



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 24-Oct-2016, 08:00  
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

27 June 2016  
Trial Day 425

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

The Accused: NUON Chea  
KHIEU Samphan

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I N D E X

Mr. KAING Guek Eav alias Duch (2-TCW-916)

Questioning by Mr. KOPPE resumes.....page 3

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSÉ	French
Mr. KAING Guek Eav (2-TCW-916)	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer

1

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

2 (Court opens at 0903H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear the remaining testimony of  
6 witness, Kaing Guek Eav and begins hearing submissions by parties  
7 to the request of Khieu Samphan defence, that is, in relation to  
8 document E420. And after that, we proceed to hear testimony of a  
9 civil party, that is, 2-TCCP-236.

10 And before we proceed, the Chamber would like to inform all the  
11 parties that for today's proceedings and for the following days,  
12 Judge Ya Sokhan is absent due to his health. For the  
13 International Judges, Judge Fenz has other commitments, so that  
14 she cannot be in the courtroom. And after the Bench deliberated  
15 the matter, we decided to have Judge Thou Mony, that is, the  
16 National Reserve Judge, in place of Judge Ya Sokhan during his  
17 absence, and he should be in that position until the time that  
18 Judge Ya Sokhan is able to return to the Bench. The same thing  
19 applies to the international side. Judge Martin will be in place  
20 of Judge Fenz until she becomes available again.

21 And this is pursuant to Internal Rule 79.4 of the ECCC Internal  
22 Rules.

23 Ms. Chea Sivhoang, please report the attendance of the parties  
24 and other individuals to today's proceedings.

25 [09.06.12]

1 THE GREFFIER:

2 Mr. President, for today's proceedings, all parties to this case  
3 are present.

4 Mr. Nuon Chea is present in the holding cell downstairs. He has  
5 waived his right to be present in the courtroom. The waiver has  
6 been delivered to the greffier.

7 The witness who is to conclude his testimony today, that is,  
8 Kaing Guek Eav, alias Duch, is present in the courtroom.

9 The civil party who is to come to testify is 2-TCCP-236.

10 MR. PRESIDENT:

11 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the  
12 request by Nuon Chea.

13 The Chamber has received a waiver from Nuon Chea dated 27 June  
14 2016, which states that, due to his health, that is, headache,  
15 back pain, he cannot sit or concentrate for long. And in order to  
16 effectively participate in future hearings, he requests to waive  
17 his right to be present at the 27 June 2016 hearing. He advises  
18 that his counsel advised him about the consequence of this  
19 waiver, that in no way it can be construed as a waiver of his  
20 rights to be tried fairly or to challenge evidence presented to  
21 or admitted by this Court at any time during this trial.

22 [09.07.43]

23 Having seen the medical report of Nuon Chea by the duty doctor  
24 for the Accused at the ECCC dated 27 June 2016, which notes that  
25 Nuon Chea has a chronic back pain and it becomes severe when he

1 sits for long and recommends that the Chamber shall grant him his  
2 request so that he can follow the proceedings remotely from the  
3 holding cell downstairs. Based on the above information and  
4 pursuant to Rule 81.5 of the ECCC Internal Rules, the Chamber  
5 grants Nuon Chea his request to follow today's proceedings  
6 remotely from the holding cell downstairs via an audio-visual  
7 means.

8 The Chamber instructs the AV Unit personnel to link the  
9 proceedings to the room downstairs so that Nuon Chea can follow.  
10 That applies for the whole day.

11 And the Chamber would now to hand the floor to the defence team  
12 for Nuon Chea to continue putting further questions to the  
13 witness.

14 [09.08.48]

15 QUESTIONING BY MR. KOPPE RESUMES:

16 Thank you, Mr. President. Good morning, Your Honours. Good  
17 morning, counsel. Good morning, Mr. Witness. Let me continue  
18 where I stopped last Thursday.

19 Q. I was reading to you some excerpts from your own testimony and  
20 then asked you some questions about that. I had stopped at the  
21 13th excerpt, and what I will do is I will give you, with the  
22 President's leave, some more excerpts, starting with that number  
23 13, and I will continue asking questions.

24 And with your leave, Mr. President, I will add a document that I  
25 was asking questions about, that is, document E3/2133; Khmer, ERN

4

1 00006728; English, 00242285; and French, 0025091 (sic).

2 So with your leave, Mr. President, I can show the documents to  
3 the witness.

4 MR. PRESIDENT:

5 Yes, you may proceed.

6 [09.10.36]

7 BY MR. KOPPE:

8 Q. So as I said, last Thursday I read to you an excerpt from your  
9 evidence, that is, E3/1578; English, page 00194552; Khmer,  
10 00178027; and French, 00178040. In that excerpt, you were talking  
11 about that document, E3/2133, I just showed you. And in your  
12 testimony, you said:

13 "This document demonstrates clearly that 17 persons were  
14 transferred from Prey Sar to Choeung Ek at that time. Thus, this  
15 fact seems to be established. I was not personally aware of it.  
16 The same document shows that 160 children were transferred on the  
17 day to Choeung Ek."

18 So in relation to that document, Mr. Witness, is it correct that  
19 you, at the time, were not personally aware of any of -- of any  
20 of these events?

21 [09.12.12]

22 MR. KAING GUEK EAV:

23 A. Thank you. My statement in that document, that is, during the  
24 proceedings, I apologize, was during the investigation. That is  
25 clear enough. It means that I do not deny the event.

5

1 However, I did not know about what happened on that day or you  
2 can say that I do not recall it. That was the principle that they  
3 applied during their implementation of their task, that is, in  
4 relation to Comrade Hor and Huy.

5 Q. Mr. Witness, let me follow up on this and also follow up on  
6 your answers that you gave in relation to what was supposed to  
7 happen to children of cadres who had been arrested and detained  
8 at S-21.

9 Mr. President, with your leave, I would like to show the witness  
10 testimony of a female cadre, former combatant, or at least a  
11 woman whose testimony is laid down in E3/7633. The relevant Khmer  
12 page where I will start is 00052430; and English, 00863759;  
13 French to follow.

