocide; that was

1 set by the Party in public.

2 Q. But it was your job -- it was your task to make sure that in
3 the confession there was information that acknowledged the
4 individual being interrogated and tortured, that he or she was
5 engaged in those sorts of activities; correct?

6 A. Talking about those who were arrested and brought to S-21, we
7 tried our best to interrogate them to make them confess that they
8 committed something wrong; that is point one, and what mistakes
9 they made, whether they were in the group of the CIA, KGB or the
10 Yuon agents.

11 [09.18.21]

12 Q. Sir, and I'm not trying to be critical of you, but were you
13 not trying -- not you, personally, but through your assistants,
14 were you not trying, by way of torture, to get those being
15 tortured to effectively lie about being KGB, CIA, or Vietnamese
16 agents? And it's a yes or no.

17 A. The interrogation and the torture were the last resort. What
18 we actually wanted was their confessions. Torture was the last
19 measure. Let me clarify on this point.

20 Q. Let me stop you because we've heard the clarifications. I'm
21 asking you a direct question. Did you get those being tortured --
22 or before being tortured, being questioned, and interrogated --
23 to lie about their activities and association? It's a yes or it's
24 a no; that will suffice.

25 A. I cannot respond to this question, Mr. President. This is a

7

1 leading question.

2 Q. I'll go to the next one. Did you have individuals being
3 questioned and later on tortured? Did you have them write their
4 confessions over and over and over again in order to get the
5 confession just right? And that's a yes or no.

6 [09.21.10]

7 A. The fact that some prisoners had to write the confessions
8 again and again, yes, there were cases, for instance, Koy Thuon.

9 Q. And the whole purpose of getting them to write it over and
10 over again was because a certain truth which was a lie was being
11 requested of them; would that be accurate?

12 A. That some prisoners were ordered to write confessions again
13 and again were not for them to lie, but for them to make it more
14 precise. And in regards to Koy Thuon confession, it was ordered
15 from the above for him to write over and over again for four
16 times. So I'd like to clarify that the fact that some prisoners
17 were ordered to write again and again were due to these factors.

18 Q. All right. And we'll get to a document later on, but it's my
19 understanding part of your task was to go over those confessions
20 carefully before sending them on to Son Sen and then you would
21 get back instructions on how to clarify points; correct?

22 [09.23.03]

23 MR. SMITH:

24 Your Honour.

25 MR. PRESIDENT:

8

1 The Prosecution, you may proceed.

2 MR. SMITH:

3 Good morning, Mr. President. Good morning, Your Honours. Good
4 morning, Counsel. Good morning, general public.

5 Your Honour, at this stage, that's not the witness' evidence. The
6 witness' evidence is that he provided the confessions to Son Sen
7 and then half way through the period, then the confessions were
8 to be sent to Nuon Chea. So it doesn't characterize his evidence
9 accurately.

10 So I'd just ask the counsel put the evidence more accurately to
11 the witness' testimony.

12 BY MR. KARNAVAS:

13 Q. When you were sending the confessions to Son Sen or Nuon Chea,
14 but in particular to Son Sen, were you not given instructions
15 back to get more details?

16 [09.24.20]

17 MR. KAING GUEK EAV:

18 A. The sending of the confessions to the superior were indeed --
19 occurred before and after the 15 of August '77. After we sent
20 those confessions, sometimes Brother Son Sen requested us to
21 interrogate again and sometime Brother Nuon would ask for
22 clarifications of a word or of a group of words or a phrase; that
23 is my recollection, but it does not happened to all the
24 confessions.

25 Q. Let's switch topics and, again, some of this was covered

9

1 during your testimony and we're going to get to documents, but I
2 just want to get some general points out of the way.

3 [09.25.21]

4 As I understand it, you had no interactions with Pol Pot; is that
5 correct?

6 A. No, I did not have any personal contact with Pol Pot.

7 Q. In fact, you were never in any meetings where Pol Pot presided
8 over.

9 A. Brother Pol and Brother Nuon led a meeting and I participated
10 in that meeting. I was about 10 metres away from him, but that
11 was the -- as close as I could get to him.

12 Q. All right. Was this a training, or was this a discussion where
13 they were discussing matters such as security?

14 A. The meeting was an anniversary celebration of the 30
15 September--

16 Q. I'm talking about meetings where they're discussing sensitive
17 issues. Did you ever participate in any of those sorts of
18 meetings? Yes or no, please, sir.

19 A. If you refer to a work meeting, I never met with Pol Pot
20 during such a meeting.

21 Q. Thank you. And you never--

22 MR. PRESIDENT:

23 Counsel, you may postpone your question.

24 Judge Cartwright, you may proceed.

25 [09.27.48]

10

1 JUDGE CARTWRIGHT:

2 Yes, thank you, President.

3 Mr. Karnavas, you are well aware that you cannot restrict a
4 witness to answering yes or no so could you please stop doing
5 that?

6 It would also help if you put very simple questions; you've seen
7 the difficulties we've had over the last few days with
8 multi-layered questions and you're very quick on the draw and you
9 speak before the microphone is on. Thank you.

10 [09.28.24]

11 MR. KARNAVAS:

12 Thank you, Judge Cartwright. I -- frankly, I wasn't aware that
13 yes or no was not permitted in this Court, but now that I am
14 warned, I had been told that we could ask leading questions, but
15 perhaps that's with a caveat.

16 JUDGE CARTWRIGHT:

17 You can ask a yes or no question, but the witness is not obliged
18 to answer it as such--

19 MR. KARNAVAS:

20 Right.

21 JUDGE CARTWRIGHT:

22 --and no, leading questions are not permitted. Thank you. Open
23 questions, Mr. Karnavas, you're well aware of that.

24 MR. KARNAVAS:

25 Well, with all due respect, we had a meeting with Susan Lamb, the

11

1 senior legal officer, and this issue came up specifically. She
2 informed us that the party who was confronting the witness, not
3 the party leading the witness, would be entitled to ask leading
4 questions; that's was -- that was what we were told.

5 [09.29.26]

6 Now, I will try to modify and abide by, but that's -- the problem
7 that we have in asking leading -- open-ended questions where we
8 don't try to restrict the witness. I need two days. I'm trying to
9 condense it to one day and unlike the Prosecution, they had six;
10 I'm giving -- given one day, but if I can have all day tomorrow
11 then perhaps I can go that route. I don't mean to -- to be
12 disputatious. I will try my level best, Your Honour, but--

13 JUDGE CARTWRIGHT:

14 Yes, Mr. Karnavas, I understand what you are telling the Court,
15 but this is a different system. It is not cross-examination and I
16 would greatly appreciate it if you could moderate and I
17 appreciate your willingness to adapt. Thank you.

18 BY MR. KARNAVAS:

19 I will. I hope my abilities don't fail me.

20 [09.30.24]

21 Q. If we could talk a little bit about your relations, now, with
22 Mr. Ieng Sary; as I understand it, you had no contact with Mr.
23 Ieng Sary other than seeing him from afar a couple of times.

24 MR. KAING GUEK EAV:

25 A. Mr. President, Bong Van and I -- I actually saw him from the

12

1 distance only twice, not three times, just twice.

2 Q. And you had no interaction with the Ministry of Foreign
3 Affairs.

4 A. No, I didn't.

5 Q. In fact, you never visited the ministry of foreign affairs;
6 right?

7 A. No, I had never visited the ministry.

8 [09.31.44]

9 Q. Never had any discussions with staff of the Ministry of
10 Foreign Affairs.

11 A. That's correct.

12 Q. Never had instructions from Mr. Ieng Sary, either directly or
13 through someone else such as Son Sen.

14 A. Yes, that was correct. Ieng Sary never instructed me through
15 Son Sen.

16 Q. It would be fair to say, also, that you were never provided or
17 had access to Mr. Ieng Sary's travel schedule.

18 A. That was correct. I never had access to his travel itinerary;
19 wherever he wanted to go, it was his business.

20 [09.32.59]

21 Q. Or his daily schedule, his daily itinerary.

22 A. Thank you. Well, it was none of my business. It was absolutely
23 none of my business.

24 Q. Right. And I'm not being critical. We're just trying to get
25 these facts down. You never visited where he worked or where he

1 lived.

2 I'll rephrase, Your Honour: You never visited where he lived?

3 [09.33.46]

4 MR. SMITH:

5 Your Honour--

6 MR. PRESIDENT:

7 The Witness, please hold on. The International Co-Prosecutor, you
8 may proceed.

9 MR. SMITH:

10 Your Honour, I've got no main objection to the question; I mean,
11 they're flowing well.

12 But in light of Judge Cartwright's decision that leading
13 questions shouldn't be asked, I think it would be easier and a
14 more open question if counsel ask: Did you ever visit where he
15 lived, rather than: You never visited where he lived? Now, that
16 is a classic leading question and the counsel is looking at me
17 smiling, thinking that I come from the Anglo-Saxon system, and
18 that is acceptable in that system as a leading question.

19 MR. KARNAVAS:

20 I'll rephrase, Your Honours. I'll rephrase.

21 MR. SMITH:

22 Okay.

23 [09.34.50]

24 BY MR. KARNAVAS:

25 I'll rephrase to save time.

1 Q. Did you know the actual relationship between Ieng Sary and Son
2 Sen?

3 MR. KAING GUEK EAV:

4 A. No, I didn't.

5 Q. And by this I'm referring to, sir, their working relationship.
6 So my questions in this area will be dealing with working
7 relationships. Did you know what sort of a working relationship
8 Mr. Ieng Sary had with Nuon Chea?

9 [09.35.41]

10 A. In terms of working relationship, I knew it was a principle --
11 it was an organizational principle embedded in the Party.

12 Q. Let me stop you here. I'm asking you what you actually knew.

13 We'll talk about principles later, but you, the witness, the head
14 of S-21, at that time.

15 A. This is a very difficult question. I cannot answer this
16 question.

17 Q. Thank you. Same question between Mr. Ieng Sary and Pol Pot.

18 A. As a matter of principle, I knew the superiors as well as the
19 sectorial leaders, but as for the precise relation, I did not
20 know. I know that they were the two important superiors, but as
21 for the practical work, I did not know because normally in a
22 hierarchical structure, the sectorial superior would have to
23 listen to the superior in the upper structure.

24 Q. All right. Vorn Vet was an important person too, was he not?

25 Or was Vorn Vet an important person? My apologies.

15

1 A. Vorn Vet was one of the important figures. He was the second
2 deputy prime minister.

3 [09.38.17]

4 Q. All right. Did you know what his actual relationship --
5 working relationship was with Pol Pot, other than in principle?

6 A. If we do not refer to the principle, I did not know, because
7 we did not know what the meeting was all about and we did not --
8 I did not see it.

9 Q. All right. Did you ever visit what has been described as
10 Office 870?

11 A. I never visited Office 870.

12 Q. Can you -- are you able to describe -- give us a description
13 of Office 870?

14 A. I cannot describe it in a word or two.

15 [09.39.56]

16 Q. All right. Did you know where it existed?

17 A. Office 870, Brother Phim and I used to get it wrong one time
18 because it was presumably located in Basak City. It was in the
19 city complex known as Basak City Complex, but that was my wrong
20 guess.

21 Q. All right.

22 Now, just a few minor details. Did you ever receive minutes of
23 any meetings from the Standing Committee at the time?

24 A. I never received one.

25 Q. Did you receive any minutes of the meetings of the Central

16

1 Committee?

2 A. I never received one either.

3 Q. Did you receive any minutes of meetings that Pol Pot may have
4 held with the zone leaders or any committee meetings that he
5 might have presided over?

6 A. The minutes of the meeting between Pol Pot and West Zone
7 Secretary, it was once published in the "Revolutionary Flag"
8 magazine, but other than that, specific minutes, I never saw any
9 minutes.

10 [09.42.29]

11 Q. And so if you never attended any meetings and never had access
12 to the minutes of the meetings save for the one you just told us,
13 can you tell us with any degree of certainty whether the minutes
14 accurately reflect what happened at the meetings?

15 MR. PRESIDENT:

16 The International Co-Prosecutor, you may proceed.

17 MR. SMITH:

18 I think I understand what counsel is saying, but perhaps to make
19 it clearer for the witness, if he can refer to which minutes he's
20 talking about. Maybe he's talking about the minutes that have
21 been shown in Court. It's not clear which minutes he's actually
22 talking about.

23 [09.43.30]

24 MR. KARNAVAS:

25 Your Honours, if I may briefly respond. I understand what the

17

1 Prosecution wishes to do. So far, we've laid a foundation that
2 he's never attended any meetings, that he had no access to
3 minutes of the meetings. So it matters not what he thinks is
4 accurate now, after all these years, after having read and
5 analyzed and synthesized. I'm asking him at the time, and I think
6 the witness can certainly tell us if clarification is required.

7 BY MR. KARNAVAS:

8 Q. So, if I may pose the question again: Sir, can you tell us
9 whether the minutes of the meetings, whether they're from the
10 Standing Committee or a Central Committee or any committee
11 meeting, whether they are accurate? Can you tell us that?

12 MR. KAING GUEK EAV:

13 A. Certain witnesses (sic) -- or I would rather say the majority
14 of them were accurately recorded. For example, one of the most
15 important minutes was on the 30th of March 1971. It was the words
16 from Pol Pot and other minutes remained to date were subject to
17 revision. For example, on the 30th of--

18 [09.45.33]

19 Q. Let me stop you here. Did you attend that meeting, yes -- you
20 did not attend that meeting? Sorry.

21 A. Allow me to finish my statement first.

22 MR. PRESIDENT:

23 Witness is directed to complete his answer. Because that was the
24 question by the counsel, then the witness should complete his
25 answer to the question.

1 MR. KARNAVAS:

2 With all due respect--

3 MR. PRESIDENT:

4 The witness may proceed because that was the wish of the Defence
5 to put that question to the witness.

6 [09.46.25]

7 MR. KAING GUEK EAV:

8 A. Certain minutes were not totally accurate. For example, the
9 minutes in October 1975, the secretary who was in charge of the
10 work, it was written together, but actually the words should be
11 separated. So what I'm trying to say is that certain minutes were
12 not totally accurate and it was later revised. That's what I am
13 trying to respond to the earlier question by the Defence.
14 But as for your last question, I would like to respond to it as
15 follows.

16 BY MR. KARNAVAS:

17 Q. Did you attend the meeting, sir, where those minutes--

18 MR. KAING GUEK EAV:

19 A. No, I never attended the meeting.

20 Q. Do you know the actual discussion that took place then? And
21 I'm not asking you what you read.

22 [09.47.56]

23 A. I knew it from my superior, but as for the actual discussions,
24 there was only one case when there was a decision to arrest Suas
25 Nau alias Chhouk, and the details of that decision, I informed

19

1 the Court earlier, but if the Court wishes to let me report the
2 detail of that, then I would be more than happy to do so.

3 Q. My question is restricted to the March decision of '76, which
4 is why I cut you off whenever you are non-responsive, and I'm
5 entitled to do that.

6 Now, sir, you said that's what your superior told you. Are you
7 speaking of Son Sen?

8 A. The last question mentioned by the Defence was on the 30th of
9 March 1976, but I talked about the minutes concerning the
10 decision to arrest Suas Nau, alias Chhouk. So I would like to ask
11 the Defence to be more specific on the date -- the specific date
12 of the meeting.

13 [09.49.29]

14 Q. Sir, you just said this is what you learned from your
15 superior. When you were referring to your superior, are we
16 speaking of Son Sen?

17 A. To be precise, I would like to clarify it. For the meeting of
18 the Standing Committee to arrest Suas Nau alias Chhouk was
19 through my superior, Son Sen. That was the decision of the
20 Standing Committee at that time.

21 Q. Okay. Thank you.

22 Now, can you point to a document that says that you had this
23 conversation with Son Sen? Is there a single document that would
24 validate what you just told us?

25 A. First, we had to look at the facts, but in terms of the whole

20

1 minutes, I did not review it with my boss, my superiors, but we
2 had discussed with each other, because as a superior, he would
3 discuss certain matters with me.

4 Q. Let me ask another -- let me ask it again.

5 And this time, Mr. President, I will interrupt the witness if
6 he's non-responsive.

7 Are there any documents that show that you had these
8 conversations at the time with your superior Son Sen? And let me
9 give you an example such as a personal diary that you might have
10 kept, some notations, some annotations, anything that would show
11 that you actually had these conversations with Son Sen.

12 [09.52.03]

13 MR. PRESIDENT:

14 The International Co-Prosecutor, you may proceed.

15 Witness, please hold on and the Chamber will rule on the matter.

16 MR. SMITH:

17 Your Honours, it's more of a clarification. Obviously the witness
18 was involved in many interviews with the Co-Investigating Judges
19 and discussions were had there about conversations with
20 superiors. So, perhaps for the clarity of the witness, is counsel
21 referring to the statements provided by this witness to OCIJ or
22 are you referring to other statements where those conversations
23 may be recorded, just so it's clear for the witness?

