



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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Trial Day 213

Before the Judges:

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MR. ABDULHAK	English
JUDGE CARTWRIGHT	English
MS GUISSÉ	French
MR. HEDER	English
MR. KONG SAM ONN	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French

1

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

2 (Court opens at 0907H)

3 MR. PRESIDENT:

4 You may be seated. The Court is now in session.

5 This morning, the Chamber will continue to hear the testimony of
6 the witness, Mr. Steve Heder, who will be questioned by Khieu
7 Samphan's defence.

8 And before I hand the floor over to the defence team, Mr. Se
9 Kolvuthy, could you report the attendance of the parties and
10 individuals to today's proceeding?

11 THE GREFFIER:

12 Mr. President, for today's proceeding, all parties to the case
13 are present. On a side note, Nuon Chea is present in the holding
14 cell downstairs pursuant to the decision of the Trial Chamber
15 concerning his health; and the witness, Mr. Steve Heder, is
16 present in the courtroom. Thank you.

17 [09.09.12]

18 MR. PRESIDENT:

19 Thank you.

20 The defence counsel for Khieu Samphan, you may now proceed.

21 Please wait, Counsel. Mr. Steve Heder, do you have an issue to
22 raise with the Chamber?

23 MR. HEDER:

24 If I might be allowed, I'd like to make three very quick points
25 on translation and terminology since that comes up again and

2

1 again.

2 Yes? Go ahead?

3 MR. PRESIDENT:

4 Yes, Mr. Steve Heder, you may proceed.

5 MR. HEDER:

6 Thank you.

7 This world of code numbers and abbreviations, as I've been told
8 in numerous interviews, this language was designed, intended to
9 be obscure and opaque, designed and intended to leave outsiders
10 confused and uncertain as to its meaning.

11 [09.10.27]

12 The second point is that to deal with this kind of language, both
13 scholars and intelligence people, like those who worked for FBIS,
14 developed a set of conventions for translating this kind of
15 language across all communist parties, and that's the - I try to
16 follow those conventions that were developed by scholars and
17 people working for organizations like FBIS.

18 And third, very quickly, what this means is that the things that
19 I'm characterizing as mistakes in the translation are not
20 mistakes that arise as a result of some general incompetence on
21 the part of translators. It doesn't reflect on their general
22 competence. All it reflects on is a bit of unfamiliarity with
23 these conventions.

24 So these are not, in some sense, translation errors, they're
25 errors in the usage of certain established scholarly and

3

1 intelligence world conventions. So I just wanted to make all that
2 clear before we go on. Thank you.

3 MR. PRESIDENT:

4 Thank you, Mr. Heder, and the counsel, you may now proceed.

5 [09.11.46]

6 QUESTIONING BY MS. GUISSÉ RESUMES:

7 Thank you, Mr. President. Good morning, Your Honours, and good
8 morning to all the parties, and to you, Mr. Heder.

9 I will continue to refer to the different terms and translations
10 relating to that period of Democratic Kampuchea.

11 Q. Just one point for purposes of clarification. How do you say
12 Central Committee in Khmer?

13 MR. HEDER:

14 A. Well, the full version would be "kanak kammathikar mocchim".

15 Q. How about the short version?

16 A. Well, it could be "kanak mocchim", which would be Central Com,
17 but already when you do that there's ambiguity. It could refer to
18 the head of the Central Committee, or it could refer to one
19 individual from within the Central Committee. And this convention
20 was used throughout the hierarchy.

21 [09.13.17]

22 So if you refer to "kanak damban", which is "sector com", you
23 don't know whether it's the sector - on the face of it, you don't
24 know whether it's the Sector Committee, the secretary of the
25 Sector Committee, or one of the members of the Sector Committee.

4

1 So it's only through context that you can be absolutely sure what
2 is meant, or close to sure as to what is meant.

3 Q. Let me press on. At the hearing of 15th of July, at about
4 9.29, the Co Prosecutor referred to your article, "Seven
5 Candidates for Prosecution", document E3/48, and in particular,
6 page 65 in English. I will give the different ERN numbers: In
7 English it is 00393553; in French, 00729654; and in Khmer,
8 00742609.

9 And this is the quotation. You are referring to reports and this
10 is what you say - and I quote:

11 "These reports [were] sometimes addressed specifically to Pol
12 Pot, including - depending on his abbreviation or alias, 009, but
13 more often they were simply addressed to 'Brother' or to 'the
14 Organization' or to the Central Committee designated by its code
15 name, 870." End of quote.

16 [09.15.20]

17 My question is as follows: Do you know the date on which that
18 article was drafted? What were your factual and documentary
19 sources for indicating that Pol Pot sometimes, or rather that Pol
20 Pot was often referred to by the code 009, and subsequently, in
21 your work in the Office of the Co Investigating Judges or Co
22 Prosecutors, did you obtain any documents to substantiate that
23 term, 009?

24 A. The answer to the first question, if I recall correctly, is
25 the basic research for this, that ultimately produced this

5

1 published report was in the late nineties, '98, '99 maybe; maybe
2 '99, 2000. The documentary basis included material that was
3 already in my possession, mostly received via David Chandler, and
4 material that was made available to me by DC Cam. Some but not
5 all, I think, of the telegrams, and reports, and comparable or
6 similar material that was later available for the Court.

7 [09.17.12]

8 I don't recall specifically seeing any new usage of the code 009,
9 when I was working at the Court, anything that I had not
10 previously seen. I think that - my recollection is that's a
11 relatively unusual formulation. I'd also say, since it's in the
12 text, where I say the Central Committee by its code number 870, I
13 wouldn't stick by that formulation now, for what it's worth. As
14 I've said, I think in earlier testimony, I think it's better to
15 understand 870 is referring to a level in the structure, rather
16 than anything specific at that level.

17 So it's, to use an analogy, it's like Americans or American
18 politicians talking about Washington. It means those guys up
19 there and those things up there at the top and then this is a
20 coded reference to it. But who in Washington, what in Washington
21 is left unspecified.

22 Q. On this point, I would like to know whether, as you stated
23 yesterday, that as part of your work at the ECCC you had access
24 to the entire file. Did you also have access to statements by Mr.
25 Khieu Samphan before the Co Investigating Judges?

6

1 A. Yes.

2 [09.19.06]

3 Q. On this specific point, regarding code 00 – code 870, in these
4 hearings E3/37; ERN in French, 00156681; in Khmer, 00156676; and
5 in English, 001156754 (sic), this is what is stated regarding the
6 Committee 870.

7 May I request, Mr. President, that this part of the statement be
8 placed on the screen, and this is what is indicated therein:

9 "The Organization 870 and Committee 870 refer to the Party, which
10 means Pol Pot. Pol Pot signed documents by writing 870 or 87. As
11 for Working Group 870, it was one of the sections of Office 870."

12 End of quote.

13 First question on this matter: As part of your factual
14 investigations, before, during, or after your mandate at the
15 Tribunal, be it with the Co Investigating Judges or the Co
16 Prosecutors, did you have access to documents in which 870 or 87
17 signatures corresponded to signatures on documents from Pol Pot
18 directly? Did you obtain those documents or any other sources,
19 including investigative reports to this effect?

20 [09.21.33]

21 A. To my recollection, there is no piece of paper familiar to me,
22 either as a result of my involvement with the Court or from any
23 other source that clearly specifies that the usage of these
24 abbreviations and codes in this particular manner must refer to
25 Pol Pot. Eighty-seven, to my recollection, was only used after

7

1 January '79. It was very frequently used after January '79.
2 And as I just said, I think now twice in various contexts, I
3 mean, a phrase like "Com 870" or "Org" or "Organization 870" and
4 similar such formulations for other levels within the Party, or
5 rather, structures within the Party, these are inherently,
6 intentionally obscure and ambiguous. "Kanak krom kram 870"
7 (phonetic) could be the whole thing, the whole committee, the
8 head of the committee, the secretary of the committee, or an
9 individual member of the committee. Angkar, according to what
10 I've been told, the way it's been explained to me, suggests a
11 somewhat higher level, but again, how much higher is a matter for
12 specification.

13 [09.23.18]

14 So the only way that it's ever been made to clear to me, or some
15 people have attempted to make it clear to me in response to my
16 questions to them is, you know, you have to get into the actual
17 practice, the actual specifics of what's going on in a particular
18 instance. So as has been described to me at other levels within
19 the Party, it depends on the reality of a particular zone
20 secretary, or sector secretary, or district secretary. Do they
21 operate collegially or are they a little lord in their level of
22 operations? So in - at various levels, the reality of - the way
23 in which it operates in reality has been described to me in
24 different ways, and I would think that this is applicable to this
25 level as well. So it could mean what was suggested here, it could

8

1 mean something else. Not a simple translation problem.
2 I'm a bit - sorry to go on. This whole - the mention here of
3 "krom kagnear", "work team" or "working group 870", I must say
4 that I never heard that formulation before I joined working
5 UNAKRT to assist the trials, nor, I must say, have I heard it
6 since. So my recollection is that came up with the testimony of
7 Kaing Guek Eav, alias Duch, and I haven't seen it elsewhere. It's
8 defined here as an office - as "The Office" or "an office",
9 depending on whether you think it's singular or plural, "870",
10 and that would require further testimony, further documentation
11 for me to talk about.

12 [09.25.42]

13 Q. Thank you for these clarifications.

14 I would now like first of all to deal with the interview you had
15 on the 17th of December 1996 with Mr. Ieng Sary. The transcript
16 of that interview is in document E3/89, and you referred to this
17 interview at the hearing of the 15th of July with the Co
18 Prosecutor at about 14H48.

19 Regarding this hearing or this interview of the 17th of July
20 1996, is that the longest interview you had with Mr. Ieng Sary?

21 A. Yes.

22 Q. Still regarding terminology, I would like to quote a passage
23 from that interview transcript and request you to provide
24 clarifications on this matter. That is document E3/89, and the
25 page that is of interest to me is in French and the ERN is

9

1 00332700; in Khmer it is 00062477; and in English, 00417619.

2 To perhaps make you more comfortable with the passage, perhaps I
3 should request that you be shown both the English and Khmer
4 versions of the transcript with the permission of the President
5 and may I request that this passage be placed on the screen, the
6 Khmer version of this passage be placed on the screen?

7 [09.28.13]

8 MR. PRESIDENT:

9 Yes, you may proceed.

10 BY MS. GUISSÉ:

11 Q. Let me repeat so that you may follow what we're saying. The
12 ERN in Khmer which you are referring to is 0062477; that is the
13 ERN. Is that okay with you?

14 You asked the question to Mr. Ieng Sary and this was the answer
15 he gave. I will allow you to read the rest of the question and
16 the answer in order that you respond to my question more clearly.

17 The middle of the question: "Well, I think that if it was the
18 hierarchy, it would be Nuon Chea or Khieu Samphan in a word. In
19 education - in the management of education, someone on the Front
20 and someone" - let me start:

21 "So it is my understanding, if the upper level was Nuon Chea and
22 Khieu Samphan, in a word meaning the organizational training side
23 and the Front side, when the Front was gotten rid of, there
24 remained just organizational training?"

