



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

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ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

ឯកសារដើម
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

10 April 2012

Trial Day 50

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

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INDEX

MR. KAING GUEK EAV, alias DUCH

Questioning by Mr. Vercken..... page 1

Questioning by Mr. Son Arun resumes page 78

List of Speakers:

Language used unless specified otherwise in the transcript

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

1

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 As scheduled, the Chamber will today continue to hear the
6 testimony of the witness, Kaing Guek Eav alias Duch, who will be
7 questioned by Khieu Samphan's defence team.

8 The floor is now given to Khieu Samphan defence team to question
9 the witness. You may proceed.

10 QUESTIONING BY MR. VERCKEN:

11 Thank you, Mr. President. Good morning to everybody present in
12 this courtroom. Good morning to you, sir.

13 [09.02.33]

14 Q. In asking you some questions, I'm going to try and restrict
15 myself to asking you questions about information that you claim
16 to have been in possession of at the time of the facts.

17 I don't think anybody here can reproach you for having wished to
18 study the period of Democratic Kampuchea and to have wished to
19 defend yourself before the judiciary that has accused you, but
20 the fact remains that you are neither expert nor historian and
21 that you are, therefore, not called upon here to comment upon
22 documents, the existence of which you were unaware of at the time
23 of Democratic Kampuchea and which cover issues that you did not
24 directly witness yourself at that particular time.

25 So I'll begin by asking you a few general questions, as is

2

1 customary, before we focus in on some points in your statements
2 because they would, I believe, fall within the framework that I
3 have set out in these opening remarks.

4 [09.04.12]

5 Before the meeting of the 6 January 1979 that we will talk about
6 in a while, did you have any particular contact, of any kind,
7 with Mr. Khieu Samphan?

8 MR. KAING GUEK EAV:

9 A. On the 6th of January, let me set that date aside, I would
10 like to respond on the events before the 6th of January. Before
11 that date, I did not have any involvement with Khieu Samphan; I
12 only saw him from a distance on the 17 April 1978 commemoration.

13 Q. When you were questioned by Investigating Judges on the 23rd
14 of August 2007, in document D86, on page 3, French ERN 00147929,
15 Khmer 00146551, you said to the Judges that, under Democratic
16 Kampuchea, you were not allowed to meet Khieu Samphan; can you
17 confirm this today please?

18 A. During that period, I did not have a right to meet with
19 Brother Hem or Khieu Samphan.

20 [09.06.39]

21 Q. Who imposed this particular ban?

22 A. That is the Party's principle. We could only meet and report
23 to the direct superior. Khieu Samphan was not my direct superior.

24 Q. 24th of June 2008, E3/107, on page 6 talking to the
25 Investigating Judges, French ERN 00197983, English 00198222, and

3

1 Khmer 00197973, you said that -- let me just repeat the Khmer
2 ERN, it's 00197973 -- you said that Son Sen never talked to you
3 about Khieu Samphan; can you confirm that please?

4 A. Son Sen did not say anything about Khieu Samphan because there
5 was nothing related to him to talk about.

6 [09.08.51]

7 Q. Yesterday, in this courtroom, you said that you did not know
8 what happened to the S-21 confessions that you sent upwards to
9 your superiors. I'd like to know if you can confirm what you said
10 to the Investigating Judges on the 19th of November 2008 in D117,
11 French ERN 00238823, English ERN 00242875, Khmer 00238833 - 9833,
12 and you stated to the Investigating Judges: "Nothing allows one
13 to suppose that Khieu Samphan himself read the confessions."
14 That's what you said at the time; are you able to confirm that,
15 please?

16 A. I could not see it clearly. Could you please make a slight
17 projection of the phrase that I -- that you said I spoke to the
18 Co-Investigating Judges?

19 [09.10.45]

20 MR. PRESIDENT:

21 Please try to follow the procedure as practiced by other parties
22 and as informed by the Chamber. You need to prepare your work as
23 the Ieng Sary's team did yesterday so that it could speed up the
24 proceeding and not to waste your time.

25 (Short pause)

4

1 Counsel, do you have any hard copy of the document? If you do,
2 please deliver them to the court officer so it can be projected
3 on to the screen. The document from the case file that needs to
4 be projected to the screen can be delivered to the court officer
5 as the Chamber grants you the permission to present such a
6 document to the witness.

7 Court officer, once you receive the document, please follow the
8 same procedure as you did yesterday.

9 MR. VERCKEN:

10 I have the document, Mr. President. I'm just going to underline
11 it so that the witness can immediately locate the passage
12 himself.

13 [09.12.50]

14 If the greffier could kindly come to assist, then we can pass the
15 document on to the witness.

16 MR. PRESIDENT:

17 Court officer, please receive the document and you can deliver it
18 to the witness.

19 MR. KAING GUEK EAV:

20 Mr. President, I would like the counsel to repeat his question.

21 MR. PRESIDENT:

22 Counsel, please repeat your question regarding the document put
23 before the witness.

24 BY MR. VERCKEN:

25 Q. Yesterday, in this Court, you said that you did not know what

5

1 happened to the S-21 confessions which you sent upwards to your
2 superiors and, in the past, you made a statement which could be
3 compared to what you said yesterday and you said, to sum up,
4 nothing allows me to affirm that Khieu Samphan, himself, read the
5 confessions.

6 [09.14.34]

7 I'm simply asking you if you can confirm that statement.

8 MR. KAING GUEK EAV:

9 A. I still stand by the fact that I did not know what my superior
10 did with the documents. Secondly, I still maintain my position
11 that Brother Hem did not read the documents before Son Sen. Let
12 me repeat, I did not acknowledge that Brother Hem read the
13 document before Son Sen. It was only Son Sen who read the
14 document before everyone else.

15 Q. Moving on to another question, during the investigation and in
16 these recent days, you have claimed that after the arrest of Chou
17 Chet you were told, in confidence, by Bong that Pol Pot asked him
18 not to convene Vorn Vet to the meeting at which there had to be a
19 decision about the arrest of Chou Chet, but rather you said that
20 Mr. Khieu Samphan should be invited instead.

21 [09.16.52]

22 My first question on this is as follows: As far as you are aware,
23 did Pang attend the Standing Committee meetings?

24 A. I actually wanted -- want the counsel to present the document
25 on the screen so that the public can see it.

6

1 Of course I can respond to your question immediately, so I will
2 request the President to allow the counsel to present the
3 document on screen.

4 MR. PRESIDENT:

5 Counsel, are you relying on any particular document for this
6 question?

7 MR. VERCKEN:

8 Well, at this stage, not particularly, Mr. President. I was
9 simply putting a question to the witness.

10 [09.18.22]

11 MR. PRESIDENT:

12 If this is a general question, then the Witness, you may need to
13 respond.

14 MR. KAING GUEK EAV:

15 The counsel, in his question, wants to know whether Pang has the
16 right to attend the meeting.

17 Pang was the organizer for the meeting place in order to -- for
18 the members of the Standing Committee to convene the meeting. In
19 principle, I believed Pang did not have the right to attend the
20 meeting.

21 BY MR. VERCKEN:

22 Q. Well, then, sir, does that mean that Pang was not able to tell
23 you whether, for example, Mr. Khieu Samphan himself attended a
24 particular meeting?

25 MR. KAING GUEK EAV:

7

1 A. Pang was the one who invited members for the meeting. On that
2 day, Pang did not invite Brother Vorn, but instead he invited
3 Brother Hem.

4 [09.20.10]

5 This is according to Pang, who followed the orders from Brother
6 Pol.

7 Q. Would it be true to say that the only information that Pang
8 gave you on that day was that there had been a change in the
9 invitations, Khieu Samphan instead of Vorn Vet?

10 A. Vorn Vet was a member of the Standing Committee, but Khieu
11 Samphan was not. He was a member of the Central Committee.

12 Q. Witness, I don't know if my point is getting through here, but
13 what I'm trying to ask you is the specifics of the information
14 that Pang shared with you on that day. Did Pang tell you anything
15 other than: "Well, instead of Vorn Vet, I've been asked to invite
16 Khieu Samphan"?

17 A. This last question is a bit different from the question --
18 from the previous one; let me respond to that.

19 [09.22.18]

20 Initially, Pang told me that on that day Vorn was in his office,
21 but Brother Pol, instead, asked him to invite Brother Hem. Then
22 Pang explained to me that Vorn Vet was difficult to work with. At
23 each meeting he did not -- he was not happy and he was not
24 active; that what was Pang's explanation to me.

25 Q. And if I understand correctly, that's all he said to you.

8

1 A. At that time, that's what was explained to me by Pang.

2 Q. Is Pang still alive today?

3 A. Chhim Sam Aok alias Pang was arrested and put in S-21. He
4 already died.

5 Q. Was anybody else present at your talk that day with Pang?

6 A. The conversation with the superior or the superior from about
7 could not be -- involve any other person or nobody would be near
8 the -- the people who made that conversation.

9 [09.24.31]

10 Q. True, but if that conversation had taken place while Pang
11 himself was already detained in S-21.

12 A. When Pang was detained at S-21, I did not interrogate him. I
13 even -- I did not even go and meet him.

14 Q. How do you explain the fact that in a transcription of an
15 audio recording of your interview with the UNHCR -- refugee
16 agency, in other words, you say that Pang told you this after he
17 had written his confession? In IS 20.19, pages 2 and 3, French
18 ERN 00160922, French (sic) ERN 00002507, Khmer 00160890--

19 [09.26.30]

20 MR. PRESIDENT:

21 The International Prosecutor, you may proceed.

22 MR. SMITH:

23 Good morning, Mr. President.

24 I would just ask that the document could be produced to the
25 witness. And I was wondering whether learned counsel had the

1 English ERN number as well? That would be helpful.

2 MR. VERCKEN:

3 Yes, yes, I did say it actually, 00002507. Mr. President, I've
4 got the document.

5 MR. PRESIDENT:

6 Court officer, can you take the document from the counsel and
7 deliver it to the witness

8 MR. VERCKEN:

9 And if I may, Mr. President, I'd like to have this projected on
10 the screens.

11 MR. PRESIDENT:

12 Yes, you may do so.

13 (Short pause)

14 BY MR. VERCKEN:

15 Q. (Microphone not activated)

16 [09.28.07]

17 Sorry, I forgot to turn my microphone on.

18 According to my French translation here, what it says is that:

19 "After Pang had finished writing his responses, I was chatting
20 informally with him and Pang told me that Vorn Vet, even if he
21 was not busy elsewhere, was never invited to their meetings."

22 Sir, how do you explain the apparent difference between what
23 you're telling us today and what you said in 1999?

24 MR. KAING GUEK EAV:

25 A. The written record of the 4th through the 6th by the UNHCHR

10

1 (sic), as you may recall, I objected to that document.

2 In light of what you ask me, was the essence of what I asked Pang
3 when Pang still had his full authority.

4 Number 2, Pang also scolded me when Comrade Hor was arrested. He
5 said that if I were not to work with my superior, I would have
6 been arrested a long time ago.

7 [09.30.18]

8 Q. Just forgive me for interrupting. I think that you have not
9 correctly understood my question. In fact, I was not questioning
10 you on the two points that you just raised. I was questioning you
11 on the apparent change in your testimony.

12 You said in 1999 that you had spoken with Pang after he had
13 signed his confessions. So given the way S 21 operated, this
14 means after he had been tortured, and here right now you are
15 telling us that you had not spoken to Pang when he was at S 21.

16 So the point of my question is to ask you why is there such a
17 difference between both testimonies. Where is the truth in this?

18 A. This is the truth what I have just said. Pang told me when he
19 was in power. I asked him sometime in April 1978 following the
20 arrest of Chou Chet.

21 Q. Do you remember when Chou Chet was arrested, the date when
22 Pang was arrested?

23 [09.32.40]

24 A. I do not remember the arrest date of Pang, but I do remember
25 the date when Pang was arrested. Let me repeat; I do not remember

11

1 when Pang was arrested, but I do remember the date when Chou Chet
2 was arrested.

3 Q. Yes, of course. Yes, you did tell us when Pang had been
4 arrested, at least the month, and that was April 1978. I'm sorry;
5 I'm referring to the discussion. Chou Chet -- I mixed this up
6 with Chou Chet's arrest.

7 Can you remind me -- or can you tell me again when Chou Chet was
8 arrested, because I'm not sure that you told the Chamber?

9 [09.33.51]

10 A. Chou Chet was arrested in April 1978.

11 Q. Now, let's return to Pang's arrest. You tell us that you don't
12 remember the date when he was arrested. Therefore, could you tell
13 us if this -- if he was arrested a long time after Chou Chet or
14 just in the weeks that followed Chou Chet's arrest?

15 A. It was after. It was between the arrest of Chou Chet and So
16 Phim when they purged the East Zone. They purged the East Zone in
17 -- sometime in June 1978, so it was between when Chou Chet was
18 arrested and So Phim was arrested. It was between this.

19 Q. Okay. So on the basis of your recollections, this occurred
20 between -- or within two months after Chou Chet's arrest; is that
21 correct?

22 A. It may have been around that time. It was about two -- in two
23 months after the arrest of Chou Chet.

24 Q. In his confession at S 21, Chou Chet -- did Chou Chet
25 incriminate Pang?

12

1 A. I do not recollect it well. I think there was no implication
2 or incrimination against Pang.

3 Q. Before Chou Chet's arrest, had Pang already been incriminated
4 in other confessions? Because this did occur before Chou Chet's
5 arrest.

6 (Judges deliberate)

7 [09.37.47]

8 MR. PRESIDENT:

9 The witness does not have to answer the last question put by the
10 defence counsel because the Defence put the question based on the
11 confession extracted by way of torture.

12 So the defence counsel is advised to examine the question to be
13 put to the witness. Particularly, he should refrain from asking
14 questions concerning the confessions extracted by way of torture.

15 [09.38.37]

16 MR. VERCKEN:

17 I am not trying to use information that was revealed in
18 confessions done under torture. I'm not trying to have the
19 witness consider this information as true.

20 But however, given the way S 21 operated and given the way the
21 regime also operated, Duch already indicated to us that all that
22 was necessary was to be mentioned in a confession to be observed
23 or arrested, and that was the object of my question. My question
24 is not based on the content or on the truthfulness of the
25 information. I am absolutely not interested in that. I'm only

13

1 trying to know whether before Chou Chet's arrest there had been
2 in S 21's history confessions in which Pang had been
3 incriminated. That's all I am looking for, and if that is the
4 case, then I will put another question to the witness.

5 [09.39.58]

6 But of course this question has no relation with the truthfulness
7 of the information in the confessions obtained under torture. So
8 I think that I am perfectly abiding by the rule that consists in
9 not taking as true information that exists in the confessions,
10 that--

11 So may I please ask the Chamber to reconsider its decision in
12 view of what I just explained? And may the Chamber allow me just
13 to continue putting the questions -- to continue with my line of
14 questioning?

15 (Judges deliberate)

16 [09.41.57]

17 MR. PRESIDENT:

18 The defence counsel may put a general question. However, the
19 Defence should not demonstrate that they -- he bases the question
20 on the statement or confession made by the prisoner who was
21 smashed at S 21, and that should not be the basis for the
22 question to be put to the witness.