14 So with your leave, I will -- I would like to show the excerpt to  
15 the witness so that he can read along.

16 MR. PRESIDENT:

17 Yes, you may proceed.

18 [09.14.58]

19 BY MR. KOPPE:

20 Q. So Mr. Witness, this woman who testified to DC-Cam, said the  
21 following.

22 Question: "While you were working at Stung Bakou, what was your  
23 main work?"

24 "The daily work was to transplant rice seedlings, dig canals and  
25 build water dams. Beside the transplanting work, I looked after



6

1 about 70 or 80 children evicted and separated from their mothers  
2 since '75."

3 Question a bit further down: "How did you do that, looking after  
4 70 or 80 children alone?"

5 "I was told to guide those children to do such work as  
6 harvesting."

7 Then on Khmer page 00052433, English 00863761 she talks about --  
8 [09.16.09]

9 MR. PRESIDENT:

10 Counsel Koppe, please repeat the ERN numbers again.

11 BY MR. KOPPE:

12 Yes. In that same document, Khmer, ERN 00052433; English,  
13 00863761; she talks about Huy, the chairman of the place that she  
14 worked. And a bit further down, on Khmer, page 00052434; English,  
15 00863763; she says:

16 "The children were taken away from their parents, who had been  
17 accused of having connection with political tendencies in Phnom  
18 Penh."

19 "When were those children taken away from you?"

20 "It was about half a month before the fall -- the fall of A Pot."

21 And then she talks about approximately 30 or 40 children.

22 Q. Mr. Witness, taking this -- this evidence in total, this woman  
23 seems to be speaking about her taking care of children of cadres  
24 who had been arrested at Prey Sar.

25 Is that something that you knew at the time?

1 [09.17.52]

2 MR. PRESIDENT:

3 Witness, please hold on.

4 And International Deputy Co-Prosecutor, you have the floor.

5 MR. LYSAK:

6 Yes. I object. Counsel is leading the witness. I think he needs  
7 to ask first an open question about what Stung Bakou was, the  
8 place where this woman worked, and then seek some -- seek to  
9 establish whether or not this was part of Prey Sar before he  
10 asserts that to the witness.

11 [09.18.19]

12 BY MR. KOPPE:

13 I'm happy to add that question in to my former question.

14 Q. Mr. Witness, this female speaks about Stung Bakou, also talks  
15 about Huy. What is Stung Bakou?

16 MR. KAING GUEK EAV:

17 A. Mr. President, first the counsel give me ERN ending with 430  
18 and then he skips to another page, and I could not keep up with  
19 him. And then he gave ERN number to the interpreter, that is,  
20 ending with 433, and when I tried to look at page with an end  
21 433, it is not there.

22 Please, you need to proceed in a way that I could follow what  
23 your question. Otherwise, I am confused.

24 MR. PRESIDENT:

25 Defence Counsel, please reformulate your question again so that

8

1 the witness can follow you and that would contribute to the  
2 ascertainment of the truth in this case. Otherwise, the witness  
3 may provide a <speculative> response, and that does not help  
4 anyone. So please reformulate your question again.

5 [09.20.09]

6 BY MR. KOPPE:

7 Q. Mr. Witness, I have highlighted the relevant excerpts for you,  
8 so if you just go within the document to the yellow excerpts,  
9 then you'll be able to follow what I just read to you. But let me  
10 summarize.

11 First of all, let me ask the question. What was Stung Bakou?

12 MR. KAING GUEK EAV:

13 A. Mr. President, I find it difficult to follow the Defence  
14 Counsel's questions. Please specify the ERN number again <>. And  
15 if you do not refer to document, you can ask me question -- a  
16 general question about <> Bakou. And <> then I can respond to  
17 your question.

18 [09.21.24]

19 MR. PRESIDENT:

20 Witness, please respond if you know about Bakou and its  
21 relationship with S-21.

22 MR. KAING GUEK EAV:

23 We previously stayed in Bakou. That was before October 1975.  
24 Later on, 703, that is, Brother Pin, took over the location. And  
25 then they went to the front battlefield and then the place was

1 <given back> to me.

2 So, Bakou was not in -- under the management of S-21 constantly,  
3 but it was back and forth. <It was given back to S-21 perhaps in  
4 late 1977.> And there were not many people at Bakou. And Huy's  
5 location was far from Bakou, although I did not know exactly  
6 where it was. And that is in relation to the question concerning  
7 Bakou.

8 BY MR. KOPPE:

9 Q. This witness speaks about the chairman, Huy, but more  
10 importantly, she speaks about taking care of children whose  
11 parents had been accused of having connections with political  
12 tendencies.

13 My question to you is following up on earlier questions. Do you  
14 know whether there were places, either in Prey Sar or somewhere  
15 else, where women took care of children of cadres who had been  
16 arrested and who had been at S-21?

17 [09.23.20]

18 MR. PRESIDENT:

19 Witness, please hold on.

20 And Judge Lavergne, you have the floor.

21 JUDGE LAVERGNE:

22 Counsel Koppe, I think you should make several distinctions. You  
23 have talked of children of cadres sent to S-21. There may also be  
24 children of persons who <were> sent for re-education, and those  
25 two categories of children did not <necessarily> face the same

10

1 fate.

2 I believe we have heard some witnesses say that when a person  
3 detained at S-21 was executed, some members of that person's  
4 family <could also be> executed, <which was not necessarily the  
5 case for> persons <who were simply> sent for re-education.

6 [09.24.09]

7 BY MR. KOPPE:

8 Q. Let me just be very specific and refer to the testimony of  
9 this individual.

10 She says that she's taking -- she has been taking care of  
11 children, quote, "who were taken from their parents who had been  
12 accused of having connection with political tendencies in Phnom  
13 Penh." End of quote.