25 [09.30.04]

10

1 And Ieng Sary's answer was as follows:

2 "On that, Khieu Samphan was an office chairman, but office
3 chairman on the industry side. So there were two or three office
4 chairmen. The office chairman was Pang, working as economics
5 chairman. Pang was the most senior. Then Khieu Samphan, and what
6 did they call it, the Front, but was inside there and inside the
7 office there. He thought about intellectuals, the Front. What
8 other chairman were there? Lim (phonetic) (phonetic), Lim
9 (phonetic) (phonetic) and there was another one, Phum (phonetic),
10 Phum (phonetic). Phum (phonetic) was on the school side. Yes,
11 with the school; he thought about the school. Everything was
12 personally up to Nuon Chea."

13 Your question put from you: "And what side was Lim (phonetic)
14 on?" Ieng Sary's response was as follows:

15 "Lim (phonetic) was in security. (Lim (phonetic) was responsible
16 for protection. Lim (phonetic) was not security.) That's right,
17 protection too. (After Pang died, Lim (phonetic) was in overall
18 charge of everything). That's right he had overall
19 responsibility, but Lim (phonetic) was a member of the Jarai
20 minority." End of quote.

21 [09.31.48]

22 The reason I am presenting this segment to you is that munti is
23 being mentioned in this passage, I believe in the Khmer version
24 you could confirm this, therefore, we're speaking about office,
25 the industry office, but as I read this segment I don't see which

11

1 office it's about. So maybe you could shed light on this. Which
2 office are you speaking about and which period are you speaking
3 about, if you remember? Maybe you need to refresh your memory a
4 little bit more by going over the document again, but in terms of
5 terminology, there is only the word "office" and I don't know
6 exactly what it refers to.

7 A. I don't know if I can move what's on my screen or it has to be
8 moved for me, but if it has to be moved for me it has to be moved
9 so that I can see the whole passage, it's cut off on one end and
10 cut off at the top and the bottom. So I don't want to move it for
11 fear that I'm going to mess it up. Ah, there we go. So can I
12 scroll over? I can do that. I just didn't want -

13 Q. Otherwise, Mr. Heder, you have the hard copy of the Khmer
14 version.

15 [09.33.36]

16 A. Yes, what's translated in the English appears to be as
17 "office" appears to be munti throughout, and your specific
18 question with regard to Khieu Samphan is?

19 Q. Mr. Heder, I am sorry, I believe the original version of this
20 document, the Khmer, did you have this interview with Mr. Ieng
21 Sary in English or in Khmer, because I see that the original
22 document is in Khmer when I look at the French translation. So my
23 first question was, was this interview conducted in Khmer or in
24 English?

25 A. Khmer.

12

1 Q. Fine, so you have the Khmer version on the screen, is that the
2 case? Since you spoke about the English translation when you were
3 answering my question, well, what I'm really interested in is the
4 context and the Khmer that was used. And when we speak about
5 "office" with two people, Pang and Lim (phonetic), I would like
6 to know what "office" you are speaking about then? If you
7 remember, of course.

8 [09.35.24]

9 A. Well, reading through this passage in the context of what I've
10 been told over the years by many people, and also in the context
11 of documents and interviews to which I had access when I was at
12 the Court, there's reference to the office, the chairman of the
13 office named Pang. You will recall that that's the name that's
14 given in the document you showed me yesterday for the Chairman of
15 the Office of Administration.

16 From many other sources, including interviews that I did myself,
17 not Court interviews but my own interviews, that's the same
18 office that was also known as S 71. And again, from interviews
19 and not Court and not - from my interviews, Court interviews,
20 Court and non Court documents, but not including confessions,
21 that's the office that oversaw a collection of other offices
22 coded with the initial letter K, the first letter of the Khmer
23 alphabet, kor, and then a number.

24 [09.37.00]

25 And the person who appears here as Lim (phonetic) is also - is

13

1 referred to by that name in some of the interviewing I've done
2 but in other interviewing it comes out as Lin with an N. And
3 according to my own interviews, and also I believe, if I recall
4 correctly, those of the Court, this is the person who took over
5 as chairman of this administrative office 870, administrative
6 office, alias Office S 71 after Pang was purged, sent to S 21 in
7 - around the middle of 1978. So he was replaced by this fellow,
8 Lim (phonetic), alias Lin, who had previously been, if I recall
9 correctly, the chairman of the K 1 Office or chairman of part of
10 the K 1 Office under S 71. A former, as described here and in
11 other places, a former bodyguard of Pol Pot from the northeast,
12 who had security and bodyguard responsibilities vis à vis Pol Pot
13 over a long period of time.

14 The other people who were named, Phum (phonetic), the other
15 person who's name, Phum (phonetic), and described as a charge of
16 a school, he was, according to interviews at least, a member or
17 maybe a vice chairman of S 71, a leading figure, if not the
18 leading figure in the Communist Party Youth League, and oversaw
19 one of the K offices which was responsible for Party
20 indoctrination at periodic meetings organized in Phnom Penh.

21 [09.39.04]

22 If there's a specific question with regard to Khieu Samphan, I'm
23 sorry, I've again forgotten it, how it's portrayed here and what,
24 according to my interviews, it might mean.

25 Q. In this very same document, Ieng Sary speaks about the

14

1 "Industry Office". Does he use the word munti in the Khmer
2 version, speaking about Khieu Samphan?

3 A. Yes, and he doesn't actually say chairman of the Industry
4 Office, per se. He says that he was – that Khieu Samphan was also
5 an office chairman, but a chairman over there with industry or
6 something like that. So it's not entirely specific or clear. So
7 he's saying he was a chairman of an office, maybe on the industry
8 side, maybe somewhere else.

9 Q. And when you spoke about S 71, you said that this was in
10 connection with 800 (sic). Or let me put my question to you
11 differently: In your research, in your interviews, and in the
12 factual elements that you gathered, before and during the time
13 you worked for the ECCC, for the OCIJ or for the OCP, did the
14 term "S 71" connect with Office 870? Was this an office working
15 in tandem with Office 870?

16 I apologize. My colleague says that S – that the translation was
17 S 21 in the Khmer version, but I'm speaking about S 71. I just
18 want to be clear about that. Please answer my question.

19 [09.41.42]

20 A. I've talked outside of the Court context to some people that
21 were present at the conflux of Party offices, which included the
22 Party headquarters before April, 1975, and in those interviews
23 the explanation that's given to me is that already, at least by
24 1971, this code, 870, was being used to refer to the centre
25 echelon of the Party, and that in broad general terms 870 was

15

1 understood to be headquartered in this area near, sort of on the
2 Kampong Cham/Kampong Thom Border.
3 And again, already in 1971, there was an office, S 71,
4 subordinated to which there were a number of other offices, some
5 designated with the K, some designated with a B, some designated
6 with a S, some designated with a KH, and the way in which S 71
7 has been described to me is as a kind of – it is as a kind of
8 administrate – office of administration. Somebody has to take
9 care of the stationary, the filing, the gasoline, the radios, the
10 cars, the motorbikes, all of that stuff that makes it possible
11 for any bureaucratic organization to function, and those people,
12 although they may not have a lot of political power, they have to
13 be people who were good and can provide all of those services. So
14 the people who were in charge are, I've been told, somebody you
15 can trust, somebody who the boss can trust.
16 [09.43.53]
17 I've also been told that within that office, S 71, or as part of
18 it, there was something called the 'Political Office', which I
19 was told was designated B 17. There's not a lot on that but – and
20 that – but the way it was described to me was as a kind of
21 secretariat. So S 71, according to these accounts, has existed
22 since at least 1971, and then moves into Phnom Penh, and this is
23 also based on interviews, and is elaborated, performing largely
24 the same kinds of functions.
25 At the same time, as we see from the document we examined

16

1 yesterday, two separate offices are established, which in my
2 interviews had never existed before. In other words, I never
3 heard of the existence of Political Office 870 or this 870
4 Bureau, as I translated it yesterday, I never heard that
5 nomenclature in connection with anything before April '75. And
6 having discussed this matter of S 71 with people familiar with
7 the Vietnamese and Chinese Communist Party structures, they have
8 said to me that this is what in China and Vietnam is known as the
9 general office of the Party - okay - with very, very similar
10 functions as to those described by me with regard to S 71 before
11 April '75 and after April '75.

12 [09.45.42]

13 Finally, I'll just make one last point, that in all of these
14 interviews that I've done over the years, both before the Court,
15 while I was at the Court, and since, there is enormous confusion
16 about the difference between, if any, between S - Office S 71 and
17 Office 870. In fact, in most of the interviews that I've done
18 people talk about Office 870 and then describe what other people
19 tell me is Office S 71. So again, we're hit with confusion and
20 ambiguity.

21 Many, many people have identified Pang and then Lim (phonetic)
22 (phonetic) or Lin to me as chairman of Office 870. On other
23 occasions, people maybe whose understanding or knowledge is a
24 little bit more inside say, well, no, it's actually S 71 that
25 Pang was head of and S 71 is just one of the offices of 870. So

17

1 it's not "The Office" 870 in English, it's "an" office 870 in
2 English. And this is why it's hard to sort out what exactly is
3 being referred to when any particular, any individual interviewee
4 talks about Office 870. It could be one thing, it could be
5 something else. Without context, without specification you can't
6 be entirely sure.

7 [09.47.38]

8 Q. Let me now turn to another excerpt on the very same topic
9 again of Mr. Khieu Samphan's statement on this very same topic,
10 E3/37, same ERNs, 0 - in French, 00156681; Khmer, 0015677-676;
11 English, 00156754.

12 The question put to Khieu Samphan by the Investigating Judge is
13 the following: "Can you describe to us the organization of Office
14 870 and its structure?" And the word munti is used in the Khmer
15 version, and the answer is:

16 "It was an office of the Standing Committee made up of two
17 people, Doeun and myself. Doeun was the president and he was
18 supported by assistants, Pang, and he was in charge of politics.
19 As far as I am concerned, I was in charge of establishing a price
20 table for the cooperatives to distribute supplies to the region
21 upon the instructions with the Standing Committee and in charge
22 with relations with Prince Norodom Sihanouk, before he resigned,
23 of course." End of quote. [free translation].

24 [09.49.13]

25 So my question is the following: In relation to what you said

18

1 about S 71 having acted as a political office, maybe, does Khieu
2 Samphan's statement regarding this correspond to what was said in
3 interviews with other people who might have echoed everything
4 that you might have said regarding the distinction-

5 MR. PRESIDENT:

6 Witness, please hold on.

7 Mr. Prosecutor, you may proceed.

8 MR. RAYNOR:

9 Mr. President, my learned friend is misrepresenting what Mr.
10 Heder has already said by using the words "when you said about S
11 71 as a political office". Mr. Heder has not put it in those
12 terms. He has said that after April 1975 there was reference to
13 the political office of 870 and the 870 Bureau. So please do not
14 misrepresent what Mr. Heder has already said.

15 [09.50.38]

16 BY MS. GUISSÉ:

17 Q. Maybe it would be better for me to ask Mr. Heder to provide
18 clarification on this. Does S 71 or was S 71 called by the people
19 you interviewed or in the documents you read, was it ever called
20 Political Office, yes or no? Of course, based on your factual
21 elements that you have gathered.

22 MR. HEDER:

23 A. I'm sorry; I may have spoken in a confusing manner. The answer
24 to your question is no, that S 71 was never referred to as, to my
25 recollection by anyone to whom I have spoken, as "a" or "the"

19

1 Political Office of 870. The description that's given of the - of
2 it in the document that we examined yesterday as an
3 administrative office, that meaning seems to be corroborated by
4 all - most if not all - almost all if not all, there always may
5 be partial exceptions, of the interviews I've conducted.