23 BY MR. VERCKEN:

24 I'm going to, therefore, try to reformulate my question, Mr.
25 President.

14

1 Q. Witness, according to you, before Chou Chet's arrest, was Pang
2 being observed by the regime?

3 MR. KAING GUEK EAV:

4 A. To my recollection, it was when I was working with Son Sen.
5 Brother Son Sen allowed the prisoners to implicate Pang when he
6 was with me.

7 Q. And this permission to accuse Pang, did it precede Chou Chet's
8 arrest?

9 A. Yes, it must have been before that because Son Sen parted from
10 me on the 15th. Brother Son Sen parted from me on the 15th of
11 August 1977.

12 [09.44.31]

13 Q. Well, first of all, did Son Sen tell you personally that he
14 wished to have Pang's name included in confessions? Is that what
15 you are telling us?

16 A. It was a very long story. There were two different stages, and
17 I would like to mention the last stage of the two.

18 One day, Brother Son Sen asked me that an individual whom he sent
19 to S 21 for a confession, why didn't he implicate Pang. I told
20 him that, there was another individual who had implicated Pang
21 earlier, but when I reported that to you, you mocked at me, and
22 at that time you could not help laughing at me as well.

23 But then Brother Son Sen said, well, I admitted that it was my
24 mistake. So, well, I would like to listen to his confession, so
25 whatever he said please let me know. I want to know that.

15

1 That was the last meeting with him.

2 Q. And what Son Sen told you -- your superior -- on that day,
3 asking for Pang's name to be kept in confessions, did this mean,
4 in your opinion, that Pang was being monitored?

5 A. Yes, that was the case, because he had been monitored for
6 quite some time already. But there was -- that was another move,
7 a new move because they had to listen. They wanted to listen to a
8 confession that implicated Pang.

9 [09.48.03]

10 Q. Thank you for this answer.

11 Yesterday, while you were answering Counsel Karnavas' questions,
12 you described the fear in which you were living during the period
13 of Democratic Kampuchea. And I'm asking myself, that given the
14 fact that Pang was being monitored and that Son Sen, as you just
15 said, had requested to have his name kept in the confessions, I
16 was asking myself whether you had thought it was prudent for you
17 to ask questions to Pang, as you claimed to have done so, Pang
18 who was still free, who was still working then, if you thought it
19 was prudent to ask questions to him on the way the Standing
20 Committee operated?

21 [09.49.22]

22 A. This was how we worked. We had to maintain certain secrecy in
23 our work, and we also had to do certain things as well. Each
24 secret affair is classified based on the level to which it should
25 be made known.

16

1 Q. I understand what you are telling us, but I am not sure that
2 you have understood what I told you. You knew that Pang was being
3 monitored. Isn't that correct, and before Chou Chet's arrest,
4 correct? And after Chou Chet's arrest, you then went to ask
5 questions on the Standing Committee to a person whom you knew
6 perfectly well that he was at least being monitored, or that he
7 was on the hot seat.

8 So was it prudent for someone like you who was so cautious, who
9 was so wary of his security, which you described during the past
10 day?

11 A. Each and every one whom Pol Pot and Nuon Chea did not trust
12 were not so aware. They did not realize what was going on, so we
13 continued to work as normal.

14 [09.51.59]

15 Q. Witness, may I please interrupt you? I am interrupting you
16 because I'm not speaking about the others; I'm speaking about you
17 precisely. And you said that you had been informed of the fact
18 that Pang was being monitored. And my question is based on this
19 information that you are telling us now.

20 You are informed, apparently, of the fact that Pang has been
21 incriminated and that Pang is monitored and that Chou Chet has
22 been arrested, and you still discuss issues related to the
23 operations of the Standing Committee with Pang? Weren't you
24 therefore facing an enormous risk?

25 [09.52.52]

17

1 A. I understand the question put by the counsel, but I would like
2 to answer it in stages.

3 So long as the Standing Committee does not declare that Pang was
4 to be arrested, then Pang remains in authority to give
5 instruction or lead S 21. S 21 had to abide by this designation.

6 If S 21 leaks secret information, then S 21 would be held
7 responsible, certainly on the question I asked Pang concerning
8 the fact that the Standing Committee did not want me to leak any
9 information whatsoever to Pang.

10 Q. I didn't hear the end of your sentence. I don't exactly
11 understand the meaning of what you were saying in French.

12 A. I would like to summarize it as follows. As for the
13 implication by a prisoner against Pang, it was the responsibility
14 of S 21 to ensure that this secret thing would not leak and Pang
15 would not learn that. It was not the leak to the outsider, but a
16 mere leak to Pang himself.

17 [09.55.58]

18 Q. Yes. Yes, I do understand. Okay, fine--

19 (Microphone not activated)

20 THE INTERPRETER:

21 Please activate the microphone.

22 MR. VERCKEN:

23 You were speaking to him while he was still -- he still held his
24 position, and you knew that he was being monitored. And this was
25 -- meant a lot in -- under the regime of Democratic Kampuchea.

18

1 So weren't you taking the risk that when -- the day when he would
2 be arrested, that he would incriminate you as being a person who
3 tried to obtain information on the Standing Committee? Weren't
4 you, therefore, facing a very significant risk, you -- not the
5 others, you -- personally?

6 [09.57.09]

7 A. That was virtually impossible. How could the interrogator at
8 S-21, would let Pang implicate me in that context? In addition,
9 if Pang would implicate me, would the Standing Committee believe
10 his implication?

11 Q. But the person who preceded you at S-21, Nat, was also
12 arrested and tortured and then executed at S-21, and now you're
13 telling us that you felt beyond all of this and that you felt
14 protected in the Democratic Kampuchea system because you were the
15 head of S-21. Is that what you're telling us today?

16 A. Nat's implication was not originated from S-21. Again, the
17 implication against Nat did not originate from S-21. It was the
18 sole decision of Brother Pol. The counsel may refer to document
19 dated the 21st of April 1976.

20 Q. I must interrupt the witness. I want to pick up on what you've
21 just said to us. You, in E3/106, page 5, told the Investigating
22 Judge that Vorn Vet had incriminated you in his confessions. So,
23 contrary to what you've just told us, you weren't in any way
24 protected in S-21, and even in the position you occupied, you
25 were perfectly liable to be incriminated in other people's

19

1 confessions that were made in S-21 under torture. So I don't
2 think you were protected and sheltered in S-21.

3 [10.01.02]

4 A. That is correct.

5 First, Vorn Vet implicated me. He did that.

6 Secondly, his response was separate from those he implicated.

7 Thirdly, the interrogator also told me about that. I said, "Let
8 him do it."

9 And, fourth, I actually showed that document to Brother Nuon
10 regarding the implication, and if Brother Nuon were to arrest me,
11 let him do it.

12 Q. So your position today is that, when you had your conversation
13 with Pang in April 1978, you didn't feel at all worried in asking
14 him the questions that you did ask him; that's what you're
15 telling us, is it?

16 [10.03.08]

17 A. That is correct. I was not worried about this matter.

18 Q. I would like to come back to the transcript of the audio
19 recording of your talks with UNHCR that I mentioned at the outset
20 this morning; and the code is IS 20.19. And in that transcript,
21 you say that Pang shared this information with you after he had
22 finished writing his confession. Do you contest the contents of
23 the transcript?

24 MR. PRESIDENT:

25 Prosecution, you may proceed.

1 MR. SMITH:

2 Your Honour, I just ask that counsel put specifically what the
3 witness said in the interview, because I don't think it was
4 categorized accurately.

5 I think the discussion in the interview was more of a general
6 discussion rather than a specific discussion in relation to the
7 arrest of Chou Chet and the circumstances surrounding it. So it's
8 a bit misleading in that regard.

9 But perhaps the passage could be put complete, and then he can
10 comment.

11 [10.04.50]

12 MR. VERCKEN:

13 Mr. President, let's make things simpler. Let's look at a
14 different document which I would like to put to the witness. And
15 as far as I am aware, it is not subject to the kinds of
16 interpretations that the prosecutor has just mentioned. It is the
17 record of questioning of Mr. Kaing Guek Eav alias Duch, dated 9th
18 of June 1999, before the Military Tribunal. It's D288/6.52/4.25.

19 And in that paper, the gentleman present says that:

20 "Sometimes I had conversations with those who had already been
21 interrogated such as Touch Phoeun, Chhim Sam Aok alias Pang. The
22 subjects were primarily for me to find out about the lives of Pol
23 Pot, Ieng Sary, Son Sen, Khieu Samphan, and Touch Phoeun when
24 they were in France. As for Chhim Sam Aok alias Pang, Chou Chet
25 alias Si, and Vorn Vet, I wanted to know the internal structure

21

1 of the Party, the history of the Party, the Revolutionary
2 Communist Party of Kampuchea; and, secondly, on the question of
3 direct interrogation, I did this in cooperation with other people
4 on the orders of Son Sen."

5 I'd like to give you a copy of that statement. And, Mr.
6 President, I'd like to have it put onto the screens as well.

7 MR. PRESIDENT:

8 Court officer, can you take the document?

9 [10.07.22]

10 BY MR. VERCKEN:

11 Q. Witness, do you not wish to look at this document?

12 MR. KAING GUEK EAV:

13 A. Yes, please, you can proceed with your question.

14 Q. It would appear, Witness, that what you said to the Military
15 Tribunal in June 1999 runs counter to what you said in this
16 courtroom under oath a few minutes ago. How do you explain this?

17 A. That record of statement was in a summary form. Three or four
18 events were combined together with the use of a single adverb or
19 adjective. Let me clarify that.

20 I asked Touch Phoeun -- that is, several months after the
21 confession was made and after he was fed good food and he was in
22 good health -- I asked people to arrange a room for me to meet
23 him. That was the time I asked about the lives of Professor Ieng
24 Sary and other Sister Thirith and Brother Son Sen--

25 [10.09.47]

1 Q. Excuse me to interrupt, Witness, but you're talking about
2 somebody else. I am talking about the person whose name appears
3 in this record and who we've been talking about already this
4 morning, namely, Chhim Sam Aok alias Pang.

5 It's perfectly clear from these minutes that you said that after
6 this person had been interrogated you talked to him, and if you
7 look at the last page of the document that I gave to you--

8 MR. PRESIDENT:

9 Counsel, once you put a question to a witness you need the
10 witness to provide or to complete his response first before you
11 can move on to your next question, so that we can get the
12 response in full from the witness.

13 [10.11.00]

14 MR. VERCKEN:

15 You're quite right, Mr. President. It just seemed to me that the
16 witness was taking a bit of a digression here, Mr. President, and
17 that he wasn't really answering my question which was about Pang.

18 I'm quite happy to leave him the time to respond to the actual
19 question I asked. Thank you, sir.

20 MR. KAING GUEK EAV:

21 Let me continue. With Brother Touch Phoeun, I only asked him --
22 or met him after several months of the confessions which were
23 completed.

24 Pang spoke to me when he was arrested and his arrest was ordered
25 by the superior, that is, from Brother Nuon.

1 Separately, regarding Chou Chet alias Si, after several months of
2 interrogations and confessions, I met him--

3 MR. PRESIDENT:

4 What is the problem? Do you have an issue with the French
5 translation?

6 (Short pause)

7 [10.12.42]

8 The AV Unit and the court officer, could you please check the
9 technical issue with the French booth and report to the Chamber
10 immediately?

11 MR. VERCKEN:

12 Mr. President, we just didn't hear the French translation of the
13 question you put.

14 MR. PRESIDENT:

15 Counsel, could you please repeat your question again because the
16 French translation did not come through?

17 [10.13.52]

18 MR. VERCKEN:

19 Would you like me to repeat what I've just said a second ago or
20 my actual question to the witness? The question to the witness?
21 Very good.

22 MR. PRESIDENT:

23 The witness, could you continue with your response to the
24 question put by the counsel which was interrupted due to the
25 technical issue? So please continue your response to the

24

1 question, in particular the final segment. You do not need to
2 start from the beginning.

3 MR. KAING GUEK EAV:

4 Mr. President, regarding the time that I met Touch Phoeun, it was
5 about one month after he was tortured, or probably a little bit
6 more than one month.

7 First, I asked him about the lives of the revolutionary people in
8 France. Brother Touch Phoeun talked about the Brother Pol,
9 Brother Van, and other Sister Thirith, and Touch Phoeun also
10 confirmed that Son Sen was persuaded to join the revolution by
11 Brother Van and Thirith.

12 Separately, regarding Khieu Samphan, I asked why Khieu Samphan
13 always respected Brother Pol so much--

14 MR. PRESIDENT:

15 Do you have any issue, Counsel?

16 [10.16.12]

17 MR. VERCKEN:

18 Yes. It's going to be difficult for me to continue questioning
19 the witness, Mr. President, if you don't allow me to contain Mr.
20 Duch when he waxes lyrical like this.

21 I'm asking him about Pang and off he goes talking about what he
22 would say after torturing somebody else, and frankly, it's not
23 relevant to the subject we're talking about now.

24 [10.16.48]

25 And I'm going to find this difficult to abide by the time limits

25

1 you have imposed upon me if you allow the witness to set off on
2 long digressions on irrelevant issues, so I would ask you to
3 authorize me to require of the witness that he answers my
4 questions directly.

5 MR. PRESIDENT:

6 The Chamber is also hearing the response of the witness; because,
7 in your questions, it involved several people. You refer to the
8 statement made by the witness at the Military Court, and that
9 statement was summarized, and that is his time -- or his turn
10 through response to your question. And of course it cannot just
11 be a focus on one person, as it is related to several people.
12 That is the intention of the Chamber: if you put a question in
13 regard to that paragraph, let him respond and conclude his
14 response first. It is not that you pose a question and then allow
15 him to respond only to what you need to hear, and, if not, then
16 you would not allow him to respond; then it is not appropriate
17 for the Chamber to proceed in this fashion.

18 Now, Counsel, put your question precisely and in short form for
19 the witness to understand. You try to quote a paragraph involved
20 several people, and it is not just involved in one single person.

21 [10.18.57]

22 MR. VERCKEN:

23 I quite understand, Mr. President. Perhaps, because we're going
24 through three languages, here, there may be one or two
25 impediments to the communication between the Defence and the

1 Chamber, but I'm sure that this is not going to be a problem.
2 I did read out the passage (unintelligible) from the 1999
3 minutes, and that is a place where the witness gives several
4 examples of people he talked with after they had been tortured in
5 S-21, but you will of course understand, sir, that my question
6 was not relating to all of these people whose names are quoted
7 here, but solely to Pang and the fact that, as far as Pang is
8 concerned, the statement by Mr. Kaing Guek Eav on that day in
9 1979 contradicts what he has stated under oath just now before
10 your good selves.

11 [10.20.21]

12 Just now, he said that he had never spoken to Pang when he was
13 held in S-21, but in 1999 he gives several examples of people he
14 talked with while they were imprisoned in S-21 and among the list
15 of names we have Pang, and that is the point of my question;
16 that's all.

