TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File Nº 002/19-09-2007-ECCC/TC

5 April 2012
Trial Day 48

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

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KHIEU Samphan

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PROCEDINGS
(Court opens at 0904H)

MR. PRESIDENT:

Please be seated. The Court is now in session.

Today, the Chamber continues hearing the testimonies of witness Kaing Guek Eav alias Duch, the questions to be posed by counsels for Nuon Chea.

Before we proceed to the counsels for Nuon Chea, the Chamber wishes to inform parties to the proceeding in Case File 002 that the hearing of the testimony of this witness will proceed until the next -- early two days of next week.

Judge Lavergne has some health concern that he may not be able to attend the whole proceeding now and that Judge Fenz is here to replace him. She will remain -- she will remain on the Bench until Judge Lavergne is better and be well to come back to take his position. We have applied this practice as guided by the Internal Rules of the ECCC.

[09.06.55]

We would like now to proceed to counsel for Nuon Chea to proceed with their questioning.

MR. PESTMAN:

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

Yesterday, we tried to make the interface work; we didn't manage in the end. I sent an email to all the parties. I hope it has arrived with an attachment including all the documents we would
like to rely upon today. I see everyone nodding so I suppose it's okay.

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

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

MR. PRESIDENT:

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

MR. PESTMAN:

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

[09.09.17]

MR. PRESIDENT:

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

QUESTIONING BY MR. PESTMAN RESUMES:

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

MR. KAING GUEK EAV:

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

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

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

A. Yes, it is true.

[09.11.52]

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

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

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

A. Pol Pot was in charge of 870 Committee.

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

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

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

[09.14.24]

A. I am convinced that this annotation belongs to Nuon Chea.
Q. You say "I'm convinced"; are you absolutely sure? You have no
doubt at all?
A. No, I don't; I have no doubt.
Q. I'm asking you because yesterday, at one point, you said that
you "assumed" that a certain annotation was made by Nuon Chea.
This is not an assumption; you are sure?
A. I am sure.
Q. Can you explain to the Court why you are sure, why you have no
doubt at all that it -- that this is Nuon Chea's handwriting? Can
you put that into words?
A. I note the handwriting -- the style of handwriting normally
done by Nuon Chea.
And, secondly, the abbreviation, "aan haoy", in Khmer, or
"already read", in English, which is the normal expression Nuon
Chea would like to put on the -- in his annotation.
[09.16.23]
And, thirdly, after the 25th of October 1977, he was the only
person who had the authority to contemplate general affairs,
including Santebal matters, and this letter dated the 9th -- this
annotation was dated 19th April 1978. He would be in charge when
Pol Pot was busy.
Q. Thank you. You testified about this particular document before
the Investigating Judges. Do you remember talking about this
document?
A. No, I don't.
Q. I thought so.

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

That was your translation at the time of the annotation.

[09.18.55]

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

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

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

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

A. The way I reported to the Investigating Judges is based on the balance between yes and no. First, I thought that this handwriting could have not belonged to Brother Pol or Khieu, so I made an assumption that it could have been written by Brother Nuon. And back then I did not gather enough documents to assist me with my -- with my view, so later on I became clear.
Q. You said -- or you told the Investigating Judges that you did not see Nuon Chea's handwriting very often; is that correct?

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

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

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

A. Yes, it is.

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

A. Yes, it is. It means that I do not remember the content of the letters Nuon Chea sent to me.
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1 Q. So those letters with these few words, there is, if I'm
2 correct, approximately 30 years before you saw the annotations of
3 Nuon Chea -- the annotations you claim are written by Nuon Chea
4 on the confessions; am I correct?
5 A. Mr. President, could you direct counsel to shorten the
6 statement and be more specific? And the early portion of the
7 statement could be repeated.
8 [09.26.45]
9 Q. I was trying to establish how much time had elapsed between
10 the letters you received -- you claim you received from Nuon
11 Chea, when you were at S-21, and the moment you saw his
12 annotations on the confessions in your own case, the annotations
13 you claim were written by Nuon Chea. How much time elapsed
14 between those two moments?
15 A. I was under Bong Nuon's supervision from 1978 until March or
16 April -- I guess it's March 1999, when Nate Thayer obtained a
17 document concerning the confession of Kung Kien, alias Eung Vet;
18 he presented the confession to me.
19 [09.28.25]
20 In that confession, it contains my annotation, Son Sen's, and
21 Brother Nuon's annotations. I recognized Son Sen's writing.
22 Indeed, I recognized my own writing. So Brother Nuon wrote very
23 few words; he indicated that the documents were to be sent to 33
24 or 35.
25 And only very few people who could annotate on such piece of
And Brother Son -- Son Sen also noted that a copy would be sent to Nuon Chea. So the annotation on that confession, you know, with -- with some kind of calculation, you can see my writings and Son Sen's writing, and the other annotation could have been for Nuon Chea. And by way of calculating the time lapsed, it is about 21 years.

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

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

[09.30.56]
The letters wrote -- written by Nuon Chea, that were sent to me in 1978; that was when I saw Nuon Chea's handwriting with my own eyes.

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

And after Brother Nuon read the letter, he annotated the letter,
that the letter was to be sent to 33 -- Sector 33 or Sector 35.

So that's what I remember.

MR. PRESIDENT:

(No interpretation)

MR. SMITH:

Sorry, I didn't hear the translation. But, good morning, Mr. President. Good morning, Your Honours. Just for the record, the document the witness is referring to is IS 5.42. Thank you.

[09.32.53]

BY MR. PESTMAN:

Q. Duch, I put it to you that you're unable to recognize Nuon Chea's handwriting, that you, in fact, never recognized Nuon Chea's handwriting, but that you look at the date on the document or the date of the annotation and, if it isn't Son Sen's handwriting or your own handwriting, you simply assume it's Nuon Chea's handwriting; isn't that the case?

MR. PRESIDENT:

Witness should not answer the question yet; just wait until you hear the decision from the Chamber because the Chamber now notes the Lead Co-Lawyer is on her feet.

[09.33.43]

You may proceed, Counsel.

MS. SIMONNEAU-FORT:

Mr. President, I really have the feeling that we're not dealing here with a question, but with a conclusion that my colleague
10

wishes to draw from the questions that he asked before.

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

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

MR. PRESIDENT:

Counsel Michael Karnavas, you may proceed.

MR. KARNAVAS:

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

[09.34.54]

This is classic cross-examination. Yesterday, I pointed out that
there is a procedure called putting your case to the witness. I
believe the controlling case is Brown vs. Dunn. This is a

procedure that is used at the ICTY and elsewhere. In fact, it is

in the rules that counsel must put his case to the witness; it is

absolutely necessary. This was something that was injected into

the rules at the ICTY by the former Judge May who passed away
during the Milosevic Trial.

There is nothing wrong with the question; it gives the -- the

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

[09.36.16]

MR. PRESIDENT:
The International Co-Prosecutor, you may proceed.

MR. SMITH:
Thank you, Your Honours. We agree with the Defence.
I think it's appropriate that their case be reasonably put to the
-- to the witness. As long as the question's not inflammatory, or
provocative, or antagonistic, the -- the thrust of the Defence
submissions should be able to be put, as long as it's based on a
reasonable foundation. And I think it's reasonable for the
Defence to put it to the witness.
And also, as my learned colleague for the Ieng Sary defence team
has said, it gives the witness an opportunity to comment on that
issue, which may well be an issue that you'll be dealing with at
the end of the case. And to be able to have that witness comment
on the issue directly, it enables Your Honours to balance and
weigh out the evidence more directly.
[09.37.26]
MR. PRESIDENT:

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

MR. VERCKEN:

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

MR. PRESIDENT:

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

MS. SIMONNEAU-FORT:

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

[09.38.21]

This is a questioning session and not a cross-examination. And Judge Cartwright reminded us of this the other day. And I'd like to indicate that I'm not at all opposed to the witness' comments; I'm opposed to the lawyer's comments. And this was not a question he asked; it was a comment.

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

[09.39.06]
MR. PRESIDENT:

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

MR. PESTMAN:

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

MR. PRESIDENT:

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

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

(Judges deliberate)

[09.42.23]

MR. PRESIDENT:

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

However, before we proceed, the Chamber would like to inform the parties that, at the ECCC, the Chamber will not practice the
adversarial proceedings that was -- or are practiced at ICCR (sic) or at ICTY. So we will have to be clear on this issue that witness shall answer this question, but we are not following the practice at ICCR (sic) or ICTY.