6 [09.52.11]

7 The problem is - the problem that I tried to raise was that this
8 phrase, "munti prambei roichet", "Office 870", many, many people
9 to whom I - whom I have interviewed before I was at - before the
10 Court, while I was at the Court, and since I've left the Court
11 have talked about Office 870 and then gone on to describe Office
12 S 71, if I look at what they're talking about and compare it to
13 other interviews.

14 So if you, as I have often done, ask the question who was the
15 chairperson of Office 870, indeed, some people will say, oh, it
16 was Pang; some people will say, oh, no, well, Pang, and then it
17 was can't remember; and some people say, oh, I remember, it was
18 Lin; and some people will say, no, it was Doeun and then it was
19 Khieu Samphan. All of those things have been said to me, and this
20 reflects, going back to my preparatory remarks, the results of
21 the intentional obfuscation in the terminology. This was what it
22 was designed to do, to make it hard for outsiders to figure out
23 who's who and what's what.

24 [09.53.45]

25 Q. Fine. So you speak about the code names used to confuse

20

1 people.

2 In the factual elements that you have gathered, and in your
3 experience here at the Court, does this seem to be consistent
4 with what happened in other offices for which various other code
5 names were used? Or based on your interviews, was this only – was
6 this confusion phenomenon only related to Office 870?

7 A. I think I understand the question. This having of a munti,
8 having of an office is something that, according to countless
9 testimonies, was – existed throughout the entire Party structure,
10 or hierarchy, if you prefer. Any Party committee, any Party-led
11 structure, military or administrative, had to have, according to
12 all of these accounts, an office, again, to take care of the
13 paperwork, to issue invitations to meetings, to keep the
14 gasoline, or the kerosene, and so on and so forth. And, you know,
15 it's a physical place to which people come where files are kept.

16 [09.55.42]

17 So at every level and in every structure of any size there was on
18 the one hand a Party Committee, led by a Party secretary with a
19 deputy secretary and more or less members, and then serving that
20 Party Committee would be the office, and whether or not the
21 chairman of the office would be a member of the Party Committee,
22 according to these interviews, varied, but probably yes, that is
23 to say, in most instances, yes. And again, as I said, people –
24 the way people have described it to me, you put somebody in whom
25 you have confidence in terms of their administrative skills and

21

1 in terms of their political and/or personal reliability, into
2 that position, because effectively, as we all know from having
3 been in any bureaucratic organization, those people are extremely
4 important.

5 So it's - it existed throughout the entire hierarchy. The thing
6 that's unique, to my knowledge, about the Centre is the
7 establishment as of - was it October '75 the document we looked
8 at, it's been a while - the establishment or the attempted
9 establishment of this separate political office. That to my
10 knowledge didn't exist at any other level.

11 [09.57.46]

12 Q. And again, based on the factual elements you gathered before,
13 during, and after working for this Court, this S 71 body that you
14 are describing as an office of administration, can you tell us
15 what its physical location was, based on the testimony you
16 gathered? Where was it in Phnom Penh, if you remember, based, of
17 course, on the elements that you have gathered?

18 A. Wherever Pang wanted it to be on that particular day. It
19 doesn't seem, from the interviews I've had, to have an
20 established permanent headquarters for him. It had all of these
21 sub offices, K 1, K 2, not K 2, K 1, K 3, etc., etc., etc., etc.,
22 etc., and - but he seems to have moved around, often working out
23 of K 7, the so called Courier's Office, which was on the
24 waterfront, near where Tapas (phonetic) used to be - I notice
25 it's gone now - but it's - I haven't been able to establish from

1 interviews that it had a permanent seat.

2 Q. Still with regard to the factual information you were privy to
3 regarding Pang and in relation to the description you gave of the
4 person who was viewed by the chief with confidence, during,
5 before, or after your time at the ECCC, be it when you were
6 working for the Co Investigating Judges or for the Co
7 Prosecutors, do you know how relations between Pang and Pol Pot
8 were described?

9 [10.00.18]

10 A. On a couple of occasions, in a couple of interviews, a
11 handful, a small number, people have talked about believing that
12 the two were extremely, extremely close, and that Pang was very
13 much a confidant of Pol Pot in terms of all of these
14 administrative matters. You can go back in time and people recall
15 that before he was chairman of Office S 71 in the wartime period,
16 that is to say, from - at least from 1971, he had performed a
17 similar function at Office 100, which was the exile headquarters
18 for the Party in the mid/late sixties. And in that connection I
19 recall one or more interviews in which people said that it came
20 as a great shock to them and left them extremely perplexed and
21 worried when they heard that Pang had been arrested and accused
22 of treason, because to their minds this was impossible.
23 Impossible that Pang could be a traitor, impossible that Pol Pot
24 could have him arrested as a traitor. So that seemed to be
25 indicative of their understanding, as told to me, of the - how

23

1 close the two men were.

2 Q. After Pang's arrest – still according to factual information
3 you obtained before, during, or after your time at the ECCC
4 working for the Co-Investigating Judges or the Co-Prosecutors –
5 as Ieng Sary told you in the extract I read out to you a while
6 ago, was it indicated that it was Lim (phonetic) (phonetic) –
7 show that what others said was true, particularly what Lim
8 (phonetic) (phonetic) said of him, of Pang; according to what you
9 gathered as information or what you read in documents?

10 [10.03.06]

11 A. I'm sorry, maybe the – I didn't quite get the question.

12 Q. I'll rephrase the question. It was, perhaps, too long. In the
13 passage I read out to you a while ago, that is the extract of
14 your interview with Mr. Ieng Sary, he refers to Pang, saying that
15 he was succeeded by Lim (phonetic), a Jarai. My question to you
16 is as follows: This information, as Mr. Ieng Sary gave you, was
17 it corroborated by any other facts you received before, during,
18 or after your work for the Co-Investigating Judges, saying that
19 Lim (phonetic) succeeded Pang shortly after the arrival of the
20 Vietnamese?

21 A. Shortly before the arrival of the Vietnamese, I presume. The
22 answer is definitely yes, multiple sources on that, both before
23 the Court and during my time, maybe not since; but certainly
24 before the Court and during my time at the Court.

25 [10.04.27]

24

1 Q. Thank you. I see that we're running out of time. Let me move
2 on to another line of questioning. We are not talking about the
3 front know, we are talking about the context in which you
4 interviewed Mr. Ieng Sary on the 17th of December 1996. At the
5 hearing during which you referred to that matter with the
6 Co-Prosecutor, and that is on the 15th of July, you stated that -
7 just a second, let me find my references. You stated that you
8 took time to prepare for that interview with Mr. Ieng Sary
9 because you were not able to meet him immediately in Pailin for a
10 problem regarding the crossing of the border. The interview was
11 in September 1996. Can you tell us what Mr. Ieng Sary's political
12 position was at the time?

13 [10.05.55]

14 A. I guess at that time, December '96, he was still formerly the
15 head of the Democratic National Union Movement, which was a
16 political organization formed out of those who had - some of
17 those, who had broken away from the Khmer Rouge in the course of
18 mostly the second half of 1996.

19 Q. Since you refer to the name of Mr. Ieng Sary's movement, I'll
20 show you a document very quickly to find out whether you are
21 aware of it and whether you were aware of that document before
22 the interview with Mr. Ieng Sary. May I request that document,
23 E3/86, be shown to the witness, titled the "The Truths on the
24 Dictatorial Pol Pot Regime" in 1996?

25 MR. PRESIDENT:

1 Yes, you can do so.

2 [10.07.24]

3 BY MS. GUISSÉ:

4 Q. The original is in English. May I know whether you read that
5 document before your interview with Mr. Ieng Sary? The first
6 page, ERN in French, 00614092; ERN in English, 00081213 and it
7 continues on the next page; and in Khmer, 00224429. The English
8 ERN is 0081213 for the first page; that is the English version.
9 First question, were you aware of this document before you met
10 with Mr. Ieng Sary?

11 MR. HEDER:

12 A. Yes, and this is actually - this document has my annotation on
13 it. It says Ieng Sary in the English, top right-hand side. The
14 document came to the Court, either directly or indirectly, via
15 me. I'm not sure whether it came directly or can via DC-Cam. But
16 this is actually the copy that I had in hand before I met Ieng
17 Sary.

18 [10.08.58]

19 Q. So if I understand correctly, at the time when you met with
20 Mr. Ieng Sary, you were aware that there had been a split vis à
21 vis, Pol Pot at that time and that perhaps what Mr. Ieng Sary
22 said at the time was within that framework, the framework of the
23 split with Pol Pot. Was that your understanding of the situation
24 at the time you interviewed him?

25 A. Yes.

26

1 Q. Another document I would like you to identify at the hearing
2 of the 15th of July 2013, you refer to your article in answer to
3 a question put to you by the Co-Prosecutor. That is document
4 E3/48, and in that response you refer to the source of your note
5 361, and I would refer to the page of your article, "The Seven
6 Candidates for Prosecution". The English ERN is 00393581; and in
7 Khmer 00742617; and there is no ERN for the French. And you state
8 that you quoted passages from Duch's statements in your footnote,
9 such as those found in an article by Nate Thayer.

10 [10.11.07]

11 Mr. President, may I request your leave to show Mr. Heder
12 document E3/1915. It is a Nate Thayer article titled "Death in
13 Detail", may I know that we're talking about the same article?
14 With your leave, Mr. President, may I request that the English
15 version of the article be shown to Mr. Heder?

16 MR. PRESIDENT:

17 Yes, you may do so.

18 BY MS. GUISSÉ:

19 Q. Is that indeed the article you refer to in your own article?

20 MR. HEDER:

21 A. Yes.

22 Q. My question to you is as follows, apart from quotes from that
23 article from Duch's statement referring to a secret meeting
24 during which Mr. Khieu Samphan took notes, that is apart from
25 Duch's statements; do you have any other factual basis to

1 corroborate the existence of this meeting referred to in the
2 article, and as you indicated during the hearing before this
3 Chamber?

4 [10.13.03]

5 And when I ask for other references, I am not referring
6 necessarily to this article, but I am also referring to any
7 information you may have obtained elsewhere as part of your work,
8 before, during, or after the time when you worked for the ECCC.

9 A. I'm afraid on this one I can't help. I don't recall
10 specifically that this is the only such reference, but I also
11 don't recall any other references, so sorry, I can't help you.

12 Q. Very well. I'll take your word for it for the time being. I'll
13 now go into another line of questioning. During your testimony
14 before this Chamber, you referred to your interview with Mr.
15 Khieu Samphan on the 4th of August 1980. The same applies to your
16 interview with Mr. Ieng Sary. I am talking about the interview
17 with the following references, E3/203. That is the interview you
18 referred to at length in answer to questions put by the
19 Co-Prosecutor. We will talk about the circumstances of that
20 interview and period.

21 [10.14.45]

22 We are on the 4th of August 1980. Can you tell the Chamber, from
23 a political standpoint, when you saw Mr. Khieu Samphan what was
24 his official stand at the time?