17 So, if the witness's choice is to talk to us about all of the
18 other people except Pang who are quoted in that 1999 record, then
19 so be it. But what I'm interested in my line of questioning --
20 and I'm sure you're going to get to this in the end, Mr. Witness
21 -- is Pang.

22 BY MR. VERCKEN:

23 Q. And so, as regards Pang, please, what is your explanation for
24 the contradiction between this 1999 record before a Cambodian
25 judge while you were in the presence of your lawyer, and what you

1 have just stated under oath before this Chamber? How do you
2 explain the difference? Thank you.

3 [10.21.52]

4 MR. KAING GUEK EAV:

5 A. If the counsel wants to ask only about Pang, then please
6 remove this document from the screen. And you don't need to
7 provide this document to me because, if you rely on this
8 document, it involves several people, not just only that
9 individual.

10 Q. Do you contest the contents of the record of 1999?

11 A. Please only ask your question related to Pang if that is what
12 you wish. Otherwise, you have to include several people in -- if
13 you relied on this document.

14 MR. PRESIDENT:

15 Counsel, could you please repeat your question? You can ask
16 general question and remove this document so you can pose your
17 question in defence of your client. And there is no need to rely
18 on this document because this document is related to several
19 people and not only Pang.

20 [10.23.34]

21 This witness already made it clear regarding this individual,
22 Pang, but there was some technical issues relating to the
23 translation.

24 So let me repeat. If you relied on a paragraph of a document
25 which involves several people and you put a question for only one

1 person, then there is no need to rely on that segment of the
2 document. You may need to rephrase your question so that it is
3 precise and beneficial, otherwise he would do the same.

4 MR. KARNAVAS:

5 Mr. President. Mr. President, may I be heard? Because the ruling
6 that you're making, the rest of us are going to be stuck with for
7 the rest of the trial. With humility, let me just say that your
8 ruling is not correct.

9 [10.24.42]

10 First, you tell us to provide documents. We provide documents, he
11 rejects them. The witness does not get to control the Court. It
12 doesn't matter whether the document contains other names.

13 He's being confronted with something that he said before another
14 institution. Today, he said one thing. In another instance, he
15 said something differently. It's classic confrontation. In fact,
16 under oath today, first, he said with Pang that he never spoke to
17 him at S-21. Later on, under oath again, he said he spoke to him.
18 This is a classic example of how to show when a witness is lying
19 and to deny now counsel for the defence the opportunity to show
20 that a witness is lying is improper.

21 [10.25.36]

22 Yesterday, the Prosecution was able to interfere all the time.
23 Now, the Prosecution is sitting quiet. Allow the Defence to do
24 their job in classic confrontation showing one statement under
25 one instance, another statement under oath here. And the

1 gentleman is subject to perjury.

2 So he must answer the question and he doesn't get to dictate to
3 you, Your Honours, how you are supposed to control the
4 proceedings.

5 As I noted yesterday, he is not at S-21; he is not here to tell
6 us how to conduct the proceedings; he is not here to interrogate.
7 He is here to be interrogated.

8 (Judges deliberate)

9 [10.29.53]

10 MR. PRESIDENT:

11 The Chamber would like to give the floor to Judge Lavergne to
12 clarify the matter. You may proceed.

13 JUDGE LAVERGNE:

14 Yes. We don't want to interrupt your questioning; we just want to
15 re-establish things.

16 There have been a few hitches as we have gone along, and so let's
17 get down to the basics of what you are asking.

18 If we understood correctly this morning, the witness, with
19 respect to Pang, said that he had never met him or never talked
20 to him in S-21; is that indeed what you said this morning?

21 MR. KAING GUEK EAV:

22 I did not meet Pang after he was arrested, but before he was
23 arrested, I had met him.

24 JUDGE LAVERGNE:

25 And during the interrogation -- and counsel Vercken can correct

1 me if I'm mistaken -- but counsel Vercken referred to a certain
2 number of documents.

3 [10.31.42]

4 First of all, your interview by the UNHCR and also your
5 examination by the -- by the Investigating Judge of the Military
6 Tribunal, and in both of these statements there is an apparent
7 contradiction with what you said this morning because it seems
8 that you spoke about a discussion that took place at S-21.

9 So is this clear to you? Did you see these documents? Were you
10 able to note that it was indeed Pang's name that was mentioned
11 among other names, but it was Pang's name that was mentioned in
12 the interview that was conducted by the Investigating Judge at
13 the Military Tribunal?

14 And if this is the case, can you explain why there is a
15 contradiction or not between these different statements?

16 Did you understand my question or would you like me to repeat it?

17 MR. KAING GUEK EAV:

18 Your Honour, the defence counsel presented me a document from the
19 Military Court. I started responding to his question and I
20 mentioned that this document points to many individuals, namely,
21 Chou Chet, Touch Phoeun and Pang. And I did mention in my answer
22 that these four individuals were different, but the Military
23 Court described them -- the Military Court summarized these four
24 individuals using only -- using the same verb, the same adjective
25 and adverb to describe the four individuals.

1 [10.35.03]

2 And I seek the permission from the Court to make the distinction
3 in terms of the description of four individual, as follows.

4 And my last suggestion to the defence counsel was that, if he
5 wants to specifically refer to only Pang, then I would suggest
6 that this document be removed from me so that I could respond to
7 that question immediately.

8 But so long as the defence counsel insists that I refer to this
9 document, I still maintain my position that I would like to
10 describe the four individuals contained in this document in a
11 separate manner.

12 MR. PRESIDENT:

13 Well, the time is now appropriate for the morning adjournment.

14 The Chamber will adjourn for 20 minutes.

15 Security guards are instructed to bring the witness to the
16 waiting room and bring him back here by five to 11.

17 The defence for Ieng Sary?

18 MR. ANG UDOM:

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

20 Due to a health concern, particularly his lumbago, Mr. Ieng Sary
21 would like to request the Chamber to excuse himself from
22 participating directly in this courtroom, but instead follow the
23 proceeding from the holding cell downstairs. For this reason, we
24 would like to request the Chamber to grant this request.

25 MR. PRESIDENT:

1 Please be seated, Counsel.

2 Having heard the request by Mr. Ieng Sary through his defence
3 counsel to waive his right not to be present directly in this
4 courtroom but instead follow the proceedings from the holding
5 cell downstairs through video-link in the holding cell for the
6 whole day today due to his health concerns, the Chamber grants
7 this request.

8 So Mr. Ieng Sary will be brought to the holding cell downstairs
9 where the video-link is connected for him to follow the
10 proceeding for the whole day.

11 The Chamber requires the defence counsel to submit the Chamber a
12 written waiver of the Accused with his thumbprint and signature.
13 And the AV technicians are instructed to connect the video-link
14 to the accused Ieng Sary so that he can follow the proceedings
15 from the holding cell downstairs.

16 And security guards are instructed to bring Mr. Ieng Sary to the
17 holding cell downstairs where the video-link equipment is ready
18 for him to follow the proceedings from there.

19 [10.38.27]

20 The Court is adjourned.

21 (Court recesses from 1038H to 1102H)

22 MR. PRESIDENT:

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

24 I notice the Prosecution is on his feet. You may proceed.

25 MR. SMITH:

1 Thank you, Mr. President. Mr. President, I need to take the
2 opportunity to make a statement about the conduct of parties
3 before this Court.

4 Your Honours, under Rule 22.4, you know, lawyers have an
5 obligation to promote the fair and effective conduct of the
6 hearings. I can't let the outburst of the defence counsel for
7 Ieng Sary pass. The tone, the manner, the accusations towards the
8 witness were completely in contravention to Your Honours'
9 rulings.

10 I understand counsel's frustration as rules develop, but I just
11 would ask that all parties -- all parties abide by general
12 standards of fair conduct in the proceedings.

13 I think, Your Honours, if all parties had outbursts like we saw
14 from the Ieng Sary defence team, this hearing would result in a
15 real disarray and would take away from the integrity of the
16 proceedings.

17 [11.04.36]

18 Again, I understand the frustration. I certainly don't want to
19 say the colour should be removed from the courtroom, and
20 certainly counsel for Ieng Sary are highly competent counsel, but
21 I would not like the public to feel that that type of outburst --
22 those types of accusations were appropriate for a courtroom.

23 So I just would ask Your Honours to advise parties -- all parties
24 to abide by the rules of etiquette and proper practice in the
25 courtroom. I'm not going to repeat what was said, but I just

1 would ask that that occur. Thank you.

2 [11.05.23]

3 MR. PRESIDENT:

4 Defence Counsel, you may proceed.

5 MR. VERCKEN:

6 Thank you, Mr. President. I was not standing up to respond to the
7 Co Prosecutor. I wanted to continue my questioning. May I do so?

8 MR. PRESIDENT:

9 Of course, but before we hand over the floor to you I'd like to
10 give the floor to Judge Lavergne.

11 [11.05.59]

12 JUDGE LAVERGNE:

13 Thank you very much, Mr. President. I'll try and hand the floor
14 over to Counsel Vercken as soon as possible.

15 But just to be absolutely sure that everybody understands the
16 thrust behind the questions that are being put to him this
17 morning, I would like just to proceed to a brief clarification.

18 Mr. Witness, this morning you stated that you had an opportunity
19 to talk about a certain number of issues with Pang connected with
20 the Standing Committee and that this conversation took place
21 before Pang's arrest, in other words, a conversation that didn't
22 take place in S-21.

23 And, now, before we broke for the adjournment, the Khieu Samphan
24 defence confronted you with one of your statements which you made
25 before the Investigating Judge of the Military Court on the 9th

35

1 of June 1999 and I will simply read one statement from that where
2 you are asked, "Did you ever personally interrogate prisoners
3 who..." and you said:

4 "At times, I went to converse with people that have been
5 interrogated such as Touch Phoeun, Chhim Sam Aok, alias Pang,
6 Chou Chet, alias Si, and Vorn Vet."

7 [11.07.52]

8 And then you go on to explain that on other occasions you went
9 straight into questioning, but there it was different.

10 But, here, we're talking about conversations with people who had
11 already been interrogated and if you read that sentence, it's
12 "after they had been interrogated in S-21". Now, if we allow your
13 statements and that sentence, then there does appear to be a
14 contradiction because if you had a conversation with them after
15 they had been interrogated, it must have been in S-21. So,
16 please, can you tell us why there is this discrepancy or if, in
17 your view, there isn't any contradiction at all? Thank you.

18 MR. KAING GUEK EAV:

19 Your Honour, regarding this matter, it seems there is a
20 contradiction. In fact, there is none. I already informed the
21 Chamber here, that the record of interview at the Military Court
22 was in a summarized form meaning they summarized the four
23 individuals with a single verb, a single adjective, and a single
24 adverb.

25 [11.09.56]

1 If a particular individual needs to be put to my question in
2 order to respond to this statement, of course, I cannot accept
3 that. I stand by this document provided that this is recognized
4 as a summarized statement. All the four individuals were
5 distinct.

6 JUDGE LAVERGNE:

7 Well, Witness, I'm going to read this sentence again and just
8 tell us yes or no if it was a sentence that you actually said --
9 if this does mirror what you said to the Investigating Judge. I
10 read:

11 "At times, I went to converse with people that had been
12 interrogated such as Touch Phoeun, Chhim Sam Aok, alias Pang,
13 Chou Chet, alias Si, and Vorn Vet."

14 [11.11.12]

15 Now, did you say this or are you telling us that it hasn't caught
16 the nuances of what you actually said?

17 MR. KAING GUEK EAV:

18 Your Honour, this is not based on the recollection, but that is
19 the truth. I met Touch Phoeun after he was interrogated. Chou
20 Chet, alias Si, I also met him after he was interrogated. As for
21 Vorn Vet and Chhim Sam Aok, alias Pang, Pang, himself, I had met
22 him before his arrest and once he was nearly arrested, he blamed
23 me, but I did not want to touch on that matter. As for Vorn Vet,
24 I already stated that I met him before he was interrogated so
25 those were the events.

1 To sum up, I met two of them after they were interrogated and I
2 had met two of them before they were interrogated.

3 BY MR. VERCKEN:

4 Q. Witness, let me get a first clarification. As I understood it
5 in my translation, you said that Pang incriminated you in his
6 confession; is that what you are telling us?

7 MR. KAING GUEK EAV:

8 A. Pang, himself, was implicated before the 17 April '77. That
9 was before the 15 August '77.

10 Q. Would you kindly look at the last page of the Military Court
11 summary from 1999, the final page, please?

12 [11.14.40]

13 Can I have this on the screen, Mr. President, please?

14 MR. PRESIDENT:

15 Yes, you may do so.

16 BY MR. VERCKEN:

17 Q. This is the excerpt right at the end of your statement in 1999
18 where it says:

19 "The written record was completed at 1645 hours on the same date
20 and the content was read out to the respondent who then agreed to
21 thumbprint it as evidence along with us below."

22 And you then see the signatures of the four lawyers present, your
23 lawyer, yourself, the registrar, and the Investigating Judge.

24 [11.15.52]

25 My question is as follows: The Investigating Judge and the

1 registrar say that you were read your statement and we know that
2 you are a specialist when it comes to anything concerning
3 interrogating people and is your statement before us today
4 essentially to say that you let a mistake that crops up several
5 times in your statement pass through your fingers without
6 correcting it?

7 A. The language which I explain regarding this statement that it
8 is a summary and, of course, it shall be acceptable to ordinary
9 people to absorb it, to understand it, and to accept it. At that
10 time, that -- that's what I said and that's what it was
11 summarized and, of course, that was my thumbprint. I believe this
12 is not something which is going to incriminate me. For that
13 reason, I provided my thumbprint there.

14 [11.18.09]

15 So to sum up, I acknowledge that I provided my thumbprint and I
16 stand by the statement and I allowed them to summarize the
17 statement.

18 Q. Witness, do you understand that the contents of these minutes
19 of the 9th of June 1999 which you tell us you signed without
20 needing to check it because the statements that should have been
21 there were not incriminating; are you aware that this record
22 acquires a crude importance when you look at it on the basis of
23 the transcriptions of the recordings of the interviews you
24 actually had with the Office of the High Commission for Refugees
25 the very same year as this Military Court record and in which you

1 also say that you talked with Pang while he was detained in S-21?

2 What's your comment on that?

3 A. Before the Investigating Judge at the Military Court made that
4 summary, I was asked many questions regarded -- regarding many
5 events and that how it was summarized at the time.

6 [11.20.18]

7 At that time, myself and the Investigating Judge did not have
8 this statement before us yet. The Investigating Judge and myself
9 did not have the record by the UNHCHR (sic) and we did not see
10 the original voice recording by that organization.

11 MR. VERCKEN:

12 (No interpretation)

13 MR. KAING GUEK EAV:

14 May I conclude my response first?

15 As for the statement dated 4 to 6 of May, I already made my
16 stance clear regarding those records and the Co-Prosecutors also
17 stated that they were simply just the records.

18 As for my interview with UNHCHR (sic), which was conducted on the
19 30, the first, the second, and concluded on the third, and I
20 already rejected that record.