Parties are also reminded, especially Mr. Michael Pestman, that they should put simple questions because the general knowledge of Cambodian people may not be that equal to the general knowledge of peoples in other developed countries. So, if the question is complicated, this may be difficult for the witness to understand and answer the question accordingly. As a result, we may not have the answers to the questions. So, in order to ascertain the truth, it does not mean that the question has to be complicated.

[09.44.59]

What we want from the witness is to allow him to answer on the basis of his knowledge and his experiences. Perhaps the witness does not remember the question; and counsel is now advised to put the question again so he can answer to the question.

BY MR. PESTMAN:

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

MR. KAING GUEK EAV:

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

Q. I'll just repeat the question: Duch, to put it simply to you, I do not believe you're able to recognize Nuon Chea's handwriting; I believe that you simply assume it is Nuon Chea's
handwriting based on the date of the annotation on the document; isn't that the case?

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

[09.46.43]

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

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

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

Q. Thank you.

[09.48.35]

A few minutes ago, when responding to one of my questions, you said: "I was under the supervision of Nuon Chea from 1978 until 1999." When exactly, in 1978, did you come under Nuon Chea's supervision?
A. Mr. President, may I indicate that I became under the direct supervision of Brother Nuon from the 15 August 1977. I already told the Court this, and counsel should understand this. We have talked about a number of letters that Brother Nuon sent to me. And I indicated a while ago that I considered '78 because it makes it easy to do the calculation of the durations that you asked me, that I referred to the annotation of Brother Nuon Chea on the confession that Nate Thayer showed to me. So I considered the year -- or I counted the year from 1978. Between that duration, I received letters, approximately three or four letters, from 1978. So there is nothing that I am trying to change here, let us be clear.

Q. On the 20th of March 2012, here in Court, you told the Judges that Son Sen was relocated to Neak Loeang on the 15th of August 1978. That date was misinterpreted in English into 15th of April 1978, but I checked the transcript, and the witness said the 15th of August 1978. Duch, is it correct that Son Sen was moved or relocated to Neak Loeang on the 15th of August 1978?

A. Mr. President, can - can you be shorter in your question so that it is clear? I would like to answer only to the last part of your question. The last part, you asked me whether Son Sen went to Neak Loeang on the 15th of August 1977, and I say yes.

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

Do you remember testifying before the Military Court?

(Short pause)

Should I repeat the question?

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

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

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

Now we are talking a matter before the Military Court.

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

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

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

That is what you told the Investigating Judges. Do you remember
MR. SMITH:

That?

Your Honour, Mr. President--

MR. PRESIDENT:

Yes, International Co-Prosecutor, you may proceed.

MR. SMITH:

(Microphone not activated)

[09.55.12]

MR. PRESIDENT:

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

MR. SMITH:

Thank you, Mr. President. I just would ask that the document be placed on the screen. And if the witness needs a hardcopy, I think it's reasonable that he gets it. As Your Honour knows, he's testified for about 300 or so hours in relation to these proceedings. The Judges and the parties have all got the documents in front of them. We can check the accuracy. I think it's reasonable that the witness, who's prepared - who's expected to provide answers, should be able to look at the document and - and provide those answers. There's no reason why he should be in a worse position than the parties and the Judges.

[09.56.06]

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

MR. SMITH:

Your Honour, in relation to that, I mean, the Defence are reading an English translation of the document; it's not the actual document itself, so--

Words matter. And I think it's reasonable that if this witness is expected to give an accurate answer, that he be able to sort of see the answer that was given in his own language rather than something that's been converted in English. As you know, the translations are not always direct. And these are important points.

[09.57.02]

MR. PRESIDENT:

What has been raised by the Prosecution is accurate. So, before we proceed with questioning to witness concerning this document, counsel for Nuon Chea is now instructed to provide the witness the hardcopy of the document which is in Khmer and to display the document onto the screen as well.

For the purpose of the transcript, defence counsel is instructed to identify the document that you intend to use to ask questions to witness.
MR. PESTMAN:
I believe I already did; I gave the Khmer ERN and the document number. It's the last document number I gave.

MR. PRESIDENT:
Can you indicate it again? Can you remind everyone again about the ERN number?

[09.59.25]

MR. PESTMAN:
I believe the ERN number in English is 00327353, and the Khmer ERN is 00320808 to 09.

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

MR. PRESIDENT:
I already gave order that the document be put up on the screen.

BY MR. PESTMAN:
Q. Duch, can you identify - or find the text which we have highlighted on the screen, in the document you have been given?

[Short pause]

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

MR. KAING GUEK EAV:
A. The translation of the text is accurate.

Q. Thank you. Did Nuon Chea ever come down to S-21, as you told
the Military Court?

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

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

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

Q. Thank you.

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

[10.04.43]

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

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

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed. And, Witness,
could you please hold on a second?

MR. SMITH:

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

[10.06.40]

MR. PRESIDENT:

Thank you.

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

BY MR. PESTMAN:

Thank you.

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

MR. KAING GUEK EAV:

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

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

Q. You know that that particular interview was also tape recorded; don't you?
A. When Nate Thayer met me, I did not notice any recorder, but Nic Dunlop did take video footage of our encounter, and Christophe Peschoux did also take the recording of our interview. Nate Thayer was seen coming somewhere near Mr. Peschoux, and I don't know whether he had recorded our interview.

Q. Now that you mention Christophe Peschoux, he also states -- or interviewed you, and the written record of that interview quotes you as saying that Nuon Chea took over in 1978, and not in 1977.

Do you remember telling Peschoux that it was 1978?

MR. SMITH:

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

MR. PESTMAN:

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

MR. SMITH:

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

MR. PESTMAN:

I have a hardcopy for the witness.
MR. PRESIDENT:

International Co-Prosecutor's observation is appropriate.

From now on, any party wishing to put any document before the Chamber, whether party wishes to seek confirmation from the witness being cross-examined, counsels or party -- the party is advised to request that the materials be put up on the screen and that hardcopies be produced to the witness.

[10.11.37]

At the same time, assistant to the counsel should be allowed to project the document on the screen immediately when the request by the party who is on his feet requesting the Chamber for the document to be put to the witness or other individuals concerned or subject of the examination in this courtroom.

Court officer is now instructed to bring the document to the witness.

And assistant to the counsel for the defence team is now advised to put up the document on the screen.

BY MR. PESTMAN:

The Khmer ERN of this particular page is 00160879. The English ERN is 00185055.

Q. Could you read the text, please, in the red box after number 6, please?

MR. KAING GUEK EAV:

A. I would like to read it as follows: "In 1978, he was sent to the battlefield in the East, and Nuon Chea came to take his
position. He was then my superior in charge of the work, and he
-- and I had to send the confessions to him."

[10.14.00]

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

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

MR. PRESIDENT:

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

BY MR. PESTMAN:

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

[10.15.49]

MR. KAING GUEK EAV:

A. I met Bong Nuon from the 15th of August 1977. I never talked
to any other people referring to any other dates other than the
15th of August 1977. And I remember when the prosecutor asked me
about the superiority of Son Sen and Nuon Chea, and I still stand
by my position that I have never been mistaken when it comes to that exact date, the 15th of August 1977, when Nuon Chea was my superior.

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

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

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

[10.18.27]

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

Q. I put it to you, Duch, that Son Sen remained your superior even after his departure to the eastern front and that you never
reported or received instructions from Nuon Chea; isn't that the case?

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

[10.20.44]

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

A. Those who were in control of the army, according to the Party Statute and the real practice, the supreme persons were Pol Pot and Nuon Chea. And in the battlefields, there were secretary of each respective zone who would be deployed: in the North, Koy Thuon and Ke Pauk; the Special Zone, Son Sen; and the Southwest, Ta Mok and Chou Chet; the East must be under the supervision of Secretary So Phim. But that is a principal.
Q. Are any of those zone commanders you mentioned still alive?

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

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

A. There was no conflict between armies.

Q. Do you know Heng Samrin?

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

Q. Have you ever met him?

A. I saw him on TV.

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

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

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

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

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

I will go and move on to my next question.
The document containing the interview is number D313/1.2.406.1.
The pages are confusingly numbered, but the pages I would like to refer to start at 35 to 44. The Khmer ERN is 00713945 to 54. The English ERN is 00651878 to 83. And the French ERN is 00743349 to 54. Those pages contain a detailed description of Heng Samrin's role in the liberation of Phnom Penh.