25 A. I'm not sure I recall specifically. After the reshuffling of

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1 the Democratic Kampuchea government, but before the establishment
2 of a coalition government of Democratic Kampuchea, I think he was
3 Prime Minister of the Democratic Kampuchea government, but I
4 wouldn't swear to it. I have to check my own chronology to be
5 sure.

6 Q. With the authorization of the President, may I request that he
7 be shown the mail he sent on the 11th of August 2009 to the
8 Co-Investigating Judges? The reference number is E3/514, E3/514,
9 and the references of interest to me are on the page and I would
10 like the court officer to show the document to Mr. Heder.

11 MR. PRESIDENT:

12 Yes, you may proceed.

13 [10.16.28]

14 BY MS. GUISSÉ:

15 Q. The page of interest to me has the following ERN in French,
16 00417794; in Khmer, 00401657; and in English, 00380171. And I'm
17 referring to the second paragraph, and I'll read the second
18 sentence in the second paragraph in French. You are referring to
19 documents that you sent to the Office of the Co-Investigating
20 Judges, and this is what you said - and I quote: "One of these
21 documents is a press conference held by Khieu Samphan and an
22 interview on the 4th of August 1980. The press conference and the
23 interview were held while I was an associate researcher at the
24 Institute of Asian Studies at Chulalongkorn University and a
25 contract analyst for office of external research of the Bureau of

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1 Intelligence and Research of United States Department of State,
2 researching recent and contemporary political developments in
3 Cambodia on behalf of the institute and with funding from the
4 office.

5 [10.18.01]

6 It occurred during a visit I made along with a number of
7 journalists to a part of Siem Reap Province, then under control
8 of the Communist Party of Kampuchea, at the invitation of the
9 authorities as arranged by its diplomatic representatives in
10 Bangkok, Thailand; notably the late Pech Bunreth. The visit
11 extended over two days during which Khieu Samphan made his press
12 statement to the group of visitors and made himself available for
13 interviews with the journalist and myself. In addition to these
14 encounters there were also several meals and informal
15 conversations with Khieu Samphan, none of which were taped. There
16 are two cassette tapes." - end of quote.

17 Regarding the context of this interview, do you agree with me
18 that it was the authorities of the Communist Party of Democratic
19 Kampuchea who invited you and other journalists to meet them; is
20 that indeed the context? What I mean is, is this the context of
21 the interview, that there was a willingness on your part to
22 provide information?

23 [10.19.25]

24 MR. PRESIDENT:

25 Counsel, please repeat your last statement and question. It's too

1 fast for the interpreter.

2 BY MS. GUISSÉ:

3 Q. Very well. I'll try to slow down. The problem is I am fast
4 running out of time. You state that, or rather, do you confirm
5 that that press conference was initiated at the behest of the
6 Communist Party of Democratic Kampuchea? That is at the
7 initiative of the authorities of the party?

8 MR. HEDER:

9 A. Yes.

10 Q. And Mr. Heder, as part of that invitation did you hold
11 discussions with other journalists regarding that willingness to
12 provide information on the part of the authorities at the time?

13 [10.20.31]

14 A. I don't recall having done so. If I did so it would at this
15 time have been, almost certainly, only with journalists from the
16 Kyodo News Service with whom I worked informally, rather closely,
17 in this period. Other journalists I doubt that I would have
18 discussed it with. But I don't remember whether I discussed it
19 beforehand with any of the journalists in my circle, former
20 circle.

21 Q. And when you met with Mr. Khieu Samphan; first question, was
22 that the first time you were interviewing him?

23 A. I believe so, yes.

24 Q. Do you mean that you hadn't known him before and there were no
25 friendship ties between the two of you?

1 A. Yes, and yes.

2 [10.21.55]

3 Q. In the manner in which I put the question in French, if you
4 say yes, perhaps I should rephrase it. Do you mean that you
5 didn't have any particular ties with Mr. Khieu Samphan at the
6 time?

7 A. Yes, I had no particular ties.

8 Q. How did you introduce yourself to Mr. Khieu Samphan? Did you
9 introduce yourself as a researcher at the Institute of Asian
10 Studies as a consultant for the Office of Research and
11 Intelligence or as a journalist?

12 A. As a research fellow. As I explained the other day, this is
13 merely the - the (inaudible) money is merely a matter of funding,
14 as indicated here, not employment. So, normally if you're at SOAS
15 and you get external funding you're still at SOAS and you
16 introduce yourself as SOAS or whichever university academic
17 institution it might be.

18 [10.23.15]

19 Q. So it was in your capacity as a researcher that you introduced
20 yourself to him? Mr. Heder, in that capacity as a researcher, as
21 you introduced yourself, did Mr. Khieu Samphan place himself at
22 your disposal, the same way he did vis à vis other journalists at
23 the time?

24 A. Yes.

25 Q. During the press conference you attended, if I understood you

1 correctly, what was the message conveyed at the time by the
2 authorities of the Communist Party? What was the reason they gave
3 for having brought together all those journalists and what was
4 the message they conveyed to them since you attended that press
5 conference?

6 A. The press conference, to my recollection dealt primarily with
7 - as it was put to me by Khieu Samphan and the others present -
8 the struggle against the Vietnamese to make it short; in other
9 words, the post January 1979 situation.

10 [10.24.00]

11 Q. So the press conference was held in relation to the armed
12 conflict that was prevalent at the time; are you agreed on that
13 with me?

14 A. Yes.

15 Q. As part of the exchanges you had with Mr. Khieu Samphan and
16 the other officials present, was there willingness to convey the
17 message they wished to convey, so that there was some kind of
18 unity in the face of the Vietnamese aggression as part of the
19 message that was conveyed to you by the officials in that press
20 conference?

21 A. Unity - I'm sorry, between Khieu Samphan and myself? Khieu
22 Samphan on the one hand and myself and the journalists present on
23 the other, or - I'm not quite sure where the question - the
24 direction in which the question points.

25 [10.26.14]

33

1 Q. (No translation) – be more specific. At the time when all
2 these officials of Democratic Kampuchea were speaking to you was
3 the idea uppermost in their minds, according to your experience
4 at the time as someone who attended the press conference showed
5 that there was some unity in the movement, in the context of the
6 fight against the Vietnamese?

7 A. If you mean did it appear from what Khieu Samphan said in the
8 press conference, and what others present said outside of that
9 context, including Khieu Samphan, but not only Khieu Samphan, was
10 that they all seemed to be in agreement on the need to expel the
11 Vietnamese; the answer is certainly yes. And those others, as I
12 think I said the other day, or maybe didn't specify, included Son
13 Sen, and Thiounn Mumm those are the two I remember most clearly
14 having been present. So yes, they seemed at least on the surface
15 of it, to be in complete unity on that issue.

16 [10.27.32]

17 Q. (No translation) – correct to say that that was the main topic
18 of that press conference, to talk about the offensive against the
19 Vietnamese who were organizing themselves and who were active?

20 A. Yes.

21 Q. Under such circumstances, when you had the interview with Mr.
22 Khieu Samphan, were you expecting him to make any particular
23 revelations at breaking up with the movement, which was at war at
24 the time?

25 MR. PRESIDENT:

34

1 Witness, please wait. The Prosecution you may proceed.

2 MR. RAYNOR:

3 Mr. President, I object on relevance. What's the relevance of
4 what Mr. Heder was expecting Khieu Samphan might say about an
5 unrelated topic that's not an issue in this trial? It's
6 irrelevant and I object.

7 [10.28.49]

8 MS. GUISSÉ:

9 Mr. President, the relevance is exactly the same as the relevance
10 of the context of this interview. When we have a certain position
11 in regard to certain political contexts, has of course the
12 consequence of what we may say or what we may not say. So my
13 question was, given the context of war existing at the time, if
14 Mr. Heder, by asking this question, was expecting Khieu Samphan
15 to break away from what had happened during the period of
16 Democratic Kampuchea. That was precisely the relevance of my
17 question, to understand how in the context, or in this particular
18 context, he can assess the contents of what was said to him by
19 Khieu Samphan. But I see that I'm running out of time and I'm
20 going to turn to another point and I will see if the Chamber can
21 grant me another 10 minutes to get back to this particular point.

22 [10.30.11]

23 At the hearing of 11 July 2013, at around 2.00 you said to the
24 Prosecutor, or you spoke about your article Pol Pot and Khieu
25 Samphan. The reference is E3/3169, page 28 in English in

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1 particular; French ERN, 00722089; English, 00002770; Khmer,
2 00711413. And in the segment you referred to when speaking to the
3 Co-Prosecutor you say it is useful to mention the comments by
4 Khieu Samphan in August 1980, and you refer to the interview you
5 had with him, and the document that was published under his
6 authority in July 1987. So I would like to provide to you in
7 relation to this article of 1987, with the assistance of the
8 court officer. This is Document E3/703. And I would like to know
9 if you are referring to this document when you speak about a
10 document that was published under the authority of Khieu Samphan
11 in July 1987.

12 So with the assistance of the court officer, may we provide this
13 Document E3/703 titled "The Truth and Justice Regarding the
14 Massacres Perpetrated by Democratic Kampuchea from '75 to '78".
15 [free translation].

16 [10.32.12]

17 MR. PRESIDENT:

18 Yes, you may do so.

19 BY MS. GUISSÉ:

20 I would like to focus on the first page in all three languages,
21 French 00693791, English 0003999, Khmer 00700545.

22 Q. So in this work that I've just mentioned, are you referring to
23 this document of July 1987 which apparently came from the Office
24 of the Vice-President of Democratic Kampuchea in Charge of
25 Foreign Affairs?

1 MR. HEDER:

2 A. Yes.

3 Q. So if I understand your article well, when you say that it was
4 published under his authority, it is because we can see the
5 mention Deputy President of Democratic Kampuchea in Charge of
6 Foreign Affairs. It is because back then he held this title, and
7 that's why you say it was published under his authority. Is that
8 correct?

9 [10.33.52]

10 Yes, I saw you nodding. I didn't allow you to answer. I'm sorry.
11 I will go a bit faster. I'm going to skip over this document and
12 just will answer - ask a question.

13 But aside from this mention Deputy President of Democratic
14 Kampuchea in Charge of Foreign Affairs, do you have any elements
15 before - that you received before, during or after your work at
16 the Court? Did you receive any factual elements allowing you to
17 know who wrote this document specifically and if Mr. Khieu
18 Samphan himself partook in the drafting of this document? Do you
19 have any elements that may substantiate this?

20 [10.34.58]

21 A. Not to my recollection, no.

22 Q. Mr. President, I see that it is 20 to 11.00. I only have one
23 single page left of questions based on one last document that I
24 would like to show to Mr. Heder. This is a speech by Pol Pot
25 speaking about Khieu Samphan and then I will be able to finish

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1 quite quickly, so I will need an extra 10 minutes, if you may
2 grant them to me.

3 I would like to remind you that these 10 minutes correspond to
4 the 10 minutes for this morning.

5 (Judges deliberate)

6 [10.37.27]

7 MR. PRESIDENT:

8 I hand over the floor to Judge Silvia Cartwright. You may
9 proceed, Judge.

10 JUDGE CARTWRIGHT:

11 Yes, thank you, President.

12 Before the President addresses the request for additional time by
13 the Khieu Samphan defence, the President has asked me to clarify
14 a couple of matters that the Prosecutors have raised with the
15 Trial Chamber by email. The first indication is that anything
16 relating to matters that need discussion before the Chamber
17 closes the evidence portion of this trial will be the - an
18 opportunity will be given, probably early next week, to do that.
19 But there was one further matter that has just been raised, and
20 if the Prosecutors wish to address that following the conclusion
21 of the Khieu Samphan's examination, then the Chamber would like
22 to know how long you require for that, please.