24 [09.52.50]

25 MR. KARNAVAS:

21

1 I wasn't sure, Mr. President, that the witness failed to
2 understand the clarity of my question. My question deals with
3 contemporaneous documents that he would have produced, he,
4 himself, at the time, 1975 to 1979, that would reflect that he
5 had conversations with Son Sen and what Son Sen told him. Are
6 there any documents of the sort? If there are, perhaps he can
7 tell us. If he kept a diary, he can tell us, or we have to rely
8 on this gentleman's word because Son Sen is no longer with us.
9 That's the point and thrust of my question, Mr. President.

10 MR. SMITH:

11 Your Honour, I understand it. It's clear now, but it wasn't clear
12 when it was first put. It was just any documents. It wasn't any
13 contemporaneous documents, and there are many documents in the
14 case file, including the record of interviews, but now it's
15 clear. I think the witness can answer.

16 [09.54.21]

17 MR. PRESIDENT:

18 Witness, do you understand the question -- the question put by
19 Mr. Karnavas?

20 MR. KAING GUEK EAV:

21 To my understanding, he -- when I was talking with my superior,
22 my direct superior, Son Sen, and whether or not any record was
23 kept, on that point I would like to clarify that whenever Son Sen
24 called me to a meeting, I brought along with me a book. So I
25 wrote down certain tasks, and my handwritten notes were kept at

22

1 S-21. So when I worked with Nuon Chea, the same thing was done. I
2 noted the work that he designated me to do. So we did not discuss
3 much, but of course I did not have any records left.

4 [09.55.40]

5 BY MR. KARNAVAS:

6 Q. Well, let me be a little bit more specific. I'm not asking
7 whether you recorded tasks that you were supposed to carry out,
8 who to torture some more, who to interrogate some more, whether
9 you should use the hot or cold or chewing method, whether you
10 should get someone to admit that they had incest with their
11 daughter. I'm not asking for that information.

12 What I want to know, sir, is whether you wrote down what Son Sen
13 was telling you about what was going on in the Standing
14 Committee, what was being discussed.

15 And I asked this question because on numerous occasions you said
16 that you -- that this is information that you learned from your
17 superior.

18 Did you write that down, all the juicy details?

19 MR. KAING GUEK EAV:

20 A. The instructions by my superior in detail, I did not take
21 notes.

22 Q. Would it be fair to say, sir, because you talked about fear,
23 and in fact you've indicated -- I believe you said that you were
24 terrified at the time, especially after Vorn Vet was picked up.
25 Would it be fair to say that it was not healthy for someone like

23

1 you to be asking information from someone like Son Sen, as far as
2 what was going on in the Standing or Central Committee?

3 [09.57.47]

4 MR. PRESIDENT:

5 The witness, please hold on and the Chamber would rule on the
6 matter, but we would like to now hand over to the Prosecution.

7 MR. SMITH:

8 Thank you. Your Honour, I understand the intent of the question,
9 but it's a little misleading in the sense that at the stage Vorn
10 Vet was arrested, which was in '78, from the file, the witness
11 stated he was reporting to Nuon Chea. So perhaps rather than the
12 question be premised on the fact that it was difficult to talk to
13 Son Sen, perhaps it would be more accurate to say Nuon Chea when
14 he's referring to 1978, certainly on the basis of the witness'
15 testimony.

16 [09.58.35]

17 BY MR. KARNAVAS:

18 I won't respond; I'll just rephrase.

19 Q. In 1976, were you in fear or terrified while you were working
20 at S-21?

21 MR. KAING GUEK EAV:

22 A. In 1976, back then I was in fear because we had to be vigilant
23 at all times when we decided to arrest anyone.

24 And secondly, there were questions implicating others. That's why
25 whenever the prisoner implicated the superior, one of the

1 superiors, then I would report immediately to my superior.

2 And secondly, I did not have the freedom to move around freely.

3 [09.59.57]

4 Q. And would it be fair to say, based on that answer, that you
5 were also vigilant to make sure that you didn't do anything that
6 would cause your arrest?

7 A. That is true.

8 Q. Now, you talked about that back then secrecy was everything,
9 and you told us that there was the "see no evil, hear no evil,
10 speak no evil" principle. In other words, you were only supposed
11 to do and know what you're expected. Did I get it right?

12 [10.00.56]

13 A. The saying goes that mind your own business. One eye must know
14 what was happening at S-21. Besides that, it's not my business.

15 Q. So, for instance, it wasn't your business to be asking about
16 what was happening in the Standing Committee meetings. Would that
17 be fair to say?

18 MR. SMITH:

19 Your Honour--

20 MR. PRESIDENT:

21 Witness, you may wait until we hear and resolve the objection
22 raised by the Prosecution.

23 Prosecution, you may proceed.

24 MR. SMITH:

25 Your Honour, again, we're moving back to that leading question

25

1 situation where he's stating that, look, it wasn't your business
2 to ask about what was happening in the Standing Committee.

3 [10.02.03]

4 MR. KARNAVAS:

5 Very well, Your Honour. My time is precious. I get the point and
6 I do understand, and I hope that we're clear that I intend to be
7 as disruptive as the Prosecution is being disruptive today.

8 MR. SMITH:

9 Your Honour, the Prosecution is not being disruptive.

10 MR. KARNAVAS:

11 Fair warning.

12 [10.02.22]

13 MR. SMITH:

14 Your Honour, the Prosecution is not being disruptive. We're just
15 making sure that all parties comply with the same rules before
16 the Court. The question could be: Was it your business to discuss
17 matters about the Standing Committee? That's the way that Judge
18 Cartwright has asked the questions to be put. That's all.

19 BY MR. KARNAVAS:

20 Q. Was it your business to discuss matters of the Standing
21 Committee meetings?

22 MR. KAING GUEK EAV:

23 A. I did not dare ask my superior, never asked, especially with
24 Bong Nuon.

25 Q. Between others, was it your business to ask others of what

26

1 they knew was going on either in the Central Committee or the
2 Standing Committee or at any other meetings?

3 [10.03.41]

4 A. In practice, it was not my business but I did ask Pang about
5 the Standing Committee meeting in the course of the arrest of
6 Seat because at that time he was nearby.

7 Q. Let's take this particular example, can we conclude then that
8 you trusted Pang not to inform on you that you were asking
9 sensitive questions about the Standing Committee meeting
10 discussions?

11 A. Pang was a person who was assigned by Bong Nuon to come and go
12 to the S-21 and he would also have access to the confessions of
13 the prisoners and he was the one who conveyed the decision from
14 the superior to the Centre.

15 Pang was the one who arranged for the meetings, for example, so
16 Pang could only tell me what he knew and not the secrets held or
17 discussed by the Committee. And if Pang were to tell me that,
18 then it's up to Pol -- Pol would decide whether to kill him or
19 not.

20 Q. And I don't mean to debate the issue, you just told us that in
21 this case you were asking Pang questions; you were trying to get
22 information from him. And my question was: Did you trust him that
23 much that he would not inform on you that you were asking about
24 sensitive information which you were not entitled to know?

25 [10.06.02]

1 A. Yes, I trusted him and that was within the framework of his
2 knowledge that he knew and if he were able to let me know, of
3 course, that he would. And if he thought it was a secret that he
4 would keep, that's his business.

5 Q. Tell us: what might have happened to you if he had gone back
6 and told his superior that you were asking these sorts of
7 questions? What would happen to you, sir?

8 A. If Pang was to report to Pol, that would be his business and
9 if I would be punished by Brother Pol, yes, it's up to him.

10 Q. And yet you were not worried of being implicated as an enemy
11 trying to spy on Central Committee or Standing Committee
12 business?

13 [10.07.20]

14 MR. PRESIDENT:

15 The Prosecution, you may proceed. Witness, you may wait.

16 MR. SMITH:

17 Your Honour, I object to the question. It's a leading question.

18 The Witness hasn't said that by discussing with Pang about

19 Standing Committee business or Central Committee business

20 necessarily meant that he would be assumed to be a spy. It was a

21 question of what was allowed to be discussed and what wasn't. And

22 he wasn't in a position to know that, so I think that the basis

23 of that question hasn't really come from the witness and perhaps

24 it could be put to the witness that, that proposition first.

25 MR. PRESIDENT:

28

1 The objection by the International Prosecutor is effective.

2 Witness, you do not need to respond to the last question raised
3 by Ieng Sary's counsel unless he rephrased his question.

4 [10.08.25]

5 BY MR. KARNAVAS:

6 Q. Witness, what would happen to individuals that were trying to
7 pry information such as what was happening in the Standing
8 Committee? What would happen to them based on what you told us
9 earlier that you were only supposed to know what you were working
10 on? What would happen?

11 MR. KAING GUEV EAV:

12 A. For me, personally, that I wanted to know that matter; it was
13 within the framework of my affair. As Pang knew about that and it
14 is also a matter of transparency, he would be able to inform me
15 on that. It's not my intention to destroy the Standing Committee.
16 Otherwise, I would be considered a traitor. That is a distinction
17 in this regard.

18 I wanted to know because I wanted to understand, to be aware of
19 the matter precisely and not with the ill intention to destroy
20 the Party. And I would like the counsel to see this clear
21 distinction in the practice, and I believe it is also a common
22 practice elsewhere.

23 [10.10.13]

24 Q. All right. So, let me make sure I understand your answer.

25 You're telling us that if Pang had gone back and said that

29

1 Comrade Duch was asking these sorts of information, you did not
2 run the risk of being labelled a traitor? Is that what you want
3 us to believe?

4 A. I prefer not to respond to your question. It is a presumptuous
5 question put to me, so I decline to respond to this one.

6 MR. PRESIDENT:

7 That is appropriate. The counsel move on please and make your
8 question based on objectivity and not based on the subjectivity,
9 or request the witness to make a presumption.

10 MR. KARNAVAS:

11 With all due respect, because of what you've just indicated, Mr.
12 President, just for the record, the ruling, with all due respect,
13 is incorrect.

14 It doesn't call for a presumption. I've laid the foundation. He
15 talked about fear; he talked about what would happen to those
16 individuals who did not follow instructions. And I put it to him,
17 very plainly and simply.

18 I will move on, but the ruling, in my humble submission, is not
19 proper.

20 [10.11.59]

21 BY MR. KARNAVAS:

22 Q. Sir--

23 MR. PRESIDENT:

24 Witness, you are reminded not to respond to any question by any
25 party that would elicit your presumption or conclusion not based

30

1 on the fact that occurred during the contemporaneous period.

2 [10.12.27]

3 BY MR. KARNAVAS:

4 Again, to go back, I'm not asking him for a presumption.

5 Q. Sir, where individuals implicated, interrogated, tortured and
6 killed who were innocent at the time?

7 MR. KAING GUEK EAV:

8 A. I believe this question also wants to elicit my conclusion or
9 presumption whether those 12,000 people killed were innocent. I
10 cannot make such a presumption or conclusion.

11 Q. Witness, were individuals named in confessions, who then later
12 on came to S-21 were under your authority and supervision were
13 interrogated, tortured and killed?

14 A. People who had confessions at S-21, some of them were decided
15 and sent to S-21 by the Standing Committee. Once they arrived at
16 S-21, no one would be spared. At the end, all would be smashed.

17 Q. You're not answering my question, sir. Part of your job was to
18 interrogate and part of the interrogation was to get names and
19 those names ended up at S-21 as live individuals who were
20 tortured and killed. And my question to you is: Did they not
21 arrive there on the base of being implicated by others?

22 I'm not asking you to guess.

23 [10.14.59]

24 MR. PRESIDENT:

25 Witness, you may wait and the Prosecution you may proceed.

1 MR. SMITH:

2 Your Honour, my understanding of the last answer was that he
3 agreed with counsel that he said that people that were named in
4 confessions were sent to S-21 and no one at S-21 was spared. They
5 were all smashed. So, I think he actually answered that question
6 perhaps in a slightly different way that counsel might like, but
7 I think he actually said yes, that people that were named in
8 confessions were brought in to S-21, which was the import of this
9 -- the following question.

10 [10.15.40]

11 MR. KARNAVAS:

12 I'll move on, Mr. President.

13 If the Prosecution is satisfied that the gentleman has indicated
14 that there were false implications of individuals that ultimately
15 were smashed and killed, and if this gentleman knew about it,
16 that's sufficient.

17 BY MR. KARNAVAS:

18 Q. So let's move on to another area. Let's talk about your
19 interviews and your preparation before coming here today.
20 Can you please tell us whether you read any material before
21 testifying in this particular Case 002?

22 MR. KAING GUEK EAV:

23 A. What do you mean by that, Counsel? Could you please repeat
24 your question?

25 [10.16.43]

1 Q. All right. We'll go from the specific to the general. Before
2 coming here today and to testify in this particular case, did the
3 Prosecution hand you a bundle of documents for you to review?

4 A. The documents were given to me by the Prosecution and I am
5 entitled to those documents. They were my statements before the
6 Co-Investigating Judges.

7 Q. Nobody is speaking about entitlement. I'm not being critical,
8 I just want the information.

9 Now, before appearing in your own case, in Trial 001, did you
10 have access to documents that you were entitled to, of course?

11 [10.17.56]

12 A. I do not understand your question, Counsel.

13 Q. You were represented by a lawyer, or a set of lawyers, right?

14 A. By law, yes. I am allowed to have two counsels.

15 Q. And did they by any chance provide you with any documents in
16 your case to look over before meeting with the Co-Investigative
17 Judges?

18 A. No.

19 Q. Let me make sure I understand because I don't want to be
20 unfair to you. Are you telling us that your lawyers did not give
21 you any documents to review while you were talking with the
22 Co-Investigating Judges; they never shared the file with you? Is
23 that what you're telling us?

24 MR. PRESIDENT:

25 In Khmer, it is rather difficult to understand. That the lawyers

1 provided by -- they provided the documents to their own client or
2 is that something along that line? It is not that the lawyers
3 provided the document to the witness and then the witness was
4 interviewed by the lawyers; in fact, the witness was interviewed
5 by the Co-Investigating Judges.

6 BY MR. KARNAVAS:

7 I never said that the witness was interviewed by lawyers.

8 Q. The question is very simple, Mr. President: Did his lawyers
9 give him access to the case file?

10 [10.20.11]

11 MR. KAING GUEK EAV:

12 A. What you mean, access to case file?

13 Q. Did they give you access to documents for you to look over?

14 A. I did not know about the access to the case file.

15 Q. Did they provide you, or did you ask for them, to provide you
16 with any books to read?

17 [10.20.58]

18 A. From my recollection, no. If you want to be certain you can
19 ask on any specific document whether I read the document or not.

20 Q. Did you read any books during that period or before while you
21 were in a military prison? Did you read any books about the
22 events that may have occurred and for which you were tried?

23 A. I did not rely on any books.

24 Q. Did you read the books? That's-- I'm not asking you whether
25 you relied on them. It's a rather simple question: Did you read

1 them?

2 A. No, I did not.

3 Q. Okay. So, when you were testifying earlier to the Nuon Chea's
4 lawyer, where you admitted to having read certain books, were you
5 mistaken about the question or were you being dishonest under
6 oath?

7 [10.22.44]

8 MR. PRESIDENT:

9 The International Prosecutor, you may proceed.

10 MR. SMITH:

11 Your Honour, I object to the question. It's confusing and I think
12 the reason why it's confusing is that the preceding questions
13 were very much confusing, because I think the witness was
14 thinking about how he received documents, whether it was through
15 lawyers or not through lawyers. But I think it's clear in this
16 case, and I think he's testified that the witness has had access
17 to the whole of Case File 001. And --

18 MR. KARNAVAS:

19 This is coaching the witness. I'm entitled to --

20 [10.23.21]

21 MR. PRESIDENT:

22 Counsel Karnavas, could you please refrain your reaction so that
23 the interpreter could interpret the objection raised by the
24 international prosecutor before you may take your turn so that we
25 could have a proper transcript of the record. And that would also

35

1 allow the parties to the proceedings to hear clearly the
2 objection raised by the Prosecution before the Chamber decides
3 whether the Prosecution is effective or otherwise.

4 The Prosecution, could you clearly state your objection again? We
5 hope that the counsel clearly understands that the proceeding
6 here are going through the interpretation process. So, please
7 make a pause before another person or another party can proceed
8 or take a turn.

9 MR. SMITH:

10 Thank you, Your Honour. We're not trying to coach the witness,
11 that's the last thing that we want to do.

12 Your Honour, it's just the series of questions that preceded the
13 last question. They were confusing for the witness and the last
14 question put a proposition which really wasn't based on the
15 answers he gave earlier, that he was -- that somehow or another
16 he was being dishonest.

17 So we object to the question. It's not framed in a manner that
18 reflects his previous answers because they were based on a series
19 of confusing questions.

20 Perhaps there's another way to approach this, just to say to the
21 witness: Were you able to read all the documents in the case
22 file?