21 [11.22.39]

22 As for the record by -- as for the statement by the -- by the
23 Investigating Judge at the Military Court, I stand by that
24 statement.

25 BY MR. VERCKEN:

40

1 Q. Witness, I understand. This morning you told the Chamber that,
2 at the time, when you had your talk with Pang, you weren't afraid
3 of being arrested; do you remember saying that?

4 MR. KAING GUEK EAV:

5 A. The conversation between Pang and myself were the conversation
6 between the leader and the one who was led. So let me repeat, the
7 conversation was between the leader and with the one who was led.

8 Q. On the 2nd of April 2008, you were questioned before the ECCC
9 Investigating Judge; this is D86/24, and I'm preparing a copy for
10 the witness and I would like the President to allow me to have
11 this excerpt put on the screen.

12 MR. PRESIDENT:

13 Court officer, could you take the document from the counsel and
14 deliver it to the witness?

15 [11.25.14]

16 BY MR. VERCKEN:

17 Q. We have highlighted the section, Witness, so you can see where
18 it is on the hard copy, and you were assisted by your lawyer on
19 this particular occasion, and this is what you said. Question by
20 the Co-Investigating Judge:

21 "Why do you keep a non-expurgated version and, at the same time,
22 when it appears that one name has been removed?"

23 "Answer: It is only in the case of those who were provisionally
24 considered innocent but who sooner or later would be arrested.
25 For those who were protected, I destroyed the confession. That

1 is, in fact, what happened when I was criticized by Son Sen for
2 having allowed a confession to show Pang's name who was Chairman
3 of the 870 Committee working group and Pol Pot's messenger to me.
4 Sometime later, he actually blamed me in reverse. I had removed
5 the name of Pang when he was hoping to see it."

6 [11.26.39]

7 And then your lawyer, Francois Roux, asks you a question:

8 "Given the conflicting orders you received from different people
9 and given the fact that your predecessor had been executed at
10 S-21, did you not fear that your turn would come eventually?"

11 And the charged person answers as follows:

12 "I've already explained that each time I was summoned by the
13 superiors, I was terrified and so was my wife. I was more and
14 more scared."

15 My suggestion to you, Witness, is that what you say here is in
16 contradiction to what you have said under oath before the Court
17 this morning. In one case, you say that you were terrified and in
18 the other, you claim not to have been terrified at all; it seems
19 to be a contradiction, kindly explain.

20 A. There was no difference or no -- there was no contradiction.

21 The meeting with the superior, it had -- I had to be opened and
22 honest. However, in general, there were several events that made
23 myself fearful. The time that it became so terrified when the
24 Party; that is, Brother Nuon Chea order the arrest of Nget You
25 alias Hong, Sochea (phonetic), for instance, so I was terrified

1 like the rest for the general situation.

2 [11.29.46]

3 As for my conversation with my superior, I was not scared; I had
4 to report to my superior.

5 Q. Do you remember when -- and please forgive me for my
6 pronunciation, when Nget You alias Hong was arrested?

7 A. The three individuals were arrested after the 15 August 1977.

8 Q. Do you remember if Ta Mok had complained about Chou Chet?

9 A. Actually, Ta Mok did not like Chou Chet; that was my
10 observation.

11 Q. Do you remember the statement that you made to the
12 Investigating Judge on 2 April 2008 and this is written record
13 D86, again, /24? So this was an interview on 2 April 2008 on page
14 4, ERN in French 00195948, English 00178061, Khmer 00178048 and
15 you say that before Chou Chet's arrest, all of his subordinates
16 had been arrested pursuant to the Ho Chi Minh doctrine which you
17 even qualified as saying that it consisted -- and before cutting
18 the bamboos, it was necessary to shave off the thorns; so do you
19 remember this statement and can you confirm having said it?

20 [11.33.42]

21 A. I do remember and I stand by this statement.

22 Q. I suggest to you, Witness, that this detail that you have
23 given to us shows to us that Chou Chet's arrest seemed to be the
24 result of a plan that had been thought of for a while; do you
25 agree with what I'm saying?

1 A. I do not quite catch what's the language. I think that the
2 language should be simplified because I cannot really understand.
3 [11.34.50]

4 Q. You said that before Angkar arrested Chou Chet, all of his
5 subordinates had also been arrested and you specified that this
6 chronology of events -- first the subordinates and then Chou
7 Chet, himself -- corresponded to the application of a doctrine,
8 the Ho Chi Minh doctrine, which states that before cutting the
9 bamboos; you have to shave off the thorns. So, therefore, I'm
10 putting the question to you if you understand the statement as
11 meaning that Chou Chet's arrest was the result of a plan that
12 consisted first in "shaving off the thorns" quote unquote and
13 then cutting the bamboos.

14 A. The content of my explanation to the Co-Investigating Judges
15 back then was exactly as what's being described. I clarified
16 again, I did explain to the Co-Investigating Judges the truth and
17 nothing but the truth. Of course, before the arrest of Chou Chet,
18 his subordinate had been arrested. I still recollect when I
19 provided that statement to the Co-Investigating Judges. I even
20 cited two examples for him.

21 [11.37.45]

22 Q. So then why do you believe Pol Pot was obliged to replace at
23 the last moment Vorn Vet by Khieu Samphan if this was only a plan
24 that had already been decided since long?

25 A. I think I have never told the Co-Investigating Judges that Pol

1 Pot decided that Khieu Samphan be replaced by Vorn Vet. Never
2 have I told them that. I merely told the Co-Investigating Judges
3 that Brother Khieu Samphan took or designated Nuon Chea's
4 brother-in-law to the industrial hospital 75 to replace Vorn
5 Vet's wife. Correction, Nuon Chea's sister-in-law, not
6 brother-in-law.

7 Q. Did you say to the Investigating Judge of the ECCC that Khieu
8 Samphan had participated in the decision-making process of
9 arresting Chou Chet?

10 A. This is the same issue. I learned it from Pang that Brother
11 Hem came in. Then Bong Hem was invited by Pol Pot to take part.

12 [11.41.20]

13 Q. To participate in order to do what?

14 A. That was again the same issue. It was to discuss in the
15 Standing Committee on the arrest of Chou Chet.

16 Q. Do you remember having said to the Investigating Judge that in
17 fact Khieu Samphan had been summoned instead of Vorn Vet only to
18 be informed of the purging procedures?

19 A. I do not recollect that. I don't know.

20 Q. Well, for the record, this is D90, page 6. This is the
21 interview of 25 June 2008 on page 5 and 6, ERN French 00198811,
22 English 0019883, Khmer 00198875.

23 MR. PRESIDENT:

24 The International Co-Prosecutor, you may proceed.

25 [11.43.50]

1 MR. SMITH:

2 Thank you, Your Honour. If there are any further questions on
3 this topic, I would just ask the witness be shown that particular
4 part of the statement if it's required to refresh his memory.

5 MR. VERCKEN:

6 I could show him the document, but I was not intending to
7 continue with this line of questioning. But if it's necessary, of
8 course, that won't be a problem.

9 MR. PRESIDENT:

10 Court officer, please take the document from the counsel and
11 present it to the witness.

12 (Short pause)

13 [11.45.05]

14 BY MR. VERCKEN:

15 Q. Have you read it, Witness?

16 MR. KAING GUEK EAV:

17 A. Mr. President, I do not know as to which part of this document
18 the defence counsel is referring to and expects my answer. Thank
19 you.

20 Q. The passage that is underlined and that is indicated with a
21 tab. It's on page 6.

22 If you please allow me, Mr. President, I can display it on the
23 screen.

24 MR. PRESIDENT:

25 The Chamber grants that, and it has been a practice before the

1 Chamber that whenever parties wish to put questions to the
2 witness concerning any particular document, it would be ideal to
3 have it projected on the screen.

4 Witness, have you found the portion of the document you are being
5 referred to?

6 MR. KAING GUEK EAV:

7 A. I'm sorry, President, I haven't seen any highlighted part on
8 this document, so I cannot find it.

9 [11.47.03]

10 MR. PRESIDENT:

11 Defence Counsel, please be precise on the part of the document
12 you want the witness to respond to because this document is long
13 and it might be difficult for the witness to locate the part you
14 are referring to.

15 MR. VERCKEN:

16 Can I have the document for a little moment so that I can make
17 sure that the passage has been properly underlined?

18 MR. PRESIDENT:

19 Court officer, please remove the document from the witness and
20 bring it to the defence counsel so that he can underline or
21 highlight part of the document which he wishes to discuss.

22 BY MR. VERCKEN:

23 In fact, the passage was already highlighted, Mr. President.

24 Q. Do you see the excerpt in question, Witness? Please take your
25 time to read it.

1 [11.48.35]

2 MR. KAING GUEK EAV:

3 A. Mr. President, I have found the portion which I am asked to
4 comment on and I would like to read it as follows. And I would
5 like the defence counsel to link this portion with another
6 portion above this particular passage so that it links the story
7 well. If you ignore the preceding passage, then the meanings
8 would be vastly different. And I insist that the defence counsel
9 links to the preceding passage so that the public at large can
10 view it.

11 Q. Well, I presented the document to you because this was
12 requested to me by the prosecutor, and if I have to read out the
13 entire document, I'll never be able to finish my examination. I
14 made a proposition to you. You told me that you didn't remember
15 your statements, and I'm giving the document to you. There's a
16 segment that I underlined in which you say that:

17 "According to me, if Khieu Samphan had been invited to attend the
18 meeting during which Chou Chet's arrest had been decided, it was
19 not to participate in the decision-making process, but only to be
20 informed of the purging process."

21 What I'm interested in is the reason for this summons. The Court
22 will be able to understand the rest of the statement. I only
23 questioned you on this specific passage, and that's all.

24 Now I have refreshed your memory, so do you remember having said
25 what is highlighted, yes or no? I'm not asking you to give me a

1 full analysis. I'm asking you only if you remember having said
2 this.

3 [11.51.21]

4 MR. PRESIDENT:

5 I think there might be a confusion in the two languages because
6 in Khmer, when it is highlighted in the English portion, it was
7 not complete in the whole paragraph. So I think that we should
8 highlight a complete portion of that so that it can be
9 understood. At least in Khmer language it has to be a complete
10 sentence.

11 [11.52.07]

12 MR. KAING GUEK EAV:

13 I would like to read out the passage in this statement:

14 "Thus, in my opinion, if Khieu Samphan was invited to attend the
15 meeting during which the arrest of Chou Chet was decided, it was
16 not to participate in the decision but to be informed of the
17 purge process."

18 BY MR. VERCKEN:

19 Q. Thank you for reading this out, Witness. And I would like you
20 now to tell us what you meant that day, when you used the
21 expression "according to me". So what you just read, does it
22 correspond to the information that you claim was given to you by
23 Pang, or is this your later interpretation that you are sharing
24 with the Judges that day?

25 [11.53.43]

1 MR. KAING GUEK EAV:

2 A. This is my opinion and it was my opinion on the role of Khieu
3 Samphan back then.

4 Q. In the conversation you claim you had with Pang, Pang -- did
5 Pang explain to you why Vorn Vet had been cast aside -- had not
6 been included in the meeting that we're speaking about, of
7 course?

8 A. Vorn Vet was cast aside because according to Pang, Vorn Vet
9 was a difficult person to work with. According to Pang's
10 explanation, Vorn Vet, on several occasions, opposed against the
11 Party concerning the identification of enemies.

12 Q. We know that Vorn Vet was arrested or will be arrested at the
13 beginning of November of the same year, and the fact of having
14 challenged before the meeting regarding Chou Chet having opposed
15 the Party, did this put him in a touchy position? Did this
16 explain why he was being monitored?

17 A. I think the Defence may, based on the translation which
18 diverged somewhat from my original words, to form another
19 question.

20 [11.56.35]

21 MR. PRESIDENT:

22 The defence counsel, please hold on. The witness needed to
23 clarify his answer because he said that the translation into
24 French and English were not correct from what he said, and I also
25 advise the interpreters to be extra careful in rendering his

1 statement.

2 BY MR. VERCKEN:

3 Q. Can you please repeat again why Vorn Vet had been excluded
4 from the meeting regarding Chou Chet's arrest?

5 MR. KAING GUEK EAV:

6 A. Pang explained to me in general terms that Vorn Vet was a
7 difficult person to work with. So whenever he did not like it, he
8 would isolate himself and then he expressed his dissatisfaction.
9 So, consequently, when the matter was concerning with Vorn Vet,
10 Brother Pol made it clear that Vorn Vet would not be invited.

11 Q. Not being invited to a meeting where decisions were taken was
12 a way of excluding someone during the regime, wasn't it?

13 A. The measures taken by Brother Pol surprised me because Brother
14 Vorn was a member of the Standing Committee. Brother Hem was not
15 a member of the Standing Committee.

16 Q. May one say that from the standpoint of the prevailing system,
17 excluding Vorn Vet from the meeting amounted to a sanction?

18 [12.00.03]

19 A. I dare not conclude or make any conclusion out of this, but I
20 simply want to mention that this was an extraordinary situation
21 which surprised me.

22 Q. Do you remember what you said to the Investigating Judge -- or
23 rather, do you remember the last time you saw Vorn Vet?

24 A. I last saw Vorn Vet on the 3rd of November 1978.

25 Q. And that was when he was already a prisoner; is that correct,

1 Witness?

2 A. Could you please repeat your question? I cannot catch it.

3 [12.01.33]

4 Q. I apologize for my question not being sufficiently precise.

5 What I wanted to ask you was before he was arrested, did Vorn Vet
6 come to S-21?

7 A. Thank you. When there was an order to arrest Pang, Brother
8 Nuon told Vorn Vet to meet me - [correction, interpreter], when
9 there was an order to arrest Vorn Vet--

10 THE INTERPRETER:

11 Sorry, Your Honour; could you please ask the witness to repeat
12 his answer?

13 BY MR. VERCKEN:

14 Q. Yes. I think we have a small difficulty with the translation.

15 [12.02.53]

16 MR. KAING GUEK EAV:

17 A. I would like to repeat my answer. When Pang was arrested,
18 Brother Nuon asked Brother Vorn to meet me and he sent along with
19 him a letter designating him to work with me.

20 Q. The letter said who should work with who?

21 A. The letter indicated that I was supposed to work with Brother
22 Vorn. And once again I would like to emphasize that without this
23 letter, I would not be given any right to work with Vorn Vet.

24 Q. Given the fact that Pang's arrest occurred two months after
25 Chou Chet's and bearing in mind what you have just said, that

1 Vorn Vet came to work with you when Pang was arrested, didn't you
2 agree that the information that Pang would have sent -- is
3 supposed to have sent to you on the fact that Vorn Vet, at the
4 time, was in the spotlight and being excluded from the
5 decision-making process, all the more extraordinary?

6 [12.05.12]

7 A. I think we should look at the dates of the events when they
8 unfolded. Brother Vorn was cast aside from the meeting of the
9 Standing Committee. It was not clear to me whether or not he was
10 cast aside on several occasions, but what was clear to me was
11 that when Bong Vorn came in before Brother Pang was arrested.
12 Therefore, before any arrest decision was executed, then the
13 lower echelon would have to report in good faith to the upper
14 echelon.