23 MR. ABDULHAK:

24 Thank you, Judge Cartwright.

25 On that second matter, we would probably not need more than 20 -

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1 15 to 20 minutes, maximum, to make our submissions.

2 (Judges deliberate)

3 [10.39.04]

4 MR. PRESIDENT:

5 Thank you, Mr. Prosecutor, for confirming this.

6 The Chamber wishes to advise the defence counsel for Mr. Khieu
7 Samphan that your – the Chamber grants you leave to put – to have
8 an additional 10 minutes to put questions to Mr. Stephen Heder
9 and, together with the confirmation from the Prosecution, the
10 Chamber will adjourn now for 20 minutes and the Chamber will
11 resume at 11.00.

12 Court officer is instructed to assist the witness during the
13 break and have him return in this courtroom by 11.00. The Court
14 is now adjourned.

15 (Court recesses from 1039H to 1101H)

16 MR. PRESIDENT:

17 Please be seated. The Court is now back in session. And the
18 Chamber would like to hand to the floor over to the Defence team
19 for Khieu Samphan to continue putting questions to the witness,
20 Mr. Steve Heder. And that is to conclude your questioning time
21 within the 10 minute time allocation.

22 BY MS. GUISSÉ:

23 Thank you, Mr. President.

24 Q. Mr. Heder, we are coming to the end of our examination, and I
25 would like to deal with the last point with you at the Hearing of

39

1 the 11th of July at 15.33. The Co-Prosecutor referred to a speech
2 by Pol Pot delivered in 1977 - and this is related to your
3 article "Pol Pot and Khieu Samphan", document E3/3169. And it is
4 footnote 65. And you refer to a speech in that footnote titled,
5 in English - I'll read out the title in English.

6 [11.03.04]

7 "Long live the 17th Anniversary of the Communist Party of
8 Kampuchea, speech by Pol Pot, Secretary of the Central Committee
9 of the Kampuchean Communist Party, delivered on September 29th,
10 1977".

11 I could have very well have read it in French, but again that is
12 the title. With your leave, Mr. President, may I show the witness
13 document E3/147, to have him confirm that is indeed the article?
14 And I would like to refer to two extracts of that article.

15 [11.03.50]

16 MR. PRESIDENT:

17 Yes, you may proceed.

18 BY MS. GUISSÉ:

19 Q. The first extract has the following ERN S - in French -
20 S000012477; and in English it is 0012669; and in Khmer, 00019256
21 and it continues on the next page. But, before reading the
22 extract, I will - no, just a minute please. So, I will read out
23 the first extract. But before I do so, could you please confirm
24 whether that is indeed the speech you referred to in your
25 footnote in your article? Was that the speech from which you

40

1 extracted the paragraph in your book "Pol Pot and Khieu Samphan"?

2 MR. HEDER:

3 A. Yes. It's the speech. But it's not from this document. As I
4 think I said in my earlier testimony, it's from a Khmer version
5 of this document, not the English translation that's provided
6 here.

7 Q. Would you prefer to have the Khmer version?

8 [11.05.44]

9 In any case, the Khmer version will be placed on the screen, and
10 it will be simpler for you to refer to it. The passage with the
11 ERNs I mentioned is as follows, and it is the last paragraph. In
12 that paragraph, Pol Pot is explaining the topic of his speech:

13 "What are the goals of that presentation? Consequently it is not
14 a question of talking about a meeting today, but whether a
15 reflection session and a study session on our revolutionary
16 movement under the leadership of our Communist Party of
17 Kampuchea." End of quote.

18 In the version of the speech you read, was there this paragraph,
19 and does it correspond to the manner in which this speech was
20 developed within the context of the Communist Party of Kampuchea?
21 The development of the Communist Party of Kampuchea?

22 [11.07.10]

23 A. Yes, I think so. Yes.

24 Q. Now, before I read out the next extract, I would like to read
25 a passage from your article "Pol Pot and Khieu Samphan", the same

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1 that was read by the Co-Prosecutor at the Hearing. The ERNs are
2 as follows; in French, 00722081; in English, 00002762; and in
3 Khmer, 00711397. And this is what your wrote, regarding that
4 speech:

5 "In this speech that was delivered" - and it was the last but one
6 paragraph, before the end in French, in the middle of the
7 paragraph - "In this speech, delivered on the 27th of September,
8 1977, Pol Pot presents, in detail, his views on the communist
9 movement in Kampuchea, its successes and failures. He publicly
10 expresses his specific confidence in the two men who were
11 involved in the purges throughout the year. Nuon Chea and Khieu
12 Samphan. The only ones who were leaders of the Party where they
13 are praised. Some describe Khieu Samphan as a distinguished
14 intellectual, paying homage to him, underscoring the fact that he
15 was arrested and imprisoned because of his political activities".
16 End of quote.

17 [11.08.59]

18 I will now read out the next paragraph, which I would like us to
19 look at. That is the passage of the speech by Pol Pot in which he
20 refers to Khieu Samphan. This is document E3/144, and the ERNs
21 are as follows; S000012485 in French; in English, 0012674; and in
22 Khmer, 00019271. And this is the passage in which he refers to
23 Khieu Samphan, referring to him not by his name but by the
24 designated state candidate. And it is in French page 25, third
25 paragraph:

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1 "The First Party Congress met on the 30th of September 1960 in
2 Phnom Penh, while the enemy's oppression was raging. As an
3 example of the situation then, I would like to say that our
4 comrades who are great intellectuals, like the Comrade President
5 of the State Presidium, were also arrested and imprisoned. If the
6 enemy did not hesitate to strike at great intellectuals, it would
7 not refrain from striking workers and simple peasants and
8 ordinary people." End of quote.

9 [11.10.50]

10 My question to your is as follows; is it, on the basis of this
11 passage in Pol Pot's speech, that you wrote the paragraph
12 relating to his - the way that he was characterised as a
13 distinguished intellectual, and the tribute that was paid to him,
14 according to you, in that speech of the 27th of September in 1977
15 - is this the passage you are alluding to?

16 A. Yes.

17 Q. Do you agree with me that, in the extract I read out to you -
18 the extract of the speech by Pol Pot - he was talking about the
19 situation at the time in 1960 and citing the example of Khieu
20 Samphan as he talked about the situation of great intellectuals?
21 Do you agree with me that this paragraph is talking about a
22 particular historical context?

23 A. Could I see the Khmer again?

24 Q. May I request that it be placed on the screen, with your leave
25 Mr. President? I have forgotten to specify, for the record, that

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1 the Khmer version does not feature in reference E3/144, but is in
2 the reference 4.40, which is the previous reference for this
3 document. And unfortunately I don't know why they didn't assign
4 an E3 number to this document in the Khmer version. But the
5 transcripts of these documents are correct.

6 MR. PRESIDENT:

7 Yes, you may proceed.

8 Court officer, could you assist the witness?

9 (Short pause)

10 [11.14.22]

11 BY MS. GUISSÉ:

12 Have you been able to read the document in Khmer and to
13 understand its meaning? So, let me put my question on this
14 paragraph. I see that mention is made of a tribute in the
15 article, but we are not talking of the context of this situation
16 in 1960, vis-à-vis intellectuals. Is that not the situation
17 depicted in that article?

18 MR. HEDER:

19 A. Well, it certainly refers to the situation as it existed as of
20 the time of the Party Congress, said to have occurred in
21 September, 1960. As for the dating of the tribute - I mean, I
22 think that's at least open to interpretation. Like there's no
23 plural there's no tense in Khmer as such, but the Comrade is
24 described as being a major intellectual. And that appears, to me
25 at least, to be at least as much a reference to the present as to

1 the past.

2 [11.15.55]

3 So whether the tribute is to the person as of 1960 or the person
4 as of 1977 – one, I suppose, could quibble. But it could very
5 easily be read as meaning the person as of September 1977. But,
6 with reference to their past activities.

7 Q. And, to end on this point; the last paragraph, as regards
8 dates you may have on the date of the tribute. In quotes. When
9 Pol Pot says: "If the enemy didn't hesitate to strike at major
10 intellectuals, nothing would prevent them from clamping down on
11 workers, simple peasants, and ordinary people". End of quote.

12 Perhaps let me continue to place this in context by reading the
13 next paragraph:

14 "It was in this bleak situation that we successfully convened our
15 Party's first congress, right in the railroad yards of Phnom Penh
16 itself."

17 [11.17.20]

18 Placed in the context of the entire speech, and in view of the
19 following paragraph, are we not – when Pol Pot talks of great
20 intellectuals, while describing – he was describing the situation
21 at the time, and he was not paying particular tribute to Khieu
22 Samphan. Isn't that correct?

23 A. Not by my reading, no. I mean, he's paying tribute to someone
24 in the present. Indeed, in part or with reference to the past.

25 But the tribute, to my reading of these passages, is still in the

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1 present. You may beg to differ. That would be my reading of the
2 way in which those passages are formulated. And it's striking
3 that the description of the comrade "as an intellectual" is not
4 formulated in such a way as to make it specifically clear that
5 it's a former intellectual. It appears at least as much to be a
6 reference to the present, which may have its own implications.
7 Other implications. But that's the way it reads to me.

8 [11.18.39]

9 Q. Very well. According to this - it was according to this
10 perspective that you wrote the paragraph in the article that I
11 referred to a while ago, and which I read to you. Is that
12 correct?

13 A. Yes, that's correct.

14 Q. And this will be my very last question to you; as part of your
15 activities before, during, or after your time at the Tribunal,
16 whether you were working for the Co-Investigating Judges or the
17 Co-Prosecutors, and as part of your activities when you were
18 researching your articles, can you tell us what was the
19 revolutionary alias of Khieu Samphan, and whether you heard any
20 others?

21 A. Well, I always heard from - I think, safe to say, or close to
22 extraordinarily safe to say - every source that the name in use
23 during the '75-'78 period was Hem. There was a new pseudonym for
24 him and others that were put into use after January, '79. I don't
25 specifically recall what it was, but these new pseudonyms, except

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1 in the case of Pol Pot, didn't stick very much. People continued
2 to refer to individuals by the pseudonyms by which they were
3 known before January '79.

4 [11.20.25]

5 Q. Very well. For the period from 1975 to 1979, the only
6 pseudonym you knew was Hem. Is that correct?

7 A. Yes, that's correct. And I supposed the question has to do
8 with something that was testified by Kang Kek Eav, alias Duch,
9 and I can say that the alias that he talked about I had never
10 heard or since anywhere else.

11 MS. GUISSÉ:

12 Thank you for these clarifications, and I thank you for the
13 patience you showed proof of throughout your examination. I am
14 done, Mr. President.

15 [11.21.19]

16 MR. PRESIDENT:

17 Thank you, Counsel. And thank you, Mr. Heder. Mr. Heder, the
18 hearing of your testimony has now concluded, and you are now
19 excused from the courtroom. We are grateful for the time that you
20 spent to testify before this Court during the last few days, with
21 patience and best effort. Your testimony may contribute to
22 ascertaining the truth in this case, and Trial Chamber wishes you
23 good health and good luck.