23 [10.25.24]

24 MR. KARNAVAS:

25 Mr. President, I'm entitled to conduct my examination in the

36

1 manner in which I see best. Now, under oath, he was being
2 questioned by the Nuon Chea team and he was asked specifically
3 whether he read two or three books. At that point, he said yes.
4 Today, he's saying no.

5 I'm trying to be fair with the witness. Either he misunderstood
6 the question or he was being untruthful when he said yes. So I'm
7 giving him the opportunity, but I will move on.

8 BY MR. KARNAVAS:

9 Q. Sir, when meeting with the Investigative Judges, and when you
10 were asked to provide written answers, did you consult with your
11 lawyers as far as what to put down?

12 MR. KAING GUEK EAV:

13 A. I'd like to go back to the -- what we discussed earlier with
14 your permission.

15 MR. PRESIDENT:

16 Yes, you may proceed.

17 MR. KAING GUEK EAV:

18 A. First, just then the counsel asked me a question that before I
19 was interviewed by the Co-Investigating Judges whether I was
20 given any document. The documents were given to me to read but
21 not before I was interviewed by the Co-Investigating Judges.
22 And another matter the counsel asked, whether those people who
23 were implicated and sent to S-21, not everyone was sent to S-21.
24 I'd like to read an instruction by Pol Pot in Document E3/ --
25 [10.27.56]

1 MR. KARNAVAS:

2 Mr. President, with all due respect, the witness is not in
3 charge. We're not at S-21. We're in this courtroom, I'm entitled
4 to conduct my examination and he cannot, willy-nilly, just go to
5 documents and talk on whatever matter he wishes. He clarified the
6 point and now I'm moving on.

7 MR. PRESIDENT:

8 Witness, you may put aside any other documents and just respond
9 to the question and please be reminded of what we instructed you
10 earlier. Do not respond to the questions that would elicit your
11 presumption or conclusion.

12 [10.28.42]

13 BY MR. KARNAVAS:

14 Q. Now, sir, I want to make sure I understood your answer
15 correctly. Is it your answer that before meeting with the
16 Co-Investigative Judges, and you met with them on a numerous
17 occasions, is it your testimony today that you did not refer to
18 documents or was that just the first time you met with them?

19 MR. KAING GUEK EAV:

20 A. I clearly stated just then, before I was interviewed by the
21 Co-Investigating Judges, I did not have any document; but the
22 process of my interview with the Co-Investigating Judges were for
23 many months and I were given documents successively based on the
24 interviews.

25 Q. All right. Would it be fair to say through your lawyers you

1 had access to the documents in your case file?

2 A. I am not familiar with the legal process or term. Every time I
3 was interviewed by the OCIJ, then my lawyer would give me some
4 documents but not before, not a long time before I was
5 interviewed.

6 [10.30.37]

7 Q. Did you have access to them electronically or just in hard
8 copy? In other words, did you have the use of a computer where
9 you could do some searching and go through the documents or did
10 they physically give you a hard copy?

11 A. In the investigating phase, to my recollection, it was all in
12 hard paper and the printed copies of the book.

13 Q. And one final question before we break, because this would
14 conclude this area of my questioning. As I understand it you also
15 had access to an expert who also testified in Court. He was part
16 of your team, Mr. Jennar; is that correct?

17 [10.31.37]

18 A. With David Chandler, no. I only met David Chandler when the
19 Court heard him as a witness in this Court. And it was in - but
20 when we had interviews with the Office of Investigating Judges,
21 we - I did not meet with David Chandler.

22 Q. Okay, but maybe something was lost in translation. I'm
23 speaking about Mr. Jennar. He was a member of your defence team
24 who later testified as an expert. Did you have access to him, did
25 you speak with him throughout the course of the preparation of

1 your case and thereafter? Mr. Jennar, Raoul Jennar.

2 A. That was correct. I met with a professor Jennar, I met him.

3 Q. And during your meetings, it's fair to say you were discussing
4 matters related to your case?

5 MR. SMITH:

6 Your Honour?

7 [10.33.19]

8 MR. PRESIDENT:

9 The witness, please hold on.

10 The Co-Prosecutor, you may proceed.

11 MR. SMITH:

12 I just heard from the witness that he met Mr. Jennar, not that
13 there was a number of meetings. So perhaps -- that -- which was
14 put in the question, so perhaps that could be clarified whether
15 there was a number of meetings or a single meeting.

16 BY MR. KARNAVAS:

17 Q. Was there a single meeting or many meetings with Raoul Jennar
18 who was part of your defence team for several months, if not
19 years?

20 MR. KAING GUEK EAV:

21 A. Before the hearing, I met him only once; that is to the best
22 of my recollection. It may have been once or twice, but if I
23 remember it correctly, it was only once before the hearing.

24 Q. And the purpose of the meeting was for you to discuss matters
25 involving your case, was it not?

40

1 A. I cannot recall it, I apologize, but I inform Professor Jennar
2 concerning the meaning of the five stars on the flag of the
3 Republic of China and he gave me a book on the line of Communism,
4 and that was the issues that I discussed with Professor Jennar
5 back then.

6 Q. Thank you, sir.

7 MR. KARNAVAS:

8 Your Honour, I see the clock, and this may be an appropriate time
9 to take the morning break since I've already finished this topic
10 and I'll be moving on when we -- which will take much longer, the
11 next topic.

12 [10.35.40]

13 MR. PRESIDENT:

14 Thank you. The time is now appropriate for a morning break. The
15 Court will adjourn for 20 minutes.

16 The security guards are instructed to bring the witness to the
17 waiting room and have him back to this courtroom before five to
18 11.

19 The defence counsel for Ieng Sary is on his feet. You may
20 proceed.

21 MR. ANG UDOM:

22 Good morning, Mr. President. Good morning, Your Honours.

23 Mr. Ieng Sary is expressing his waiver of his right to
24 participate directly in this courtroom, and he would like to
25 follow the proceedings from the holding cell downstairs due to

41

1 his lumbago and other health concerns. And due to these reasons,
2 I would like to ask for permission from the Chamber accordingly.

3 MR. PRESIDENT:

4 Having the heard the request by Mr. Ieng Sary through his counsel
5 to waive his right not to be present directly in this courtroom,
6 and the Chamber understands that this request was for his remote
7 participation from the holding cell downstairs for the whole day
8 today due to his health concerns.

9 [10.37.08]

10 Having heard this request, the Chamber grants the request that he
11 will follow the proceedings from the holding cell downstairs
12 through the audio-video link.

13 And the Chamber advises the defence counsel to submit to the
14 Chamber the letter of waiver with the thumbprint or signature of
15 the Accused.

16 And the audio-visual equipments are instructed to link the video
17 to the accused Ieng Sary so that he can follow the proceedings
18 for the whole day today from the holding cell downstairs, and the
19 security guards are instructed to bring the Accused to the
20 holding cell downstairs.

21 The Court is now adjourned.

22 (Court recesses from 1038H to 1058H)

23 MR. PRESIDENT:

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

25 Ieng Sary's defence team, you may resume your questioning of the

1 witness.

2 MR. KARNAVAS:

3 Thank you, Mr. President. Thank you, Your Honours. And, again,
4 good morning to everyone in and around the courtroom. And I will
5 endeavour, Mr. President and Your Honours, to be ever mindful of
6 the proceedings and conduct them in the manner in which you have
7 outlined for us.

8 Before I begin, Mr. President and Your Honours, I have a series
9 of documents which are all more or less into different bundles
10 and it might be -- it might facilitate the proceedings if we were
11 to give a bundle at a time to the court officer. That way they
12 don't have to walk all the way over here. It is my practice to
13 actually provide a binder to the witness though I understand
14 under these circumstances it may not be necessary.

15 [11.00.10]

16 So if we could give the first bundle to the court officer, it
17 would facilitate -- I would call the number and, of course, ask
18 for your permission to show the document to the witness. Also, we
19 did provide the list of all these documents.

20 I should also note that the documents have been highlighted to
21 the sections -- to the sections where we want the witness to
22 focus on, so both in hard copy and an electronic copy to assist
23 him. These are documents that he has seen; almost all of them he
24 has commented on. Many of them were generated by him or with him,
25 and I haven't received any objections from any of the parties

1 thus far concerning any of the documents, though objections may
2 pop up.

3 [11.01.13]

4 MR. PRESIDENT:

5 Court officer, you may take the bundle of the documents from the
6 counsel.

7 Regarding the presentation of document on the slide, is that the
8 same? When the counsel wish to project a document on the slide,
9 please put your request to the court officer so it can expedite
10 the proceeding.

11 If there is any objection for any reason, then the Chamber will
12 step in and decide.

13 MR. KARNAVAS:

14 Thank you, Mr. President. I hope things will go smoothly. Keep in
15 mind this is my first -- my first try at this in this particular
16 Court, so -- but we are organized.

17 If I could first show the gentleman the document with the E180,
18 E180. With the Court's permission, this is a study, Lessons
19 Learned from the Experience of the Elders of Former Generations.

20 [11.02.43]

21 BY MR. KARNAVAS:

22 Q. I just have a couple of questions, sir.

23 First, would it be fair to say that this is a document that you
24 produced, you authored; correct?

25 MR. PRESIDENT:

1 Witness, please respond to the question by the counsel.

2 MR. KAING GUEK EAV:

3 A. Thank you, Mr. President. This is the document which I
4 compiled.

5 [11.03.25]

6 BY MR. KARNAVAS:

7 Q. And you compiled it this year approximately -- well, less than
8 a month ago; is that correct?

9 MR. KAING GUEK EAV:

10 A. I submitted this document to the Court, which was received on
11 the 12th of March, so I believe I completed this compilation on
12 the 9th of March.

13 Q. All right. Thank you very much.

14 Now, if we -- if you turn over the first page and the ERN numbers
15 are English 00791977, Khmer 00787937, and French 00792696; it's
16 the second page on this document.

17 Do you have it -- do you have the page, sir?

18 A. Thank you. Yes, I opened to that page now.

19 Q. All right. Now, we see that it's a forward and it says "a
20 researcher".

21 The researcher, are we to understand, is you?

22 [11.05.27]

23 A. This particular researcher is myself.

24 Q. And if you look at the forward, it says that this document was
25 based on what you heard, researched, analyzed and summed up.

1 Would that be correct?

2 A. That is correct.

3 Q. And would it also be correct that what you researched,
4 analyzed and summed up are documents that were made available to
5 you and books that you had reviewed?

6 A. This document is a compilation, and not only based on the
7 books. As I stated, it was also based on the evidence that I
8 personally experienced, heard and researched.

9 [11.06.54]

10 Q. Right. And I guess what I wanted to focus on is, and make sure
11 that we all understand, that in part what you wrote was based on
12 what you read, what you researched, what you analyzed and what
13 you summed up?

14 A. That is correct.

15 Q. All right. Thank you.

16 Now, if we go to the next document, with the Court's permission,
17 it's E1/51.1. And this is from the transcript of 20th March 2012.

18 And if we could go to ERN number on Khmer, it's 00791941 to 42.

19 In English it's 00793004. In French it's 00793092 to 93.

20 And here, this is from the transcript, and I know this was asked
21 of you before, but I want to cover it. You indicate on line 20,
22 at least in the English version:

23 "However, if you really want me to only talk about what I knew
24 back then, I am afraid I might -- I may not have anything to tell
25 the world about this because I was confined to S 21 in

1 particular."

2 Do you recall making that statement, sir?

3 [11.09.33]

4 A. I did not hear whether it was a question or not. The text
5 reads like that. The text reads based on the understanding at the
6 time. I have nothing else to respond to the people.

7 What is your question, Counsel?

8 Q. I just want to make sure that that is exactly what you said as
9 I read out. So do you stand by that statement today?

10 A. Yes, I stand by my statement. It is not just something on the
11 script, but that is the truth.

12 Q. You said that you were confined to S 21 in particular. If we
13 were to reflect back on a day in the life of Comrade Duch, your
14 existence was home, S 21, and back home, more or less; correct?

15 [11.11.13]

16 A. The work at S 21 was in large volume. There were trainings.
17 There were other tasks. At that time, I woke up in the morning, I
18 would stay at the house and read the document from 7 a.m. until
19 11 or 12 noon.

20 S 21 -- inside S 21 there were other things going on at the time.
21 It is not just a routine, just to go from the house to the
22 workplace because there were various units and functions of other
23 subsections within S 21.

24 Q. Right. But I'm speaking about Comrade Duch. You are --
25 indicated that you did not ride around Phnom Penh. Am I correct?

1 MR. PRESIDENT:

2 Witness, you may wait.

3 The Prosecution, you may proceed.

4 MR. SMITH:

5 Your Honour, that -- that's not the witness' evidence. The
6 witness' evidence is, and counsel has heard it, that he attended
7 meetings with his superior, Nuon Chea, every three to five days.
8 He attended other meetings with military personnel and Son Sen.

9 [11.12.52]

10 BY MR. KARNAVAS:

11 I'll rephrase, Your Honour.

12 Q. Other than the meetings that you had to attend, were you able,
13 sir, to get on your bicycle or your moto, or a cyclo, or a taxi,
14 or your car, or a truck, to drive around as you wished,
15 willy-nilly, in Phnom Penh or anywhere else?

16 [11.13.27]

17 MR. KAING GUEK EAV:

18 A. In general, cadres, including myself, did not have a right to
19 walk freely. Whenever we went out, it was for the mission, and
20 that is the truth.

21 Q. Thank you.

22 If we look at now document D90, with the Court's permission. And
23 as I understand it, Your Honours, not all documents have an "E"
24 number, and so -- and if there is an error, the error is solely
25 mine, but to the best of our knowledge this is one of those

1 documents. So it's D90. If you could look at that with the
2 Court's permission.

3 And you will see, sir, on the first page that what I'm handing
4 you is a written record of your interview of the 25th of June
5 2008. And if you could go to Khmer ERN number 00198873; English
6 00198882; French version 00198890, and I want to focus your
7 attention to the first part of your answer where you indicate:
8 "I must first indicate that I have a better knowledge of the
9 situation today compared to last August or last December. Indeed,
10 as I went through the case file I understood better the
11 organization of the regime."

12 Do you recall giving that answer and do you stand by it today?
13 [11.16.17]

14 A. I cannot make a firm recollection of what I said, but I stand
15 by my statement.

16 Q. Thank you, sir.

17 If we now look at the next document, and with the Court's
18 permission, it's D238. D238, it's another written record of the
19 gentleman on 10th November 2009.

20 Sir, if I could focus your attention on Khmer ERN number
21 00403882; English 00403893; French 00403903, it should be on the
22 last page. And I want to focus on the question, or part of the
23 question and part of the answer. There is a question which in
24 part says:

25 "Can you also explain when and why the Central Zone and the New

49

1 Zone were created?" And part of your answer is:

2 "I prefer to wait until I have read the Ke Pauk document before
3 answering this question."

4 Do you recall providing that answer and do you stand by it?

5 [11.18.34]

6 A. Yes, I recall it and I stand by my statement.

7 Q. And just to be sure that I understand your answer, you wanted
8 to look at documents before providing an answer to the question
9 posed to you by the OCIJ?

10 A. On that day, yes. I would request the -- for the record of the
11 interview of Ke Pauk and I'd like to read that first.

12 [11.19.18]

13 Q. Thank you.

14 Now, if you look at document D86/27, with the Court's permission,
15 this is a written record of the gentleman's interview of May 5,
16 2008.

17 And I would like to focus your attention to part of your answer
18 where you say:

19 "I, myself, did not know other people's work. From that point of
20 view, one could not draw the conclusion that the regime was
21 criminal but simply that crimes were committed at S 21."

22 Do you recall giving that answer and do you stand by that answer
23 and, in particular, that you did not know other people's work?

24 A. This document is a 2008 document and it was in May. My
25 knowledge in 2008, that is in May, was correct at that time.

1 [11.21.22]

2 Q. So you are answering that question based on the knowledge that
3 you had at that time before having access to other documents,
4 correct?

5 A. At that time, I did not have access to other documents, and my
6 general understanding of the situation was what I stated.

7 Q. Right. And if we could go to now, another page, Khmer ER
8 number -- ERN number 00187654 to 55; English 00204343; and French
9 it's 00177616 to 00177617.

10 And I want to focus your attention to a part of your answer where
11 you say that:

12 "Moreover, up until this point in the investigation, I have
13 tried, in the presence of my lawyer, to answer all of the Judges'
14 questions. So I consider that the declaration I made to the
15 UN..."

16 This says HCR, but I believe it should be the UNCHR.

17 "...is outdated and no longer useful."

18 Do you see that part of your answer, sir, "So I consider that the
19 declaration I made to UNHCHR (sic) is outdated and no longer
20 useful"? Do you see that?

21 A. Yes, I see that.

22 Q. And could it be that it's outdated, because at the time that
23 you answered questions during that declaration, you did not have
24 access to the documents that were provided later to you by your
25 lawyers in this -- in your case?