15 [12.06.34]

16 MR. PRESIDENT:

17 The time is now break -- it is appropriate to take a lunch break.
18 The Court will adjourn until 1.30 this afternoon.

19 I note that the defence counsel for Nuon Chea is on his feet.
20 Again, the Court will resume at 1.30 and security guards are
21 instructed to bring Mr. Witness to the waiting room for the
22 witness and bring him back to this courtroom before 1.30 this
23 afternoon.

24 The counsel is on his feet. You may proceed.

25 [12.07.14]

1 MR. PESTMAN:

2 Thank you, Mr. President. My client would prefer to follow the
3 remainder of the proceedings from the holding cell downstairs
4 because of his poor health. I have the appropriate or the
5 necessary waivers here to hand over to the court officer.

6 MR. PRESIDENT:

7 Thank you, the defence counsel. Please be seated.

8 Having heard the request by Mr. Nuon Chea through his defence
9 counsel expressing his waiver of his right to be present directly
10 in this courtroom but, instead, to follow the proceeding from the
11 holding cell downstairs for the rest of the day due to his health
12 concern, the Chamber grants the request through the defence
13 counsel that Mr. Nuon Chea would follow the proceeding by
14 video-link from the holding cell downstairs this afternoon. And
15 he has expressed his waiver of rights to follow the proceeding
16 directly in the courtroom.

17 [12.08.39]

18 The Chamber requires the defence counsel to submit the Chamber
19 the letters of waiver with the thumbprint and signature of the
20 Accused.

21 AV technicians are instructed to connect the video-link to the
22 accused Nuon Chea so that he can follow the proceeding for the
23 rest of the day and security guards are instructed to bring Mr.
24 Nuon Chea and Mr. Khieu Samphan to the holding cell downstairs.
25 And this afternoon, please bring only Mr. Khieu Samphan back to

1 this courtroom before 1.30.

2 The Court is adjourned.

3 (Court recesses from 1209H to 1331H)

4 MR. PRESIDENT:

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

6 The floor will be given to Mr. Khieu Samphan's defence team to
7 continue questioning this witness. You may proceed.

8 BY MR. VERCKEN:

9 Thank you, Mr. President. Good afternoon to the Chamber and all
10 those who are present here. Good afternoon to the witness.

11 Q. A few days ago, you said before this courtroom that Khieu
12 Samphan had a unit under his orders, the electrical plant at Chak
13 Angrae.

14 Now, could you tell us where you get this information from about
15 Chak Angrae?

16 [13.33.28]

17 MR. KAING GUEK EAV:

18 A. Regarding my statement that Brother Hem controlled at least
19 one unit which was the electrical plant in Chak Angrae, it's
20 based on the following reasons.

21 The chairman of the electrical plant in Chak Angrae was arrested
22 and taken to S-21. His name was Youk Chuong, alias Chorn. He said
23 that Brother Hem taught him to become a CIA agent. And for all
24 the affairs in the -- the affair of the CIA, he had to follow the
25 guidelines taught or instructed by Brother Hem at the Chak Angrae

1 power plant.

2 For that reason, I sought advice from Brother Nuon, and for that
3 reason I believed – or, this is the evidence showing that Brother
4 Hem controlled the power plant in Chak Angrae.

5 Q. Yes. So what I've understood from this is that the information
6 you have from an S-21 confession.

7 [13.36.03]

8 A. That is correct.

9 Q. On the 28th of March, 2012 before this courtroom, you
10 maintained that on the 6th of January 1979 on the eve of the
11 Vietnamese invasion of Phnom Penh you attended a meeting in the
12 presence of Khieu Samphan and that the meeting was held in the
13 Suramarit Buddhist lycée. And you told the Court in E1 --
14 E1/55.1, page 95 in the French version:

15 "I knew the person in charge of the state storage facility, but
16 when I saw that the person in charge of that facility was
17 attending the same meeting under the supervision of Bong Hem, I
18 realized that Bong Hem was in charge."

19 And so my question to you is the following. At this meeting
20 which, as you tell us, took place on the eve of the invasion, was
21 the question of the state storage facilities discussed in any way
22 whatsoever? In fact, was it the subject of the meeting?

23 [13.38.04]

24 A. Brother Hem chaired the meeting regarding the situation that
25 the Vietnamese soldiers arrived in the Cambodian territory. He

1 said that "Don't be surprised; just carry on with your work"
2 because the matters were managed by Roeung and San.

3 Q. I'm lost here. What was under Roeung and San?

4 A. When the Vietnamese entered, then Comrade Roeung and Comrade
5 San would be able to counter the Vietnamese forces.

6 Q. And this Comrade Roeung was the same person who was under
7 Khieu Samphan's supervision for the state warehouses, or are we
8 talking about somebody else? The name does seem to be similar.

9 A. Comrade Roeung and Comrade San, they were secretaries of two
10 separate divisions.

11 [13.40.16]

12 Q. So do I take it that during this meeting on the 6th of January
13 1979 the question of the state warehouses did not come up in the
14 conversation?

15 Can you confirm, please?

16 A. That is correct. There was no discussion about the state
17 warehouse. There was a discussion only on the invasion by the
18 Vietnamese troops.

19 Q. But when one comes to consider the statement you made in this
20 courtroom and which I have re-read, the impression one gets is
21 that the simple presence of the person in charge of the
22 warehouses and the presence of Khieu Samphan at the same meeting
23 that leads you to assume that there is some kind of hierarchical
24 link between these two people. Now, is this right? Is this true?

25 [13.41.38]

1 A. There were a number of participants in that meeting, but I
2 clearly knew Comrade Roeung from the state's warehouse. So I
3 concluded that it might be possible that Comrade -- that Brother
4 Hem also controlled the state warehouse.

5 Q. In other words, it's an assumption that you made at the time
6 and that you continue to make right now; is that correct?

7 A. I made a conclusion at that time and today, yes, I make the
8 same conclusion.

9 [13.42.56]

10 Q. And to try and substantiate that conclusion that you drew, the
11 essence is that there were these two people, Khieu Samphan and
12 the head of the state warehouses, present at the same meeting.

13 A. They attended the meeting chaired by Nat. And usually whoever
14 chairs the meeting, it means that person was the superior of the
15 attendants. At that time, it was only Brother Hem who talked
16 about the situation, and nobody else.

17 Q. But you were at the meeting, Duch, and Khieu Samphan was not
18 your direct superior, is that right?

19 A. I believe you, Counsel, you should look at a bit further up.
20 Comrade Lin called me to ask me to go to work. And when I took my
21 moto to the Suramarit school, I stopped there and then the
22 comrade came to pat my shoulder and invited me in. I was --
23 actually hesitated because Brother Hem was not my superior, but
24 Comrade Roeung just encouraged me to get inside.

25 I think I made a mistake. Let me correct. It's Comrade Lin, not

1 Comrade Roeung. Comrade Lin who actually pushed me in. So I
2 entered because I knew he -- Comrade Lin would not do that if he
3 was not authorized to do so.

4 [13.46.01]

5 Q. Thank you, Witness, for those points of information. But that
6 particular anecdote that you have shared with us, you will agree,
7 has absolutely no relation to the question of whether or not Mr.
8 Khieu Samphan was responsible for the state warehouses.

9 Do you agree?

10 A. Your conclusion is based on your personal reason and I made my
11 personal conclusion. And I still have reasons to maintain my
12 conclusion as it is because regardless of any regime we are
13 under, no one would be authorized to spread information to anyone
14 except their subordinates, or his or her subordinates.

15 When I entered, all the seats were already occupied except one,
16 and Comrade Roeung at the time asked me to sit in that chair.

17 [13.48.08]

18 Q. All right. But I'm not asking you to repeat your story. But
19 are there any other reasons that might have led you to deduce
20 that there is some kind of hierarchical link between Mr. Khieu
21 Samphan and the state warehouses which would have led you to
22 think that the other gentleman was his subordinate?

23 Is there something that made you really believe that Mr. Khieu
24 Samphan was in charge of the state warehouses, or is it just the
25 series of events that you have divulged just now that makes you

1 think, broadly speaking, that everybody attending the meeting was
2 a subordinate of Khieu Samphan?

3 [13.49.06]

4 A. That is correct. I still believed those people sitting around
5 Brother Hem were his subordinates, including Comrade Roeng.

6 Let me confirm that, at that time, Brother Hem did not speak to
7 me, not even a word, not even a smile.

8 Q. Is it possible that you might have adduced information to the
9 effect that Mr. Khieu Samphan was in charge of the state
10 warehouses from a confession obtained under torture in S-21?

11 A. I did not talk about the content of the confessions.

12 Q. That's true, but I'm asking you the question anyway.

13 A. Counsel, could you please repeat your question because only
14 half of my statement was heard on the channel that I'm listening
15 to.

16 [13.51.10]

17 Q. Which channel are you listening to, Witness?

18 A. I'm listening to the French channel, says the witness.

19 Q. All right. Well, if your answer didn't come through correctly,
20 would you like to repeat it, please?

21 MR. PRESIDENT:

22 Counsel, could you repeat your last question because only half of
23 your question was interpreted.

24 And as for the witness, you are reminded that please you should
25 pause until the interpretation of the question concludes before

60

1 you start to respond.

2 And, Counsel, please also slow down, as the witness is listening
3 to you in the French -- on the French channel and he needs to
4 finish listening to the interpretation first before he could
5 respond. So please leave sufficient time between the two of you.

6 [13.52.38]

7 BY MR. VERCKEN:

8 Yes, I understood that, Mr. President. I'll be more careful.

9 Q. My question was a simple one. Backing up your statements of
10 the 6th of January 1979 that you have just talked about -- or
11 your observations, rather, might there be other information that
12 you could have drawn from confessions obtained in S-21?

13 MR. KAING GUEK EAV:

14 A. There are two separate issues here. One is my observation
15 regarding the 6th of January 1979 event. That was the event that
16 led to my conclusion, the conclusion that Brother Hem controlled
17 at least one unit of the state warehouses.

18 As for the second matter, that is, the confession of Chhoun,
19 Chhoun confessed that his superior, who was appointed by the CPK,
20 that is, Brother Hem, his superior taught him how to become a CIA
21 agent and how to operate like a CIA agent. Therefore, as Brother
22 Hem controlled the power plant in Chak Angrae was known by
23 Chhoun, that's why he implicated his superior, that is, Brother
24 Hem, who was appointed by the Communist Party of Kampuchea. So I
25 do not touch upon any content within the confession of that

61

1 comrade.

2 [13.55.34]

3 Let me continue. When I reported to Brother Nuon, Brother Nuon
4 did not say anything because the confession implicated Brother
5 Hem. It meant that he acknowledged that Brother Hem controlled
6 that plant, and he was appointed by the CPK to do so.

7 He only threatened me that I -- that Brother Nuon threatened me
8 that--

9 Q. In sum, then, Witness, the information that led you to
10 conclude that, in your view, Mr. Khieu Samphan had a unit under
11 his command is, (a) the fact that you didn't want to go into the
12 meeting, but -- because Mr. Khieu Samphan was going to be there,
13 but you were practically forced to go in anyway; two, that the
14 meeting was chaired by Khieu Samphan; and, three, because in at
15 least one confession obtained in S-21, Khieu Samphan had been
16 connected with somebody in charge of that electrical plant.

17 Is that a fair summary of what you're telling us?

18 [13.57.42]

19 A. In principle, yes, it is correct.

20 Q. Thank you. Just now you said that Lin called you to the
21 meeting.

22 During the investigation phase, you talked about Lin at the first
23 stage, but also Doeun as being the person who summoned you to the
24 meeting. Can you remember that variation in the name of the
25 person who summoned you?

1 A. I may confuse because the two individuals have the rights to
2 make a phone call to me.

3 Q. And they called you to come to the meeting, is that right?
4 Please repeat in the microphone.

5 A. That is correct. The two of them had the right to make a phone
6 call to me to call me for work. As for Comrade Lin, he did not
7 have the right to make a phone call for me to work. Not only have
8 the right to make a phone call to me to work, he also had the
9 right to ask me to arrange my forces to receive the people that
10 he would send.

11 [14.00.12]

12 Q. Thank you. And during the investigation, you described often
13 the state of mind and even the panic in which you were as of the
14 2nd or 3rd of January, you said, during which your superior at
15 S-21 had given you the order to execute the last prisoners.
16 Do you remember that description you gave of your mental state
17 during that period, or would you like me to remind you of what
18 you said?

19 A. I still remember. I remember all.

20 [14.01.08]

21 Q. So then can you please repeat it here?

22 A. Mr. President, after I received order from Brother Nuon to
23 destroy the remaining prisoners, I came to tell Comrade Hor to
24 follow the order, for him to execute the order because it was his
25 work. He was responsible for that work.

63

1 And as for me, I said to myself to destroy all, that means Vorn
2 Vet, who was recently arrested. So could it be me who was to be
3 arrested? It was then that I became terrified. I couldn't even
4 sleep, and I stayed at home.

5 I had my blood pressure. I got up only when we had to have meal,
6 and I took my wife to have meal. And after that, I came back home
7 and sleep. I did not even go to the place where I usually went.
8 No one saw me going out of my house.

9 [14.03.22]

10 Q. Except to go to a meeting on 6 January where this crucial
11 information is going to be given to you, meaning that everything
12 is fine, Phnom Penh is well defended and you can continue with
13 your activities as if there was nothing.

14 Is that the case?

15 A. It is correct.

16 Q. I now would like to revisit a statement you made on 4 July,
17 2002 before the Military Tribunal, and the index number is
18 D288/6.52/4.43 on page 3. The French ERN 00327365, English
19 00329135, Khmer 00095691. And we are going to give you a copy, a
20 Khmer version. And you can see the underlined passage on the last
21 page.

22 And can I please display this on the screen?

23 And during this statement during which you were questioned about
24 your knowledge of Khieu Samphan -- and this was 2002. And you say
25 that, "Up until today -- as for Khieu Samphan, today we have

1 never met. Not even once".

2 Have you read the passage?

3 [14.06.11]

4 And my question is the following: How can you explain this
5 apparent contradiction between your statement on 4 July 2002
6 before the Military Tribunal and what you're saying today under
7 oath?

8 A. Mr. President, in this case, as two people are included, the
9 Military Court included two people here. I was never under any
10 official control by either Ieng Sary or Pol -- or Khieu Samphan.
11 That was what it means here.

12 When it comes to this kind of summary, we can understand it this
13 way.

14 Q. So your explanation is that when in 2002 you say that you
15 never met Khieu Samphan, well, in reality, what you wanted to say
16 was that you were not his subordinate; is that the case? Is that
17 your explanation?

18 A. (No interpretation)

19 Q. Can you please repeat your answer? We did not get the French
20 interpretation.

21 A. It is correct.

22 [14.08.16]

23 Q. Now I would like to consider the issue of the laissez-passer
24 which you spoke about. And you spoke about this on the 1st of
25 April 2008, when you were questioned. And the Investigating

65

1 Judges were asking you then: "Why didn't you escape like everyone
2 else?" And you answered then -- and I quote:

3 "Personally, I had a quarterly laissez-passer that was signed by
4 a surnamed Khang, and it was the alias of someone whom I don't
5 know. But when I saw Khieu Samphan's handwriting, it seemed to me
6 that it was his."