[10.27.12]

MR. SMITH:

Your Honour, just a--

MR. PRESIDENT:

International Co-Prosecutor, you may proceed.

MR. SMITH:

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

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

[10.28.08]

And I would submit that that's a good ruling, to the extent that all these documents that are being put before the Chamber,
1 certainly, by the Prosecution, Your Honours haven't ruled on the
2 admissibility of those documents. And certainly, until such time
3 that it becomes evidence in the case, the value of the document,
4 of course, is something less in terms of the proceedings, and
5 particularly in relation to the fact that the defence counsel for
6 Nuon Chea have objected against any documents being put before
7 the Chamber without the witnesses being called.
8 We would submit that by -- introducing specific details of that
9 document through a question is introducing evidence of -- which
10 they, in fact, want rejected.
11 [10.29.04]
12 But going back to the particular point, Your Honours have ruled
13 that only the general substance can be put, but not the specifics
14 of the statement, particularly as it is not evidence before the
15 Chamber until Your Honours have ruled on the matter, which
16 obviously the parties are still awaiting -- your decisions on the
17 written record.
18 MR. PESTMAN:
19 If the prosecutor is suggesting that Heng Samrin should be heard
20 as a witness, we fully support that request.
21 And I will not go into great detail; I will ask some general
22 questions about the document and about the facts mentioned in the
23 document.
24 MR. PRESIDENT:
25 Please be seated, Counsel.
(Judges deliberate)

[10.36.06]

MR. PRESIDENT:

Please stand up, Counsel.

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

MR. PESTMAN:

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

MR. PRESIDENT:

Yes, Judge Cartwright.

JUDGE CARTWRIGHT:

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

[10.37.04]

MR. PESTMAN:

Maybe the prosecutor can assist me.

MR. SMITH:

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

MR. PESTMAN:

Well, we also put it on our list, and as far as I know, the prosecutor has not objected to it.
MR. PRESIDENT:
The court officer is instructed to take the hardcopy from counsel
and bring it to witness for examination--
(Judges deliberate)
[10.38.03]
MR. PRESIDENT:
Hold on. Court officer, you are not supposed to take that
document.
Counsel, because the document that you refer to is an interview
between an individual with -- and Samdech Heng Samrin and this
witness was not present during the interview, which means he does
not know about the procedure of the interview itself, so counsel
can put general questions to this witness, but you are not
supposed to refer to particular portions of the interview.
Likewise, witness is supposed to listen to questions from counsel
and shall not answer to the question on the basis of
particulation -- rather, on speculation. If the witness
understands the questions asked by counsel, witness shall answer
the question, but the witness is not supposed to guess on the
answer of the questions.
Yes, Counsel, you -- go ahead.
[10.39.45]
MR. PESTMAN:
Thank you, Mr. President. I understand the ruling.
I'm looking at the clock and I notice that it is past the time
you usually break up. Is it a good moment to break up now, or
would you like me to continue with my general questions?

MR. PRESIDENT:
You should continue until you finish that point.

BY MR. PESTMAN:
Q. Duch, do you know what Heng Samrin's position was at the time
Phnom Penh was taken?
A. Mr. President, at the Liberation Day, Brother Rin was the
deputy secretary of the Region 3. I reported this to the
Co-Investigating Judges as well. It was the Division 3 in the
East Zone.

[10.41.04]
Q. Are you sure it was Division 3, and not Chakrey's first
division?
A. Mr. President, Brother Rin was the deputy secretary of
Division 3, in East Zone, and the secretary of the division was
named Peou Hak.
Q. Do you know the name of Heng Samrin's younger brother who also
was a military commander involved in the liberation of Phnom

Penh?
A. Mr. President, I know his brother's name was Thal.
Q. Do you know what his role was during the liberation of Phnom
Penh?
A. Mr. President, Comrade Thal was secretary of the navy position
in Neak Loeang. It was called Division 290.
Q. And who was secretary of the Second Division from the Eastern Zone?

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

[10.43.47]

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

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

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

[10.45.57]

MR. SMITH:

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

Now, I mean, if he took the author out of it, if he took the person that took the interview out of it and just left it to the
1 substance, that's what Your Honours has stated already.
2 So I would ask that counsel would just keep to the substance, the
3 general substance, but not to the specifics of what this witness
4 said.
5 Your Honours still haven't ruled on the witness statements on
6 this issue.
7 MR. PESTMAN:
8 Q. I'll rephrase: Have you any knowledge about the city being
9 divided into various zones and the troops in those zones, areas,
10 not being allowed to go into other areas controlled by other
11 troops? Did you know that?
12 [10.47.17]
13 A. Mr. President, allow me to repeat what I reported to the
14 Court. Zone -- the Phnom Penh Zone was divided in accordance with
15 the division which liberated the zone, and they were supposed to
16 protect the area that they liberated.
17 And as for the principle that people were not allowed to walk
18 freely, that was the principle, or the policy of the Party. I was
19 in the Special Zone, and I was not supposed to come to Phnom Penh
20 Zone. Otherwise, I would be arrested if I did not have the letter
21 -- or if I did not have the pass. If, for example, rode on our
22 motorbike freely, our moto would be confiscated.
23 Q. We just talked about Heng Samrin and his brother, Thal, two
24 commanders who participated in the liberation of Phnom Penh.
25 Do you know -- that's my question: Do you know whether there are
any other division commanders or deputy commanders who participated in the attack and the liberation of Phnom Penh who are still alive today?

[10.49.14]

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

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

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

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

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

[10.51.56]

MR. SMITH:

Your Honour, I object to the question.
He - again, defence counsel is putting specifics of the statement to the witness. He can put the -- he can rephrase the question in another way, but certainly, at the moment, this is not evidence before the Court. And obviously we are seeking that evidence to be placed before the Court, but we are waiting for your decision. And what counsel is doing is attempting to lead evidence of these other statements through this witness. I would just ask that defence counsel follow the direction of the Trial Chamber, that it be left to the substantive matter rather than juxtaposing one witness's evidence against - against this witness.

[10.52.47]

MR. PRESIDENT:

Defence Counsel for Nuon Chea, you are reminded again. And I thank the observation made by the Co-Prosecutor, once again.

I hope that the principle of professionalism that counsel should try the best to follow the direction from the Chamber. Counsel can put general questions without referring to any specific portion or part of the interview or the written record of the interview of another person to put questions to this witness or any other witnesses. This is a reminder, Counsel, and it seems that it is easy for counsel to remember this issue.
Thank you, Mr. President.

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

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

MR. PRESIDENT:

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

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

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

MR. ANG UDOM:

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

MR. PRESIDENT:

Having heard the request of Mr. Ieng Sary that has been made through his counsel, which waives his rights to be present today in this courtroom and to follow the proceedings remotely, from the holding cell, through audio-visual means, for the rest of
today's proceedings, due to his health reason, the Chamber grants the request. It has been made through counsel, waiving his rights to be present in this courtroom and to follow the proceedings remotely, from the holding cell, downstairs.

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

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

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

The Court is now adjourned.

THE GREFFIER:

All rise.

(Court recesses from 1057H to 1120H)

MR. PRESIDENT:

Please be seated. The Court is in session.

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

MR. SMITH:

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

It was put to the witness that, in that interview, he stated that, in 1978, when Nuon Chea replaced Son Sen, on the basis of
that that appeared in the interview with Chris Peschoux. Your
Honours, I have advised defence counsel that that quote has come
not from the interview transcript itself, it's come from some
notes that are attached to the interview but are not reflected in
the transcript of the interview themselves. As to how that
information appears in the notes, it's unclear, but I just wanted
to clarify for the record that the transcript doesn't state that;
it's in fact some notes that are attached to the interview, in
terms of the transition from Son Sen to Nuon Chea.

[11.22.16]

And just one other matter; in terms of the implication by defence
counsel that Heng Samrin is the only commander alive, in relation
to the evacuation of Phnom Penh, Your Honours are aware that, in
our witness list, we put forward two regiment and battalion
commanders, TCW-253 and TCW-356, as proposed witnesses.
And we understand Your Honours haven't decided on the witness
list for the force transfer part of the case, but just to clarify
it for the record that regiment commanders and battalion
commanders have been placed on the Prosecution's witness list,
and Your Honours, obviously, are still to decide which witnesses
would come before this Court. Thank you.