14 Can you give a reaction, please?

15 If you want to look for the specific quote, Mr. Witness, that is  
16 Khmer, 00052434.

17 MR. KAING GUEK EAV:

18 A. Thank you, Counsel. There are two discrepancies in this  
19 excerpt. On page ending 430, here only refer to the last three  
20 digits of the ERN number of the page, it reads:

21 "We were taken to look after the children who were evacuees from  
22 1975, as their mothers were separated from them and about 70 or  
23 80 children were given to us."

24 [09.25.54]

25 Referring to that context, they refer to evacuees. And allow me

11

1 to say that there was no evacuee coming to reside at Prey Sar.  
2 Those people were all combatants who committed offences, and  
3 later on, children of cadres were also brought to live there. So  
4 this statement is not correct since there was no evacuee who was  
5 allowed to live at Prey Sar.

6 And as I have stated previously, there were only combatants and,  
7 later on, there were cadres and their children.

8 MR. PRESIDENT:

9 Witness, please observe the microphone.

10 [09.26.56]

11 MR. KAING GUEK EAV:

12 A. And on page ending 434, Pan was the one who provided the  
13 statement, and it read, "The children were evacuees, and the  
14 mothers <and fathers> had political tendencies in Phnom Penh.  
15 <After the mothers were separated from the children, those  
16 children were brought here.>"

17 So it could be interpreted in two ways, <> either they were  
18 evacuees or they were cadres. So the statement is not that clear.

19 MR. KOPPE:

20 Q. Leave aside the statement. Are you aware of the existence of  
21 facilities at Prey Sar where women were taking care of children  
22 whose parents had been arrested for whatever reason?

23 A. I did not know about that.

24 Q. Thank you, Mr. Witness. I will move on.

25 A related subject. I realize when I'm going to ask this question

12

1 that you haven't seen the OCIJ list, the new prisoners' list of  
2 the OCIJ. I'm going to ask the question, nevertheless.

3 This new list speaks about 15,101 potential prisoners at S-21 in  
4 the broadest sense of the word. In that list, we have identified  
5 that about 699 persons are registered as wives of cadres. That's  
6 about 4.63 percent of the total.

7 [09.29.17]

8 Now out of those 699 persons, 202 persons are registered solely  
9 as "wife of" without any mention of their position either in the  
10 CPK or government, which is about 1.34 percent of the total.

11 My question, between one and a half and five percent of the total  
12 of prisoners being arrested because they were "wives of", is that  
13 -- are these percentages accurate? Are these in conformity with  
14 what you recollect?

15 MR. PRESIDENT:

16 Witness, please hold on.

17 And International Deputy Co-Prosecutor, you have the floor.

18 [09.30.18]

19 MR. LYSAK:

20 Thank you, Mr. President.

21 I think Counsel is leading the witness with a conclusion that  
22 he's made himself from the record. I don't have an objection if  
23 he wishes to have the witness make observations, if he can, but I  
24 think he's putting a conclusion to the witness rather than asking  
25 for observations.

13

1 BY MR. KOPPE:

2 If I had done it the other way, then the objection would have  
3 been that I had to provide the source first of this information,  
4 so either way, I'm objected to. But let me ask it in general  
5 terms, Mr. Witness.

6 Q. What would be the percentage of females who had been -- who  
7 would have been arrested because they were the "wives of"? What  
8 would be the percentage when you compared it with the total  
9 number of prisoners?

10 MR. KAING GUEK EAV:

11 A. Starting from 31st July 2007, when I was brought to the ECCC,  
12 to the 10th of April 2012, I did not <see the list consisted of  
13 about 15,000 people.> I did <> see the <list> with a total number  
14 of 12,000 and a few hundred <people,> whose names have been  
15 <carved> or scribed at the Tuol Sleng Museum. I never do a  
16 summary or a total sum up of particular parts of statistics from  
17 the list. Although I am a mathematics teacher, I need the figure  
18 to work on before I can provide you with my proper response.

19 [09.32.32]

20 Q. I'm not asking you to agree with me on the exact percentage,  
21 but let's take this maximum number. Five percent of the total  
22 prisoners arrested because they were the "wives of". Five percent  
23 and not -- and the other 95 percent not arrested because of  
24 family connections. Would that be approximately correct?

25 MR. PRESIDENT:



14

1 You may proceed, International Deputy Co-Prosecutor.

2 [09.33.16]

3 MR. LYSAK:

4 Again, counsel is putting a conclusion to the witness that the  
5 evidence is simply of -- records the number of people who are  
6 identified as "wives of". There's nothing in there that tells us  
7 the number of people who actually were arrested because they were  
8 relatives, so I don't think counsel has a basis to put a -- that  
9 percentage to the witness as the number of people who were  
10 arrested because they were relatives. He can only ask about the  
11 identification of people using the term "wives of".

12 MR. KOPPE:

13 Well, Mr. President, what we're doing is the opposite of what the  
14 Prosecution has been doing. Prosecution is using anecdotal  
15 evidence to establish a pattern, and I have simply looked at the  
16 full list, established how many prisoners had the title "wives  
17 of", and we came up to that number. So it's totally transparent  
18 as to how I came to that number, so I think it is a different  
19 approach, but an acceptable approach, as to questioning this  
20 witness. So my ultimate question, maximum five percent of the  
21 prisoners were arrested because of a family connection, is that  
22 something that is in conformity with your recollection, I think  
23 is an appropriate question.

24 [09.34.51]

25 MR. LYSAK:

15

1 Mr. President, let me add one other thing. There are many other  
2 prisoners on the list who are identified as "son of, daughter of,  
3 mother of, father of", even "husband of", so there are many other  
4 people who are identified by other means of connection to people  
5 other than just "wife of".

6 MR. KOPPE:

7 And that is simply incorrect because if you actually look to the  
8 Excel sheet, it's a very, very small number, much below this  
9 number. That is particularly what the Prosecution is doing,  
10 making anecdotal evidence into something general.  
11 So again, I stand by the validity of this question.

12 [09.35.38]

13 MR. PRESIDENT:

14 The witness has already answered in relation to the figure. He  
15 said he could not give the estimate.

16 Number one, it is because he has not received the total number of  
17 the people listed or the prisoners at S-21. And number 2, the  
18 increased number of the prisoner from the 12,000 up to 15,000 has  
19 not been learned by the witness as of now.