7 And then, here, before the Chamber, on 28 March 2012, you stated
8 that Pang had provided you with a laissez-passer, not a quarterly
9 laissez-passer as you said in 2008 in document E3/106, but a
10 laissez-passer for six months, which was signed again by Khang.

11 [14.09.57]

12 And you stated that, back then, you had asked Pang who was this
13 Khang in question -- I hope that I'm pronouncing it right -- and
14 that Khang answered you: "Bong Hem."

15 And here, before the Chamber again, you stated:

16 "I looked at this handwriting, and I compared the documents, and
17 I concluded that it was probably the same person who wrote this.
18 It was surely him because I once saw his handwriting -- [you were
19 speaking about Khieu Samphan] -- when he had sent a letter to his
20 friend in the Special Zone."

21 So my first question regarding this is the following: How long
22 was this laissez-passer valid for; for three months, for six
23 months?

24 [14.10.54]

25 MR. PRESIDENT:

1 Witness, please wait.

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

3 MR. SMITH:

4 Thank you, Your Honour. I think the question relates to the
5 passages that the defence counsel were putting to the witness. We
6 didn't get the document number that he was referring to of the
7 Co-Investigating Judges' statement, and I just would ask perhaps
8 for the ERN number of that passage. And perhaps if the witness
9 could be provided that passage so that he could provide a more
10 enlightened answer.

11 [14.11.33]

12 BY MR. VERCKEN:

13 That's true. I apologize. And I went a bit too fast.

14 So yes, I do have here a copy that I can give to the witness, a
15 copy of his statement -- or rather, of his examination of 1 April
16 2008, and the index is E3/106, and the ERNs are the following:
17 French 00177646, English 00176535, Khmer 00177625.

18 Q. So you have had the time to look at this document. And what
19 was the validity of this laissez-passer? Was it three months, six
20 months?

21 [14.12.56]

22 MR. KAING GUEK EAV:

23 A. Mr. President, since the implementation of the pass until the
24 time that I was asked by the Investigating Judges, it had been 30
25 years, so I am confused. I'm not sure whether the pass was valid

1 for three months or six months.

2 I was talking about the validity over a period of a semester
3 because Pang had gone, and I was issued a pass. So I was thinking
4 of this period. That's why I said it was valid for a period of
5 six months.

6 MR. PRESIDENT:

7 Your mic was not activated when you spoke the last time, Duch.

8 MR. KAING GUEK EAV:

9 Mr. President, the validity of the pass -- well, when it comes to
10 the validity of the pass, I am confused. I'm not sure whether the
11 validity was six months or three months. I'm not so sure.

12 I think between the time that Brother Khieu went to live in Neak
13 Loeung and the times that Pang or Brother Hem signed the pass for
14 me, it was over a long period of time. So on this basis, I said
15 it was probably six months.

16 [14.15.27]

17 BY MR. VERCKEN:

18 Q. Are you sure that this was Khieu Samphan's signature?

19 MR. KAING GUEK EAV:

20 A. Mr. President, at that time there was no signature. It was
21 initialled. It was written quickly just like my name. We wrote
22 our name in a quick manner.

23 And as for my answer, whether I am sure or not -- as for the
24 writing, I am sure that it was the writing of Brother Hem, and
25 the reason is (microphone not activated).

68

1 [14.16.24]

2 Q. So you're saying this on the basis of initials that were
3 drafted very quickly.

4 A. And when we look at the writing, it recalls the letters that
5 he wrote -- Brother Hem wrote to his friend sometime in 1973 or
6 1974.

7 MR. PRESIDENT:

8 Can witness repeat what you have just said? Because before that
9 your mic was not activated, and so there was no translation.
10 Without the mic being activated you cannot be interpreted.

11 [14.17.13]

12 MR. KAING GUEK EAV:

13 A. Mr. President, the writing on the pass as I trust what Pang
14 said, that writing belongs to Brother Hem is because Pang said
15 Khang's handwriting belongs to Brother Hem, and Brother Hem
16 signed the pass. So, when it was clearly told to me, I recalled
17 his handwriting back in -- that I saw in 1973 or 1974.

18 BY MR. VERCKEN:

19 Q. So, to summarize what you just said, on the basis of a piece
20 of handwriting that you saw a few years before on a letter which
21 you compared to two initials that were scribbled quickly on a
22 laissez-passer you are able to conclude that it was the same
23 person? Is that what you're saying?

24 MR. KAING GUEK EAV:

25 A. His full name was written on that pass.

1 [14.19.01]

2 Q. Which full name?

3 A. The entire content; the older writings on that pass belongs to
4 Hem.

5 Q. I know that the question has already been put to you and maybe
6 the question might seem a bit excessive but can you -- are you
7 able to analyze handwriting even if you claim to have done so but
8 what qualifies you to do this? You had no document to make any
9 comparisons and you're just comparing this with what you remember
10 from several years ago. So, do you have any kind of specific
11 experience in terms of comparing handwritings and especially
12 under such difficult circumstances?

13 A. Mr. President, I would like to indicate that there was no
14 reason for Pang to lie to me; that the writing in that pass did
15 not belong to -- belongs to Brother Hem so this is the important
16 reason. How could a superior lie to his subordinate?

17 [14.20.43]

18 It was only about a pass. It was about who signs the pass. How
19 could Pang lie to me? I don't think so.

20 Q. Are we speaking about the same Pang, the same Pang who was
21 arrested, tortured and executed at S-21?

22 MR. PRESIDENT:

23 Witness, please answer. It was too quick for you to answer so
24 there was no translation.

25 MR. KAING GUEK EAV:

1 A. Yes, that Pang was the same person.

2 BY MR. VERCKEN:

3 Q. And can you explain one last point to me; what was the power
4 of a laissez-passer that was signed by someone who was completely
5 unknown?

6 MR. KAING GUEK EAV:

7 A. Those who knew, knew about that and those who did not know,
8 did not know about that. Soldiers would recognize that the pass
9 was signed by Brother Khieu; they would recognize the handwriting
10 of Brother Khieu.

11 [14.22.24]

12 Others, when seeing that kind of letters or pass, would recognize
13 that the letters were written by a certain person, they knew
14 that.

15 Q. And a laissez-passer that was drawn up by a certain person was
16 enough to allow you a freedom of movement?

17 A. At that time, if the pass was not signed by Khim and the
18 soldiers walked, they would be arrested.

19 [14.23.23]

20 Q. Who was Khim?

21 A. Mr. President, Khim is Khieu; it was used as a signature on a
22 pass.

23 Q. But it was not Khieu Samphan, was it?

24 A. Khieu was Son Sen. Khieu Samphan would be used with Khang.

25 Q. So, this laissez-passer didn't allow you to go anywhere if I

1 understand you correctly, the laissez-passer that was signed by a
2 so called Pang?

3 A. No pass was signed by Pang.

4 Q. I'm sorry, I said "Pang" -- that was my mistake -- instead of
5 "Khang"; I meant "Khang".

6 So, if I understand what you're saying correctly, a
7 laissez-passer signed by Khang didn't allow you to go anywhere
8 because it was necessary for the laissez-passer to be signed by
9 Brother Khieu; is that the case?

10 A. No, it does not mean that. When Brother Khieu was in Phnom
11 Penh, our pass was signed by Khim.

12 Whenever I was asked for the pass I would show the pass and I
13 would be allowed to go and after Brother Khieu went to Neak
14 Loeung for a period of time, I held a pass signed by Khang, and
15 no one asked me for the pass with the signature of Khang.

16 [14.26.06]

17 Q. Yes, fine, but the revolutionary name of Khieu Samphan -- and
18 everybody knows his name was Bong Hem, wasn't it? It wasn't
19 Khang, whom you are suddenly speaking about.

20 A. We are on two different sides now. We are on two different
21 sides. We do not understand each other.

22 Brother Khieu has a lot of names. 89, Son Sen; 62, Son Sen; 21,
23 Son Sen. And he used the name Khim when he signed on the pass;
24 that was for the pass only. Besides, as for Brother Khieu
25 Samphan, most people knew him by his name Hem. I knew him by

1 "Hem" as well, but when he signed on a pass, he used the name
2 Khang, it was Khang.

3 Q. And everyone knew that?

4 [14.27.53]

5 A. Even though I was asked for the pass, I believe I would be
6 able to go because the pass was official.

7 Q. You are telling us that it was Son Sen who signed the
8 laissez-passers normally. Is it because he was your superior?

9 A. He was my superior.

10 Q. And is this why he signed your laissez-passer?

11 A. It is correct.

12 Q. What was the validity of a laissez-passer signed by Mr. Khieu
13 Samphan whereas Mr. Khieu Samphan was not your superior?

14 A. Mr. President, Khieu Samphan was a name used in the past, long
15 time ago. So people in Trapeang knew already that the name was
16 used to sign on a pass. They all knew. So, as to the value of the
17 pass, it was up to the one who asked for it, who checked it.

18 Q. Where is the pass today?

19 [14.30.09]

20 A. It is correct for you to ask me this question. I sent to the
21 -- I told the Office of the Co-Investigating -- rather the
22 Co-Prosecutors to look for the pass at S-21 because when I ran
23 away, I dropped it there.

24 Q. And why wasn't it Nuon Chea who signed the pass, since you
25 seem to be implying that he would be the successor to Son Sen?

1 A. Pol Pot and Nuon Chea were high above the hierarchy so it
2 would be unlikely that both would sign the travel pass.

3 [14.31.27]

4 Q. Khieu Samphan was only president of the State Presidium, in
5 other words, nothing at all, is that right?

6 A. Khieu Samphan was not as high as Pol Pot and Nuon Chea but he
7 was still high that he could sign the pass. He was a member of
8 the Central Committee, a full fledged member.

9 Q. Have you got any kind of documentary evidence or are you aware
10 of any that might serve to confirm your statement about this
11 pass?

12 A. The year today is 2012; from 1979, it has been 34 years. Many
13 people are separated and died. How could it be possible to find
14 someone who would know about this or to arrest more people for
15 them to know about this? Please do not make any more arrest,
16 either because you believe me or not.

17 Q. Let's change the subject. In the Foreign Ministry, who was in
18 charge of taking prisoners to S-21?

19 A. I will not answer this question.

20 Q. Why, Witness, do you not want to answer it?

21 [14.34.25]

22 A. As I said earlier, in general it was Comrade Lin who sent them
23 to me and now you want to dig up about anything else?

24 Q. No, I'm not here to dig. I would just like to draw your
25 attention to your statements. On the 3rd of June 2008, in E3/60,

74

1 page 9 and 10; French ERN 00195616 and 17; English 00195606;
2 Khmer 00195598 -- and I read: "In the business of the foreign
3 minister, that ministry there was a messenger who brought the
4 prisoners to S-21, it was a person called Cheam, who was the same
5 age as me. People were not detained within the ministry but taken
6 directly to S-21."

7 Can you confirm the name of the individual that you quoted to the
8 Investigating Judge in 2008?

9 [14.36.27]

10 A. That record of interview at the Office of the Co-Investigating
11 Judges --

12 MR. PRESIDENT:

13 Court officer, can you deliver the document from the Counsel to
14 this witness. Also, can you project the document on screen?

15 BY MR. VERCKEN:

16 Thank you, Mr. President. It's just being done.

17 Q. So your answer please, Witness. Do you confirm what you said
18 to the Investigating Judges of the ECCC on the 3rd of June 2008?

19 MR. KAING GUEK EAV:

20 A. I never reject any statements that I made before the Office of
21 the Co-Investigating Judges at ECCC.

22 [14.37.46]

23 In this case I also do not reject this document. The thing is I
24 just do not wish to respond to the Counsel's question.

25 Q. Well, without answering you therefore confirm what you said in

1 2008, is that right?

2 A. I will not respond to your question regarding the someone or
3 about something that you want to lead into.

4 MR. PRESIDENT:

5 The Chamber will take a 20-minute break, and we shall resume at 3
6 p.m.

7 Security guards, can you take the witness to the waiting room and
8 bring him back here at 3 p.m.?

9 THE GREFFIER:

10 All rise.

11 (Court recesses from 1439H to 1501H)

12 MR. PRESIDENT:

13 Please be seated. The Court is in session.

14 Before handing over to defence counsel for Mr. Khieu Samphan to
15 continue his questioning to the witness, the Chamber would like
16 to remind the witness that the Chamber has noted that you have
17 been tired for the time that you spent in giving testimonies
18 before the Chamber. This is a fact. However, at the same time,
19 the Chamber hopes that, Mr. Witness, you continue to give your
20 testimony for another one hour.

21 The Chamber has already informed the witness previously that
22 witness has the obligation to answer to questions posed by the
23 parties on the basis of what you hear, know or experienced
24 concerning the facts or events relevant to the case. And as
25 indicated by you, Mr. Witness, yesterday, we are here to seek the

1 truth concerning the events occurred.

2 The United Nations and the Cambodian government agreed to create
3 this tribunal, and for this purpose, again, the Chamber hopes
4 that you continue to try to contribute or help the Chamber -- or
5 assist the Chamber to seek the truth. Can you do this, Mr.

6 Witness?

7 [15.03.45]

8 MR. KAING GUEK EAV:

9 Thank you, Mr. President. I volunteer to continue giving
10 testimony.

11 MR. PRESIDENT:

12 Thank you, Mr. Witness.

13 I now hand over to the defence counsel to continue his questions
14 to this witness.

15 BY MR. VERCKEN:

16 Thank you, Mr. President. I believe I'll be finished very soon.

17 And in line of what you said to the witness, I will repeat the
18 question that he did not wish to answer before we adjourned for
19 the break.

20 [15.04.29]

21 Q. And the question was: Who, at the Ministry of Foreign Affairs,
22 was in charge of bringing prisoners to S 21?

23 MR. KAING GUEK EAV:

24 A. Thank you. Earlier, I answered that in general it was Comrade
25 Lin; and I'm talking about a general practice.

77

1 And now you are asking on a different issue, but I will answer to
2 that question following the direction from Mr. President. I do
3 not reject my answers to the Office of the Co Investigating
4 Judges. Comrade Yem once brought Comrade Thean (phonetic) to S
5 21.

6 Q. And the name of the comrade you just mentioned is spelled
7 C-h-e-a-n; is that correct?

8 A. Mr. President, the messenger of the Ministry of Foreign
9 Affairs was Cheang (phonetic).

10 [15.06.21]

11 Q. Thank you, Witness.

12 I have very few questions left.

13 I think there was a little misunderstanding before. I believe
14 that you did not answer directly the question regarding how you
15 knew that Roeung was working at the state warehouses.

16 A. Mr. President, Comrade Roeung worked at the state warehouse.
17 He met me during the 17 April ceremony at Borei Keila. He worked
18 especially in the South Zone. I knew Roeung from a long time ago.