[11.23.21]
MR. PESTMAN:

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

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

[11.24.46]

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

MR. SMITH:

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

We disagree indeed.

May I continue with my cross-examination?

MR. PRESIDENT:

Yes, please.

[11.25.47]

MR. PESTMAN:

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

MR. KAING GUEK EAV:

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

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

A. Yes, it is.

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

[11.27.52]

What is your response to that particular quote from the
MR. SMITH:

Mr. President?

MR. PRESIDENT:

Yes, please.

MR. SMITH:

The objection is based not on the fact that the allegation can't be put; however, to ask this witness to comment on your decision, it's really not appropriate that he does that. But if they - if he wants to put the substance of the allegation to the witness, he can do that and respond to that, but to ask the witness to comment on your judgement, I don't think it furthers the issue factually, which you'll have to decide in this case. He can put the basis -- or that finding as a proposition, but I don't think this witness should be put in a place where he has to comment on how you've judged the proceedings. That's not appropriate.

[11.29.00]

MR. PRESIDENT:

Yes, Counsel Karnavas?

MR. KARNAVAS:

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

As we - as you all may recollect, we had requested both from the
Trial Chamber and from the Prosecution to lay out what specifics both the Trial Chamber and the Prosecution believed that this particular gentleman was less than honest and truthful about during the course of the proceedings in 001. We did so because we wanted to be able to confront him.

We believe that it is entirely appropriate to ask the gentleman to comment on where the Prosecution says that they believe that he was less than honest and less than forthcoming in his previous trial, what he thinks. If he maintains that he was absolutely 100 per cent truthful, then, obviously, it goes to the gentleman's credibility. The same would go for the Trial Chamber, to ask for us to ask the gentleman -- to put to him that the Trial Chamber found him to be less than honest, less than forthcoming, less than truthful and for him to give his opinion. It's putting the case to the witness. He has maintained steadfastly that, throughout his interviews with the Office of the Co-Investigative Judges, speaking with the Prosecution, speaking in his own case, and speaking here, that he has been 100 per cent truthful, albeit he has qualified it that on occasion he might have drawn conclusions, having gotten things mixed up. Nonetheless, I think it is perfectly appropriate to put it to the witness.
If we're here to get to the truth, this is the opportunity to do so through this gentleman. And, after all, it is the Prosecution who has claimed over and over again that this particular witness is in a unique -- I believe that was the word that we've heard half a dozen times, if not a dozen times -- a unique position to fill us in on the facts. Well, that's what we're here for, Your Honours.

[11.31.24]

So I think it's highly appropriate.

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed.

MR. SMITH:

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

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

[11.32.16]

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

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

[11:33:28]

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

MR. PRESIDENT:

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

MR. KARNAVAS:

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

It was precisely for those reasons, Your Honours, that we filed a
motion, early on, requesting the Prosecution to lay out exactly
where they believe the witness had been less than truthful. The
Prosecution's response was: Well, of course we're not going to
ask or produce any evidence where we believe the witness was less
than truthful. But they never came up with specifics.

[11.34.24]

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

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

MR. PRESIDENT:

Mr. Pestman, you may now proceed.

[11.35.25]

MR. PESTMAN:

Thank you, Mr. President. I'm just trying to be helpful. I'm
giving this witness the opportunity to respond to an important
conclusion in your Judgement, which, I assume, was based on the
evaluation of all the facts presented in that particular case.

MR. PRESIDENT:

Counsel may be seated. The Chamber is in deliberation.

(Judges deliberate)

[11.37.20]

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

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

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

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

JUDGE CARTWRIGHT:

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

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

And if I -- if I could just, with the President's permission, add
at this stage that it does get very confusing for the Bench when
there is an objection made, a response, then the objection is
replied to, and then the responders both want a right of reply.
[11.39.27]
If you want to reply to an objection, then please make that clear
before the floor is given to the person -- the party who has made
the original objection, so we only have one round of argument.

Thank you, President.

MR. PESTMAN:

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

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed.

MR. SMITH:

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

[11.40.57]

Your Honours, I mean, in terms of placing new documents before
the Chamber, you know, Rule 87.4 applies and it requires the
Defence to establish why that couldn't have been done before with due diligence. We're not sure when this film first came out and whether or not they've exercised due diligence to place it on the case file, and so, until the Defence can establish the criteria for Rule 87.4, we would object to the - to the showing of the movie.

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

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

MR. PESTMAN:

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

I want to show it to the witness; I don't want to put it before the Chamber. I don't think Rule 87 applies. I'm not trying to establish the authenticity of the fragment; I don't want to put it on the case file; I want to use that particular fragment to impeach this witness. And I believe that I don't have to put it on the file, that it does not have to have a case file number.
And if I remember correctly, for example, when the director of DC-Cam was interviewed, or examined in Court, both the prosecutor and counsel for the civil parties used the website -- which is not on the case file, has no number, and we were not warned that they were going to do that -- used the website DC-Cam has and, in one case, even a PowerPoint presentation from that website to examine the witness.

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

MR. PRESIDENT:
International Co-Prosecutor, you may now proceed.

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

[11.44.18]

Certainly, counsel for Nuon Chea hadn't made it completely clear for what purpose he was using this document, whether he wanted to place it before the Chamber or, alternatively, just to confront the witness.
But what we would say is that we assumed that the Rithy Panh film was available before last night, and the Defence provided a list of documents that they would use today, and that document, I believe, wasn't on that list. And so that was in - it didn't, sort of, follow the Trial Chamber's order -- firstly, that documents be made available 24 hours and, secondly, made available the day before. So we can only wonder why that one was left off the list. So it's really -- it's ultimately a matter of notice. And the Defence had this document and they left it off the list.

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

[11.45.28]

MR. PRESIDENT:

Counsel, you may now proceed.

MR. PESTMAN:

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

MR. PRESIDENT:

The objection by the Co-Prosecutor is sustained. Counsel is therefore not allowed to put up this film; even any portion of it is not allowed for this time being.

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

(Judges deliberate)

MR. PRESIDENT:

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

JUDGE CARTWRIGHT:

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

If that--

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

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

MR. PESTMAN:

We'll come back to this after the break. I think that's the best thing to do. I'm confused -- that's all I can say at this particular moment -- because we were told on more than one occasion that we did not have to put documents we wish to use for cross-examination on any list.
If that - if we were informed wrongly, then -- or if this information was incorrect, then it's important that we are, you know, told so. I'm really confused.
I will continue with my questions.

BY MR. PESTMAN:

Q. Duch, on the final day of your trial, you asked this Trial Chamber to acquit and release you. As your counsel at the time explained -- Kar Savuth -- he said that you should be acquitted because you only obeyed the CPK, and the CPK was the culprit; was the criminal behind all the scenes.
Could you explain to the Court what was actually meant by those words?

[11.50.42]

MR. KAING GUEK EAV:

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

Q. I put it to you, Duch, that you have a tendency to shift the responsibility for your own actions and choices onto others. And I put it to you that blaming Nuon Chea for the crimes committed while you were in charge of S-21 is part of a pattern of
behaviour. And I put it to you that Nuon Chea was never in charge
of S-21 or gave you any orders; Nuon Chea was simply the person
you decided would take the blame and absolve you of
responsibility when Son Sen disappeared from the stage. And I put
it to you -- and then you can react -- that you cannot accept
responsibility for your own actions and that, in fact, you are a
liar; you even fabricated your own confession.

[11.53.06]

MR. PRESIDENT:

International Co-Prosecutors, you may proceed.

MR. SMITH:

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

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

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

So I would ask that counsel break it up into five questions and
take away the allegation that he's a liar.
And other than, if he's got something to say, "you're not telling
the truth about a particular point", put that point to him.
Otherwise, it's not very helpful to the Chamber.

MR. PESTMAN:

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

MR. PRESIDENT:

We thank you very much, indeed, for your alert and that you know
that you should rephrase your questions.
And you indicated the phrase in which you indicated the term that
you should not use to the witness at this time, and you should
avoid it.
And the Chamber wishes to inform you that the assessment of the
value of the evidence put before this Chamber is the task of the
Chamber. Whether the Chamber is convinced or not by having
reviewed the evidence, it is up to the discussion of the Chamber
solely. And this will be done during deliberation, after parties
have already made their closing arguments.