20 So the witness, once again, has already answered the question put  
21 by counsel, so the witness <does not need> to answer the question  
22 again.

23 BY MR. KOPPE:

24 Fine. I'll move on, Mr. President.

25 Q. Let me go to excerpt 14, Witness. That is document E3/455;

16

1 English, 00149913; Khmer, 00146674; French, 00149938.

2 Mr. Witness, in this excerpt, if you find it -- I'll wait for  
3 you. It's excerpt 14. It says, and I quote you -- it's about the  
4 blood taking of prisoners. You say:

5 [09.37.17]

6 "In Rithy Panh's film and in the introductory submissions of the  
7 Co-Prosecutors, I saw a demonstration on this matter, but I never  
8 authorized anyone to take blood."

9 Then in E3/448, which is excerpt 15, English, ERN 00154912;  
10 Khmer, 00154928; French, 00154921.

11 "As I already said, I do not deny that blood has been taken from  
12 people. I did not see it myself."

13 These two excerpts, Mr. Witness, are they correct?

14 MR. KAING GUEK EAV:

15 A. Mr. President, in relation to blood drawing, I am -- I was  
16 confused at the first place. And later on, I was informed about  
17 the blood drawing, and I did not know when the practice started.  
18 Son Sen <and I> gave the permission to draw the blood, and after  
19 the permission from <the superior>, <Try> went to Tay to get the  
20 syringes. And then when we were warned to be careful not to --  
21 not to cause any STD. So I did <not go to examine the practice,>  
22 I do not recall when that practice started.

23 [09.39.12]

24 In fact, Son Sen instructed me about the matter, and I relayed  
25 the instruction to my subordinates. Try worked together with Tay,

17

1 the chief of Hospital 98, <> on the issue concerning blood  
2 drawing.

3 Q. But just to be certain, it was in Rithy Panh's film that you  
4 first heard of this phenomenon of blood taking of prisoners.

5 Correct?

6 A. Rithy Panh interviewed me, and I gave my answers. I did not  
7 see the film by Rithy Panh. In fact, I was interviewed by Rithy  
8 Panh and I provided my answers.

9 Q. Let me move to something that I would like to read to you, Mr.  
10 Witness.

11 Mr. President, document E3/226. These are minutes of the Standing  
12 Committee meeting. And I would like to show the witness an  
13 excerpt from these minutes. They are at Khmer page 00017158;  
14 English, 00183372; French, 00296166. With your leave, Mr.  
15 President, I would like to show this excerpt to the witness.

16 [09.41.02]

17 MR. PRESIDENT:

18 You may proceed.

19 BY MR. KOPPE:

20 Q. So, Mr. Witness, these are minutes of a meeting of 10 June  
21 1976, so please go to the highlighted portion, which talks about  
22 the issue of blood donation. Let me read it to you, and then I  
23 ask your comment.

24 "Issue of blood donation: We could expand it. We collected the  
25 general public force to get more blood to save the lives of our

18

1 fighters at borders. If the issue could not be solved at bases,  
2 it should be solved at Phnom Penh. We collected forces from  
3 offices, military, industries and so on. There were more than  
4 100,000 people living in Phnom Penh. We were able to collect  
5 blood from 5,000 people monthly. In the long run, we could  
6 collect even more blood because we would have enough food supply.  
7 The procedures were to select our men and women fighters in  
8 offices and military units. This was not posing any problem to  
9 us. It was not a significant sacrifice." End of quote.

10 [09.42.40]

11 Mr. Witness, the Standing Committee, the CPK, is discussing a  
12 general blood donation policy together with representatives of  
13 the Ministry of Social Affairs. Is this something that you knew  
14 at the time, a general blood donation policy?

15 MR. KAING GUEK EAV:

16 A. Regarding the meeting, the meeting was held between Ministry  
17 of Health and Ministry of Social Affairs. It had nothing to do  
18 with S-21. S-21 received the orders from 870 through Son Sen. And  
19 I have spoken about the process already. The matter in relation  
20 to the tasks between the Ministry of Health and Ministry of  
21 Social Affairs was not known well by me.

22 Q. Just to make sure if I understand, you were the chairman of a  
23 2,000 plus combatant regiment. Were you ever approached in that  
24 capacity as chairman that your men were also requested to donate  
25 blood for the combatants who got wounded at the border?

19

1 [09.44.54]

2 A. At S-21, there were no instructions from 870 through Son Sen  
3 asking me to draw blood from cadres, but the instruction was to  
4 draw blood from the prisoners who were in good health and to  
5 avoid drawing blood from the prisoners with <> STDs<>.

6 Q. Thank you, Mr. Witness. Let me move on to my next subject.

7 But not having said for the completeness of the record, Mr.

8 President, that in the list of 15,000 plus prisoners, 79, seven  
9 nine, are identified as "daughters of", 32 prisoners are  
10 identified as "husbands of", 61 as "son of" and 26 as "mother  
11 of". So as I said, a much smaller number than even that other  
12 category.

13 [09.46.14]

14 Having said that, let me move on to the next subject, Mr.

15 Witness. Please go to excerpt 16, that is, E3/448; ERN English,  
16 00154912; Khmer, 00154929; French, 00154922.

17 You've repeated this testimony in Court. You speak about Nuon  
18 Chea ordering you to test medicines on victims. You said:

19 "Nuon Chea gave me about 20 to 15 capsules, telling me to test  
20 them on the victims for three days and to keep it secret. In  
21 reality, I have replaced on the sly the power with paracetamol."

22 Is that a correct statement, Mr. Witness?

23 A. Mr. President, a few days ago, I did talk about the fact that  
24 Uncle Nuon gave medicine to me to test on prisoners, and I do not  
25 recall how many drug or capsule I was given. And here, it states

1 14 or 15 capsules that I was given <to test for three days>, so I  
2 would like to base myself on this document because it is more  
3 accurate.