19 MR. VERCKEN:

20 I have no further questions, Mr. President, and our team -- the
21 Khieu Samphan defence team is also done with questioning.

22 MR. PRESIDENT:

23 Thank you.

24 [15.08.12]

25 Because we still have time, and the defence counsel for Mr. Nuon

78

1 Chea was informed the other day that, if we have any time left,
2 the floor will be given to the national defence counsel for Mr.
3 Nuon Chea so that he can put some more questions to this witness,
4 the floor is now yours, Counsel.

5 QUESTIONING BY MR. SON ARUN RESUMES:

6 Good afternoon, Mr. President. Good afternoon, Your Honours.

7 Once again, I thank you very much that I have another opportunity
8 to put more questions to Mr. Duch, the witness.

9 Q. First of all, Witness, I would like to ask you about what you
10 told defence counsel for Mr. Khieu Samphan. You said there was a
11 letter signed by Mr. Nuon Chea. There were four letters,
12 actually, telling you to work with Brother Vorn. Do you still
13 have the letter, or did you already give to -- give it to the
14 Office of the Co Investigating Judges or the Office of the Co
15 Prosecutors?

16 Secondly, was there any intervention from Mr. Nuon Chea?

17 [15.09.59]

18 MR. KAING GUEK EAV:

19 A. Mr. President, I would like to indicate to the Chamber that,
20 in the letter, it was written as introducing Comrade Vorn to work
21 at the place, and there was a mention of the name Buon, or
22 Brother Buon. That was a secret name for Brother Nuon Chea. As I
23 remember, I did not keep the letter. I forgot about it.
24 Other letters of Brother Nuon, yes, I kept those other letters,
25 but when I ran away, I did not bring them with me, so I'm not

1 sure whether the Office of the Co Prosecutor could get a hold of
2 those letters.

3 So this is my answer to you. And I'm not sure about the rest of
4 -- the other part of your question, Counsel.

5 [15.11.22]

6 Q. My other question is: Do you believe that this is the order of
7 Pol Pot, or it was the intervention -- direct intervention of Mr.
8 Nuon Chea?

9 A. Mr. President, as a principle, it was Brother Pol who decided,
10 and it was Brother Nuon who would monitor the practice. So I
11 believe that it was the decision by Brother Pol, and Brother Nuon
12 monitored the work, because Brother Pol never showed up in
13 person.

14 Q. Thank you.

15 My next question is-- In a statute of the CPK it reads that the
16 deputy secretary followed the secretary, so it is not possible
17 for Nuon Chea to decide, even though it was his own work, for
18 example concerning the assembly for education. Therefore, whether
19 the work was correct or not, it was for Pol Pot to decide or to
20 be responsible, and so the ultimate decision was on -- was to be
21 made by Pol Pot; is this correct?

22 [15.13.11]

23 A. Mr. President, in his capacity as a general controller, it is
24 correct, yes, he was the one who decided on the work. And once
25 the decision was made, the decision had to be executed. The

1 subordinate would be implementing the order, and there was
2 someone who would be monitoring the work.

3 For example, as indicated in the decision of the 9th of October
4 1975, it stated clearly that, with the absence of Brother Pol,
5 Brother Nuon would decide on Brother Pol's behalf. Through the
6 analysis of documents from S 21 -- that is, after 1978 -- I did
7 not see that Brother Nuon sought any advice from Brother Pol; he
8 only wrote short annotations, for example regarding the arrest of
9 Kang Chap in Preah Vihear Province.

10 [15.14.39]

11 So, when the secretary was not there, it was the deputy secretary
12 who would take over the work. That would fall in line with the
13 Statute of the Party as well.

14 And when it comes to the Party's work, it meant that the control
15 of the biographies of the cadres. We were told not to believe in
16 the networks of the enemies; we were told to believe in our own
17 networks.

18 Bong Nuon was in charge of Long Norin's biography. He was better
19 than -- he knew better than Ieng Sary did. Especially when Pol
20 Pot was not there, Brother Nuon would make the decision. And when
21 Pol Pot made the decision, it was Pol -- it was Nuon Chea who
22 would monitor the work that was executed.

23 Q. Thank you.

24 Witness, you were the head of S 21, and the rank was equal as the
25 chief of the district, this according to your answers to the Co

1 Prosecutor.

2 My question is: Given this rank as equal to the head or the chief
3 of the district, I assume that you were educated at the same
4 level as chiefs of district. How could you understand or know a
5 lot more than that?

6 [15.16.55]

7 A. Mr. President, I lived in the Communist Party of Kampuchea
8 since 1971, and when it comes to the study of the Party Statute,
9 I studied it since 1977 (sic), so I knew that the Party would
10 assign a core pillar and a Central Committee. That is my initial
11 understanding.

12 And I read a Chinese book which talked about the revolution in
13 China, and I gained such knowledge since then.

14 So it has nothing to do about the rank being close to the chief
15 of the district or the head of the division.

16 So we understand what was stipulated in the Party Statute, and I
17 learned since 1967 about the discipline of the Party.

18 [15.18.09]

19 Q. Thank you. Your answer is a bit lengthy, and I did not intend
20 to ask you to discuss that, not things that you learned in China
21 or whatever.

22 My question is: Given your status, your rank, how could you know
23 a lot about the Party? Did you know about that because you were
24 told or did you know about that because you read documents?

25 A. Mr. President, in the Party Statute, it - it mentions clearly

82

1 that the leadership in the country is the Central Committee and
2 it stated clearly that a subordinate obeyed the superiors. It was
3 also mentioned in the Statute in 1967, the Statute that I
4 learned, the Statute that was created in 1960. I learned that
5 clearly and I was determined to respect the Party. When I came to
6 M 13, I was told that I was to obey the decision of the Central
7 Party. So this is the story.

8 [15.19.49]

9 Q. In your role as -- or as your -- as the head of S 21, you were
10 also in charge of the interrogators and the one who examines the
11 confessions. Would like to state again, when you became the head
12 - rather, before you became head -- the head of S 21, what roles
13 did you have? Did you have the same roles when it comes to -- if
14 you compare the roles between Pol Pot and Nuon Chea? Do you
15 understand my question?

16 A. Mr. President, I have answered to that question. I indicated
17 already, during the Case 001 Trial, I indicated again and again;
18 the Chamber is my witness.

19 S 21 -- the hierarchy at S 21 is not after Duch, it was Mam Nay.
20 It's not Mam Nay, it was Duch. For all work of the Communist
21 Party of Kampuchea, in the face of the history, the ones who were
22 responsible for this are these two people, Pol Pot and Nuon Chea.
23 And again, in the absence of Pol Pot, Nuon Chea decided on the
24 work.

25 [15.22.07]

1 Q. Do you have any evidence to say that, in the absence of Pol
2 Pot, Nuon Chea would decide, and when Pol Pot was present, Pol
3 Pot would decide and Nuon Chea would monitor the implementation?

4 A. First, we all reviewed the document dated 9 October 1975. The
5 contents of it I already stated.

6 If one is not present, the other one will make a decision. So one
7 would make a decision and one would monitor the implementation of
8 that decision. And if one is not present, one would decide and
9 would also implement the decision.

10 And we also have the evidence regarding this, in particular
11 evidence from S 21, the confession of the person named Kung Kien,
12 that I mentioned this morning.

13 [15.23.21]

14 The prosecutors already know the document number of that
15 confession of Kung Kien. So I reported about that document to
16 Brother Khieu - that is, to Son Sen -- and it was likely that Son
17 Sen would deliver it directly to Brother Nuon -- that is, the
18 evidence showing that, in the absence of Pol -- of Brother Pol,
19 Brother Nuon would decide. So that was evidence during the time
20 that Pol Pot declared that he was not well.

21 And for all these details, you may consult the statement I made
22 with the Office of the Co Investigating Judges. So you would have
23 both: the documents with my handwriting and the handwriting of
24 the relevant individuals. So the documents exist, and the
25 evidence also exists.

1 Q. Thank you. When Son Sen went to the East Zone on his mission,
2 did you know that Son Sen went to the East for any particular
3 period? And when did he return?

4 A. Son Sen separated from me. Initially, I did not know where he
5 went to, but later on my younger sibling, who was a medic at the
6 general staff, came to visit - to visit me and said that he was
7 there, at Neak Loeang, as he was at Neak Loeang as well, and
8 that's how I knew about that.

9 And when you talk about the period, Son Sen separated from me on
10 the 15 of August '77, and I did not see him until the 25th of
11 June 1986, when he called me in order to put me to work. So it
12 was a long period that I separated from him, so from '77 until
13 the 25th or the 26th of June 1986, if I could recall.

14 [15.26.22]

15 Q. So, from the 15 August 1977, when Son Sen went on a mission to
16 the East, you said that Nuon Chea was in charge of security on
17 his behalf.

18 I'd like to clarify that, when you returned -- I think, the 26th
19 of June 1986; is that correct, if I am not mistaken?

20 A. I think we two misunderstand each other. I said I separated
21 from Son Sen on the 15 of August 1977 and I met him on the 25th
22 or the 26th of June 1986. Either it's the 25th or the 26th 1986,
23 when he called me to put me to work again.

24 Q. So the time that you separated from Son Sen was quite a long
25 time.

85

1 However, in between, was there any document stating his return?

2 If he were to return upon the completion of his mission to the
3 East for one, two, or three months, did you ever -- did he ever
4 contact him in his capacity of the Minister of Security?

5 A. Son Sen and I, since we separated, I maintained our
6 communication through radio communication on a monthly basis
7 until the last month. That is in fact after the arrest of So Phim
8 -- I meant it's before the arrest of So Phim.

9 [15.28.37]

10 Q. Thank you. I'd just like to -- need your clarification that
11 upon the return of Son Sen, I believe, although I do not have any
12 document to put it into evidence--However, from my understand, the
13 mission was not that long, he went on his mission and returned,
14 because through your vertical network -- that is, to report to
15 the Ministry of Security--

16 My question is: Upon his return, did he still work as the
17 Minister of Security? If so, why you did not meet him during that
18 period?

19 MR. PRESIDENT:

20 Prosecutor, you may proceed.

21 MR. SMITH:

22 Your Honour, I object to the question because it's based on
23 information that counsel says that he - that he doesn't have or
24 doesn't know of; it's just his own intuition that he came back.
25 And so it's a leading question and it's actually not based on any

1 substance that he can put forward.

2 I mean, he can ask the witness: Did Son Sen return, and when did
3 he return? But he's putting forward facts that he's unaware of
4 himself.

5 [15.30.13]

6 MR. PRESIDENT:

7 Counsel, do you have any reply?

8 MR. SON ARUN:

9 I'd like to reply to the objection raised by the Prosecution.

10 In fact, the witness said: When Son Sen returned, the period in
11 between was too long and that he could not use that event to
12 incriminate my client. In fact, the Minister of Security was
13 still in his position upon the return of that minister to Phnom
14 Penh.

15 If the witness said he met with the minister on the 25th or 26th
16 of June 1986, it was far too long a period. So, then, it means
17 the work between the Ministry of Security and other security
18 centres could not function.

19 I, of course, do not make a conclusion, but it seems very
20 unlikely.

21 [15.31.32]

22 MR. PRESIDENT:

23 The objection by the Prosecution is sustained.

24 Counsel, please rephrase your question and try to avoid your
25 subjective conclusion. You need to rely on the events and the

1 relevant facts within the case file.

2 BY MR. SON ARUN:

3 Thank you, Mr. President.

4 Q. I'd like to continue with my questions.

5 Based on your statement to the OCP on the 26th of March 2012 that
6 the subordinate needed to report to the superior, namely the
7 platoon heads to report to the company and the battalion heads to
8 report to the regiment, how come you made a report to Nuon Chea
9 in the absence of Son Sen? Does it mean that it is in
10 contradiction to the hierarchy -- the hierarchical structure that
11 you stated before the OCP, and which is also contradictory to
12 Chapter 3, Article 6, of the Party statute?

13 [15.33.07]

14 MR. KAING GUEK EAV:

15 A. As an independent regiment, S-21 is under the subordinate of
16 the general staff. As for the logistics, weaponry, and medical
17 supplies, clothing, uniforms, for instance, they are under the
18 direct subordinate of the general staff. Before Son Sen was
19 engaged at the battlefield, all the yearly trainings at S-21 was
20 with Son Sen.

21 Besides, after the 15 August 1977, I separated from Son Sen. I
22 use that word: we were separated.

23 And as for Son Sen, I already stated that he was appointed as
24 Minister of -- at that time, it was called Minister of Country
25 Defense, not National Defense. That was his title then. And his

1 role was in charge of the general staff, and his activities were
2 accordingly so.

3 In the time of need by the country, the general staff was ordered
4 to go to station in Neak Loeang. So it was upon their
5 communication that -- when he was called to the ministry; that
6 was in relation to the general staff.

7 Separately, at S-21, we were under the control of Son Sen. Son
8 Sen already stated that: "Comrade, you need to report all of the
9 documents to S-21 to me personally, as I represent Angkar." And
10 that was his exact words. And in practice I never reported to
11 anyone else except Son Sen.

12 [15.35.38]

13 Now, let me refer to the Party Statute. What you stated is
14 correct: the subordinate has to respect the superior. So the
15 regiment needed to report to the division, but for the
16 independent regiment, it is needed to report to the general
17 staff.

18 However, S-21 was established by Article 8 of the Party Statute,
19 under the control of the - of the Standing Committee. I do not
20 have that document with me. If you need, I would seek the
21 President's permission to show the article on the screen.

22 Q. Yes, I have that article with me. I thank you for your reply.
23 However, I do not have much time and I have more questions to
24 ask, so I would prefer you to respond briefly and precisely.
25 You -- in your reply to the Prosecution that, in 1979, Brother

1 Nuon ordered you to smash all the remaining prisoners, can you
2 reconfirm whether the order from Brother Nuon was actually the
3 order from Nuon Chea or from someone else? And that's question
4 number 1.

5 And question number 2: Where was Son Sen in early January 1979,
6 before the arrival of the Vietnamese soldiers in Phnom Penh? How
7 was the orders executed? Was it verbally or in writing? Was it
8 with any particular signature or stamp? If not, did you believe
9 that it was the order from Nuon Chea at the time?

10 [15.37.52]

11 A. Thank you, Counsel. Let me clarify that. Brother Son Sen was
12 likely engaged in the battlefield from the 25th of November 1978
13 -- my apology, it was '77 -- because the signature on the
14 document sent to S-21, as we seen during the hearing in Case 001,
15 his last signature was on the 25th of November '77. So I believed
16 that Son Sen was engaged in the front battlefield scenes. As for
17 my communication through radio, it was not frequent. So Son Sen
18 never met me in person from that date. That's the first point.

19 And for the second point, regarding the order to smash the
20 remaining prisoners at S-21, the order was from -- on the 1st of
21 January 1979, but I was not that precise. However, the remaining
22 prisoners were all smashed on the 3rd of January '79. That is
23 based on my recollection.

24 So Brother Nuon issued the order directly through me. And let me
25 recall some of the words in the order, and that I met him in

1 person.