1 [11.24.28]

2 A. I'd like to clarify that that was the principle of my opinion.
3 The record of the statement accepted from the voice recording
4 tape, that is the record I made to the UNHCHR (sic), was
5 transcribed in -- onto a piece of paper and I was requested to
6 read. To my opinion, that was outdated.

7 Q. All right. And would it be fair to say, just to make sure that
8 I understand correctly your answer, it was -- the answers that
9 you provided at the time were outdated because your knowledge was
10 limited as opposed to what your knowledge eventually evolved to
11 after reading all of the documents provided to you by your
12 lawyers?

13 [11.25.37]

14 A. This phrase was my assessment to the handwritten record
15 extracted from the tape. It is not an assessment of my
16 competency.

17 Q. All right. Thank you.

18 If we could now look at document D427. And for the court officer,
19 I'm skipping a couple of documents to save time. So this is D427.
20 This is from the Closing Order and, in particular, there are a
21 couple of passages I would like to go over them and get your
22 assessment.

23 Khmer 00605535; English 00604723; French 00674366.

24 I'm referring to paragraph 873; I believe it's the same paragraph
25 in all three languages, where it says here:

52

1 "Duch explains that Nuon Chea was part of this committee,
2 although it is unclear whether he had knowledge of this at the
3 time or if this understanding has evolved with his access to the
4 case file."

5 Very simply, let me ask you this question. Do you agree or
6 disagree with this assessment?

7 [11.28.12]

8 A. That assessment is not correct. Later, we recalled that I was
9 interviewed by the Co-Investigating Judges regarding the role of
10 Brother Nuon in the Committee. Brother Nuon said the military
11 committee comprised of five people: Pol Pot, So Phim, Ta Mok, Son
12 Sen, and Ke Pauk, and it's said now that was not correct.
13 He excluded himself and then he put So Phim's name instead. Who's
14 going to trust So Phim, because Pol Pot did not trust So Phim,
15 and he himself did not trust So Phim.

16 [11.29.12]

17 Q. Now, let me interrupt you, sir, because I think you went well
18 beyond the thrust of the question.

19 Let's look at another passage. This would be in paragraph 878,
20 ERN number 00605537; English 00604725; French 00624368. Here in
21 the Closing Order the Co Investigating Judges remark:

22 "It is not always clear to what extent Duch's knowledge and
23 understanding of the hierarchical structure above him developed
24 with his access to the case file."

25 This is what the Co Investigative Judges have stated. Do you

1 agree or disagree with this assessment?

2 MR. PRESIDENT:

3 The International Co Prosecutor, you may proceed.

4 And, the witness, please wait before your response to the last
5 question.

6 [11.30.43]

7 MR. SMITH:

8 Your Honour, this question is asking for the witness to provide
9 an opinion on whether he believes the Co Investigative Judges'
10 opinion is correct or not. I think counsel should just put the
11 allegation itself rather than comment on the opinion gained by
12 the Co Investigative Judges. It doesn't assist Your Honours in
13 evaluating the evidence.

14 [11.31.05]

15 MR. KARNAVAS:

16 If I may briefly respond, I'm trying to be fair to the witness
17 before putting it to the witness. I'm giving him an explanation
18 -- I'm giving him an opportunity to explain. He can certainly say
19 he disagrees and give us the reasons why, or he says agrees and I
20 move on. The fact that I don't say "I put it to you" doesn't mean
21 that I'm not putting it to him. I'm giving him an opportunity.
22 May I have an answer to this question, Your Honour?

23 (Judges deliberate)

24 [11.32.01]

25 MR. PRESIDENT:

54

1 The objection of the Prosecution to the last question put by the
2 defence counsel for Ieng Sary is sustained. The witness does not
3 have to answer that question because that question would lead to
4 the witness to answer questions that may not necessarily address
5 the matter.

6 The counsel may rephrase the question so that it would not
7 suggest the witness to conclude in the -- in his answer or to
8 provide any subjective answer to that question.

9 [11.32.59]

10 BY MR. KARNAVAS:

11 Q. Let's look at -- on the same document, Khmer 00605556-57,
12 English 00604739, French 00624384, paragraph 929:

13 "With the secrecy surrounding the CPK centre, Duch could only be
14 certain of the hierarchy directly above him but did not know all
15 of the details of the decision-making process for arrests. He
16 states he only became aware of the 30 March 1976 Central
17 Committee decision through his access to the case file."

18 Would you agree or disagree with the Co-Investigating Judges that
19 you could only be certain of the hierarchy directly above you,
20 but that you did not know and could not have known the details of
21 the decision-making process?

22 MR. PRESIDENT:

23 The Witness, please hold on.

24 The International Co-Prosecutor, you may proceed.

25 [11.34.31]

1 MR. SMITH:

2 Your Honour, this is where we get to cherry-picking, as my
3 learned friend would say.

4 Your Honours, we have no objection with the proposition being put
5 forward, but counsel has put forward half a proposition and the
6 proposition is qualified by the following sentences. And then it
7 states:

8 "Nevertheless, though his experience at S-21 and with the
9 knowledge he had at the time, Duch was able to observe that the
10 framework contained in this Central Committee decision regarding
11 the right to smash inside and outside the ranks was implemented
12 in practice."

13 [11.35.09]

14 So this is the problem with leading questions, Your Honour, is
15 that if they actually mislead the witness it would not assist the
16 witness in understanding, in fact, what was said. If the leading
17 question puts the proposition in full, then the witness is not
18 misled but at least can comment on the proposition.

19 And if you look at the first part of the paragraph, it's
20 intrinsically linked to the second part and it makes the answer
21 complete. By taking out the last part of the paragraph, it looks
22 as though the witness is more unaware of things than aware, but
23 the full paragraph states the opposite.

24 So our objection is not so much that a proposition not be put to
25 the witness, but if the proposition is put, it not be

1 cherry-picked as counsel has often said, and it not be
2 misleading.

3 [11.36.13]

4 MR. KARNAVAS:

5 If I may respond? It's rather comical to hear the remarks from
6 the Prosecution when they do exactly the same thing. Secondly,
7 they've had six days to elicit testimony, six -- over six days.
8 I'm given one.

9 Now, I'm giving the opportunity to the gentleman to comment,
10 there's nothing leading about my question. He can certainly say
11 that no, he wasn't -- he knew very well all of the details of the
12 decision-making process.

13 If I am unfair to the witness, surely Your Honours will have the
14 opportunity to elicit further information from this gentleman.

15 I'm giving him an opportunity to make assessments on this.

16 Lastly, the Prosecution does not know what my follow-up question
17 is. But even if they did know, when you look at the answers that
18 we have received thus far, I have laid a proper foundation which
19 allows me to put these questions to the witness.

20 [11.37.18]

21 So the question is, could he have known about the hierarchy above
22 him and could he have known all the details of the
23 decision-making process? And the reason I'm asking this is
24 because the Prosecution has stood up here and said he's in a
25 unique position, and it's our submission he's in a unique

1 position because he's read documents, has studied, had access to
2 an expert, had access to lawyers, and that's why we're entitled
3 to go down the road of this line of questioning.

4 MR. PRESIDENT:

5 The prosecutor, you may proceed.

6 [11.38.11]

7 MR. SMITH:

8 Your Honour, I don't quite find the comedy in just asking a
9 witness a fair question, and that question was taken out of
10 context of that paragraph and the witness should be brought --
11 his attention should be brought to the full paragraph, not just
12 part of it.

13 MR. KARNAVAS:

14 Your Honour, I gave him the number of the paragraph and he's been
15 reading it and studying it while listening to the Prosecution's
16 remarks. He's a very clever individual, he's intelligent, he's
17 educated. I don't see the unfairness.

18 Now, if I'm going to be objected to, please, you know, rule on
19 the objection so I can move on, Your Honours. But I think I'm
20 entitled to the answer.

21 MR. PRESIDENT:

22 The representative of the civil party Lead Co-Lawyer, you may
23 proceed.

24 [11.39.21]

25 MS. NGUYEN:

1 Your Honours, thank you. I might just interject here to say that
2 I can certainly see where the line of questioning that Mr.
3 Karnavas is taking the witness through is trying to establish,
4 but this is an issue that's not just confined to this particular
5 document, the Closing Order.

6 Your Honours do need to take into account, if you are going to be
7 relying on this line of questioning, that certain questions that
8 have been put to the witness have, in fact, been taken out of
9 context.

10 [11.39.55]

11 I'll give one very brief example, and that is the record of
12 interview on the 25 of June 2008, which is D-90, where the
13 witness in that record of interview said that he would like to
14 have a look at the document from Ke Pauk before answering a
15 question.

16 Now, the question that was put to him was about the creation of
17 certain zones and why these zones were being created. Now,
18 without the context in which those questions are being asked, we
19 don't know what the document of Ke Pauk talks to. The witness, in
20 his answer, says that in relation to the conditions and to the
21 date of the establishment of certain zones, he would like to
22 refer to that document before answering the question.

23 So I think that Your Honours do need to take into account that
24 some of these extracts that we're seeing from these written
25 records of interviews are, in fact, taken out of context.

1 [11.40.56]

2 MR. KARNAVAS:

3 If I may respond? First and foremost, if counsel for the civil
4 parties had an objection it should have been raised in a timely
5 fashion. I did not -- I did not interrupt because I didn't want
6 to be rude to counsel, but in the future I will interrupt and I
7 will interrupt very forcefully, especially since the Prosecution
8 wishes to abide by the rules and these are the rules.

9 Secondly, if he has all this knowledge that the Prosecution and
10 the civil parties are saying, he's in a unique position to talk
11 about structure. Why is it -- why is it when he's being
12 questioned by the Investigative Judges he says, I need to look at
13 documents before I can answer that question? If he knows so much
14 and it's in his brain already, he doesn't need to look at
15 documents. He doesn't say I need to double-check.

16 So -- and it's our contention that through this period of
17 analyzing and synthesizing, he's been able to fill in certain
18 blanks, and we're entitled to put these lines of questioning to
19 the witness and get his answer. And so when we're hearing that
20 this is unhelpful, I submit that these objections are not
21 terribly clever.

22 [11.42.11]

23 MR. SMITH:

24 Your Honour--

25 MR. PRESIDENT:

60

1 Please press on the button when -- before you speak. Yes, you may
2 proceed.

3 MR. SMITH:

4 Your Honour, we have no objections to the general line of
5 questioning; of course, it's quite appropriate. It's clear from
6 the records of interview, it's also clear from the testimony,
7 that there are some facts that were known to this witness later
8 rather than during the time. The critical issue is, as counsel
9 has put it, what was known to the witness at the time compared to
10 what was known later.

11 Our only concern is that the questions are fair, not that this
12 avenue not be explored. The last question was unfair because it
13 misled the witness as to that was his answer, but it was
14 intentionally cut in half and that was misleading.

15 [11.43.36]

16 MR. KARNAVAS:

17 Mr. President, it wasn't his answer. This is a conclusion that
18 the--

19 MR. PRESIDENT:

20 The Chamber needs to rule on this matter. The Chamber wishes to
21 give the Defence the last chance to reply on this particular
22 matter, and I would like to remind parties that you should pause
23 in between your reply and response so that your argument is
24 properly rendered by the interpreting team. So you may reply to
25 this response, but that is going to be your last reply to this

61

1 matter.

2 [11.44.22]

3 MR. KARNAVAS:

4 Thank you, Mr. President. Much appreciated.

5 First of all, I am not referring to what the gentleman may have
6 said and taking it out of context. I am referring to a document
7 that was generated by the Investigative Judges who have had
8 access to the gentleman over a course of several years where they
9 questioned him and provided him documents where he provided
10 written answers, and they drew a conclusion. And we've seen it;
11 there's no need for me to read it.

12 I'm now giving the gentleman an opportunity to agree or disagree
13 with the assessment that was made. But specifically I asked him
14 are they correct when they say that he could not possibly know
15 about the details of the decision-making process for arrests in
16 light of the circumstances, because that's what they're saying.

17 (Judges deliberate)

18 [11.47.04]

19 MR. PRESIDENT:

20 The objection by the civil party lawyer representing the civil
21 party Lead Co-Lawyers is not sustained because it was not done in
22 a timely manner and that interjection was not relevant to the
23 matters that we are hearing, but the objection by the Prosecution
24 is sustained.

25 However, the Chamber wishes to remind parties that the question

62

1 should not prompt the witness to draw a conclusion on the part
2 and portion of the Closing Order of the Co-Investigating Judges.
3 The witness should be questioned based on his experience and
4 observation he has seen concerning the events that he has the
5 knowledge of.

6 BY MR. KARNAVAS:

7 Thank you, Mr. President.

8 Q. Then, let's perhaps go to D86/9 -- D86/9, and in particular
9 Khmer ERN 00154230, English 00154202, French 00154218; and this
10 is from a written record of interview dated 29 November 2007. And
11 I would like to go over this.

12 [11.49.10]

13 It says here, in this particular page -- the top of it reads:

14 "Confession. I wish to confess concerning a letter which I
15 previously denied."

16 I'll skip a line. You then say -- or two lines:

17 "I forced myself make a temporary denial out of fear and
18 embarrassment. The reason being that I was waiting for the
19 falling into place of the actual implementation of my request to
20 demand a copy of evidentiary documents to read and consider and
21 refresh my memory." Then, further down, you say: "In summary, I
22 need all types of evidence in order to contribute to enlightening
23 the Court about the crimes which occurred at S-21."

24 You provided this document, did you not, on the 28 November 2007,
25 which is when it was signed by you? These are your words, are

1 they not?

2 [11.50.37]

3 MR. KAING GUEK EAV:

4 A. That were my -- was my words.

5 Q. And to make sure that I understand you correctly, you gave
6 information which was not accurate or truthful, you finally
7 confessed, and the reason for giving false information initially
8 was because you wanted to read documents first before giving an
9 answer. Did I summarize the situation?

10 A. Before I respond to this question - [correction, interpreter]
11 before answering to the question, I had to look at the document
12 first. I did ask for the document at that time.

13 Q. We'll move on. We'll take that as an answer.

14 MR. KARNAVAS:

15 Your Honours, I was about to -- well, I see we have 10 minutes
16 and I don't want to give up any time.

17 [11.52.08]

18 We'll move into the next document -- series of documents. This is
19 -- hopefully we can get through these quickly -- D121/2. This
20 document could be provided. This is a list of questions and
21 answers, with the Court's permission; D121/2, Your Honour. This
22 document is generated by the gentleman.

23 [11.53.03]

24 MR. PRESIDENT:

25 Court officer is instructed to locate the document and please

64

1 present this document to the witness.

2 BY MR. KARNAVAS:

3 Q. If we could just look at that very quickly before we go to the
4 very last page of this document which is D121/6. Here we have a
5 list of questions do we not, sir, that were provided to you to
6 answer; correct?

7 MR. KAING GUEK EAV:

8 A. That is correct.

9 Q. And we see that the date is 6 March 2009, and if we go at the
10 very last document which is attached to this, which is D121/6, we
11 see that the answers were provided on December 1, 2009,
12 approximately eight or eight-and-a-half months later. Would you
13 agree with me on that?

14 Sir, could you please tell us how long it took you to provide the
15 answers to those questions? On the very last page of D121/6 it
16 says, "His lawyer sent them to us on 20 November 2009." Do you
17 see that?

18 A. I am sorry, I cannot locate the document. I cannot follow it.

19 Q. Attached to this document at the very end there is a document
20 with the number of D121/6, and if you look at -- towards the end
21 of this document -- the penultimate paragraph -- do you see where
22 it says, "His lawyers sent them to us on 20 November 2009"? Do
23 you see that, sir?

24 A. Mr. President, I can find it now.

25 [11.57.30]

65

1 Q. So is it correct to conclude that you had from 6 March 2009 to
2 20 November 2009 to provide answers to these questions? Can we
3 draw that conclusion?

4 MR. PRESIDENT:

5 The witness, please hold on.

6 The International Co-Prosecutor, you may proceed.

7 MR. SMITH:

8 Just so the record is clear on it, the Accused's trial was from
9 April to September 2009.

10 MR. KARNAVAS:

11 Your Honour, I'm just going by the document. I'm trying to
12 demonstrate that he had approximately eight months to answer
13 these questions. That's the whole purpose. I don't see the
14 dilemma and I don't see the reason for objecting.

15 But I'll move on to the next document.

16 [11.58.39]

17 BY MR. KARNAVAS:

18 Q. D108 -- no, I'm sorry -- D90/II, D90/II, and attached to this
19 document are the answers. If you flip to E3/15, and we see "Phnom
20 Penh, 21 October 2008", that's when the document is dated, and in
21 the paragraph it says:

22 "The questions are attached to the record of the interview dated
23 25 June 2008."

24 Would it be fair to draw the conclusion that with these sets of
25 questions it took you approximately four months to answer?