4 Q. Now, what puzzles me a bit, Mr. Witness, is the following. You  
5 said that you replaced the powder with paracetamol, presumably to  
6 save these prisoners. But on the other hand, you were responsible  
7 for executing all those prisoners. As a matter of fact, Vorn Vet  
8 called you, when he entered, the "contemptible killer".

9 What made you change this powder with paracetamol all of a  
10 sudden? What made you want to save these people?

11 [09.49.10]

12 A. Mr. President, this question was put to me by Judge Marcel  
13 Lemonde. I said at the time that I did not allow my hands to kill  
14 prisoners <directly>. Prisoners were sent to S-21 for  
15 interrogation and execution, but I, myself, did not use my hands  
16 to kill prisoners. That was the answer I gave to Judge Marcel  
17 Lemonde.

18 Q. I know that was the answer, but what made you decide at the  
19 time to change the content of these pills? Those prisoners were  
20 going to die anyway. Is that what you -- that's what you said.

21 [09.50.16]

22 A. Thank you, Counsel. Mr. President, at S-21, the chief of S-21  
23 did not kill the prisoners by himself. There was a practice  
24 implemented at S-21. There was -- there were persons responsible  
25 for different tasks, for example, examining the documents and

1 killing prisoners.

2 Again, head of S-21 did not kill prisoners by himself. The  
3 medicine was given by Uncle Nuon by himself, so if I did not --  
4 if I did not want to kill prisoners by myself, I needed to change  
5 the content of the medicine.

6 Q. All right, Mr. Witness. Let me go to the next subject. And let  
7 me take these excerpts from your evidence together. Mr. Witness,  
8 in your little folder, it is -- these are excerpts 17, 18 and 19.  
9 Mr. President, these are, respectively, E3/454, English, ERN  
10 00147603; Khmer, 00146661; French, 00149924; document E3/449;  
11 English, ERN 00159557; Khmer, 00158840; French, 00158848. And the  
12 third document, E3/357; English, 00242936; Khmer, 00242925; and  
13 French, 00242947.

14 These are the three excerpts, Mr. Witness. Let me read them to  
15 you.

16 [09.52.47]

17 There's a question about whether you ever saw torture tools that  
18 they saw at Tuol Sleng Museum such as the immersion basin. And  
19 your answer is:

20 "I never saw that immersion basin. I categorically deny that  
21 there was an immersion basin."

22 In your second quote, you said:

23 "I never personally entered the interrogation rooms and never saw  
24 any blackboards with chalk written rules. I know such  
25 inscriptions were found in S-21, but in my opinion, they were



1 added after 7 January '79 for political reasons. Whatever the  
2 case may be, they were not there on the 3rd of January."

3 In relation to a particular document, you -- a confession, you  
4 have seen Vietnamese annotations, and you said, "This annotation  
5 was surely added by the Vietnamese in 1979."

6 Mr. Witness, these three statements from you about certain things  
7 that we can see at the Tuol Sleng Museum today, which didn't  
8 exist when you were there, are these correct?

9 [09.54.29]

10 A. Mr. President, at S-21, there were no immersion basin up to  
11 the <7th> January <>, and there were no blackboards with the  
12 charts written rules concerning Santebal rules. And there were no  
13 Vietnamese <> annotations on <S-21 documents>.

14 Later on, I have seen those things, <the documents,> the basin  
15 and the blackboards. I made my objection. I protested during the  
16 investigation stage about the matters and, in particular, in  
17 relation to the 10 Santebal rules.

18 Judge Lavergne -- Judge Lemonde asked me why I protested the 10  
19 Santebal rules. I told him that there was no such rule,  
20 <particularly> rule number 8, <which stated that "Do not use>  
21 Kampuchea Krom <as an excuse. Any question asked has to be  
22 answered." There was no instruction regarding Kampuchea Krom for  
23 interrogators to implement at S-21>, so that was fabricated after  
24 the establishment of the Tuol Sleng Museum, as I <> said back  
25 then.

1 Concerning immersion basin, was depicted in different views in  
2 Pha Tha Chan's film and also in Bizot's film. <In fact, there was  
3 no immersion basin.> And in relation to Vietnamese annotations  
4 <on S-21 documents>, it happened only after 7 January.

5 Q. During your testimony --

6 [09.56.31]

7 MR. LYSAK:

8 Mr. President, just for the record because counsel didn't  
9 actually read the last quote from E3/357, the -- this annotation  
10 was simply someone writing on the coverage page of this document  
11 in Vietnamese the word "confession". That's all this annotation  
12 was that is discussed in this E3/357.

13 BY MR. KOPPE:

14 I think that's exactly what I read, so I'm not quite clear what  
15 the observation is about.

16 Q. But, Mr. Witness, in doing your testimony, answering questions  
17 from Judge Lavergne, you also categorically denied certain things  
18 which could be seen in the 1981 East German documentary, "<Die>  
19 Angkar". You denied that there was such a welcome sign on one of  
20 the gates that was shown on that video. You also denied the  
21 existence of medical experiments which could be read from a  
22 medical diary. You used the word "fabrication". Is there anything  
23 else that you consider to be Vietnamese fabrications?

24 [09.58.12]

25 MR. PRESIDENT:

1 Witness, please hold on.

2 You may proceed, Deputy Co-Prosecutor.

3 MR. LYSAK:

4 Yes, Mr. President. We simply ask that if Counsel's going to  
5 confront the witness with prior statements about this film and  
6 assertions of fabrications that he give us the references, E3 and  
7 ERN references.

8 MR. KOPPE:

9 Prosecution was in Court. Those questions from Judge Lavergne.

10 Q. Let me -- let's forget about those two East German documentary  
11 things, Mr. Witness. Is there anything else that you consider to  
12 be Vietnamese fabrications, post-1979 fabrications?

13 [09.59.17]

14 MR. KAING GUEK EAV:

15 A. Mr. President, in relation to the East German documentary, I  
16 have never seen -- I never saw it before. I was brought to Tuol  
17 Sleng <Museum> by Judge You Bunleng and Judge Marcel Lemonde, and  
18 I was shown the immersion basin fabricated by Van Nath and Pha  
19 Tha Chan.