24 Court officer, in collaboration with WESU, please make
25 arrangements for Mr. Heder to return to wherever he wishes to go.

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1 And Mr. Heder, you may now leave the courtroom. Thank you.

2 (Witness exist the courtroom)

3 [11.22.44]

4 MR. PRESIDENT:

5 The Chamber would like to give the floor to the Prosecution to
6 respond to an article in the "Phnom Penh Post" that has been
7 submitted by the Prosecution to the Trial Chamber through email.

8 You may proceed.

9 [11.23.11]

10 MR. ABDULHAK:

11 Thank you, Mr. President. And good morning, Your Honours. As the
12 President just indicated, we did a short while ago forward this
13 particular letter to the editor of "Phnom Penh Post" to all
14 parties. Your Honours, we ask for time to make submissions in
15 relations to this letter. It was published this morning, in the
16 "Phnom Penh Post", so the edition of the 18th of July, on page
17 16. It is a letter entitled "Khieu Samphan is Forced to Remain
18 Silent". It's signed by, or issued in the name of, Anta Guissé,
19 Kong Sam Onn, and Arthur Vercken, Counsel for Khieu Samphan. The
20 reason we made this application to be heard, Your Honours, is
21 both in light of the fact that we are approaching the conclusion
22 of evidence, but also in light of the scandalous nature of the
23 allegations made in a public fashion. And our view that
24 allegations of this sort must not only not be tolerated by this
25 Court, but should also be addressed and dealt with in accordance

1 with law and in accordance with accepted standards of ethics.

2 [11.24.40]

3 It's a rather long list of allegations that this letter contains,
4 and I will try to deal with all of them one by one. And of course
5 I'm at Your Honours' disposal, if you wish to hear from us
6 further. But our application will be pursuant to Rule 35 that
7 Counsel be formally rebuked and that a formal reprimand be
8 issued, and further measures be taken against them, in light of
9 what in our submission is a clear attempt to interfere with the
10 administration of justice, and conduct that falls far below – far
11 below – the ethical and professional standards that Counsel are
12 required and expected to uphold in this courtroom and before Your
13 Honours.

14 I'll deal with the allegations one by one, because I do believe,
15 on behalf of the Office of the Co-Prosecutor, it is important to
16 set the record straight at the earliest possible opportunity. So,
17 the first allegation that is made in this letter is that Your
18 Honours have heard dozens of witness and admitted as evidence
19 thousands of documents, while ignoring many concerns expressed by
20 the Defence. This is a clear misrepresentation of the record of
21 these proceedings.

22 [11.26.16]

23 At every turn, the Defence have been given the opportunity to
24 challenge Prosecution's – and indeed civil parties' – documentary
25 evidence, as well as being given the opportunity to submit their

1 own documentary material. Of course, at every turn, they have
2 availed themselves of those opportunities, as have we. By way of
3 a very brief recap; in this Court, we had witnesses who testified
4 to the origin and provenance of documentary evidence - two
5 witnesses from DC-Cam. We had extensive hearings on each of the
6 annexes that the Prosecution put forward. The Defence were able
7 to make written and oral submissions on all of those documents.
8 As to the allegations that, somehow, Defence concerns were
9 ignored, this is clearly false. Reasoned decisions were issued in
10 relation to every annex, as well as, separately, in relation to
11 witness statements which were the subject of further submissions
12 yesterday.

13 [11.27.20]

14 There can be no credible allegation that anyone has been
15 prevented an opportunity, or that anyone's concerns have not been
16 considered. It is one thing to disagree with a decision,
17 following which of course Counsel have the possibility, of which
18 they've been reminded on numerous occasions by Your Honours, of
19 appealing to the Supreme Court. That is one thing. But to make
20 false allegations about effectively being gagged, ignored, or
21 prevented from making submissions is unreasonable, it is
22 unethical, it is unprofessional.

23 Further, on Defence's concerns with documents, I would remind the
24 defence that, on numerous occasions where we've made applications
25 for new material to be admitted, they were permitted to make

1 written and oral submissions. And, in fact, Your Honours declined
2 our request to admit a number of documents, among them a series
3 of documents from Amnesty International, U.S. cables predating
4 the April 1975 period, and new witness statements such as a
5 statement of witness Meas Voeun, who of course testified before
6 Your Honours in October 2012.

7 [11.28.40]

8 The second allegation – and I will slow down. I will repeat the
9 name of that witness for the record. Witness Meas Voeun. The
10 second allegation relates to an alleged denial by Your Honours of
11 a possibility of, quote, "a real discussion on the mountain of
12 evidence admitted". One wonders, when reading these words,
13 whether Counsel for Khieu Samphan are operating in a parallel
14 reality. Only recently, on the 9th of July, having sought an
15 opportunity to make presentations on key evidence, they failed to
16 do so. I stood, at that juncture, and asked Your Honours to
17 consider giving Counsel extra time, and Your Honours did so. Both
18 the President and Judge Lavergne addressed Counsel Vercken,
19 asking him on several occasions whether he intended to make
20 presentations on key documents, and whether he intended to avail
21 himself of the opportunity given by Your Honours to respond to
22 the key documents – the mountain, as they describe it – that the
23 Prosecution has put forward.

24 [11.30.09]

25 He declined that opportunity. He declined that opportunity, and

1 this morning he seeks to mislead the public, and everyone else
2 observing these proceedings, as to what happened here in Court.
3 To mislead the public as to their own sloppiness, and as to their
4 own failure to take the opportunities given to them, including
5 opportunities specifically offered to them for extra time to make
6 submissions on documents. To make this claim is simply
7 outrageous, against that record.

8 The third complain relates to the Severance Order. And it is
9 always amusing to see the Defence now take issue with the
10 Severance Order, having in fact supported it throughout this
11 Trial. And this is what they say. Quote:

12 "While hindering the Defence from discussing the evidence
13 presented in the course of the first trial, allegedly devoted to
14 the policy of evacuation, the Chamber surprisingly announced it
15 would adjudicate within the realm of the first trial the
16 responsibility of Khieu Samphan with regard to all criminal
17 policies. They go on to say that this is, indeed, shocking. Their
18 words.

19 [11.31.44]

20 As a matter of record, the scope of this trial was defined in the
21 Severance Order in September 2011. Counsel for Khieu Samphan did
22 not question that decision, nor did they seek its
23 reconsideration. In fact, they opposed the Prosecution's appeal
24 to have the scope of trial revisited.

25 And here, I will refer to their response to our appeal because I

1 believe it is important to put on the record again just what the
2 defence's position has been throughout this trial. In their
3 response to the Co-Prosecutor's immediate appeal of the Severance
4 Order, Document E163/5/1/9 at paragraph 31, counsel make it clear
5 that they, in fact, fully understand the scope of the Severance
6 Order and the scope of the trial - quote:

7 "However, the Trial Chamber did not issue the Severance Order
8 with a view to summarizing the indictment but, rather, to
9 permitting a detailed review of all its components. As the Trial
10 Chamber has previously explained in issuing the Severance Order,
11 its reasons were..."

12 Going to number 2:

13 "...to ensure that the first trial encompasses a thorough
14 examination of the fundamental issues and allegations against all
15 accused."

16 And 3:

17 "...to provide a foundation for a more detailed examination of
18 the remaining charges and factual allegations against the accused
19 in later trials."

20 [11.33.43]

21 The defence then go on to argue that, in fact, this is a decision
22 that was perfectly reasoned and fully understood by them.

23 Paragraph 46:

24 "The defence does not agree with the arguments that the Trial
25 Chamber failed to provide adequate reasons."

1 Paragraph 49, second sentence:

2 "The truth is that, contrary to the Co-Prosecutor's assertion,
3 the Trial Chamber clearly gave adequate reasons for its decision
4 by taking into account the risk involved in extending the scope
5 of Case 002."

6 [11.34.29]

7 An almost unbelievable exercise in hypocrisy, having supported
8 the Order throughout this trial, having failed to raise any
9 issues in relation to the scope of the trial, having opposed, in
10 fact, appeals on this issue, they now turn around and say that
11 you've placed them in a state of confusion and that they have not
12 been able to effectively engage and defend their client in
13 relation to these policies.

14 The further allegation is that - and this is the fourth
15 allegation in the letter: "that the dice is loaded, that the
16 Chamber has never been interested in hearing what the defence has
17 to say." Again, an outrageous and false claim.

18 Just a couple of aspects of this trial for everyone's benefit.

19 They have been given an equal time to question all witnesses.

20 They were given opportunities to propose their own witnesses, and
21 they did, and the Chamber called those witnesses. They were given
22 opportunities to make document presentations. They declined them.

23 In fact, they've made no complaints about any substantive aspect
24 of this trial until this very last-minute change of heart by
25 Khieu Samphan.

1 [11.35.53]

2 And it is important to recall that it was as recently as the 27th
3 of May against that entire trial record that Khieu Samphan
4 confirmed he intended to continue testifying. As recently as the
5 27th of May when he made that confirmation, no issues were raised
6 about supposed allegations of fair trial rights, no issues were
7 raised about an inability to put their case forward.

8 They made the strategic decision, and that is their right. And in
9 our submissions, it does draw certain implications for them, but
10 it does not entitle them to misrepresent the record as they have
11 sought to do.

12 And final - and the final misrepresentation in this open letter
13 relates to the circumstances leading up to Khieu Samphan's
14 refusal to continue testifying.

15 [11.37.01]

16 The allegation here is that the Chamber has denied all of Khieu
17 Samphan's requests in relation to the mode of his examination.

18 Again, not true.

19 Your Honours initially accepted some of the proposals and denied
20 others, which, in our submission, is an entirely reasonable
21 decision, a decision consistent with every case ever prosecuted
22 at any international tribunal. But having made those initial
23 accommodations and having then heard that Khieu Samphan was
24 refusing to continue to testify, Your Honours gave us an
25 opportunity to offer further accommodation.

1 Contrary to the article, those accommodations did not relate only
2 to extra time to prepare. We also offered to give Khieu Samphan a
3 list of topics on which he would be examined. None of that
4 information appears in this article. None of that information is
5 shared with the public as Khieu Samphan seeks to put forward
6 these series of misrepresentations about supposed breaches of
7 rights. And that brings me to my conclusion and our application.
8 It is our respectful submission that, by issuing this false and
9 misleading statement in relation to on-going proceedings before
10 Your Honours, counsel have engaged in a blatant attempt to
11 interfere with the administration of justice and to bring the
12 administration of justice into disrepute. This falls far short of
13 the standards of ethics, professionalism and integrity that are
14 required of counsel.

15 [11.39.11]

16 If I can refer to just one document that is relevant for present
17 purposes. It is the UN Resolution on the Basic Principles on the
18 Role of Lawyers. It's a United Nations document. It applies to
19 everyone in this courtroom.

20 The document number is UNDOCA/CONF.144.28/REV.1. In fact, one
21 shouldn't have to read this in a court of law with professional
22 counsel, but we will read it because it's important to remind
23 them of the duties they have failed to fulfil. Article 12 -
24 quote:

25 [11.40.08]

1 "Lawyers shall at all times maintain the honour and dignity of
2 their profession as essential agents of the administration of
3 justice."