1 [12.00.28]

2 MR. KAING GUEK EAV:

3 A. Mr. President, I cannot follow it. But what I would like to
4 confirm is that these records are correct. They are not falsified
5 documents. So I can only confirm that these records are correct.

6 Q. Thank you.

7 If we look at the next document, D108/52 – D108/52. I know it's
8 12 o'clock Mr. President, but I think in five minutes I can
9 complete this chapter, with your indulgence.

10 MR. PRESIDENT:

11 Yes, you may proceed, Counsel. Yes, please.

12 BY MR. KARNAVAS:

13 Thank you.

14 Q. We see here a list of requests from the civil parties, and it
15 appears to be June 2nd, 2008. And if you go to D108/52/3 in the
16 document, that is, it appears that your answers were provided on
17 15 July 2008, approximately six weeks later. Would that be
18 correct?

19 MR. KAING GUEK EAV:

20 A. My answer is the same. I cannot follow this line of
21 questioning but I only believe that these records are correct.
22 But I cannot simply follow the lines of questioning.

23 [12.02.26]

24 Q. Thank you.

25 If we look at the next document, D86/12, D86/12, "Written Record

67

1 of Interview of Charged Person, 24 January 2008. If you could
2 please look at that, sir, I would appreciate it. And then
3 attached to this document is D86/12/I and we see the date of
4 March 18th, 2008. Would it be fair to say that in this occasion,
5 your answers were provided three weeks later?

6 A. What was kept in this record is correct and the date's also
7 correct.

8 Q. And, of course, if we -- in the first part of the document at
9 D86/12 -- I don't have the ERN number so I'll skip that question
10 to avoid wasting time.

11 [12.04.10]

12 But for the record, it does reflect that the gentleman was
13 provided with a magazine, "Searching for the Truth".

14 Do you recall whether you were ever provided with this magazine
15 by the Investigative Judges, "Searching for the Truth"?

16 A. Yes, I do.

17 Q. Thank you.

18 Your Honours, this may be a good point to break for lunch. Thank
19 you very much for the additional five minutes. Thank you.

20 MR. PRESIDENT:

21 Thank you, Counsel. Thank you, the witness.

22 The time is now appropriate for lunch adjournment. The Chamber
23 will adjourn until 1.30 this afternoon.

24 And the security guards are instructed to bring the witness to
25 the waiting room and have him back to this courtroom before 1.30.

68

1 I note the defence counsel for Nuon Chea, Mr. Michiel Pestman,
2 you may proceed.

3 [12.05.37]

4 MR. PESTMAN:

5 Thank you, Mr. President. My client would like to make the usual
6 request to follow the remainder of the proceedings from his
7 holding cell this afternoon. I have the waivers here to hand over
8 to the Court.

9 MR. PRESIDENT:

10 Thank you, please be seated.

11 [12.06.05]

12 Having heard the request by the defence counsel -- by Mr. Nuon
13 Chea through his defence counsel that he would like to waive his
14 right not to be present directly in this courtroom but instead
15 follow the proceeding from the holding cell downstairs, the
16 Chamber grants the request, and he will follow the proceeding
17 from the holding cell downstairs through video-link in -- this
18 afternoon.

19 The Chamber requires that the defence teams submit to the Chamber
20 the letters of waiver of his right not to be present directly in
21 this courtroom, and this letter of waiver should be thumb-printed
22 or signed by the Accused.

23 And we instruct the audio-visual technician to make sure that the
24 audio-visual equipment is linked to the Accused so that they can
25 follow the proceeding from the holding cell downstairs.

69

1 And security guards are instructed to bring the Accused to the
2 holding cell downstairs and bring Mr. Khieu Samphan back to this
3 courtroom before 1.30.

4 The Court is now adjourned.

5 (Court recesses from 1207H to 1331H)

6 MR. PRESIDENT:

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

8 The floor will be given to the Ieng Sary defence to question the
9 witness. You may proceed.

10 [13.32.28]

11 BY MR. KARNAVAS:

12 Thank you, Mr. President, Your Honours. Good afternoon. And good
13 afternoon to everyone in and around the courtroom.

14 Q. Sir, before we left off, we went through a series of documents
15 where we showed that you were provided questions by the
16 Investigative Judges and that months or weeks later, you provided
17 answers.

18 And so now I would like to ask you a question. During the
19 investigative phase, were you also, on your own initiative,
20 providing written statements to the Office of the Investigative
21 Judges?

22 MR. KAING GUEK EAV:

23 A. I wrote a few articles for the Co-Investigating Judges to
24 clarify certain events.

25 Q. And as I understand it, you did this on your own, at your own

1 initiative?

2 [13.34.25]

3 A. Yes, indeed.

4 Q. Would it be fair to say that in some or in all those instances
5 when you provided some clarifications or some additional
6 information, you did so after reflecting, but also after
7 consulting, analyzing and synthesizing documents?

8 A. I cannot recall it clearly. However, the articles I wrote for
9 the Co-Investigating Judges were based on my recollection of the
10 events, not relying on any particular document.

11 Q. Okay. If we could look at D86/7; this is a written record of
12 interview of you as the charged person dated 3 October 2007. If
13 you could please look at that, sir; just go through it. Go
14 through the hardcopy. And if I could focus your attention on the
15 ERN number 00146669; that's the Khmer version, 00146669; English,
16 00149908; French, 00149933. And we could see on this page where
17 there is a note by the Co-Investigative Judges that they are
18 attaching to the record a handwritten text, which is a
19 declaration that you had provided them. Do you see that, sir?

20 [13.37.10]

21 A. Yes, I see it.

22 Q. This is an example that I was referring to. Just -- if we
23 could look at -- if we could look at just one - one page, that
24 would be perhaps on the last page; it's, Khmer, 00146679;
25 English, 00149918; French, 00149944. There are just a couple of

1 matters.

2 You indicate, for instance, on this page: "Fourth, it was on
3 account of my trying hard to searching for the truth that Ta Mok
4 forever bore me a grudge about the case of a Hanoi cadre named
5 Prach Son alias Pot."

6 Have you found that passage, sir? Have you found that? Perhaps,
7 if we have some assistance? Have you found it, sir? It says:

8 "Fourth..."

9 A. Yes, I found it.

10 [13.38.58]

11 Q. And I take it that throughout that time you were searching for
12 the truth, as you have put down here, or was it just one isolated
13 instance where you were searching for the truth? Which of the
14 two?

15 A. Regarding searching for the truth, of course it occurred on
16 several occasions, but in this instance it is more evident
17 because Ta Mok made an accusation against a Hanoi cadre that he
18 shot one soldier. And based on the analyses of the projection of
19 the bullet, I believe it was not and that Kang Chap shot himself.
20 I did not make a report to Ta Mok because as a principle, the
21 person who was arrested and after the interrogation shall be
22 smashed. And then I made a report to Vorn Vet and the matter was
23 raised to the awareness of Brother Pol.

24 [13.40.38]

25 Q. Thank you. Now, if we go further down, if you skip where it

1 says "Fifth" and you go to the next paragraph, it says:

2 "At S-21 I evaded work to the maximum. I accepted only the work
3 that was unavoidable. I thus never grasped anything concretely."

4 Do you see that, sir? Step by step, do you see the passage that
5 you wrote?

6 A. Yes, I have seen it.

7 Q. And it is your testimony today under oath that at the time you
8 were at S-21, you evaded work to the maximum, or would you like
9 to qualify that?

10 A. I evaded the work. In this instance it means I tried to avoid
11 the work of the police. However, I could not avoid it. I actually
12 tried from the beginning.

13 Q. Right. I understand. But the point that I am trying to make is
14 I want to make sure we all understand you. While you were at S-21
15 and you were in charge of S-21, you evaded work to the maximum,
16 correct?

17 [13.42.42]

18 A. That is correct.

19 Q. All right. Thank you. And when you say in the same sentence
20 which you drafted and turned over to the Investigative Judges,
21 when you say, "I thus never grasped anything concretely," was
22 that a truthful statement?

23 A. That statement is correct.

24 Q. Thank you. If we could go on to the next document, which is
25 another example, D86/20, and this is another written record of

1 one of your interviews, 27 of March 2008. If you could look at
2 that and please draw your attention to KH00178020. That's the
3 Khmer ERN number; English, 00194546; French, 0078032. If you
4 could look at that, briefly? We won't dwell on this too much. I
5 simply wish for you to confirm that in this particular document
6 we see that you provide comments on the circumstances of your
7 meeting with the journalists and on the book written by Dunlop,
8 "The Lost Executioner". Is that correct?

9 [13.45.05]

10 A. That is correct.

11 Q. Can or should we conclude that in providing these comments,
12 you would have had to have read "The Lost Executioner", the book
13 that was written by Dunlop? Can we draw that conclusion?

14 A. Yes, I did read the book.

15 Q. Now, was that part of your case file or was that a book that
16 was provided to you by your lawyers, if you recall?

17 A. I cannot recall it, but I read the book in the Khmer language.

18 Q. All right. What about Philip Short's book on Pol Pot, which I
19 believe is in French; did you have an opportunity to read that
20 one, if you recall, Philip Short?

21 A. No, I haven't read the book by Philip Short.

22 Q. Thank you. If we could go now to another document, and this
23 would be the last document of this series, and these are just for
24 the Court's edification; these are just vignettes, just examples.

25 D86/27 -- D86/27, a written record of an interview by you or of

1 you, May 5, 2008. And if we could look at -- the Khmer ERN number
2 is 00187654 to 55; English, 00204343; and the French, 00177616 to
3 17, the following page. If you look at it, here it appears that
4 you provide remarks to the OCIJ on the book written by David
5 Chandler titled "Voices from S-21 - Terror and History in Pol
6 Pot's Secret Prison". Is that correct?

7 [13.48.32]

8 A. The true lines I wrote as a remark on the -- on that book is
9 correct.

10 Q. Thank you. Now, I take it in order to remark on the book, you
11 had to have read it, correct? Sir, there is nothing more in the
12 document that you need to refer to.

13 A. That is correct. I read part of the book, not the whole book,
14 probably half of the book.

15 Q. Okay. Now, is there a reason why you only read half of the
16 book? Were you only half interested or was it that you were
17 pressed for time, or you only focused on matters that you thought
18 were essential for the Office of the Co-Investigative Judges?

19 [13.49.58]

20 A. Because the remaining of the book to me was not important.

21 Q. And so the sections that you commented on, I take it those
22 sections you deemed important?

23 A. The section in David Chandler's book which was of my interest
24 and which I made comment for the Co-Investigating Judges were the
25 parts that I considered important.

1 Q. All right. And I take it the Co-Investigative Judges did not
2 ask you to comment on any other parts of the book? Would that be
3 correct?

4 A. According to my recollection, that is true.

5 Q. Now, in commenting on the book, did you have to -- or did you
6 consult with any other documents that were available in the case
7 file and had been made available to you through your lawyers? If
8 you could just answer the question, I would appreciate it.

9 [13.52.02]

10 A. There are two issues. One is that what I wanted was the
11 document dated 30 March 1976 and another issue is that I wanted
12 to talk about the work of David Chandler, that he made an
13 assessment that Pol Pot was a student of Mao Zedong, so he also
14 made a conclusion on the decision made in resolving the internal
15 Party's dispute, and I believe that was incorrect because I also
16 read that document. So my interest was in these two issues.

17 Q. Let me translate that answer then. Yes, I reviewed documents
18 that were in the case file in answering or commenting on David
19 Chandler's book. Is that a fair characterization of your answer?

20 [13.53.24]

21 A. Yes.

22 Q. And when you talked about, just now, which we can see in the
23 document, where you comment on the March 30th, 1976 decision, not
24 only -- this was -- you referred to the decision in your analysis
25 and, as I understand it, before arriving at this Tribunal or at

1 the ECCC, you had never seen the document?

2 A. I cannot recall the exact time that I have the document and I
3 don't know whether I had the document -- that document before my
4 text.

5 Q. All right. But I want to -- as I understand -- and I can
6 produce the document if need be -- as I understand it, between
7 '75 and '79, you had not seen this document, this decision?

8 A. That is correct. The document was provided to me by the Office
9 of the Co-Investigating Judges.

10 Q. I have to learn to pause.

11 Now, does David Chandler discuss that particular decision in his
12 book?

13 [13.55.38]

14 A. As I recall, he made a brief article about the document dated
15 30 March 1976. He wrote, "It is the first written document which
16 were found which also highlighted the persons who had a right to
17 smash." David Chandler also was interested in the fact that Pol
18 Pot ordered for the destruction of the telegrams. That is
19 according to my recollection.

20 Q. The Answer to my question is: Yes, in his book, he discussed
21 this decision?

22 A. Yes, that is correct.

23 Q. And then you took it upon yourself to comment on what he had
24 commented on this decision?

25 A. Yes, I made my comments in addition to what was commented by

77

1 David Chandler.

2 Q. And in making your comments to the comments that were made by
3 David Chandler on this particular decision, did you consult other
4 documents or other texts that had been made available to you, if
5 you recall?

6 [13.57.40]

7 A. I did not rely on any documents besides the one by David
8 Chandler. I relied on the events occurred during that period.

9 Q. All right. Thank you.

10 Now we're going to move on. We're going to move to a different
11 area. So if we could look at D227 - D227. This is another written
12 record of one of your interviews and it's dated 21 October 2009.
13 If I can get the assistance of -- D227.

14 MR. PRESIDENT:

15 Please, go and check and obtain the document from the counsel.

16 [13.58.49]

17 BY MR. KARNAVAS:

18 My apologies.

19 Q. Now, sir, if you could look at this document, and then if you
20 could draw your attention to Khmer ERN number 00398200; English,
21 00398208; French, 00398216. Now, I want to focus where it says
22 "Reply by the Charged Person", and that would be you. And I'm
23 going to quote a little bit from the text, if you could follow
24 along:

25 "You need to make a distinction between theory and practice.

78

1 Theoretically speaking, the separation of powers was organised
2 through the decision [of 30th March] – 30 March 1976. The
3 [distinction] of roles in terms of smashing enemies was organised
4 between the zone secretaries, [the head of the] -- the heads of
5 the Office [of] 870 committee and the independent sectors and the
6 general staff secretary (the two exceptions being the ministry of
7 foreign affairs and the ministry of economy, for which nothing
8 was provided in terms of security). Practically speaking, all
9 power was centralised [in Pol Pot] – in Pol Pot's hands."

10 Did you find that passage, sir, where you made -- where you
11 provided that reply? Did you find it?

12 [14.01.19]

13 MR. KAING GUEK EAV:

14 A. Mr. President, yes, I found it.

15 Q. Thank you. And I notice here that you're talking about in
16 theory versus practice. In law we would say de jure versus de
17 facto. So in theory you say one thing, but then if I understand
18 you correctly, in practice something else may actually be put in
19 place. Is that how I should understand your reply?

20 MR. PRESIDENT:

21 Witness should hold.

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

23 [14.02.09]

24 MR. SMITH:

25 Thank you, Your Honour. I would just ask that, perhaps to be fair

79

1 to the witness, that the full passage be put, particularly the
2 following two sentences that follow because it relates directly
3 to the question being put by the counsel.

4 MR. KARNAVAS:

5 I leave it to the Court's discretion. Due to time, I have to make
6 some selections, just as the Prosecution did, and they had six
7 days.

8 (Judges deliberate)

9 [14.03.29]

10 MR. PRESIDENT:

11 Counsel, could you put the question again and make it succinct so
12 that the witness finds it easy to understand and to respond to
13 your question? Please try to avoid complex questions which pose
14 difficulty to witness.

15 BY MR. KARNAVAS:

16 Thank you, Mr. President.

17 Q. Sir, you've read your reply. Can you please tell us what you
18 meant in theory versus in practice? What did you mean by that?

19 MR. KAING GUEK EAV:

20 A. Mr. President, in theory, as a principle, the secretary of the
21 Party had the decision to smash within the framework of the
22 Party. This is what we followed since 1971.

23 However, in practice, it was not that clear. In the case of Kang
24 Chap, that was an example.

25 [14.05.19]

80

1 Q. Thank you. We'll move on to another topic. If we could go now
2 -- we talked a little bit about fear this morning. If we could
3 just go to document E3/106 -- E3/106; and I will be drawing your
4 attention to pages 00177626 -- that's the Khmer ERN; English --
5 I'm sorry, it should be 26 to 27, so you have to look - look over
6 the next page as well. In English, it's 00177636 to the -- 37,
7 the following page; and the French, 00177647-8.
8 There's a question put to you, and -- towards the bottom of the
9 page, at least in English -- it says: "If your relations with him
10 were that good, why did you allow torture in this case?"
11 And we're speaking, for point of context, about Vorn Vet, and we
12 see earlier on he calls you a "filthy killer" or a "filthy
13 executioner".
14 And then you go on-- So that's the context.
15 Then the Judges pose another question to you, which reads:
16 "If you had this conversation with Vorn Vet and in light of what
17 you explained to us this morning, is it not because you were
18 wondering about the evolution of the regime and the crimes it
19 committed? Did you share your concerns with Vorn Vet?"
20 And your answer is:
21 "No, the purpose of this conversation was to protect myself from
22 faults for which Pol Pot could blame me. The idea was to behave
23 in a way that would not give Pol Pot excuses to arrest me
24 easily."
25 Do you recall giving that answer?