20 I denied that particular basin's existence, and I made my protest  
21 before Judge You Bunleng and Judge Marcel Lemonde, but I did not  
22 deny this fact before Judge Lavergne. I never watched the East  
23 German documentary before.

24 Let me clarify the point once again. Concerning the fabricated  
25 documentary, the film by Ho Van Tay was fabricated. <The film was

25

1 submitted to the Court.> And later on, Ho Van Tay withdrew the  
2 document. <But the Chamber used> the document of Ho Van Tay <for  
3 questioning>.

4 [10.00.37]

5 Back in the past, Judge Cartwright asked me about the child --  
6 the naked child in the film which was shown. And I was looking at  
7 the <victim and I was curious>. And I asked the <Office of the  
8 Co-Prosecutors> to provide <to me S-21> documents proving the  
9 relationship between Norng Chanphal and the parents. And later  
10 on, I was shown the <S-21> document in relation to the mother of  
11 Norng Chanphal, Madam <Mom Yov> (phonetic), who was arrested and  
12 placed at S-21<, by the National Co-Prosecutor Tan Senarong>. And  
13 I apologized. I <apologized> to Norng Chanphal and I said that  
14 <he became an orphan because> his parents died at S-21.

15 The film made by Ho Van Tay was fabricated.

16 I thank you very much counsel. That's all from me.

17 Q. Let me, with your leave, Mr. President, go to the next  
18 subject. Maybe I can finish my questions until the break.

19 Please go to documents, for you, 21 and 23, Mr. Witness.

20 Twenty-one is E3/10590, 10590; English, 00329123; Khmer, 00095702  
21 to 703; French, 00327340. And the other document is E3/82,  
22 English ERN 0039818 --

23 MR. PRESIDENT:

24 Counsel Koppe, please repeat the ERN numbers again since the  
25 interpreter cannot follow you.

1 [10.02.50]

2 BY MR. KOPPE:

3 Actually, I've given the interpreters the documents. It's --  
4 these are documents 21 and 23.

5 Q. So I'll start again with 23, which is E3/82; English,  
6 00398187; Khmer, 003918 -- sorry, 8179, so 00398179; and French,  
7 00398193. This is about Nuon Chea and Ta Mok, Mr. Witness.  
8 One is your statement to the military court and one is your  
9 statement to the Investigating Judges.

10 In your statement before the military court, you said:

11 "Nuon Chea was the third person. My response is the same  
12 regarding Ta Mok. He was behind Pol Pot instigating Pol Pot on  
13 almost every matter. Today, I would like to further clarify that  
14 Ta Mok was the person that implemented the genocidal regime."

15 [10.04.09]

16 And in your other WRI, you say:

17 "I note that there is mention made of Uncle Number 2, whereas at  
18 S-21, we never called Nuon Chea by that time. We called him  
19 Brother Number 2".

20 In one document, you seem to be saying that Nuon Chea was number  
21 3, but then you changed it into number 2. Why is that?

22 MR. KAING GUEK EAV:

23 A. Thank you. And, Mr. President, the content of the document is  
24 correct that Uncle Nuon was the third person. In relation to the  
25 WRI at the ECCC during the <investigation stage>, I said that

1 Uncle Nuon was the second person, and allow me to clarify the  
2 matter.

3 And in fact, I have corroborated more about the facts that there  
4 were seven standing <committee> members, Pol <was the first  
5 person> and Nuon, <> was first deputy of secretary<>.

6 So I believe the statement in this document may be an exception  
7 that I made a mistake since I provided countless statements to  
8 the Court. And I never for once acknowledged that Uncle Nuon was  
9 the third person because, in reality, he was the second person.

10 [10.06.26]

11 Q. Following up on this, Mr. Witness, you've called Nuon Chea  
12 Brother Number 2. Is there -- are you aware of any document,  
13 doesn't matter which one, telegrams, Revolutionary Flags, minutes  
14 of meeting, any document from DK, identifying Nuon Chea as  
15 Brother Number 2?

16 A. There was no Revolutionary Flag magazine or any minutes of a  
17 meeting indicating that Uncle Nuon was the second person.

18 Initially, it was Koy Thuon who wrote about Brother Number 1 and  
19 Brother Number 2.

20 Initially, I never heard about that because I only heard people  
21 refer to them as Brother Pol and Brother Nuon. As for the  
22 military side, they referred to Brother Khieu, Brother 89, but  
23 for S-21, it was known as Brother 62. But in Koy Thuon's  
24 confession, he referred to Brother 1 and Brother Number 2. And  
25 Pol Pot agreed to that title.

1 [10.08.08]

2 And why I say that, because during the commemoration day of 17  
3 April, in the year that I cannot recall, he said that the main  
4 objective of Khuon was to destroy Brother Number 1 and Brother  
5 Number 2. And that was the statement made by Pol Pot during that  
6 ceremony.

7 And later on, Son Sen gave me the same instruction. And that it  
8 was S-21 who started with calling those people with the title  
9 "Brother 1" -- "Brother Number 1" or "Brother Number 2". <I did  
10 not say anything> because it was the "Yuon" who usually referred  
11 to their cadres as "Brother Number 1" or "Number 2".

12 In the CPK, Brother Vorn was number 6, <and he> was more senior  
13 than Brother <Khieu who was> Number 7, but later on, Brother Pol  
14 and Brother Nuon advised not to use that title again.

15 But as I said, the label was started by Koy Thuon during his  
16 confessions at S-21 and also in the CPK documents, they also used  
17 the title. And during the Case 001 proceedings, Counsel Son Arun  
18 asked me about that as well.

19 So, I believe this is clear to everyone in relation to Brother  
20 Number 1 and Brother Number 2, so let me reiterate it. It was Koy  
21 Thuon who initiated with that titling, and then it started to be  
22 used within S-21 and maybe it spread outside as well, although I  
23 did not have any precise knowledge about that. And as I said,  
24 Brother Pol made a statement during a ceremony about the use of  
25 such title and, later on, the upper echelon gave instructions for

1 us to stop using the titles because in the "Yuon" structure, they  
2 use such titles. And simply in the chain of command, <minority  
3 had to respect majority, lower level had to respect upper level,  
4 and all of us in the whole country> had to respect <> the Party  
5 Centre.