The Chamber has noted your words on second occasion already.
Yesterday and today, you used these terms time and again. The
Chamber hopes that -- as a professional international counsel,
you should have not used the terms in the first place, and that
we do not want these gestures to be influential in our system as
MR. PESTMAN:

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

BY MR. PESTMAN:

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

MR. SMITH:

Mr. President--

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed.

[11.57.37]

MR. SMITH:

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

It's two questions. He says: I put it to you, you are dishonest.
And the second question is: You're blaming Nuon Chea for his
activities.

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

BY MR. PESTMAN:

Q. Duch, did you understand my question?
MR. PRESIDENT:

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

[11.58.49]

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

MR. PESTMAN:

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

[11.59.41]

MR. PRESIDENT:

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

And, again, I wish to reiterate that the Chamber has the discretion to review the probative value of the evidence after
parties have already made their closing statements.

MR. PESTMAN:

I have no further questions.

But just for the record, I was not the one who used the word "dishonest" first; that was the witness when he referred to me. I was just quoting that witness when I used that word. Thank you.

[12.00.49]

MR. PRESIDENT:

Counsel Karnavas, you may now proceed.

MR. KARNAVAS:

Thank you, Mr. President. I just wish to comment because we're going to be here for the next couple of years on this issue -- this trial.

And it seems to me that, with all due respect, the Prosecution, in -- the prosecutor himself, in his opening statement, called the accused "killers", and there was no reaction from the Bench.

I think that's inappropriate.

To suggest now that we cannot put to the witness a general question that he is dishonest or has been dishonest, in my humble submission, is incorrect.

[12.01.35]

Now, it's a matter of technique and it's a matter of how you phrase the question. And I agree with the prosecutor that at times it's much more useful for the Bench to ask questions that have -- that are trying to elicit only one fact as opposed to
compound questions because then, even if you get an answer, the
question is: Is it to the first part, the second part, the third
part, or whatever? So that's that point.
Secondly, with respect to the film itself, if I might revisit it
a little bit, it appears to us, Your Honours, that that film was
released in January 18, 2012, which would have been subsequent to
the - to the commencement of the proceedings, and that was in
France. Here, in Cambodia, when I first became aware of it, I
believe it was released and shown to the public after the Duch
Appeal.
[12.02.26]
So, at least as far as due diligence, it may be something for the
Trial Chamber to consider during the break -- during the break.
I'm making this on behalf of the -- for the Trial Chamber to
consider, that it would appear that the film became available--
Granted, efforts should have been made, perhaps, to alert the
Trial Chamber, and the Prosecution, and the parties that the film
or portions of it, even if it's one minute, was being sought to
be admitted.
But, I think, in light of the fact that we're still in the
growing pains of how to proceed efficiently in this trial
process, it may be worth for the Trial Chamber to reconsider its
position and consider my submission as an oral application under
Rule 87.4 in particular, as was rightly pointed out by Judge
Cartwright. Thank you.
MR. PRESIDENT:

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

[12.03.35]

MR. PESTMAN:

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

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

MR. PRESIDENT:

International Co-Prosecutor, you may now proceed.

[12.04.58]

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

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

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

MR. PRESIDENT:

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

MR. PICH ANG:

Thank you, Your Honours. I wish to be very brief on the film -- the website civil party cited when we put questions to Mr. Youk Chhang and witness from DC-Cam.
At that moment, Mr. President, so far as we remember, reminded parties that, before any document be put before the Chamber, parties were advised to inform the parties and the Chamber in advance. This reminding was made time and again, so let's be guided by the ruling of the Chamber and by the rule.

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

[12.07.41]

MR. PRESIDENT:

Counsel, you may proceed.

MS. SIMONNEAU-FORT:

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

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

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

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

[12.08.50]
MR. PRESIDENT:

We thank you.

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

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

"Rule 87. Rules of Evidence

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

[12.10.46]

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

Since it is now appropriate time for lunch adjournment, the Chamber will adjourn, and the afternoon session will be resumed
The security personnel are instructed to bring witness to his waiting room and have him returned to the courtroom by 1.30 p.m.

Counsel Pestman, you're on your feet. You may proceed.

MR. PESTMAN:

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

[12.11.55]

MR. PRESIDENT:

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

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

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

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

And security personnels are now instructed to bring the accused persons to the holding cells and have Khieu Samphan returned to the courtroom by 1.30.
The Court is adjourned.

(Court recesses from 1213H to 1332H)

MR. PRESIDENT:

Please be seated. The Court is in session.

Before handing over to the defence counsel for Nuon Chea to continue his question to this witness, the Chamber would like to make some observation concerning the request made by counsel for Ieng Sary, which has been supported by defence counsel for Nuon Chea, concerning the projection of a video footage.
The Chamber requires that counsel submit a written request concerning the projection of this video, pursuant to Internal Rule 87.4. Opportunities will be given to other parties to submit responses, should they wish to do so. The time limit for other parties to submit their responses will be three days.

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

QUESTIONING BY MR. PAUW:

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

[13.34.55]

Q. Duch, I'm going to ask you some questions to which we already know the answers, but I want to make it absolutely clear what
And my first question to you is: Did you, personally, ever attend a meeting of the Central Committee or the Standing Committee of the CPK in the period of 1975 until 1979?

MR. KAING GUEK EAV:

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

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

A. Mr. President, no.

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

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

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

A. What documents are you talking about, Counsel?

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

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

[13.38.06]

BY MR. PAUW:

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

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

MR. PRESIDENT:

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

MR. PAUW:

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

So, with your permission, I will just move on because time is short. So I will ask my following question.
[13.39.18]

BY MR. PAUW:

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

And you answered:

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

Do you stand by that statement?

MR. KAING GUEK EAV:

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

[13.40.21]

MR. PAUW:

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

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

(Judges deliberate)
MR. PRESIDENT:

The procedure for showing documents before the Chamber, and as already informed to the parties, the parties should prepare the document in hard copy and provide the witness with that copy before questions can be put regarding the document. Therefore, counsel is instructed to follow the procedure.

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

BY MR. PAUW:

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

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

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

MR. KAING GUEK EAV:

A. There are a lot of documents -- there are a lot of documents
during my investigation phase. I think I should receive a copy of
those documents or the documents should be put onto the screen.

As I have said -- and Mr. President echoed my concerns -- that
there may be a problem with the translation.

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

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

[13.45.56]

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

Q. You have also stated that, when you were asked whether you
knew what Nuon Chea did with the confessions after you had
allegedly sent them to him, you have answered: "I do not know."

I ask you now: Do you know, Duch, what Nuon Chea did with the
confessions after you allegedly sent them to him?

Maybe my microphone was not on. Is that correct?

(Judges deliberate)

[13.47.16]

MR. PRESIDENT:

This is a repetitious question; witness should not answer that.
1 BY MR. PAUW:
2
3 Thank you, Mr. President.

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

5 [13.48.48]

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

7 MR. PRESIDENT:

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

9 Could counsel indicate the ERN number for transcript?

10 BY MR. PAUW:

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

12 [13.50.19]

13 Q. So, if you have seen the document, you have read that -- according to the English translation, you -- you stated: "I can say that I began to think that this regime was criminal from 1983 on."
And my question to you is: Why did it take you until 1983 to realize that the regime of Democratic Kampuchea was criminal?

MR. KAING GUEK EAV:

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

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

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

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

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

This is my answer.

Q. Thank you for that answer.

I would like to move on to the next topic, and that is the research that you have done. I can state that you have done
research because you have mentioned this several times before the
Trial Chamber. And also, in your statements before the
Investigating Judges, you have indicated several times that you
have read and studied documents and books relating to the period
of Democratic Kampuchea.
I'm going to ask you -- I'm going to put before you the names of
a few books and I wish -- wish for you to just indicate whether
you have read those books or not; a simple yes or no answer will
do.
And the first question is: Have you read the book "Voices of
S-21" by David Chandler?
A. Yes, I have.
Q. Have you read the book "The Lost Executioner" by Nic Dunlop?
A. Yes, I have.
Q. Have you read the book "The Gates" by François Bizot?
A. I have also read that, but I was not interested in that
because the French he used in that book was difficult to
understand. I usually teased the authors that he was a poet
because his French was imaginary.
[13.55.34]
Q. Have you read the book "Cambodia: Year Zero" by François
Ponchaud?
A. I have read some of it; only a few pages.
Q. Have you seen the movie by Rithy Panh, "S-21: The Khmer Rouge
Killing Machine"?
A. I have watched two pieces of footage by Rithy Panh, but I do not remember the titles.