1 (Short pause)

2 Sir, I'm just interested in the passage that I pointed out, not
3 the entire text.

4 [14.09.20]

5 A. Mr. President, my answer seems to be broad at the time:

6 "...the purpose of this conversation was to protect myself from
7 faults for which Pol Pot could blame me. The idea was to behave
8 in a way that would not give Pol Pot excuses to arrest me
9 easily."

10 This was out of context. I do not know why I answered it that way
11 at the time. It is out of context here. So I could say that I may
12 have answered it that way. That's why we have this written record
13 here.

14 Q. All right. Well, is it true that you were trying to get
15 information from Vorn Vet, your mentor at one time, to see how
16 you could best behave to avoid being suspected or charged by Pol
17 Pot?

18 [14.10.39]

19 A. Thank you. I would like to remind -- I now remembered I did
20 say so. When Vorn Vet arrived at S-21, it was in the afternoon
21 and I was there in the morning. I went there for the purpose to
22 ask for forgiveness from him. I asked him why Pol Pot arrested
23 him.

24 Q. Sir, if I can interrupt because we have limited time. If you
25 could just answer the question. You've already told us about

1 asking forgiveness because he had to be tortured and killed. We
2 understand that.

3 What I'm interested in, your answer that you gave here. Were you
4 also trying to get information from him that would help you to
5 make sure that you didn't do anything that would get you
6 arrested?

7 [14.11.42]

8 A. It is correct that I went to ask for Vorn Vet so that he could
9 explain to me what kind of person Pol Pot was so that I could
10 protect myself -- so that I will not experience the same thing
11 Vorn Vet did. That's what I remember why I went to meet Vorn Vet.

12 Q. Right. And if I could go back to my question this morning, so
13 asking Pang about information concerning the Standing Committee
14 and what might have happened in the Standing Committee, you did
15 not think that that might be the sort of information that could
16 get you into trouble, the fact that you were asking these sorts
17 of questions and the fact that Pang could inform on you with Pol
18 Pot?

19 [14.12.47]

20 A. Mr. President, the fact that I asked Pang, it was a separate
21 occasion. It was dealing with the arrest of Saey, that was --
22 whether there was an intervention from Vorn Vet to help Saey.
23 That was my question at that time.

24 Q. Thank you. But nonetheless, the information that was being
25 discussed was what happened supposedly, or what was said

1 supposedly, at a Standing Committee meeting; is that correct? Is
2 that what Pang represented to you?

3 [14.13.39]

4 A. Certainly, it concerned the meeting of the Central Committee.

5 Q. Thank you. And of course, the same question I asked you this
6 morning about Son Sen, there is nothing in writing, concretely,

7 that we can look at, that was made contemporaneous to this

8 conversation that you had that would verify the supposed

9 conversation you had with Pang?

10 A. Mr. President, I did not take any notes of the conversation I
11 had with Pang, nor did I write anything about the instructions.

12 [14.14.37]

13 Q. Thank you. If we could look at the next document, which is

14 D86/21, D86/21, this is another written interview that you gave

15 on the 28th of March 2008. And if I could direct your attention

16 to Khmer ERN number 00177581; English, 00177588; French, 00177596

17 -- and I'm going to be reading your -- one answer where you say:

18 "I confirm that the Party took all the important decisions,

19 ruling the country in an exclusive and absolute manner, as the

20 terms of its statutes themselves state ([articles] -- article 2

21 or 3). This meant that all the decisions of the Secretary or the

22 deputy-secretary had to be respected and that [those who did not]

23 - those who did not respect them had to be eliminated, pursuant

24 to the principle defined by Son Sen, 'there was no profit in

25 keeping them and no loss in eliminating them'."

1 Do you recall giving that answer, sir?

2 [14.16.41]

3 A. Mr. President, I remember answering that.

4 Q. Okay. Thank you. Now, it seems from your answer -- and correct
5 me if I'm wrong -- that anyone who did not -- anybody, in effect,
6 could be eliminated, other than Pol Pot and Nuon Chea, at least
7 based on your answer; is that correct?

8 A. Mr. President, I do not agree with the conclusion made by
9 counsel.

10 Q. All right. They were -- Vorn Vet, for instance, he was
11 eliminated, was he not?

12 A. Mr. President, Vorn Vet was arrested and brought to S 21 for
13 interrogation and smashed.

14 Q. Well, he was eliminated, was he not?

15 A. He was eliminated.

16 Q. Now, were other high-level individuals who held important
17 positions also eliminated?

18 A. Mr. President, yes.

19 [14.18.19]

20 Q. Thank you. Okay, let's go on to something else. If we could
21 look at document D119. D119, this is another written record of
22 your interview. And I -- if I could draw your attention to the
23 page, ERN number in Khmer, 00242893, 00242893; in English it's
24 00242904; in French it's 00242915. And here you're responding to
25 a question, and it relates to Mr. Khieu Samphan, but your answer

1 is rather interesting:

2 "Under the Khmer Rouge regime there was frequently a person put
3 in front as façade to hide the important person."

4 Do you see that answer?

5 [14.20.02]

6 A. This is my response.

7 Q. And do you stand by that response?

8 A. I stand by that.

9 Q. If we could go to the next document, and that's D90, D90, and
10 in particular I wish to focus your attention on Khmer ERN number
11 00198874; English, 00198883; in French, 00197984.

12 And I want to read a passage. You say: "Amongst the seven members
13 of the Standing Committee, three were responsible for security:
14 Pol Pot, Nuon Chea and Son Sen."

15 Do you stand by that answer, sir?

16 A. Mr. President, I always do.

17 Q. Now, would you say that this trio, these three individuals, to
18 your understanding, had the power to arrest anyone?

19 A. Among these three individuals, the one with the highest power
20 in all cases was Pol Pot.

21 [14.22.23]

22 Q. And let me make sure I understand that answer correctly. In
23 other words, Pol Pot could have someone like Mr. Ieng Sary or
24 Khieu Samphan arrested?

25 A. Mr. President, Pol Pot could arrest Khieu Samphan, Ieng Sary,

86

1 or Nuon Chea, but another issue was that on what basis Pol Pot
2 would arrest anyone.

3 Q. Right. Perhaps the same basis as Vorn Vet, or Koy Thuon, or
4 Hou Youn, or a number of other individuals. Would those not be
5 sufficient grounds to arrest, torture, and kill?

6 [14.23.41]

7 MR. PRESIDENT:

8 Witness, please hold.

9 Yes, International Co Prosecutor, you may proceed.

10 MR. SMITH:

11 I think the question is not clear. I think the counsel should put
12 to the witness what grounds those three were arrested on to see
13 whether he could comment on whether they were the same grounds,
14 but that hasn't been discussed.

15 MR. KARNAVAS:

16 Your Honours, for six days the gentleman has given all sorts of
17 information as to who was smashed and for what reasons. It is not
18 for me to give him the grounds. He was the one that was writing
19 the confessions and ensuring that they were ultimately smashed.

20 BY MR. KARNAVAS:

21 Q. Are you able to answer the question, sir? If not I will move
22 on.

23 MR. KAING GUEK EAV:

24 A. Mr. President, may counsel ask me again? I forgot the
25 question.

1 Q. Thank you, Witness. You had indicated that on what grounds
2 Ieng Sary or Khieu Samphan could be arrested, and my retort was,
3 on similar grounds, such as Vorn Vet or others. Would those not
4 be sufficient grounds to warrant an arrest?

5 [14.25.27]

6 A. Mr. President, the secretary of the Party decided to arrest
7 someone with adequate reason he deemed sufficient. I repeat, he
8 deemed sufficient.

9 Q. Right. But at times, as you well know, or maybe correct me if
10 I'm wrong, were not pretexts used to cause an arrest, such as
11 falsely accusing someone of being a CIA, a KGB, or maybe a
12 Cambodian with a Vietnamese mind?

13 A. Mr. President, I do not understand the question. Could counsel
14 ask me again?

15 [14.26.40]

16 Q. I'll rephrase. I'll go about it another way.

17 Vorn Vet, did he deserve, in your opinion, to be smashed?

18 A. Mr. President, that would lead to my speculation, and I do not
19 want to answer this question.

20 Q. I'll go about it in another way. Was Vorn Vet tortured?

21 A. Mr. President, yes, he was.

22 Q. And the purpose of torturing him, was it not -- let me
23 rephrase it. What was the purpose for having Vorn Vet tortured?

24 A. Mr. President, if we talk about the purpose, I will not answer
25 that because that will lead to my speculation.

88

1 Q. Let me make sure I understand that answer.

2 Are you suggesting sir, that you, the head of S 21, don't know
3 why your mentor, the one that you asked for forgiveness, the one
4 that called you a filthy killer, you don't know why he was
5 tortured? Is that your answer?

6 [14.28.47]

7 A. Now, let me say that when I went to meet and ask for
8 forgiveness from him, he pointed at me and said that "a
9 murderer". I believed that he was not referring to me; he was
10 referring to the superior. I was still moderate.

11 Q. Do you know why he was tortured, or don't you, or don't you
12 want to tell us?

13 A. Why Vorn Vet was tortured? Those who were arrested at S 21
14 would fall under the authority of S 21 to be interrogated. Those
15 people were followed closely and would be beaten if they were
16 deemed to deserve that. That was the work of S 21 as well as
17 other security centres.

18 [14.29.59]

19 Q. Thank you. And did Vorn Vet deserve the torture that he
20 received under your supervision?

21 A. Your question is too general. It's too general. When you talk
22 about the process of interrogation--

23 Q. Sir, I am going to interrupt. Did he deserve to be tortured?

24 It's yes or no. Or was he just tortured for the sake of torturing
25 because that's what S 21 was, a torturing chamber? Which of the

1 three: he deserved it, didn't deserve it but had to be tortured
2 anyway?

3 [14.31.01]

4 MR. PRESIDENT:

5 Witness, you wait.

6 The International Co Prosecutor, you may proceed.

7 MR. SMITH:

8 Your Honour, the witness was answering the question and counsel
9 interrupted him. And I agree that it's not appropriate to ask a
10 witness to give a yes or no answer to a question that is slightly
11 more complicated than that, and he was doing that and then
12 counsel interrupted and then asked a series of leading questions
13 to get him to provide a certain answer. So I'd just ask that the
14 witness be allowed to freely give his own answer, one that --
15 rather than one that's being placed in his mouth.

16 [14.31.44]

17 BY MR. KARNAVAS:

18 Q. I'll rephrase, Your Honour. I'll rephrase: How long was Vorn
19 Vet at S 21?

20 MR. KAING GUEK EAV:

21 A. I forget it all.

22 Q. Was he there one week, one month, several months?

23 A. From my recollection, Vorn Vet arrived on the 2nd of November
24 1978.

25 Q. And when did you have him smashed?

1 A. I cannot recall.

2 Q. How many confessions did he have to write in order -- before
3 he got it just right, that is, the story that was expected of
4 him?

5 A. I did not expect what Vorn Vet had to write, so the word
6 "expect" here should be removed from your question.

7 Q. Did you review his confessions?

8 A. Before I sent it through Nuon, I reviewed it.

9 [14.33.53]

10 Q. And were you asked to go back, as you've indicated on other
11 occasions, to get Vorn Vet to provide clarifications or answers?

12 A. Based on my recollection, he either made just one time
13 confession or two times. I cannot recall exactly.

14 Q. And if you recall, what did he confess to doing wrong?

15 A. According to my recollection, Vorn Vet said he was a CIA.

16 Q. Now, he was your mentor. You had spent a lot of time with him.
17 You went to ask for his forgiveness. To your knowledge, was he a
18 member of the CIA?

19 A. I could not say whether he was a CIA or not, but he himself
20 never taught me any trick about the CIA.

21 Q. So are you suggesting that you don't know that -- well, let me
22 rephrase it. Are you telling us that back then, when you had him
23 killed, that you believed his confession that he was CIA?

24 [14.36.14]

25 A. As I said, whether Vorn Vet was CIA or not, I could not know,

91

1 but I was never taught about any lessons about CIA by him.

2 Q. All right. Let me give you a more general question then. Did
3 everybody that came through S 21 who claimed to be CIA, KGB or a
4 Vietnamese agent, to your understanding and belief at the time,
5 were they all CIA, KGB or Vietnamese agents?

6 MR. PRESIDENT:

7 Witness, you do not need to answer to this question. The question
8 was already responded to earlier.

9 [14.37.07]

10 MR. KARNAVAS:

11 Mr. President, the question was with respect to Vorn Vet. Now,
12 this was with respect to the others. And the purpose of asking
13 this question is to see whether this gentleman believed those
14 confessions. If not, it goes to show that people were killed
15 under certain pretexts, which further shows that the pretext
16 could be used to have somebody arrested and killed, and that's
17 the whole line of questioning.

18 But if you want me to move on, I'll move on.

19 MR. PRESIDENT:

20 This is a repeat of your previous question. Please move on.

21 [14.37.52]

22 MR. KARNAVAS:

23 Thank you, Mr. President.

24 I see that it's about time for the break, and this would be a
25 good time for me, actually, before I go into the next chapter. So

1 if we could take our break now, which is the time, it would also
2 help me as well.

3 MR. PRESIDENT:

4 Thank you, Counsel. Thank you, Witness.

5 The time is now appropriate for the afternoon adjournment. We
6 will take a 20-minute break and resume at 3 p.m.

7 Security guard, escort the witness to the waiting room and return
8 him to the courtroom at 3 p.m.

9 The hearing is now adjourned.

10 THE GREFFIER:

11 All rise.

12 (Court recesses from 1438H to 1458H)

13 MR. PRESIDENT:

14 Please be seated. The Court is in session, and the floor is
15 handed over to defence counsel for Mr. Ieng Sary to continue his
16 questionings to this witness.

17 BY MR. KARNAVAS:

18 Thank you, Mr. President, Your Honours. And, again, good
19 afternoon, sir.

20 Q. If we could refer to document D120. This is one of your -- a
21 written record of one of your interviews of the 27 November 2008;
22 if you could look at it. And we may dwell a little bit on this
23 document.

24 [14.59.57]

25 First, I would like to point to your attention of Khmer ERN

1 Number 0024920; English, 00242931; and French, 00242942.

2 MR. PRESIDENT:

3 Counsel, could you indicate the ERNs again from the Khmer ERN?

4 Because it was not translated.

5 BY MR. KARNAVAS:

6 00242920 - 00242920; English, 00242931; French, 00242942.

7 Q. Sir, have you located that page? Sir, I would most appreciate

8 it if you would just locate the page that was just read out.

9 [15.01.20]

10 Now, here, in one of your answers, you say:

11 "I do not have any information on the organization of the

12 Ministry of Foreign Affairs. I've forgotten the details, not

13 having focused on that organization. [I only met] -- I only

14 remember that I met Pol Pot's nephew So Hong in 1978, who was in

15 control of the staff [of] the Ministry of Foreign Affairs and who

16 may have been Ieng Sary's deputy."

17 Have you located that section?

18 MR. KAING GUEK EAV:

19 A. Mr. President, yes, I have.

20 [15.02.20]

21 Q. And when -- earlier, on the same page, where you say that --

22 you talk about "the working principle" and you say, "I can

23 confirm, however, that based on our working principles, before

24 arrests at the Ministry of Foreign Affairs, Ieng Sary's decision

25 was certainly needed. There was only one exception, which I have

1 already mentioned; that of Chau Seng, arrested under a false name
2 without Ieng Sary['s] knowing"; do you see that part?

3 A. Mr. President, yes, I do.

4 Q. Now, I understand -- or I think I understand when you say
5 "based on our working principles". What I'd like to know is:
6 Factually speaking, do you know how the arrests were being
7 conducted at the Ministry of Foreign Affairs?

8 A. Mr. President, does counsel ask about the arrests, general
9 arrest, or the arrest of Chao Seng?

10 Q. General arrests.

11 A. Mr. President, staff at the Ministry of Foreign Affairs who
12 were arrested to S-21, there were a lot of them.

13 [15.04.22]

14 Q. All right. There were a lot of them.

15 As I understand it, you did not speak with any of the messengers
16 who were coming from the Ministry of Foreign Affairs?

17 A. I am not sure about that.

18 Q. All right. And did you know whether they knew what was in the
19 message that they were delivering?

20 A. I do not remember, but the arrests made at S -- rather made at
21 Ministry of Foreign Affairs were not from the ministry, it was
22 from Son Sen and later on from Nuon Chea.

23 [15.05.43]

24 Q. Sir, if I understand you correctly, they were the ones that
25 were making the decisions as to who should be arrested?