6 [10.10.50]

7 Q. Thank you, Mr. Witness. Mr. President, in -- also in the light  
8 of the multiple objections, I would need half hour more, so if  
9 you would allow me that after the break, then I think I could  
10 wrap up everything that I have.

11 MR. PRESIDENT:

12 Counsel, the Chamber will not grant you any additional time. In  
13 fact, you only had 45 minutes today, but we allowed you a bit of  
14 extra time because the first time was usual for proceedings in  
15 the Court.

16 And Mr. Kaing Guek Eav, the Chamber is grateful of your testimony  
17 and the hearing of your testimony is now concluded. And your  
18 testimony may contribute to the ascertainment of the truth in  
19 this case.

20 You are no longer required to be present in the courtroom. The  
21 Chamber wishes you all the very best.

22 Court officer, in collaboration with WESU as well as the ECCC  
23 security personnel, coordinate with the security personnel of the  
24 Kandal prison for the transportation of the witness back to the  
25 Kandal prison.



1 And Witness, you are now excused.

2 [10.12.22]

3 (Witness exits the courtroom)

4 [10.12.36]

5 MR. PRESIDENT:

6 The Chamber would like to hear oral responses from parties in  
7 relation to the submissions by Khieu Samphan's defence, that is,  
8 document E420. And the Chamber would like to remind the parties  
9 that, on the 22nd June 2016, the Chamber received a courtesy copy  
10 of email from the defence teams of Khieu Samphan with a  
11 submission in French language only.

12 The defence team submitted that due to the urgency of the matter.  
13 They decided to submit the application in the French language  
14 first to the Trial Chamber and parties, and an official request  
15 will be <> submitted once the Khmer language has been translated.  
16 And on the 24 June 2016, in late afternoon that day, the Chamber  
17 received an official submission from the defence team in the  
18 Khmer and the French languages.

19 [10.13.47]

20 The defence team expressed their concerns on the uncertainty of  
21 the scope of the segment on internal purges and request the Trial  
22 Chamber to reconsider some witnesses who have been summonsed for  
23 this segment of the trial as well as a civil party who is to  
24 testify today. And based on the introductory submission as well  
25 as the Closing Order, the <defence team> argue that, besides the

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1 internal purges in other areas, the Chamber only has temporal  
2 jurisdiction to examine the internal purges only in the old North  
3 Zone, that is, the Central Zone, as well as the new North Zone  
4 that happened <in> 1976 and in the East Zone in 1978.

5 And in order to decide on this submission, so that the Chamber  
6 can schedule to hear testimonies of <> civil parties and experts  
7 in relation to this segment, on the 23rd of June 2016, the Trial  
8 Chamber notified parties its intention to hear oral responses  
9 from parties to this urgent request by the Defence Counsel for  
10 Khieu Samphan today, that is, after the conclusion of Kaing Guek  
11 Eav, alias Duch.

12 Since the Defence -- since the submission by Khieu Samphan  
13 defence existed only in the French and Khmer languages and it was  
14 submitted late on 24 June 2016, the Chamber would like to invite  
15 Khieu Samphan's defence to provide a summary of their submission  
16 before the floor is given to other parties to make their oral  
17 responses.

18 And I'd like to now hand the floor to the defence team for Khieu  
19 Samphan.

20 [10.15.58]

21 MS. GUISSÉ:

22 Good morning, Mr. President. I thank you.

23 I will indeed sum up the substance of our motion. May I,  
24 nevertheless, point out that our motion is not for review at this  
25 point in time? It is a motion for clarification, and it comes

1 after the decision of the 25th of May 2016, decision of the  
2 Chamber, in which the Chamber expresses the wish to hear the  
3 testimony of TCW-1005, a witness called by the Prosecution,  
4 saying<, even as> we objected to the appearance of that witness  
5 because <that> witness' testimony doesn't fall within the scope  
6 of trial <002/02>. And the Chamber, relying on the reasoning of  
7 the Co-Prosecutors, was of the view that that testimony fell  
8 within the scope of the jurisdiction because that witness was  
9 going to talk about purges in Kratie.

10 [10.17.12]

11 And it is in light of the reasoning of the Chamber that the  
12 question arose as to what the Chamber understands as its  
13 jurisdiction in terms of internal purges, taking into account the  
14 fact that in analysing the purges as we prepared for this hearing  
15 <on the purges>, we <again> went into the details of the <initial  
16 indictment> <and the Closing Order, and obviously> in light of  
17 the <Chamber's severance order> of 2014, and <following our  
18 analysis of> all those documents, we do not understand <how> the  
19 Chamber could have reasoned <its> decision of the 25th of May  
20 2016, saying that the testimony of TCW-1005 falls within the  
21 jurisdiction <because <it> discussed the purges in the autonomous  
22 sector of Kratie, 505, which is not part of the geographical zone  
23 indicated in the Closing Order and the other documents I cited,  
24 we did not understand the Chamber's decision,>  
25 and that is why we have filed this motion for clarification. For

1 the purpose of clarity, <of course,> we are relying <the  
2 aforementioned motion and> on Rule 98.2 of the Internal Rules,  
3 which states that the Chamber can only rule on facts <contained>  
4 in the <Indictment>.

5 [10.18.47]

6 As a matter of fact, as part of our submissions, E420, <we have  
7 detailed everything that appears in> the introductory motion <of  
8 the initial indictment <by the Co-Prosecutor>. The paragraphs  
9 contained in the Closing Order> relating to purges have been  
10 detailed. Let me, nevertheless, point out that purges are not  
11 crimes <in themselves>. It is a term that was used by the  
12 Co-Investigating Judges <when> drafting the Closing Order, but  
13 each time, <the> purges are not viewed as crimes that are  
14 independent in themselves. They are always related to <either>  
15 security <centres or> execution sites and we have <seen and>  
16 detailed the sites that are related sometimes to the Kampong  
17 Chhnang airport, Au Kanseng <or> the Tram Kak <cooperative in our  
18 submissions>.