4 Article 14:

5 "Lawyers, in protecting the rights of their clients, shall at all
6 times act freely and diligently in accordance with the law and
7 recognized standards and ethics of the legal profession. Pursuant
8 to Article 23, those same standards of ethics apply when counsel
9 engage in public activities such as discussing the administration
10 of justice in newspapers."

11 Your Honours, this article contains outrageous misrepresentations
12 of fact. It is a cynical, calculated attempt to mislead the
13 public, as I said, to bring the proceedings before the Court into
14 disrepute, and to make allegations, false allegations, in
15 relation to a matter, specifically the matter of adverse
16 inferences, which is presently under consideration by Your
17 Honours.

18 It is indeed an appalling failure to act professionally and
19 ethically and, as such, it should be sanctioned so that a strong
20 message can be sent by this Court that this is not permissible
21 behaviour and that it will not be tolerated.

22 [11.41.44]

23 We apply, pursuant to Rule 35, to Your Honours to issue a formal
24 reprimand or rebuke to counsel Kong Sam Onn, Anta Guissé and
25 Arthur Vercken, to refer them to their respective bar

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1 associations, to notify the Defence Support Section of this
2 matter and, of course, to issue that reprimand and that reference
3 as public documents so that the public record can be corrected
4 and these outrageous misrepresentations put to rest.

5 That is our application, Your Honours, and if there are any
6 further questions that you wish me to address, I'm at your
7 disposal.

8 MR. PRESIDENT:

9 Thank you, Mr. Prosecutor.

10 Madam Lead Co-Lawyer for the Civil Party, you may proceed.

11 [11.42.50]

12 MS. SIMONNEAU-FORT:

13 Yes, Mr. President, thank you for this opportunity to take a few
14 minutes of your time because I wish to react to this column or
15 editorial that seems to me to be particularly serious and, very
16 clearly speaking, is something that is false and something that
17 is disloyal.

18 I wish first to make a few introductory remarks. The first is
19 that when we don't wish to speak, it's always easier to justify
20 one side - oneself by saying that we are prevented and that we
21 are forced to remain silent by someone else. And that's exactly
22 what is happening here.

23 And my second remark is that I infinitely regret the form that
24 was chosen by the Khieu Samphan defence to voice their opinion in
25 that way. We had a debate on the same topic here, and since the

1 Chamber did not support the defence, the defence is turning to a
2 newspaper, which I don't believe is an appropriate place for an
3 adversarial debate. And in this paper, we don't have to justify
4 everything point by point. And it's also a place where it's
5 possible to misrepresent what is happening. And this is what's
6 happening here.

7 [11.44.33]

8 I think that this article is an insult to the Chamber. Beyond
9 this Chamber, it's also an insult for our proceedings that we've
10 been having for the past two years. And beyond this, it is an
11 insult to the civil parties we are representing here and an
12 insult to the Cambodian people, and this should be reminded.
13 Of course, I support the Co-Prosecution here regarding all of the
14 allegations made by the Khieu Samphan defence. I share the
15 Prosecution's point of view. Each one of these allegations is
16 false, not grounded. It was already evoked here and it was
17 already rejected by this Chamber.

18 I wish simply to add two small comments regarding two particular
19 allegations.

20 Regarding the documentary mass that we're facing here, I am
21 asking myself what the Khieu Samphan defence was expecting by
22 coming to such a trial. Are civil law lawyers surprised by the
23 civil parties here who have joined? I hope not. Are - is the
24 Khieu Samphan defence surprised by the number of documents? Well,
25 I believe that the more documents we have, the more impartial we

1 can be. If the – if Nuon Chea or Khieu Samphan would be
2 prosecuted on the base of five documents, then there would be a
3 problem of impartiality -- of partiality and justice.

4 [11.46.22]

5 Now, my second comment on – regarding the allegations regarding
6 the five policies. In this article, I read that your Chamber is
7 accused of having suddenly introduced, at the very end of this
8 trial, the discussion on these five policies. This is false.

9 As of your Severance Order, you mentioned the paragraphs
10 regarding the existence of these policies. And often, you
11 insisted during the proceedings on this to remind us that we were
12 going to discuss the existence of these five policies, so this
13 assertion is blatantly false, among the other false assertions.

14 [11.47.09]

15 I believe that what the – the Khieu Samphan defence team is doing
16 today is nothing else than an attempt to try to withhold the
17 Chamber of its credibility at the very end of these proceedings.
18 It is nothing else than a strategy.

19 The reality, which I wish to remind, is as of the very first days
20 of this trial, I remember that Nuon Chea and Khieu Samphan
21 promised, and Mr. Khieu particular insisted that he would – and
22 he said to us that he would speak at the end of the trial. He
23 said it, and he promised it not so much to the Chamber, but to
24 the civil parties and to the Cambodian people. In any case, that
25 – those were the words he used back then. And he had many

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1 opportunities to do so, and your Chamber offered him the
2 opportunities for him to do so as well as to his counsel. I was
3 maybe a little less flexible.

4 I believe a trial is not simply a moment when we consider legal -
5 abstract legal issues. It's not something only for jurists and
6 specialists. It's - it's something that is for society at large,
7 for the Cambodian people, for the international community and for
8 the victims, for the civil parties, for the civil parties
9 representing here all of the victims. And I believe that, today,
10 this encounter that we have which Nuon Chea and Khieu Samphan are
11 refusing, that is their choice. But what I find particularly
12 dishonest is that that choice that they made today, they are
13 trying to have the Chamber bear the responsibility for this
14 choice, but not by themselves.

15 [11.49.29]

16 I have no specific position on the sanction requested, and this
17 the Chamber, of course, will assess. But what I want, however, to
18 underline today is the seriousness of what's indicated in this
19 article, which was brought to us little by little over the past
20 weeks and over the past days.

21 I believe that the accusations here against your Chamber are an
22 insult against you and also an insult against the civil parties
23 and against all - everybody coming here every day to find out
24 what has happened, to hear what has happened and to understand
25 what has happened. And I wish to stress how serious the matter

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1 is.

2 Thank you.

3 [11.50.21]

4 MR. PRESIDENT:

5 Thank you.

6 The National Lead Co-Lawyer for the Civil Party, you may proceed.

7 MR. PICH ANG:

8 Good morning, Mr. President. Good morning, Your Honours. I have a
9 few additional points to my esteemed colleague from the
10 Prosecution and my International Lead Co-Lawyer for the Civil
11 Party, but I do not comment on the legal aspect, but I speak on
12 behalf of the civil parties. I would like to assert to the
13 Chamber concerning the expectation of the civil party from the
14 accused.

15 At the very beginning, particularly during the investigation
16 stage, the co-accused once decided to exercise their right to
17 remain silent. They did not respond to the questions by the
18 Co-Investigating Judges. And this move aroused suspicion by the
19 civil party as to why they decided to do so.

20 Then, at the start of the trial by this Chamber, the co-accused,
21 particularly Mr. Nuon Chea and Mr. Khieu Samphan, started to
22 respond to question by the Prosecutors. And this move made the
23 civil party find that it is important that the co-accused respond
24 to the question because they want the co-accused to respond to
25 the question. They have asked us, as their representative, why

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1 the accused refuse to respond to questions. How can we ascertain
2 the truth without the response from the co-accused?

3 [11.52.33]

4 So as the lawyers for the civil parties, we, from time to time,
5 have to respond to the query by the civil parties.

6 Following the death of Mr. Ieng Sary in last March, certain civil
7 parties have made a request to the Lead Co-Lawyer for the civil
8 party and they have made a public appeal as well that the
9 co-accused should respond to the question. They should enlighten
10 the Court and they should understand that their testimony, their
11 response to the questions are very important to them.

12 Now, the - we haven't met all the civil parties, but I am sure
13 that their recent move will make the civil party most unhappy. I
14 have not much thing to add, but on behalf of the civil party, I
15 still earnestly request that the co-accused be required to
16 respond to the question that will - the civil - appease the civil
17 party and, in addition, it is also useful for the historical
18 record for the younger generation to come to learn about their
19 past history.

20 Thank you, Mr. President.

21 (Judges deliberate)

22 [11.54.15]

23 MR. PRESIDENT:

24 Thank you.

25 The hearing of the testimony of witness Stephen Heder has come to

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1 an end and the Chamber notes the application by the co-lawyer -
2 by the Co-Prosecutor and the observation by the Lead Co-Lawyer
3 for the civil party concerning an article published on the "Phnom
4 Penh Post" today.

5 (Judges deliberate)

6 [11.55.44]

7 MR. PRESIDENT:

8 The defence team for Mr. Khieu Samphan, do you have any
9 observation or response to make to the application put forth by
10 the Prosecution? Since I did not see that you intended to make
11 this observation, I did not grant you the floor earlier, but if
12 you do have any observation, you may proceed, counsel.

13 MS. GUISSÉ:

14 Thank you, Mr. President. Yes, indeed, I wish to make a few
15 observations.

16 The first, as a defence counsel, we never intended to insult
17 anyone, nor the Chamber, nor the parties, and even less the civil
18 parties and even less so the Cambodian people. That's my first
19 observation.

20 [11.56.38]

21 My second, as a defence counsel, our role is to represent our
22 client, to assist him and to carry his voice. There is nothing in
23 this article published by the "Phnom Penh Post", absolutely
24 nothing, that does not already exist in the arguments we
25 developed before the Chamber, whether it be - and let me give you

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1 the references here – our findings relative to the questioning of
2 the accused at E288/4. Everything here that we are developing in
3 our submission can be found in summarized form in this article.
4 Everything that we have said regarding severance, regarding
5 issues around this, we have already stated it before this Chamber
6 when we examined. And I can say so because I am the one that
7 raised these objections and I was the one who raised these
8 problems during the document hearing on joint criminal
9 enterprise.

10 Let me start with this point because it's an important point and
11 I find it absolutely scandalous today that we're being criticized
12 for having understood what was written in our decisions and we
13 did not appeal the decision, which seemed clear based on the
14 elements we gathered from the Chamber and today were telling us
15 that we are changing our position.

16 [11.58.12]

17 We developed our argumentation in an extremely in-depth way. I
18 was the one at that hearing, so I can say so with quite a bit of
19 certainty when the documents were presented on the modes of
20 liability linked with JCE. And what did I say then?

21 I said that we had understood in the Khieu Samphan defence that –
22 and we said that we would refer to Annex E124/7.3, which explains
23 to the parties, which specified to the parties what the scope was
24 of the elements discussed here in Case 002/1. And now I would
25 like to refer you to this document. It was in paragraph 5 of this

1 annex. And this paragraph 5 of this annex explains that in this
2 trial 002/01 the forms of liability would be examined.

3 (A) Liability related to the participation in a joint criminal
4 enterprise, paragraph 1521 to 1525:

5 [11.59.32]

6 "Except for anything regarding the great violations of the Geneva
7 Conventions and the sub-paragraphs titled 'The Creation and the
8 Operation of the War Cooperatives, the Re-Education of Bad
9 Elements as well as the Elimination of Enemies Within and Outside
10 of the Party and the Regulation of Marriage'."

11 And we would only focus on the soldiers and officials of the
12 Khmer Republic.

13 Now, regarding sub-paragraph headed - called "Special Measures
14 Against Specific Groups, in Particular the Cham, the Vietnamese,
15 Buddhists and Former Officials and Servicemen and Their
16 Families", it is on the base of this annex - and I did not invent
17 it. This is an annex that was drafted at the same time as the
18 Severance Order of the Chamber to explain what was going to be
19 the scope that would be under consideration.