1 A. Mr. President, this is the principle and I am responding as in
2 principles if you can -- I cannot answer it as a practice. So can
3 counsel indicate whether I should answer on the basis of the
4 principle or on the basis of the practice?

5 Q. Well, thank you for raising that because I'm asking -- because
6 I'm interested in the practice. And if I understand you
7 correctly, when it comes to what was happening in the Ministry of
8 Foreign Affairs, in practice you are unable to provide any
9 concrete information?

10 A. Mr. President, all the work of the Ministry of Foreign Affairs
11 consisted of a lot of works. I do not even remember who brought
12 people to S-21. That was the practice.

13 Q. All right. So when you talk in principle are you, by any
14 chance, making assumptions in drawing conclusions?

15 A. In general, as a principle I do not draw any conclusion. I
16 based my answer on the political lines and on the practice.

17 [15.08.15]

18 Q. Well, I'm asking you about practice, sir. You've just told us
19 that in practice you have no idea what's happening in the
20 Ministry of Foreign Affairs.

21 Sir, as you sit here today, you cannot say with any degree of
22 certainty what the practice was when someone was arrested?

23 A. In general, I saw the arrest that was in practice at the
24 general staff. The decision was from the general staff, and as
25 for the -- and once the decision was made, the decision was

1 transferred to the lower level for implementation. And in
2 principle, for the remaining documents, Son Sen always sought
3 decision from Pol Pot. Son Sen sought, in principle, the decision
4 from Pol Pot, and this is my observation.

5 [15.09.43]

6 Q. All right, thank you. Well, maybe I need to be a little more
7 specific.

8 You have no evidence that Mr. Ieng Sary was consulted concerning
9 any of the arrests?

10 A. I have no evidence.

11 Q. Is there anything that you can point to concretely, something
12 that would show that Mr. Ieng Sary was actually informed that
13 someone was going to S-21 before they arrived?

14 A. The receiving information before people arrive at S-21, what
15 do you mean by that? I do not understand that; what information?

16 Q. Well, such as where it would show concretely that Mr. Ieng
17 Sary was consulted and either agreed or voiced an opinion about a
18 particular arrest.

19 A. There was no evidence.

20 Q. And so when you say that in some -- as you do in some of your
21 statements that Mr. Ieng Sary was consulted or informed of an
22 arrest prior to somebody going to S-21 with the exception of one
23 individual, that is an assumption on your part?

24 [15.12.13]

25 A. The translation is bad.

1 Q. But then I may be your – the cause of it. Let me go about it
2 another way.

3 You've indicated in some of your statements that Mr. Ieng Sary
4 would have been aware or would have been consulted about
5 someone's arrest from the Ministry of Foreign Affairs who is then
6 taken to S-21. Is that not an assumption on your part?

7 A. Mr. President, that was the principle. That was the principle.
8 If Ieng Sary did not attend the meeting at the Central Committee,
9 Pol Pot would decide on that and the decision would be given to
10 Ieng Sary. If Ieng Sary was at the office of the Central
11 Committee, it would be informed. Even the chief of the division
12 was to be asked for the decision.

13 [15.13.46]

14 Q. And could you please show me something concretely; a piece of
15 document, something that would substantiate and support what
16 you've just said to us, how things were in principle and in
17 practice?

18 A. The remaining documents -- now, let -- let us look at the
19 documents of Long Muy, alias Chuon. The letter was written to Pol
20 Pot. The document number is D93/III. And there was my annotation,
21 there was Son Sen's annotation, and there was Son Sen's
22 annotation. For every issue, Son Sen sought comments from Pol
23 Pot.

24 Document E3/20, the document of Heng Pich; that document
25 reflected what Son Sen wrote in order to seek comment from Pol

1 Pat (phonetic) -- Pol Pot, rather.

2 [15.15.18]

3 In another document, Son Sen--

4 Q. Let -- let's stick with that document; one document at a time.

5 I'm entitled to conduct my examination this way, Mr. President,

6 because he brought out an example.

7 MR. SMITH:

8 Your Honours, I have no objection; it's just that defence counsel

9 had asked for the witness to point to documents that would

10 indicate that this working principle was applied in practice and

11 he had started to do that and then he had stopped him in his

12 examination. As long as the witness is allowed to continue to

13 provide that information about those other documents that would

14 support this working principle, I have no objection with the

15 counsel perhaps breaking it up to make it simpler.

16 MR. KARNAVAS:

17 There's a great deal of anticipatory anxiety on the part of the

18 Prosecution. I'm trying to go step by step.

19 BY MR. KARNAVAS:

20 Q. Sir, on this particular document, you indicated that it would

21 go from Son Sen to Pol Pot. Show me where, in the document, that

22 it says that Pol Pot then conferred with Ieng Sary and then it

23 went back to Son Sen, back to you so then you could go ahead and

24 execute; where is that, your example?

25 [15.16.49]

1 MR. SMITH:

2 Your Honour, I don't think the--

3 MR. PRESIDENT:

4 Witness, please wait. We have the objection from the Prosecution.

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

6 MR. SMITH:

7 The question's a bit misleading. The witness was providing
8 information as to the application of the working principle to the
9 different departments or units, not necessarily to Foreign
10 Affairs so I think that question was a bit misleading.

11 MR. KARNAVAS:

12 I can't seem to win with this prosecutor. My question earlier had
13 to do with Ieng Sary, specifically mentioned. He then interrupts,
14 purposely, for no reason, now he's interrupting again saying it's
15 misleading.

16 [15.17.39]

17 This gentleman chose that document as an example to show that Mr.
18 Ieng Sary was consulted. Now, if that is not the case with this
19 document, perhaps, he can point to another document that
20 concretely shows that Mr. Ieng Sary was being consulted; in other
21 words, putting the principle to practice. Can the gentleman do
22 that?

23 MR. PRESIDENT:

24 The objection made by the Prosecution stands. Defence counsel is
25 advised to make the question succinct so that the witness will

100

1 not get confused when it comes to documents as the document is
2 pertaining to Mr. Ieng Sary or someone else.

3 [15.18.34]

4 It seems that we still face the same problem; it might be because
5 of the translation issue that is why witness may find it
6 difficult to answer.

7 Again, counsel is advised to make the question clear so that it
8 will not be confusing when it comes to documents, in general, or
9 general documents and the documents with Ieng Sary's annotation.

10 BY MR. KARNAVAS:

11 Q. The document that you just chose as an example, sir, does it
12 bare any annotations from Mr. Ieng Sary?

13 MR. KAING GUEK EAV:

14 A. Mr. President, the documents that I referred to, the three
15 documents, my intention was to show that as for the decision to
16 be made, Son Sen sought advice from Pol Pot and that was what I
17 understood from counsel.

18 [15.19.49]

19 Now, as for the document pertaining to Mr. Ieng Sary, that
20 concerns the people at his unit, but there was no document with
21 Mr. Ieng Sary annotations. Document concerning people from his
22 unit was Heng Pich, alias Hong (phonetic); document
23 E3/20(15.20.15).

24 Q. Let me go back to my question. You talked about in principle,
25 I'm asking you in practice; is there a particular document that

101

1 shows the principle being put into practice at the Ministry of
2 Foreign Affairs? Do you have that; if not, I'll move on?

3 A. There were documents, but the documents were in different
4 forms. The decision to arrest Chau Seng was not known by Ieng
5 Sary. Son Sen called me to change Chau Seng's name to Suo
6 (phonetic) and not to tell anyone.

7 [15.21.14]

8 The evidentiary document was in the list of newcomers. And if you
9 go to look at the list, there was no Chau Seng's name; there was
10 only Suo's (phonetic).

11 Q. Can you – can you point, somewhere, a document, either from
12 Son Sen or anyone else to Ieng Sary, either asking for his
13 approval or giving him notice that someone from the Ministry of
14 Foreign Affairs is being taken to S-21?

15 A. Mr. President, if we are optimistic to seeking the truth and
16 we are not intimidating one another -- if we are optimistic in
17 finding the truth, we will have to look at the document of Heng
18 Pich, alias Hong (phonetic). In this document, Son Sen reported
19 to Pol Pot about an individual which I do not wish to name. It is
20 clear--

21 Q. I'm going to cut off the witness. I'm asking specific
22 questions. As I noted earlier, we're not at S-21 where the
23 witness gets to dictate the order of the interrogation. I'm
24 asking a simple question. Can you point to a single document from
25 Son Sen or anyone else; Pol Pot, Nuon Chea, to Ieng Sary

102

1 notifying him and seeking his approval?

2 [15.22.59]

3 Your Honour, I posed a question to the witness; let the witness
4 answer.

5 MR. SMITH:

6 Your Honour, I understand he's posed a question to the witness--

7 MR. PRESIDENT:

8 Witness, please wait. There's an objection from the Prosecution.

9 Remember that there is -- when there is an objection from another
10 party, you should wait. You are not to listen to the order by
11 parties, but by the Chamber.

12 MR. SMITH:

13 Your Honour, I understand he's posed a question, but he also cut
14 the witness off just when, certainly, on the English translation,
15 it appeared that he was relating the answer to the question and
16 he was referring to the - to the document of Hong (phonetic). And
17 he's -- the last we heard in English, it is clear, and I assumed
18 he was going to answer on that particular document, but counsel
19 cut him off. And that's why I object to the second question, and
20 let the witness just finish his answer.

21 [15.24.00]

22 MR. KARNAVAS:

23 My question has nothing to do with that document, which is why
24 I'm reacting. He doesn't get to just talk whatever he wants to
25 talk about.

103

1 This was quite pointed out in the psychiatric report; how he
2 answers questions.

3 I'm asking a specific question; I'm entitled to an answer. If
4 it's non-responsive, I'm entitled to interrupt.

5 MR. PRESIDENT:

6 Please, Mr. Co-Prosecutor.

7 [15.24.34]

8 MR. SMITH:

9 Your Honour, the last series of questions, defence counsel has --
10 has stated consistently what documents do you have to show. It
11 was actually every bit his question, and the witness was
12 providing documents to provide -- to give that answer. He was the
13 one that had the open-ended question about what documents do you
14 have, and now the witness should have an opportunity to explain.

15 MR. KARNAVAS:

16 The question is the principle to the practice; that's what we're
17 talking about.

18 I'll move on.

19 [15.25.15]

20 BY MR. KARNAVAS:

21 Q. In the same document, 00242925, English 00242936, French
22 00242946, please look at the documents, sir, look at that page
23 where you say: "In any case, I never received orders from Ieng
24 Sary, with whom I was never in contact."

25 Those were your words; were they not?

1 MR. KAING GUEK EAV:

2 A. Mr. President, these are my words.

3 Q. You never received any annotations from Ieng Sary through Son
4 Sen or Pol Pot or Nuon Chea to go back and extract more
5 information on anyone that you were in the process of torturing.

6 A. Mr. President, I did not communicate either verbally or in
7 writing with Mr. Ieng Sary in any circumstances, no.

8 Q. And you can't tell us what communications were had between Son
9 Sen and Ieng Sary or Nuon Chea and Ieng Sary on any of those who
10 were being arrested from the Ministry of Foreign Affairs.

11 A. I do not know. In practice, I do not know.

12 [15.27.37]

13 Q. Thank you. Finally, that's what we're getting at; in practice,
14 what you knew.

15 In practice, is it fair to say that to your understanding Angkar
16 meant Pol Pot?

17 A. Angkar was Pol Pot.

18 Q. And as I understand it, it was your understanding or at least
19 your representation that Son Sen was representing Angkar.

20 A. Mr. President, behind the back of Son Sen, I called him as
21 Angkar, but he never considered himself as Angkar. Before him or
22 in front of him, I called him Bong or Brother.

23 Q. Sir, have you not represented, in this courtroom or to the
24 Investigative Judges, that Son Sen was representing Angkar when
25 he was meeting with you giving you instructions?

105

1 [15.29.22]

2 A. He told me that he came to lead S-21 on behalf of Angkar or as
3 a representative of Angkar; he was not Angkar, but he was
4 representing Angkar.

5 Q. Thank you for that clarification. And that's exactly what I
6 was trying to elicit from you.

7 Now, with these annotations that were being put on some of these
8 confessions, you cannot say with any degree of certainty where
9 those confessions went despite the annotations on them?

10 A. It is for me -- it's difficult for me to respond to your
11 difficult question.

12 Q. I'll simplify it: Once you prepared a confession, you send it
13 to Son Sen; am I right?

14 A. Before the 15 August '77, I sent all the confessions to Son
15 Sen. After that date, I sent all to Nuon Chea.

16 Q. And after those confessions left you, you don't know where
17 they went other than Son Sen or Nuon Chea.

18 A. That is correct.

19 Q. You don't know what discussions may have taken place based on
20 those confessions, if any discussions were -- were held at all.

21 [15.32.07]

22 A. Concretely speaking, I only knew of one case, regarding the
23 arrest of Chou (phonetic). After my analysis, I conclude that,
24 for the arrest of Si (phonetic), they did hold a discussions
25 among themselves.

106

1 Q. And this was based on what you were told by Son Sen or am I
2 incorrect?

3 A. Yes, the superior ordered me to prepare the document and,
4 later, I was told by my superior from the work site and that was
5 during a meeting.

6 Q. Your superior was Son Sen.

7 A. It's -- that is correct.

8 Q. All right. And so in order to verify that information, we need
9 to have Son Sen over here; would that be right?

10 [15.33.38]

11 A. If we are trying to search for the truth, in this way, it
12 seems it's intangible.

13 Q. All right. Incidentally, were you searching for the truth when
14 you were at S-21? Is that the purpose of S-21 under your
15 authority, to search for the truth?

16 A. It is a matter based on the analysis of the people during this
17 generation and of the people during that generation. The Court,
18 itself, can make its own judgment.

19 Q. Well, I'm not asking the Court to make a judgment; I'm asking
20 you.

21 As head of S-21, you were taking confessions, interrogating,
22 applying the hot, cold, chewing methods; was that all for the
23 sake of getting to the -- searching for the truth as you put it?
24 Was that the procedure or the process that you were involved in,
25 searching for the truth?

1 [15.35.22]

2 A. I always say, even the last few days, that S-21 was a unit to
3 fulfil its anti-espionage task.

4 Q. All right. Now, as you sit here today and reflect back, would
5 it be fair to say that you did not know -- you didn't have the
6 details of how your superiors or those above you -- how they
7 worked among themselves? Would that be fair to say?

8 A. Your question is that I did not know how my superiors worked.
9 Your question is too general, and I would like to -- not to
10 respond to this question.

11 Q. Please refer to -- I believe we have it in front of you --
12 D120, Khmer page 00242921 - 00242921; English, 00242932; French,
13 00242943. If you could look at that, here you state -- you're
14 saying:

15 "You point out to me that, if some confessions clearly had
16 'Comrade Van' written on them whereas others did not, it is
17 probably because not all the confessions of persons from the
18 Ministry of Foreign Affairs were sent to Ieng Sary."

19 Then you go on to say:

20 "In fact, I do not know the details [...] how the superiors worked
21 amongst themselves. It is possible that in the absence of Ieng
22 Sary the confessions were sent to Pang, but that is an assumption
23 on my part."

24 [15.37.51]

25 So do you see the words "probably" and "assumptions" and

108

1 "possible"? Do you see those?

2 A. Yes, I see.

3 Q. And were you speaking the truth when you uttered those words?

4 A. The word "may", it means it may be true, it may not be true;
5 because it is a conclusion.

6 Q. What does the word "assumption" mean to you? Because you've
7 invoked that quite often whenever you think that it's unnecessary
8 or unhelpful for you to answer a question. So what does
9 "assumption" mean?

10 MR. PRESIDENT:

11 Witness, you may wait.

12 The Prosecution, you may proceed.

13 [15.39.21]

14 MR. SMITH:

15 Your Honour, I -- I object to that question. It's loaded with an
16 -- an assumption that the witness was intending to avoid
17 answering the questions directly and that's -- that assumption
18 can't be made from the witness' answer, so I'd ask that he
19 retract that question and just ask -- ask the question simply
20 rather than placing his own opinion on why or why not the witness
21 answered in a certain way. There's no basis for that at all.

22 BY MR. KARNAVAS:

23 Q. Here's what the witness said, Your Honours. I can't -- I don't
24 know how it's translated in Khmer, I assume French is more or
25 less close to English: "It is possible that in the absence of

109

1 Ieng Sary, the confessions were sent to Pang, but that is an
2 assumption on my part."

3 Are you not making an assumption here? Are you not -- are you not
4 assuming something?

5 MR. KAING GUEK EAV:

6 A. Normally, an assumption is simply an assumption but, of
7 course, some assumptions are based on certain facts or events.