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

A. I met them.

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

[13.57.22]

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

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

MR. KAING GUEK EAV:

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

MR. PRESIDENT:

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

BY MR. PAUW:

Mr. President, to clarify this point, Duch has been a suspect in
Case 002. He has been questioned as a suspect in Case 002, and I, therefore, assume that he has had access to documents in Case 002.

MR. KAING GUEK EAV:

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

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

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

A. I responded to questions posed to me by Co-Investigating Judges; some questions extracted from Mr. David Chandler's book.

I have not cited the substance of the book as the base for supporting my responses. I talked to the Co-Investigating Judges on how David Chandler wrote or compiled the information in his book.

Q. Thank you.

Duch, I will now move on to the next segment of my questions, and
that involves some answers that you provided when interviewed by
the Co-Investigating Judges.

And I ask the President for permission to show document D90; it's
Khmer ERN 00198873, English ERN 00198882, and French ERN
00198890.

[14.02.22]

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

MR. PRESIDENT:

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

BY MR. PAUW:

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

[14.03.44]

Duch, I do not care about the contents of these statements. My
question is the following: Do you agree with me that your study
of the case file improved your understanding of the organization
of the regime of Democratic Kampuchea?
A. It is correct. Here, I responded to the Co-Investigating
Judges concerning the structure of S-71 and I did say that my
knowledge has improved concerning the structure of S-71.
Q. The following document I want to show you is D86/25; the
English ERN is 00185474, Khmer ERN is 00185466, and the French
ERN is 00185481. It is a statement before the Co-Investigating
Judges on the 29th of April 2008. And I ask permission to show it
on the screen.
MR. PRESIDENT:
Counsel, could you please repeat the ERN numbers in three
languages because you were rather fast when reading out the
number and the interpreter have missed portion of the reading;
could you please repeat?
[14.06.10]
And court officer is now instructed to bring the document from
counsel to witness, and the document can be now put on the
screen.
So, Counsel, please repeat the numbers.
BY MR. PAUW:
Thank you, Mr. President, my apologies. I tend to get excited
when I read out ERN numbers, but I will try to be slower. English
ERN is 00185474, Khmer ERN is 00185466, and the French ERN is
Q. And as the witness has already received a copy of the document, I will read a question as put by the Investigating Judges. The Investigating Judges ask Duch: "You told us you would give us your written observations on your 1999 interview and on David Chandler's book, "Voices from S-21", and we still have not received anything."

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

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

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

MR. KAING GUEK EAV:

A. Yes, I do.

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

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

Q. Thank you.

And then I would now like to move on to the next document which
is document D238; it is an interview with the Investigating
Judges of November 10, 2009. English ERN 00403888, Khmer ERN
00403877. And French ERN is 00403897.
Can I get permission to show this document on the screen and show
it to the witness?
MR. PRESIDENT:
You may proceed, but we seem to have not received the ERN in
Khmer clearly yet; could you please repeat it?
BY MR. PAUW:
Yes, Mr. President, to be absolutely sure, I'll quote from the
actual document; it's 00403877.
[14.10.40]
Q. And while the witness is reading in Khmer, I will again
provide the English translation. It's an interview that deals
with the confession of a certain Khek Bin alias Sou. And I want
to quote the part where Duch states the following:
"To summarize concerning the use to which this confession was
put, I transmitted the document to Son Sen via his messenger. Son
Sen must have prepared the document and asked Pol Pot for a
decision. I do not know whether the note by Nuon Chea was written
before or after Pol Pot's decision. I think, although this is not
clearly stated in the document, that Nuon Chea was responsible
for ensuring that Pol Pot's decision was properly implemented
and, therefore, sent the decisions to various zones."
[14.11.37]
And now we get to the part that I want to ask you about. Here, you state, Duch -- and I quote:

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

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

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

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

MR. KAING GUEK EAV:

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

MR. PRESIDENT:

Counsel for the civil party, you may now proceed.

MR. PICH ANG:

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

2 MR. PRESIDENT:

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

8 [14.14.21]

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

11 MR. KAING GUEK EAV:

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

14 MR. PRESIDENT:

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

19 [14.15.27]

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

23 BY MR. PAUW:

24 Q. Duch, I will ask the question more simply. In this answer, you
25 state -- when you're talking about this particular confession,
you state -- I quote: "In fact, I am drawing my conclusions on
the basis of the decisions of 9 October 1975 and 30th of March
1976."

What do you mean with that statement?

[14.16.40]

MR. KAING GUEK EAV:

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

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

A. By "general norm," I referred to the decision on the 30th of
March of 1976; the decision that was implemented throughout the
country as a general norm. And the decision on the 9 of October
1975 was also part of the general decision to be implemented
throughout the country. Son Sen was in charge of general staff
and security matters all across the nation.
Q. On the same topic, I would like to show you, again, documents D228 and the English ERN -- excuse me, the English ERN is 00398231 until 00398233, Khmer ERN is 00398224 until 00398225, and the French ERN is 00398239 and the following pages.

[14.19.40]

You already have this document in front of you.

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

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

And regarding this confession, you state:

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

[14.20.39]

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

"You have called my attention to the fact that we have found no trace of a summary report to Pol Pot. Let me recall that all problems were to be reported to Pol Pot. The decision of 9 October 1975 specified that any individual decision must be
brought to the knowledge of the collective and the decision of
the 30th of March 1976 provided for a weekly meeting during which
Nuon Chea undoubtedly made his report to Pol Pot." End of the
quotation.

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

[14.22.03]

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

MR. PRESIDENT:

Counsel for the civil party, you may now proceed.

MR. PICH ANG:

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

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

MR. PRESIDENT:

Your observation by the counsel for the civil party is
appropriate. We also note that the witness may have problems
following what counsel is putting to him.

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

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

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

MR. SMITH:

Thank you, Your Honour. Just for clarity's sake, the witness was pointed to the passage that started off: "My analysis is that this document was -- went to Nuon Chea..." But perhaps, if the witness -- so that the witness can have the full understanding of his answer, that the witness refer to the previous sentence beforehand, where it states, on the upper-right hand corner -- he wrote "703", and under the square on the middle, he marked "To Brother Nuon, one copy, 11th of November 1977". That part of the passage wasn't put to the witness. So all I would ask is that, perhaps, if the witness could review that
MR. PAUW:

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

[14.25.43]

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

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

[14.26.50]

BY MR. PAUW:

Q. Duch, you've stated on numerous occasions, both before the Investigating Judges and before this Trial Chamber, that you do not remember certain things because it was so long ago, and I understand this; it is a long time ago.
I submit that your testimony has made some other things clear and I put it to you that you have no personal knowledge of what happened in Standing Committee; you have no personal knowledge of what happened in the Central Committee; you do not know what happened to the confessions after you sent them out, you just speculate. You do not know what the roles and activities of Nuon Chea were in the Central or Standing Committee. For your statements, you rely on what you have read afterwards, mixed with what you may or may not remember. You rely on these minutes of the Central Committee and the Standing Committee which you read 30 years after they were allegedly adopted and you assume that this is how things actually worked in the leadership of Democratic Kampuchea.

[14.28.04]

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

[14.28.54]

MR. PRESIDENT:
Co-Prosecutor, you may now proceed.

MR. SMITH:

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

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

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

[14.29.52]

MR. PAUW:

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

MR. PRESIDENT:

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

MR. PICH ANG:

Thank you, Mr. President, Your Honours. What counsel for Nuon Chea was raising is against the instruction by the President's ruling, and he concluded that witness Kaing Guek Eav alias Duch understands everything, that he could respond to him.
However, apart from counsel and witness, the general public may not be aware of what counsel and witness are now discussing. This case filed before us is not for a few people. It is for the whole nation, and for that reason, the points made should be clear and understood by everyone.

MR. PRESIDENT:

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

MR. PAUW:

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

MR. PRESIDENT:

You may proceed.

BY MR. PAUW:

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

MR. KAING GUEK EAV:

A. Mr. President, a person's answer varies from another person's
answer. When I answered to the Co-Investigating Judges were talking about, without understanding the topic discussed at the time, we could not understand the reason why I answered it that way. I did answer it that way. Extracting only a portion of my answer to say it here is not proper. I submit that I do not have the competence to answer these kinds of questions.

MR. PAUW:

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

[14.33.53]

MR. PRESIDENT:

Yes, Counsel Karnavas.