20 We explained during this hearing on joint criminal enterprise
21 relative to modes of liability that under these conditions we
22 cannot understand that the other policies whereas they had been
23 excluded specifically from this annex be considered now. That's
24 the first point to explain why it is at that moment that the
25 defence raised the issue. And it was even more so important

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1 because, later on, the Co-Prosecutors as well as the Civil Party
2 Lawyers explained to you that it was not possible to simply speak
3 about the existence, but we also have to speak about the
4 implementation of these policies. And this gave rise to a very
5 important legal issue which we underlined, and this is nothing
6 new.

7 [12.01.18]

8 Maybe I should slow down. It's true that I'm - of course, I'm a
9 bit worked up, so maybe - well, regarding severance, this is what
10 was said. And I remember very, very clearly having said that if
11 we hadn't appealed the Severance Order the first time, nor the
12 second time when the Chamber issued a recent decision, if we
13 didn't appeal this, it was in light of this particular point
14 because we thought that things that we had to talk about were
15 very clear. That's the first point.

16 The second point - and this is nothing new. This is not the first
17 time that we're saying this. We have kept on saying this since
18 the beginning of this trial as of when we started speaking about
19 the preparation of the final submissions and the way that we were
20 going to deal with the documentary mass.

21 [12.02.10]

22 So I would like to reassure my civil party colleague, we were, of
23 course, expecting a lot of documents in this trial, but since
24 there are many, many documents, we were also expecting to have
25 the possibility at the end of these proceedings, as happens in

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1 all - in every trial to confront the evidence, whether it be
2 testimony, whether it be documentary evidence. We were hoping
3 that we could bring up in detail every point and to shed light on
4 these points for the Chamber.

5 The hundred pages granted to us for our final submission do not
6 allow us to have this full - a full debate which is necessary and
7 - which is necessary at the end of the trial. It's not the first
8 time we've said it. We already - we said it before. And what we
9 said in this "Phnom Penh Post" article can be found in our
10 submissions E288/4, can be found when you look at the written
11 records, when you look at the transcripts of the hearings, and
12 can also be found in our different observations.

13 [12.03.23]

14 I remember also the trial management meeting, the first one, that
15 in the number of pages granted to us, if you cannot take into
16 consideration that we have never heard until now the defence's
17 position, these hundred pages will correspond to nothing because
18 the Prosecutor, who has 200 pages - and we'd like to remind us
19 that he had - he has had his number of pages maintained and we
20 are stuck with 100 pages, whereas Ieng Sary is no longer with us.
21 That's just a side point.

22 We stressed at that point that the Prosecutor had already an
23 introductory submission which corresponds to an unlimited amount
24 of pages which states his case. So this is not the case for the
25 defence.

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1 So telling us that – and we have already told you that only
2 having 100 pages for our final statement is not acceptable. The
3 difference is that what we said in our submission we also said in
4 this newspaper article. And I'd like to remind you that the
5 submission is public.

6 [12.04.40]

7 Maybe our position does not suit the Co-Prosecution or the
8 Chamber or the civil parties, but still, the positions that we
9 have as defence counsel, of course, are not there to please
10 everyone. Our aim is to defend our clients and to present our
11 defence. Maybe you like it, maybe you don't like it. It's a pity.
12 But that's the case in a trial.

13 The analysis that we have of the case is not the same analysis as
14 the Co-Prosecution. It's not the same, of course, as the Civil
15 Party Lawyers, and this is why we have a trial. This is why we
16 are confronting each other. This is why we are confronting our
17 different points of view.

18 The only difference that we have today is that we have already
19 presented what was already presented in the submission I'm
20 speaking to you about, and by Khieu Samphan when he spoke, and by
21 Arthur Vercken, or by myself or Kong Sam Onn. All of this was
22 already said in – during the hearing when, of course, our
23 microphones were not disactivated (sic).

24 Things were said and said again, and things that we said again
25 publicly as we had already filed our submission publicly, E288/4,

1 so there's nothing new.

2 [12.06.05]

3 So of course, if you have to sanction us because we present our
4 position, because we express our opinion as defence counsel,
5 well, then, yes, of course. I'd like to refer you to the basic
6 principles of the bar adopted by the Eighth Council for the
7 Prevention of Crimes held in Havana on 27 August to 7 September,
8 1990. The basic principles relative - of the UNHCHR specifying -
9 the basic principles relative to the role of the bar specify in
10 paragraph 23, Freedom of Expression and of Association, that
11 lawyers, as anyone else in a trial, must enjoy freedom of
12 expression.

13 And we have this freedom of expression, and we have used it by
14 all means through our submissions, through our microphones when
15 it was possible and through the press. So there is absolutely
16 nothing new. Absolutely nothing new.

17 [12.07.13]

18 Everything we said to the press, we already said before this
19 Chamber. We have already written it. So today, I don't know why -
20 well, I suppose I know why, but, well, the Co-Prosecutors want to
21 turn this into a drastic event. There's no reason for this.

22 We have expressed our position and we explained our position.

23 That is part of our educational strategy. You may call it
24 strategy. But the position - our position means that I am the
25 right - I have the right to say why my client takes and takes

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1 such a position. And I am allowed to say so during the hearing,
2 publicly through the press.

3 Everything that we denounced in the press, we had already
4 denounced them before this Chamber. If this must lead to
5 sanctions, well, I think, then, we have reached a very difficult
6 juncture and it will be really regrettable.

7 Of course, you have the Co-Prosecutor's submission. You have the
8 defence's positions, which are not new, and are - always rest on
9 either decisions by the Chamber or on discussions during the
10 document hearing. And I'd like to refer to all of the detailed
11 submissions of Arthur Vercken when he was explaining why we would
12 not participate in the document hearing.

13 So once again, there is nothing new, nothing new except that this
14 time, yes, maybe, this hearing is a bit more important than - or
15 was important than today.

16 [12.08.49]

17 This trial is public. Anyone who wishes to check the transcript
18 of this trial might be able to see what Khieu Samphan's position
19 was, what were the arguments that were presented and may notice
20 that nothing new, nothing - absolutely nothing new has been
21 developed in this article except for the fact that, of course,
22 this position is stated in the newspaper.

23 If that's a problem, I regret it. But once again, the hearings
24 are public. Our position is public. And as the - the defence
25 counsel, we can explain why - we have the right to explain why we

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1 take such and such a position. Whether people believe that our
2 position is not a right one, is erroneous, that is their right,
3 as well as it is Khieu Samphan's right in his position as an
4 accused before your Chamber to also react within the limits of
5 his possibilities and explain how he was reacting to this fact.
6 So there's nothing new. There's no reason to sanction anyone
7 except considering maybe that we are stand-in lawyers who can say
8 nothing when they don't understand something, when they feel that
9 something is unfair.

10 [12.10.03]

11 We have explained often why we believe that the page limit is
12 unfair, why we believe that we cannot discuss all of the evidence
13 because of the limit of pages, why this is unfair, and we
14 explained why it is unfair to cut off our microphone because we
15 were expressing maybe certain ideas that did not agree with the
16 Prosecution or with the Chamber.

17 But the idea, once again, in a trial, in a criminal trial, it's
18 to have confrontation, confrontation of visions, confrontations
19 of positions. And you, the Bench, will make the decision at the
20 end and, of course, we won't have other - any other choice than
21 to consider your decision based on the elements that we have
22 provided to these proceedings.

23 So what we said in this article is nothing different from what we
24 said before.

25 [12.10.57]

1 Well, if this deserves a sanction, well, this is really
2 regrettable in regard to the defence's rights and extremely
3 regrettable in regard to the confrontation of different points of
4 views and consideration of the legal and factual elements of this
5 trial.

6 MR. PRESIDENT:

7 Mr. Kong Sam Onn, you may proceed.

8 MR. KONG SAM ONN:

9 Thank you, Mr. President. I know that we are now 10 minutes over
10 the time, but I would like to have a brief observation concerning
11 the application by the Co-Prosecutor and that of the Lead
12 Co-Lawyers for the civil parties.

13 Overall, I believe that the application by the Prosecutor was
14 done in harsh - in a haste, and I believe that the application to
15 the Chamber to impose any sanction on the defence counsel, I
16 believe that this is not in accordance with the established
17 procedures of requesting for such sanction.

18 [12.12.20]

19 It is important that the Chamber is provided with sufficient
20 ground to - and the opportunity to examine the merit of this
21 application. And as my international colleague has already
22 mentioned, that what was published in the "Phnom Penh Post" was
23 nothing new. It is something that we have already raised in the
24 Court. And in addition, the prosecution may have failed to look
25 at the merit of the substance of this article, particularly

1 taking the view from the defence counsel, a person who is
2 representing interests of a client. And I believe that any
3 allegation that we are interfering in the administration of
4 justice is the position that is misleading, and it is also a
5 misrepresentation of the defence position.

6 [12.13.36]

7 And on the point that the Lead Co-Lawyers for the civil party
8 raised, both the International and National Lead Co-Lawyers for
9 the civil party, who said that the civil party were disappointed
10 with the decision to remain silent on the side on Mr. Khieu
11 Samphan. And as the Chamber and all parties are well aware that
12 this Tribunal is now bringing to trial Mr. Khieu Samphan and
13 other leaders, and the exercise of his right to remain silent of
14 Mr. Khieu Samphan is his inherent right.

15 The trust and confidence of Mr. Khieu Samphan on the impartiality
16 of this Court is his sole decision, so I believe that the impact
17 emanated from this Court is of serious consequence for him.

18 Eventually, he may be found guilty if he failed to follow the due
19 process of international law. I believe that we are now not in a
20 conference or we are not in a school where the researchers come
21 to conduct research. It is the trial in a Court of law. That's
22 why we have to look at every reliable evidence and everyone has
23 to have the trust and confidence in the process, particularly in
24 the Court. And it's all up to Mr. Khieu Samphan to assess it
25 along the way and, as a result, his cooperation with this Court.

1 Thank you, Mr. President.

2 (Judges deliberate)

3 [12.16.56]

4 MR. PRESIDENT:

5 Now the hearing of the testimony of the witness has come to an
6 end and the Chamber has not yet scheduled the next hearing, so
7 the Chamber decides to adjourn now and resume on Tuesday next
8 week.

9 The Chamber wishes to announce this scheduling for all parties
10 and support staff, and the Chamber will announce the next
11 Scheduling Order for the subsequent hearing to all parties and
12 the public. And the Chamber will hear the remaining issue raised
13 by the Prosecutor and other parties to the proceedings on
14 Tuesday, the 23rd of July, 2013 starting from 9 o'clock in the
15 morning. This is the information for parties and support staff of
16 the Court as well as members of the public.

17 [12.18.07]

18 Security guards are now instructed to bring Mr. Khieu Samphan and
19 Mr. Nuon Chea back to the detention facility and have them to
20 participate in the proceedings on the 23rd of July, 2013 before 9
21 o'clock in the morning.

22 Mr. Nuon Chea shall be brought to the holding cell downstairs
23 where audio-visual equipment will be connected to him so that he
24 can follow the proceeding by remote means.

25 The Court is now adjourned.

- 1 (Judges exit courtroom)
- 2 (Court adjourns at 1219H)
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