8 [15.41.07]

9 Q. Okay. Let's look at document D121 -- D121 and I will ask you
10 to look at Khmer ERN Number 00244235 - 00244235; English,
11 00244242; French, 00244248. And for the record, this is one of
12 your other interviews on the 28th of November 2008. And in it,
13 you're discussing Nat and you say:

14 "It was under these circumstances that Nat was transferred to the
15 Ministry of Foreign Affairs. I assume that the arrest must have
16 necessarily been decided after consulting Ieng Sary."

17 Do you see that, sir, where you say "I assume"?

18 (Long pause)

19 [15.43.25]

20 Do you see it, sir, where you say "I assume that the arrest must
21 have necessarily been decided after consulting Ieng Sary"? Do you
22 see that? It's at 00244235. Do you see that, sir?

23 A. Yes, I see it.

24 Q. And you stand by that answer, do you not?

25 A. I stand by my statement.

110

1 Q. Now, when you are assuming something, are you not drawing a
2 conclusion?

3 A. I already stated that assumption cannot just be blindly made.
4 There had to be some basis for the assumption.

5 Q. Do you allow for the possibility for your assumptions to be
6 incorrect?

7 A. Of course they could be incorrect in one or two instances, but
8 in general they are correct.

9 [15.45.07]

10 Q. All right, then. So I want to make sure I understand that. So
11 whenever you make assumptions, you, Comrade Duch, generally, with
12 the exception or one or two occasions, they are always correct?

13 A. Your question seems to go around and around. I decline to make
14 my response to your question.

15 Q. Very well. I want to talk to you about something else very
16 briefly, and that was concerning the children that you commented
17 upon that Ieng Sary had saved. Do you recall commenting upon
18 these events?

19 [15.46.26]

20 A. That is a new issue which does not have anything to do with
21 the confessions or the persons decided to be arrested by the
22 Party.

23 Of course, when you refer to the children, I recall that is a new
24 issue and if you want to reintegrate that into your previous
25 question -- line of questionings, I will decline to respond.

111

1 [15.46.57]

2 Q. Apologies for not giving you a transitional statement that I
3 was moving onto another topic. So we're now on another topic.
4 So are you willing to now discuss this issue, or is this
5 something else that you refuse to give evidence on?

6 A. In fact, it is not my intention to decline to respond to your
7 questions, but we have to refer to the basis of the issues. If we
8 refer to the children, of course I still maintain the facts
9 regarding those children.

10 Q. Let's talk about that. It's my understanding that you first
11 learned of this in 1990; is that correct?

12 A. That is correct.

13 Q. In other words, at the time -- at the time of those events,
14 you were not aware of it?

15 A. Previously, I was not aware of that issue.

16 [15.48.33]

17 Q. To be more concretely, neither Son Sen, Nuon Chea, Pang or
18 anyone else gave you any information about these events?

19 A. If they were to tell me, I would have known. And not until the
20 1990s, I did not know about that; nobody told me.

21 Q. Right. And I take it as to how it was that Mr. Ieng Sary saved
22 those children, you don't have the details. Would that be fair?

23 A. I did not know about that.

24 [15.49.35]

25 Q. You don't know, for instance, whether Mr. Ieng Sary objected

112

1 to an order issued by Pol Pot or anyone else?

2 A. As I said, I do not know about that.

3 Q. And anything that you may have commented on concerning those
4 children would be based on assumptions from your part?

5 MR. PRESIDENT:

6 Witness, you may wait.

7 The assigned lawyers for the civil parties, you may proceed.

8 [15.50.30]

9 MS. NGUYEN:

10 Your Honours, I do realize that it is late in the day, and that

11 Mr. Karnavas might well be running out of time, but Judge

12 Cartwright did clarify this morning that non leading questions

13 need to be asked. There's a good reason for that, and we've been

14 sitting here listening to Mr. Karnavas ask a whole bunch of

15 leading questions.

16 Now, I think Mr. Karnavas needs to be reminded that he needs to

17 ask non leading questions and he needs to reframe his questions

18 in a way that the answers are coming directly from the witness

19 and not from him.

20 [15.51.06]

21 BY MR. KARNAVAS:

22 Q. Sir, if you were not aware of those facts and the

23 circumstances under which these children were saved, were you in

24 a position to then give details about Mr. Ieng Sary's involvement

25 and how those children were saved?

1 MR. KAING GUEK EAV:

2 A. You may say that was my gut feeling, or my personal shame.

3 Ieng Sary kept those children, the children of Touch Kham Doeun,
4 and Comrade Nat, and another one, and they survived.

5 As for me, I did not dare ask Angkar to make a centre for the
6 orphans, for example, because that is based on my experience at M
7 13. Of course, I was ashamed of myself for this noble deed by
8 Ieng Sary. But later on, in the practice of the principle, there
9 were gaps: the child of Cheng An survived, and the three siblings
10 of Norng Chanphal survived, and the child of another person also
11 survived.

12 So the principle of arresting the parents and brought along the
13 children were, in practice, common for hundreds and thousands,
14 but there were of course the gaps of those children who survived,
15 as I mentioned earlier.

16 So yes, this is like one of the few cases that happened during
17 the practice. So the principle was not put in practice in a
18 perfection mode.

19 But regarding those children who looked -- who were looked after
20 by Ieng Sary, I was shameful of myself that I did not do such a
21 thing. Of course, I did not make a presumption that it was a
22 shameful, but I, myself, felt that shame.

23 [15.53.57]

24 Q. You have no concrete information concerning Mr. Ieng Sary and
25 whether he was involved in any way with the arrests of the

114

1 parents of those children, do you?

2 A. It is very difficult for me to respond to your repetition of
3 questions.

4 In principle, he must have known. If you just keep repeating this
5 line of questions, I will decline to respond.

6 As for the children, yes, I was shameful of myself for what was
7 done by Ieng Sary.

8 Q. Now, you say in principle, and I'm asking -- I'm going back to
9 in practice. Because you're the one that they've told us you're
10 in a unique position. You had access to Son Sen and Nuon Chea.
11 They talked to you about individuals coming there. They asked you
12 to get more information.

13 During your discussions with Son Sen or Nuon Chea, did they ever
14 say that Ieng Sary was involved in the arrests of the parents of
15 those children?

16 [15.55.38]

17 A. I already stated, in principle, he must have been involved
18 either in a meeting or that -- he was informed later. And only in
19 one instance, that is, regarding Chau Seng, that he was not
20 present. So there is no evidence to indicate whether he was
21 present or not, but in principle he should have been present.
22 And if you just keep asking me on this, I would not know what to
23 respond to you, and I decline to respond to your questions.

24 [15.56.16]

25 Q. Well, let's look at -- let's look at -- we'll move on, sir,

115

1 another topic. We'll leave the principle versus the practice.
2 E78, and here I point to references where the Prosecution has
3 concretely argued that you lack credibility, or they argued in
4 several instances you lack credibility, and this was stated
5 concretely in their final trial submission dated November 29 --
6 November -- sorry, 11 November 2009. So after hearing your
7 testimony, the prosecutors themselves indicated -- and I'll read
8 out some of the paragraphs--

9 [15.57.21]

10 MR. SMITH:

11 Your Honour, I object.

12 MR. KARNAVAS:

13 For the record, if I could just number -- name the paragraphs
14 without going into the--

15 MR. PRESIDENT:

16 The Prosecution, could you firmly state your ground for the
17 objection?

18 As for the counsel, please, you be reminded that you need to wait
19 for the other parties to make their objections and wait for the
20 interpretation to complete first. If two parties speak at the
21 same time, it is not possible to interpret.

22 [15.57.58]

23 MR. SMITH:

24 Your Honour, the objection is based on the ground that it's not
25 relevant, the prosecutor's opinion on the witness' testimony at

116

1 his own trial.

2 If the Defence has particular allegations to put, they should put
3 them, but asking this witness to comment on the Prosecution
4 opinion on particular parts of his testimony is not relevant and
5 it's argumentative. And on the same basis that it wasn't relevant
6 for the witness to comment on your judgment nor on the Co
7 Investigative Judges' opinions of this person's evidence. The
8 facts should be put, not asking him to think of what he thinks
9 about someone else's opinion.

10 [15.58.49]

11 MR. KARNAVAS:

12 Mr. President, may I remind Mr. Smith that just last week he said
13 put examples. Well, I'm citing examples. Paragraph 182, paragraph
14 176, paragraph 199, paragraph 220, paragraph 425, paragraph 426--

15 MR. PRESIDENT:

16 Counsel, could you please repeat the number -- the paragraph
17 again because there is no interpretation from your fast-paced
18 reading, not even in French.

19 MR. KARNAVAS:

20 Apologies. The Prosecution, in its final trial submission, has
21 concretely spelled out where they believe Duch was untruthful.
22 They can be found on paragraphs 182, 176, 199, 220, 425, 426,
23 433, 440 and 482. So these are concrete instances where the
24 Prosecution, as an officer of the Court, has asked you to find
25 that Duch, when testifying in his case, was dishonest, less than

117

1 truthful.

2 So since the Prosecution last week indicated that we needed to
3 have specifics, I would like to go to the specifics.

4 MR. PRESIDENT:

5 The International Prosecutor, you may proceed.

6 [16.01.09]

7 MR. SMITH:

8 All we're asking is that counsel just put the factual basis to
9 the witness rather than a speech about other people's views on
10 his honesty on certain matters, that's all.

11 MR. KARNAVAS:

12 Very well. I see it's 4 o'clock, Your Honours. I can do this
13 probably in about five or 10 minutes, and I assure you -- I
14 assure you this is my very last question. Or I could do that in
15 the morning, but I think perhaps if I can just do one or two --
16 one or two because there are many instances.

17 (Judges deliberate)

18 [16.02.26]

19 MR. PRESIDENT:

20 I'd like to hand the floor over to Judge Cartwright to respond to
21 the objection raised by the Prosecution and replied by the
22 counsel, as well as the time that might be extended for Ieng
23 Sary's defence so that they can conclude the questioning this
24 afternoon.

25 JUDGE CARTWRIGHT:

118

1 Thank you, President.

2 The Trial Chamber sustains the objection made by the prosecutor.

3 I believe that counsel for Ieng Sary understands the basis for
4 that, which is precisely the same as asking him to comment on the
5 Co-Investigating Judges' views or conclusions and on the Trial
6 Chamber's. You may put the allegations to him. We have all the
7 paragraphs that you've carefully read out twice. Just one or two
8 examples, please, and we can read the rest. Thank you.

9 [16.03.33]

10 BY MR. KARNAVAS:

11 Thank you, Your Honour. I know I'm -- it's a long day and rather
12 combative.

13 Q. If we could just go to the one dealing with -- that's in
14 paragraph 425; and this is, again, in document E78, with the --
15 I'll deal with these ones.

16 Let me ask you this. Is it -- Duch, would it be fair to say that
17 on numerous occasions during your trial when you were confronted
18 about your own powers, that you gave incomplete, evasive, or
19 misleading testimony?

20 Could you please answer that question?

21 MR. KAING GUEK EAV:

22 A. I tried my best to respond to the questions and that I am
23 honest to my feeling through my decision and, of course, anybody
24 can decide according to his or her opinion. And in the end it is
25 the Trial Chamber to decide, to make judgement, and we are all be

119

1 judged -- will be judged by the nation and by everyone else in
2 the end. That is my brief response to your question.

3 Q. Did you refuse to tell the whole truth?

4 [16.06.19]

5 A. I believe I never refused to respond truthfully, but the
6 question is whether the questioner already presumes that whether
7 the respond is truthful or not. This is something that you need
8 to consider. But on my end, my response is truthful.

9 Q. Well, I'm asking about questions posed to you by the
10 Investigative Judges or the Prosecution. Were you always
11 truthful?

12 A. There are hundreds of questions, so if you ask me in this way
13 I cannot respond.

14 [16.07.26]

15 MR. KARNAVAS:

16 Mr. President, Your Honours, that concludes my cross-examination.
17 I did condense it because of the time period. I hope that in the
18 future with such important witnesses I won't find myself in this
19 situation because then I have to ask compound questions, somewhat
20 leading, and perhaps in the future more leeway will be given to
21 us. But in this instance, I realize that we're coming against a
22 recess period, but I did endeavour to do my level best and if I
23 in any way tested your patience, my apologies.

24 Thank you, sir, for coming here to give your evidence. On behalf
25 of Mr. Ieng Sary, Mr. Ang Udom and myself, I wish to thank you.

120

1 MR. PRESIDENT:

2 Counsel, thank you for your remarks.

3 [16.08.27]

4 All parties are reminded that when it comes to time allocation
5 and scheduling, we did actually communicate through the legal
6 officer to you regarding your request, and as you -- then we held
7 a meeting with the legal officer on Friday of the week and we
8 tried to entertain the time allocation requested by all parties.
9 As today, it is shown that you requested an extra time and we
10 granted that so that you could complete your questions.

11 So please make proper and more accurate time estimations in order
12 to communicate to the Chamber and, alternatively, if you request
13 a longer time allocation and you don't have enough questions to
14 fulfil the time, it's going to have an impact on the scheduling
15 of the proceedings by the Chamber.

16 And, of course, we are trying to expedite the proceedings. We all
17 remind you of the due process and fair justice which is also an
18 objective element of justice.

19 The Prosecution, you may proceed.

20 [16.10.04]

21 MR. SMITH:

22 Your Honour, it's a brief matter. It's in relation to the issue
23 of a party putting their case to a witness.

24 Your Honours have advised that this Court doesn't follow
25 detail-by-detail the practice of the Yugoslavia Tribunal nor the

121

1 other international courts.

2 However, one of the principles that has been raised, and it was
3 raised by the defence in Ieng Sary, is that the substance of
4 their case, if it's in contradiction to what the witness is
5 testifying to, it should be put to the witness to see whether he
6 agrees or disagrees.

7 And in terms of the evidence that this witness has given, the
8 question that I would ask the defence counsel for Ieng Sary --
9 whether today or tomorrow -- put to this witness because I think
10 it will help Your Honours in determining this issue, is whether
11 or not if the defence counsel do not believe it was a working
12 principle to inform the unit heads of the arrests of people
13 during the CPK era, to allow them to be informed of enemies in
14 their department or office, and also to allow them to contemplate
15 the arrest. I would ask that defence counsel put that question to
16 the witness.

17 [16.11.32]

18 It's clear that the witness has stated he doesn't know for a fact
19 whether or not a particular arrest of a person in a particular
20 unit or office was made known to Ieng Sary. But he does state
21 that it was a working principle and if they disagree that that
22 was the working principle during that period, we would ask that
23 that particular question be placed to the witness either today or
24 tomorrow. It enables Your Honour to have a direct answer on the
25 point which certainly the Prosecution will be putting forward at

122

1 the end of the case.

2 [16.12.10]

3 MR. KARNAVAS:

4 If I may be heard? A couple of matters.

5 First, I object to priming the witness. This could have been made
6 outside his presence. By making that speech their closing

7 argument, I believe and I submit that that was done in bad faith.

8 Because I'm being asked now to think overnight and, of course,

9 the witness overnight, how to answer a -- whether to ask a

10 question and how he should answer it. It is utterly improper.

11 We need to decide what is the procedure? Is it a procedure of

12 convenience? Whenever we like it, it's the ICTY. When we don't

13 like it, it's the French. When we don't like it, it's a hybrid.

14 When we don't like it, we just make it up. Which procedure are we

15 using?

16 Secondly, if the Prosecution wishes to ask a question they can do

17 so. They can't have it both ways. I find this really abhorrent,

18 of making such a statement in front of a witness prior to all the

19 parties having an opportunity to cross-examine the witness.

20 This is improper, and I don't need instructions from the

21 Prosecution or from the Bench. And by the way, Mr. President, I

22 asked for two days and then I asked for additional 10 minutes. So

23 it wasn't as if I had miscalculated, if anything I tried to

24 accommodate the other team.

25 But in the future if that -- if I'm going to be punished for

123

1 accommodating, then obviously I will take up all of the time that
2 I'm requesting. I don't think it's proper, but I think to suggest
3 that somehow I miscalculated and that I should benefit is
4 incorrect. I asked for two days, I said I would try to get it in
5 one. I did it in one day and 10 minutes with all the
6 interruptions. I think that's pretty good under the
7 circumstances.

8 (Judges deliberate)

9 [16.15.09]

10 MR. PRESIDENT:

11 Thank you, Defence Counsel, for questioning the witness for this
12 whole day. And the Chamber also would like to thank the witness
13 for his testimony today.

14 The time is now appropriate for the adjournment. The Court will
15 adjourn, and we'll resume tomorrow morning, commencing from 9
16 a.m.

17 According to the schedule, tomorrow's proceeding, the floor shall
18 be given to Khieu Samphan defence team to question the witness,
19 Kaing Guek Eav, alias Duch.

20 Security guards, you're instructed to take the witness to the
21 detention facility and have him back here tomorrow morning before
22 9 a.m. Also, you are instructed to take the three Accused back to
23 the detention facility and have them back here before 9 a.m.,
24 tomorrow.

25 The Court is now adjourned.

1 (Court adjourns at 1616H)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25