MR. KARNAVAS:

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

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

It made me recall that a few days ago I did the same thing. I objected on the grounds that Mr. Smith himself was "cherry-picking" -- I believe that was the word I used -- part of it and requested that another portion be read as well, at which point the retort was: That can be done on cross-examination. So I
just point this out because what's fair for the Defence should be fair for the Prosecution.

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

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

MR. PRESIDENT:

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

MR. SMITH:

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

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

In this instance, the passage that was being put to the witness left out a significant factor which would have led to the witness' answer, whereas the passage that I put to the witness was complete. The fact that there was text before and above that passage doesn't mean it was taken out of context.
And so we disagree with Mr. Karnavas' view on that, because, if we want to take it to the extreme, then we'd have to read the whole set of interviews to the witness to keep it all in context. There has to be a reason of -- sort of a level of rationality to what is put to the witness and whether it's complete or incomplete, and we disagree with the assertion by counsel for Ieng Sary.

MR. PRESIDENT:
The Chamber notes these observations.

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

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

We are now adjourned.

THE GREFFIER:

All rise.

(Court recesses from 1437H to 1500H)

MR. PRESIDENT:

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

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

QUESTIONING BY MR. SON ARUN:
Good afternoon, Mr. President, Your Honours, and the Court. My co-counsels have already put several questions to the witness. I would like now to put a few more questions.

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

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

MR. KAING GUEK EAV:

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

[15.03.10]

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

First, all representatives had to remain with the popular masses or their constituents for the State Presidium -- rather, the
people representative assembly each held by Comrade Nuon, Phim
and Mok and other composition of the organization would be up to
the Standing Committee to decide.
I would like to ask you this question. Here, it says something
about Mr. Nuon Chea as the President of the Assembly. However,
when it comes to the State Presidium or the government, rather,
we can see Comrade Pol, the first secretary and; Van, deputy
prime minister for foreign affairs; Comrade Vorn, deputy prime
minister for economics and finance; Comrade Khieu, deputy prime
minister for national defence. And according to the later
decision by the Standing Committee--

[15.05.35]

MR. PRESIDENT:

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

[15.06.24]

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

MR. PRESIDENT:

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

MR. SON ARUN:

(Microphone not activated)

MR. PRESIDENT:

Please make sure your mic is activated before you speak.

[15.07.28]

MR. SON ARUN:

Document E3/12.

MR. PRESIDENT:

Thank you.

Court officer is now instructed to take the document and hand over to the witness. Assistant of the counsel can now put the document up on the screen if he may.

MR. SON ARUN:

The document is now up on the screen.

MR. PRESIDENT:

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

BY MR. SON ARUN:
Q. Mr. Witness, in this document, there is no mention of Nuon Chea as the top leader in charge of the ministry of -- in charge of security matters, as you indicated earlier. Could you please elaborate on this?

MR. KAING GUEK EAV:

A. My first impression is that you did not quote correctly the portion concerning Comrade Khieu. In this document, it is correct. If you read through the upper part of the document, the government shall be that of the Party. I will state that is the truth, and Mr. Son Arun may refer to the statute of the Party as well. The Party of CPK belongs to the worker and peasant class. The Party governs absolutely and firmly over every fragment of the society. So every affair of the Party must have been informed by Brother Pol and Nuon. Brother Pol rendered the orders and Brother Nuon ensured that the orders were well implemented.

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

MR. SON ARUN:

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

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

[15.12.36]

BY MR. SON ARUN:

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

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

[15.14.40]

MR. KAING GUEK EAV:

A. Mr. President, first, I would like to comment on the work of the Party affairs by Nuon Chea. "Party affairs" here does not refer to study sessions. That would be a lie. "Party affairs" mean the recruitment of new members and how disciplinary actions
be implemented or imposed on members of the Party who committed wrongdoings.

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

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

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

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

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

[15.17.37]

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

A. According to my knowledge and practice and what I heard. The ministry of national defense was in charge -- was charged by Son Sen. At that time they called the national defense ministry
however, Son Sen was the head of the general staff of the CPK's army. They got their own general staff committee.

[15.18.32]

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

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

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

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

A. Mr. President, with regard to security affairs, throughout the country there were at least 196 police officers. S-21 was one
among them and I already indicated, in detail, the work of S-21. I do not believe that there is no document relevant to the structure, because I was the one who reported to Son Sen and Son Sen, every now and then, talked about Brother Nuon. And I indicated time and again on this already.

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

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

What you said that Son Sen had to work directly with you and you work directly with him and at some point you dealt directly with Nuon Chea. So my question is whether that is the case. Since the work was operated on a hierarchy core structure so it had to be operated top down or like that or could you tell us in detail what is your opinion concerning this structure? Was it in a mess
like that or not?
A. You said that every state had its own structure. However, could you please refer to China during the time when Fa Guofeng (phonetic) as the president. The president of the party was the prime minister at the same time. The deputy was the head of the assembly. Li Xiannian was the president. We asked what power Li Xiannian had. What about Li Ying Ning (phonetic)? Did he have any power? They had none. These people were more symbolic because they were senior citizen and they were people who were respected but not people who enjoyed power.

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

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

Q. Thank you. I noted that you testified that on the 15 of August 1977, after Son Sen had left for the East, you indicated that
some important confessions and documents were submitted to Nuon Chea. Could you tell the Court how this happened?

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

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

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

A. I think Mr. Son Arun trying to confuse me. I was talking about general staff; I'm not talking about security. As I indicated, security committees were not established all across the country, back then. Son Sen assigned his team to handle some documents so that the documents could be forwarded to Pol Pot who made the final decision.
With regard to the 96 security officers all across the country, the report from these offices had to be forwarded all the way to the Standing Committee and for general staff, they were in charge of weapons and military.

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

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

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

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

Q. I now move on to another question. You answered to the Co-Prosecutor last week that, if we talk about "the Party", it
was about Pol Pot and Nuon Chea. If we talk about the arrests or
smash, it was about Pol Pot and Nuon Chea. If we talk about smash
and other major orders it was about Nuon Chea, and so on and so
forth.

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

[15.33.10]

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

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

A. Thank you. Mr. President, we used to know each other so we may
be too excited. Allow me to answer this. As I said earlier, in
theory, Party refers to the meetings that collected those who
joined the core pillars of the Party. They were Party members and
they had their own roles. We had the super - the superiors who
were responsible for affairs across the country or from one
congress to another. The other work was in the hand of the
secretary of the Party. It was as of the decision on the 9th of
October 1975.
The secretary was in charge of the overall work.

And the deputy secretary was in charge of the Party's affairs.
Given - so given his responsibilities, he had the power to do a
lot of thing. And as I indicated was on page 5, line 2. As
evidence, when Pol Pot took a rest, Brother Nuon came to replace
him. And as for the confession of Kung Kien, Son Sen wrote a
document and sent it to Brother Nuon directly and it was Brother
Nuon who decided.
So he, Brother Nuon, made the decision when Pol Pot took arrest.
So, again, when was not available, the other did the work on the
other one's behalf. So that was in practice and in short.
Counsel asked me what we mean by the word "party". A party is a
theory, it is a political force that collected core forces within
the party and it followed the idea of the democratic centralism.

Q. Can you indicate further whether all Power was in the hands of
the secretary or the deputy secretary of the Party? Was it
stipulated somewhere in the statute of the Party?
A. Mr. President, may I request counsels to examine the statute
of the Party? One concerns the discipline of the Party. The
subordinates had to respect the superiors and we obeyed the
principle of the democratic centralism.
Let me give you an example. In the document issued on the 30th of March 1976, it mentioned clearly that at the cooperative, the one who decided to -- rather at the base, the one who decided to smash was the secretary of the zone. There was an instance that Kang Chap arrested the wife of a relative of Khieu Samphan and when this information was known by Pol, Kang Chap was punished. So Brother Pol said: You had the rights to make the decisions to smash, but you can't decide subjectively. That was why Son Sen always sought comments from Pol Pot and we had a lot of annotations that mention this.