2 [15.39.39]

3 He said: For all the remaining prisoners, you need to smash them
4 all, Comrade.

5 Then I asked him: So what about the "Yuon" detainees? Do we have
6 to smash them? Because we need to prepare the text for the radio
7 broadcast.

8 He said: Smash them all, because sooner or later we will find
9 them.

10 Then I asked: About the "Yor-8" [Y-8], do we have to smash them
11 too?

12 Then he said: That is up to you.

13 And that was his exact wordings from him to me at the time.

14 Q. Thank you, Witness.

15 Another question for you. You talked about the standing, the zone
16 -- the Standing Committee at the zone was the one who made a
17 decision at that zone level. What about at the sector, or at the
18 district, or the cooperative levels? Was it a common practice
19 that the secretary at those respective levels need to make the
20 decision or need to request for approval from the upper echelon?

21 [15.41.11]

22 MR. PRESIDENT:

23 Witness, please wait.

24 The International Prosecutor, you may proceed.

25 MR. SMITH:

1 Mr. President, just for clarity's sake, it's not clear whether
2 counsel's referring to the decision to smash from the 30th of
3 March 1976, which authorized zones to kill, or whether he's
4 referring to other general decisions not in relation to killing.
5 I think it would be useful for the witness to know what type of
6 decision he's referring to.

7 MR. PRESIDENT:

8 Thank you, the Prosecution.

9 [15.41.57]

10 Counsel, could you rephrase your question to be more precise for
11 the witness to respond? Usually, we base questions on the
12 document. So, usually, you can pose general questions based on
13 the document.

14 BY MR. SON ARUN:

15 I do not wish to reply to the objection raised by the
16 Prosecution. I'll move on to another question.

17 Q. Regarding bringing the people to Phnom Penh, it was at the
18 discretion of the secretary or deputy secretary. How did you know
19 about that? You were only just chairman of S-21.

20 A. The soldiers were established in 1956 as a secret force for
21 the Party. It was established by each zone. However, they were
22 under the control of the Party. Talking about the Party, here,
23 means talking about the secretary and the deputy secretaries. In
24 1974, this force was gathered to become a division under the
25 control of the Party secretary. That's how it was formed.

1 Regarding the 1971 Party Statute, it was rather slightly
2 different from the one that we have. Soldiers were the close
3 children of the Party. That's how it was stated.

4 Q. Thank you, Witness.

5 Regarding the role of S-21, which was to get the confessions
6 which would implicate others -- that is based on your statement
7 before this Court -- and the superior, that means your superior,
8 was that your common practice at the time?

9 [15.45.16]

10 A. That was the common practice, Mr. President. That was the way
11 the CPK practised since the Issarak period.

12 Q. When Son Sen went to the East Zone on his mission, you told
13 the Court that, during that period, Nuon Chea was in charge on
14 behalf of Son Sen. Did you ever see any official document
15 appointing Nuon Chea in his place in charge of security? And who
16 appointed him?

17 A. Since I went to see Son Sen when I was under his control, he
18 said what was told to be done by Brother Nuon. I did not just
19 make it up. It showed that above Son Sen was Brother Nuon and
20 then Brother Pol, and that was commonly known.

21 And on the 15 of August 1977, I was called -- I think it was
22 Comrade Lin or Comrade Nat -- I was called to work, and at that
23 time it was not at the location to the north of Borei Keila,
24 where Son Sen worked, it was at some other institute. I went to
25 the second floor and I met Brother Nuon there. He said: Comrade

1 Khieu now go through the front battlefield, and I am here to lead
2 you on his behalf; and we also had Comrade Pang and Comrade Lin
3 both of whom you already know. That's what he told me.

4 [15.47.49]

5 So, as he was a deputy secretary, everybody knew; we all knew
6 that Brother Nuon was more senior than Brother Khieu. So that's
7 how it was.

8 Regarding any official transfer of authority or any official
9 stamp, no, it did not exist.

10 Q. Last week, on the 5th, I actually asked you the question, but
11 due to the time limit, I'd like to ask you the same question with
12 some additional supplementary questions.

13 When you were asked by the prosecutors whether you believed that
14 the "Revolutionary Flag" magazine could be duplicated, and you
15 said you believed that, yes, they were the copies.

16 And the question is: Why do you believe that they were the
17 copies? What do you base your assessment on? That's question
18 number 1.

19 And for question number 2: Do you know where the original copies
20 of the magazines are kept when you received? And do you know
21 where they are located or kept now? I refer to the original
22 magazines.

23 [15.49.27]

24 A. Regarding the "Revolutionary Flag" magazines, I did read them
25 successively since late 1971 or early '72. That's point 1.

1 And point number 2, that I acknowledge that the photocopies of
2 the "Revolutionary Flag" magazines, I already stated that I did
3 not see them making photocopies, but I believe they are the
4 copies of the original copies.

5 And if you ask about the location of the original copies, maybe
6 some were collected from S 21, and I believe the original copies
7 are maintained by Chhang Youk.

8 Of course, I know about these movements because I also follow the
9 proceedings in this Court.

10 Q. I have another question for you. The document that is your
11 handwritten document, E180, with the title "Lessons Learned from
12 the Experiences of the Elders of Former Generations" -- ERN in
13 Khmer is 00787939, in English, 00791979 -- you wrote that Ho Chi
14 Minh decided to remove Son Ngoc Minh to Hanoi and left Sieu Heng
15 in charge in the country.

16 [15.51.44]

17 What were the policies of Ho Chi Minh? And do you have any
18 evidence to support the policy by Ho Chi Minh, so that the
19 Cambodian people can understand about the historical event?

20 A. The document of this kind was maintained in the document by
21 the CPK after the general convention. Ho Chi Min removed Son Ngoc
22 Minh to return to Hanoi, and there were 1,100 Cambodian
23 combatants and cadres; they were taken to study in Vietnam. And
24 that was the fact.

25 [15.52.44]

1 As for his exact wordings, we did not have any of that.

2 Sieu Heng was kept in the country. That point was also mentioned
3 in the document of the CPK.

4 [15.53.24]

5 Q. I have another question. In your writing, E180 -- in ERN in
6 Khmer, 00787952; English, 00791999; that is after the coup d'état
7 -- you talk about the presence of the Vietnamese troops in
8 Cambodia. You said that the "Vietnamese troops who took refuge in
9 Cambodia defeated the Lon Nol authorities at district levels and
10 established a provisional authority.

11 "This provisional state power belongs to the Vietnamese Workers'
12 Party. However, in appearance it was Cambodian:

13 "[As] cadres sitting on the Sector and District Party Committees
14 were all Vietnamese with Khmer names.

15 "[The] Cambodian troops who were mobilized by [Vietnamese] were
16 part of the Vietnamese party and under the control of the
17 Vietnamese Company Committees. "Confiscated weapons and booty
18 belonged to the Vietnamese party.

19 "Cash and taxes belong to Vietnamese party."

20 That was the extract from your paper. You said that the authority
21 was a "provisional authority" and that it shall be delivered to
22 the Khmer Angkar.

23 I want to ask whether was there any handing over to the Khmer
24 authority. If so, when was the event?

25 [15.55.25]

1 A. Let me give you one or two examples which are historical
2 events.

3 In -- my native village is in Stoung. Vietnamese liberated Stoung
4 about the 16th of March, let's say -- I apologize, let's say it
5 was in June. Then they appointed a cooperative to become a
6 district front committee. His name was Prum (phonetic). And later
7 on the Khmer Angkar arrived with Comrade Noeun (phonetic).
8 Actually, Noeun (phonetic) died at S 21. He became the district
9 secretary at the time. So that was the changing over of the
10 authority.

11 As for S'ang area and Kaoh Thum, Leuk Daek and Kien Svay, they
12 were controlled by those authorities from An Giang province. They
13 appointed their front committees, district committees-- I get
14 confused. They organized the sector committee and the district
15 committee and they appointed the soldiers, the front committee at
16 the district and the sub-district and the village levels.

17 [15.57.07]

18 So they brought to Vietnam all the booties and confiscated
19 weapons and also the taxes. An Giang authority controlled all
20 these.

21 By July or August, the East appointed a party committee for
22 Sector 25 to protest against the Vietnamese authority until the
23 Vietnamese authorities shot dead a tax - a Cambodian tax
24 collector to the south of Preaek Sdei. And until that December,
25 the authority was handed over from Sector 62 of An Giang to the

1 sector under the control of the East. That is about the handing
2 over.

3 Sometimes it was shorter; sometimes it was a longer period. So,
4 in Stoung, it was in a short period of time for the transition of
5 power.

6 Q. Thank you.

7 In the paragraph which I read, I have five questions and I
8 already asked one. So I still have only four more questions for
9 you.

10 For question number 2: Why the Vietnamese Party established the
11 authority to control within the territory of Kampuchea at the
12 time?

13 [15.58.53]

14 A. I think this would lead to my conclusion as I analyze the
15 situation, and I can draw a conclusion. Vietnamese and Vietnamese
16 soldiers took refuge in the Kampuchean territory, and during the
17 coup d'état, Lon Nol got assistance and weaponry supply in a ship
18 by SEATO, and he also returned the Vietnamese migrants back to
19 Vietnam.

20 They were detained first in various locations. One was near Psar
21 -- Kandal Market and they were sent through other refugee
22 organization or Red Cross to Vietnam. That was the time the
23 Vietnamese soldiers from the South raised the flag of the United
24 Front to defeat the Lon Nol authority and to take control of the
25 local authority.

1 And what was the purpose of that? In fact, we relied on the
2 Vietnamese assistance. However, in fact, Vietnamese took the
3 opportunity to control Kampuchea, but of course that not be -
4 that was not possible. But they stay as well as they could and
5 where they could benefit from the area.

6 [16.00.54]

7 Q. Thank you.

8 I have three more questions, then it's finished.

9 Regarding the Vietnamese authority in Cambodia, how many were
10 they? Can you-- And where were they in Kampuchea? Can you tell
11 the Court?

12 A. The Vietnamese committees who controlled soldiers and
13 established by Vietnam in Kampuchea after - after the coup d'état
14 in 1970, they were all -- went back to Vietnam. I only know the
15 committee commander in Kien Svay.

16 As for the committee controlling KaohThum district, was Nhien Nam
17 Do (phonetic). They all went back to Vietnam.

18 Q. Thank you.

19 This is my last question: How can you explain the strategy by
20 Vietnam on the Kampuchean territory?

21 [16.02.29]

22 A. Let me talk about the event after the coup d'état of 18 March
23 1970.

24 We did not seek their support or assistance; they were already
25 there. They used weapons to chase away the Lon Nol authority.

1 And what was the purpose? We also can't explain that. So it is
2 very difficult to say about the real intention because we -- no
3 one explained that to us.

4 MR. SON ARUN:

5 Thank you, Witness. Thank you, Mr. President. I conclude my
6 questions.

7 MR. PRESIDENT:

8 Thank you, Counsel. Thank you, Witness.

9 The time is now appropriate for the adjournment.

10 Before the adjournment, the Chamber would like to ask all the
11 three defence teams whether your clients are intending to
12 confront this witness.

13 We may start from Nuon Chea's defence team.

14 MR. PESTMAN:

15 Thank you, Mr. President. As we announced last week, if I
16 remember correctly, our client would like to read a statement, or
17 give a statement in response to this witness' testimony.

18 [16.04.40]

19 And now that I am on my feet, there's also some other more
20 procedural points we would like to raise next week. I think we
21 have to digest what has happened and how the examination of this
22 witness unfolded. And we would like to come back to at least two
23 decisions your Trial Chamber took during the examination of this
24 witness, which we believe violate our right to examine this
25 witness effectively. But I will come back to that next week.

100

1 But to answer your first question -- or your question, our client
2 would like to respond to what this witness has said in the past
3 weeks. I do not expect it will take more than 10 to 15 minutes.

4 [16.05.49]

5 MR. PRESIDENT:

6 The schedule that we are intending to have is for your clients to
7 question the witness; it's not for the lawyers. So you may need
8 to consult with your client whether your client wishes to
9 confront this witness.

10 MR. PESTMAN:

11 I want to ask him whether, in addition to the statement he would
12 like to give here, he has some questions for the witness as well.

13 (Judges deliberate)

14 [16.08.29]

15 MR. PRESIDENT:

16 What about Ieng Sary's defence?

17 MR. ANG UDOM:

18 Your Honours-- Also, good afternoon, Mr. Kaing Guek Eav. Mr. Ieng
19 Sary already declared his exercise of remaining silent and he
20 still maintain his right. As for witness Kaing Guek Eav, he will
21 maintain that right as well. Thank you.

22 MR. PRESIDENT:

23 Thank you for stating the ground.

24 As for Khieu Samphan's defence?

25 MR. KONG SAM ONN:

101

1 Thank you, Mr. President. Mr. Khieu Samphan does not wish to
2 question the witness, Duch. Thank you.

3 (Judges deliberate)

4 [16.12.03]

5 MR. PRESIDENT:

6 Thank you to all the three defence teams for your response.

7 The Chamber would like to inform Nuon Chea's defence that, if you
8 wish to make a remark or observation regarding the proceeding in
9 questioning this witness, please put it in writing and submit it
10 to the Trial Chamber. All parties are having the same right and
11 they also have the right to respond to the submission by Nuon
12 Chea's defence team in writing.

13 And, regarding that Nuon Chea wishes to make a statement which
14 takes five to 10 minutes, that's all what we get.

15 And as for the two other defence teams, they do not wish to
16 question this witness.

17 The time is now appropriate for the adjournment.

18 Once again, the Chamber would like to thank the witness, Kaing
19 Guek Eav alias Duch, for your endeavour to respond to several
20 questions during these several days period with patience and best
21 effort.

22 [16.13.41]

23 We, the Chamber, do not have any question for you at this stage.

24 Security guards, you are instructed to take Kaing Guek Eav alias
25 Duch to the detention facility.

102

1 Lead Co-Lawyer for civil parties, you are on your feet in a very
2 last minute. It seems very inappropriate to do so. Next time,
3 please try to use the time within the Court session, and just not
4 after or -- or immediately before the adjournment of the day.

5 MS. SIMONNEAU-FORT:

6 Mr. President, please forgive me for taking the floor at the very
7 last minute. I won't be very long.

8 I thought that the Chamber had taken a decision regarding Mr.
9 Nuon Chea's statement. If this is not the case and if it is
10 indeed possible for Mr. Nuon Chea to make a statement, well,
11 then, we would like to be able to discuss this when the hearing
12 will resume -- that is to say next Wednesday.

13 [16.15.02]

14 But we would like to express ourselves. We thought that the
15 decision had already been taken; we didn't believe that this
16 point could be re-discussed.

17 MR. PRESIDENT:

18 The Court is now adjourned and it will resume on Wednesday, 18 of
19 April 2012 -- that is after the celebration of the Khmer New Year
20 -- and it will commence at 9 a.m.

21 Security guards, you are instructed to bring the three Accused to
22 the detention facility and have them back here, in the courtroom,
23 on the morning of 18 April 2012, before 9 a.m.

24 (Court adjourns at 1616H)

25