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

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

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

Q. But when it comes to decision making, was it done by you together with Hor like what Nuon Chea had to do; because this is
1 what you call the centralism?
2 A. Mr. President, work that was assigned from the superior was
3 handed over to me and I disseminated the work.
4 There was -- there could be instances where we could express our
5 idea that work was not properly done. And when I was absent, my
6 deputy was in charge, but I would be informed before everything
7 was done. Daily work was done following orders. Everything was
8 done following orders.
9 15.42.43]
10 Q. I would like to make an analysis and I would like to invite
11 you to join my analysis concerning the meeting -- the minutes of
12 the meeting. When it comes to the distribution of the work, for
13 example, number one, it talks about the delegation of work and
14 the operational process. One, "Secretary -- Comrad Secretary:
15 General responsibility over the military and economy." And number
16 2, "Comrad Deputy Secretary: Party affairs, social action."
17 But it only -- rise it this way and that's not expressed that the
18 person was responsible for this work.
19 A. There was no mistake in the document. The minute takers did
20 not make any mistake. Pol Pot sometimes said this person was
21 responsible for this, but sometimes he did not mention the word
22 "responsible". He only said: This person, this work.
23 He also talked about --
24 (No interpretation)
25 And the word "Party affairs" means that it's to recruit, to
1. promote, and to discipline Party members. We have this evidence here.

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

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

6. [15.45.25]

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

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

14. A. Mr. President, allow me to answer this question as follows. The Central Party could assign the assistant officers. If I'm not mistaken, it was stipulated in Article 8 of the Party Statute. That was about the security issue directly supervised by the Central Committee. And as for the logistics, it was to go through Pang. Yes, and if I'm not mistaken, it was stipulated in Article 8.

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

24. A. I was educated by Vorn Vet from 1967, and I met him again in 1971. And after he went to the special zone in Phnom Penh, his
house of Phnom Penh, I was with Son Sen. So my history with Vorn Vet began from '73 to '74.

Q. After the -- after Phnom Penh was liberated after 1975, did Vorn Vet control the security?
A. No, he did not control the security. He controlled the economy. He was on -- in the south.

[15.48.54]

Q. When Son Sen went to -- was on his mission in the East Zone in 1977, on the 15th of August 1977, when Nuon Chea took place, that was what you said, did -- or do you have any evidence -- do you have any official mission letter that proves this, that shows that you communicated directly with Nuon Chea?
A. Mr. President, when my superior went to Neak Loeang I was not aware of that. I was not even aware of that. One day, Comrade Lin came to call upon me to work and I went with him, and then I met with Brother Nuon at Suramarit Buddhist School, and I was told that Comrade Khieu went to the battlefield, and so I had to go and work with him. Pang and Lin frequently went to that place. This is the fact, and as for the official letter, there was no official letter. Son Sen did not have any official letter from Brother Pol.

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

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

[15.51.42]

A. Mr. President, allow me to talk about this precisely, comprehensively. The internal "Revolutionary Flag" magazines followed the Chinese magazine. The Chinese magazine was called "Red Flag", and it was written in Chinese. I read the Chinese magazines once in 1967 when I was in Chamkar Leu. Later on, I was detained in prison, and once I was released I went to work at M 13. It was on the 21st of July 1971. So it was in 1972 when I again received the internal magazine. At this time, the magazine was changed -- the title of the magazine was changed from the "Red Flag" to the "Revolutionary Flag", and since then I regularly received the magazines. [15.53.03]

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

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

Q. Did you remember the month?

A. No, I did not.

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

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

I received some "Revolutionary Flag" magazines regularly, every
month, but sometimes two issues were included together as a one
special issue, or two months, sometimes three months were, you
know, a special issue was published in two or three months. So it
is not possible for me to do the calculation for the total number
of the magazines.

[15.54.44]

Q. When you saw and read the "Revolutionary Flag", it means that
you are very sure about the magazines. If so, can I ask you to
explain the characteristics of the magazines?
A. Thank you, Mr. President. These "Revolutionary Flag"
magazines, from 1971 or 1972, these magazines were sent or
distributed to each zone, five copies for each zone, and then
there were people who copied these magazines or reprinted these
magazines so that there were enough for every zone. Each copy
could be reprinted into 100 copies. We could reprint it -- we
could reprint those magazines in red ink, and there was a slight
difference when it comes to the shape of the flags on the cover
page.

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

[15.56.47]

Q. You said originally, from 1971 or before that until 1975, the
"Revolutionary Flag" magazine was handwritten. After that --
after 1975 the cover page was published in colour. At that time, was it handwritten or was it typed?

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

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

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

[15.58.52]

Q. Thank you.

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

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

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

[16.00.01]
A. I would like to say that the events happened in Kampuchea.

First, the CPK advised us in the "Revolutionary Flag" of the evacuation of the population from Borei, and when the people were evacuated the enemies were deprived of the people to control, so we had an ample opportunity to attack them. The reason we evacuated people was to ensure that they come on our side.

Then, in 1974, the CPK won the battle in Udong. At that time, Son Sen ordered me to evacuate a few people to Pursat Province. At that time, there was one person, KW-30, or Uch Sorn, who testified before the Chamber, still survived, and other people also survived the ordeal and some died later.

After the event, I was in Amleang. A few days later, I noted that a few people were seen walking on the roads, and I was thinking to myself perhaps these people were volunteers who would like to go to their hometown voluntarily. Later on, I learned that there was an office set up in Amleang to receive the people and to manage the people where they should go next. That's all I know.

And when I came to Phnom Penh, and on the 26th of June -- and I think I can refer to document KNH166 for this. During the study sessions, the first topic of the study session was about the victorious factors. The victorious factors include the great leap forward. Great leap forward means that we were prepared very well. People had to be evacuated. Foreigners, including westerners, had to be -- had to be expelled or sent out of the
country.

[16.03.07]

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

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

A. There was no instruction to any combatant to call me, myself, Brother East or Brother West. The combatants themselves came up with the terms. And Koy Thuon was the only person who told me about Brother Number Two; he used the term. Later on, we learned also that Ta Mok was addressed as Brother Number Four. So this is how the terms came to our mind.

[16.05.00]

MR. PRESIDENT:

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

MR. SON ARUN:

I perhaps need another hour, if Mr. President allows. Perhaps I need one hour on the next -- on -- tomorrow, rather. My apologies, tomorrow is Friday and we don't have hearing. Perhaps
on Monday I may have that hour for finishing my questions?

(Judges deliberate)

MR. PRESIDENT:

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

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

MR. KARNAVAS:

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

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

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

But I think I can keep it within one day, and that would give the Khieu Samphan team one day. I may be able to do it in less than a day, but I've scheduled for the entire staff, myself, to work over the next three days to see what has been covered so we can do a very focused -- a very focused examination, in keeping with some of the rulings that have already been made, and so that we
1 don't lose any time with procedural matters. Thank you.
2 MR. PRESIDENT:
3 Counsel for Khieu Samphan, you may now proceed.
4 [16.07.55]
5 MR. VERCKEN:
6 Thank you, Mr. President. I am in the same situation as my
7 colleague Karnavas. It is true that the privilege we have to
8 speak last makes any forecast complex, because to avoid
9 repetitions I and my entire team will have to spend the next
10 three days reformulating the questions that we have in mind to
11 try to gain time.
12 Be that as it may, it is difficult for me to answer your
13 questions with any precision, but what is certain is that I
14 wouldn't be able to complete my examination in less than a day,
15 including of course the examination by my Cambodian colleague.
16 That is something that is obvious to us.
17 The Tribunal has decided not to sit on the Wednesday and Thursday
18 next week, and that is understandable, but that poses problems to
19 us, although, again, I must say that at this point in time it is
20 quite difficult to say that I will need less than a day at the
21 very minimum.
22 (Judges deliberate)
23 [16.10.12]
24 MR. PRESIDENT:
25 Since it is now an appropriate time for today's adjournment, we
shall now adjourn. However, the Chamber is seized of the request
by counsel for Nuon Chea. The Chamber has already scheduled
hearings to be conducted on Monday and Tuesday next week.
Counsel for Nuon Chea has indicated very clearly that they would
prefer two days for questioning the witness. For that reason,
since counsel for Nuon Chea have already used their time
allotted, we will proceed to counsel for Ieng Sary and Khieu
Samphan respectively on Monday and Tuesday.
If time is left over from two counsels, then counsel for Nuon
Chea may take the advantage of the remainder of the time left
over by the counsel, and if not, then we will decide accordingly
on the practical circumstance on those days.
[16.11.44]
The Chamber is now coming to a conclusion for today, and the next
session will be resumed on Monday and the hearings will be
conducted for two days only next week.
Security personnels are now instructed to bring witness to the
detention facility and bring all the accused persons to the
detention facility and have them return to the courtroom by 9
a.m., on Monday next week.
The Court is adjourned.
(Court adjourns at 1612H)