19 [10.19.55]

20 I cite these three sites because <obviously> I <am focusing on>  
21 your severance order, which referred to those sites. <A  
22 comparative reading of the initial indictment>, particularly  
23 paragraphs 42 and 71 of the <initial indictment>, the Closing  
24 Order, that refers to purges in paragraphs 192 to 203 of that  
25 Closing Order, <but> also the legal characterization; <given

1 that> we have to <read> the Closing Order in terms of <factual  
2 elements, as well as> legal characterization< -- and> we are  
3 talking <about> paragraphs 1327 to 1576 <here - when> we <read>  
4 all these <documents together, including my> footnotes <on the  
5 documents, regarding> purges<, we have a case submission that is  
6 normally restricted to> events <occurred> in the North Zone in  
7 1976, events <occurred> in the East Zone in 1978, bearing in mind  
8 that those facts are related to S-21 or Phnom Kraol.  
9 And as I said earlier, other passages in the Closing Order that  
10 referred to purges and -- bearing in mind your decision, your  
11 severance <order> of May 2014 -- we have three sites <where we  
12 can discuss those purges:  
13 The Kampong Chhnang airport, for division 62 in 1976 and 1977 -  
14 that is paragraph 387 of the Closing Order;>  
15 We have Au Kanseng as regards purges of lower cadres <and  
16 ordinary fighters in Division 801, in 1977 - that is paragraph  
17 614 of the Closing Order;  
18 And finally, the> Tram Kak cooperatives<, due to the facts  
19 related to a> meeting <in> 1977 <or> 1978, which are referred to  
20 in <paragraph 309 of> the Closing Order. <I am summarizing this  
21 to explain each time that I refer you> to our submissions and our  
22 footnotes and all of the details <of the facts> that we have  
23 referred to.  
24 [10.22.20]  
25 But in any case, the Chamber's jurisdiction cannot go beyond

1 these points. And <yet, that is what concerns us>, and that is  
2 why we are requesting the Trial Chamber to clarify the matter at  
3 this stage, <as that will - how do I say this - condition> what  
4 is the scope of the examination of parties when the witnesses and  
5 civil parties called to appear before this Chamber <on this  
6 segment are here. We> need to understand why, whereas we have the  
7 analysis of the Closing Order <final indictment, with all the  
8 paragraphs I cited earlier--> we <want to> understand <how> the  
9 Chamber <could consider, in its reasoning, to call> witness  
10 TC-1005 <(sic), how it could consider that Kratie, which does not  
11 appear in the court documents at all - as I just reminded you -  
12 how> can the Chamber consider that it has jurisdiction to  
13 consider the purges in Kratie?  
14 This concern is all the more important because, as we pointed out  
15 in our submissions, when you focus on the list of witnesses that  
16 the Chamber would like to call to testify on purges, we realize  
17 that there are only three witnesses, that is, <of> the six  
18 witnesses plus the civil parties <who were called> -- we have  
19 only three witnesses who are mentioned in the Closing Order in  
20 Case Number 002. And all the other witnesses and a large number  
21 of statements that are considered by the Chamber as part of this  
22 sub-segment on purges, all these elements come from other  
23 investigations; <that is> investigations 003 and 004.  
24 And we are <really> talking about what we have <feared> from the  
25 very beginning; <by> introducing elements from other <cases> to

1 complete <or clarify> the case, we find that the jurisdiction of  
2 the Chamber de facto <extended> which is not <at all> in line  
3 with <the spirit of> Rule 98.2 and <above all, with the elements  
4 I just reminded you of, on what is contained> <in> the Closing  
5 Order <and> which <forms> the basis for the Chamber's  
6 jurisdiction.

7 I <am aware> that it is very complex to sum up in such a short  
8 time, but essentially, the question we are asking today is: What  
9 does the Chamber consider as the scope of its jurisdiction? You  
10 have seen our version, our understanding of what your  
11 jurisdiction <was>; and when we look at the <appendix> that you  
12 gave us together with your severance <order>, <it seems> that you  
13 understand the situation the same as we do. <But> when we look at  
14 the reasoning that you gave recently <as regards> Witness 1005,  
15 this raises questions.

16 [10.25.34]

17 I <am focusing only> on Witness 1005, because as regards the  
18 other witnesses mentioned in the motion, we have simply summed up  
19 what is expected of their testimonies, but we still do not have  
20 the exact reasoning of the Chamber as to the reasons <for calling  
21 those witnesses>.

22 I cannot elaborate on the reasoning of the Chamber, why you are  
23 calling <these witnesses>, but as far as we are concerned, it is  
24 very clear that the jurisdiction of the Chamber <consists of> the  
25 <events in the > North Zone that occurred in 1976, <the events

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1 that occurred> in the East Zone in 1978 and all that has to do  
2 with S-21, Phnom Kraol, and the other sites that correspond to  
3 what I said earlier as regards the sites you considered as  
4 falling within the scope of Case 002/02 within the framework of  
5 your severance order.

6 [10.26.33]

7 So we are rather perplexed and worried in the face of what we  
8 feel is an extension of the Chamber's jurisdiction, compared to  
9 what is envisaged in the Closing Order.

10 In summary, that is the position of the Khieu Samphan team and  
11 the reasons why we are asking the Chamber to clarify the matter.

12 MR. PRESIDENT:

13 Thank you, Counsel.

14 And the Chamber would like now to hand the floor to the defence  
15 team for Nuon Chea to respond or to make an observation in  
16 relation to the submission by the defence team for Khieu Samphan,  
17 if you have any.

18 [10.27.18]

19 MR. KOPPE:

20 Yes, Mr. President, briefly.

21 I think we agree almost in its entirety with the Khieu Samphan  
22 defence team is saying. It is, indeed, true and it is rightfully  
23 said that, "internal purges", between quotation marks, as we  
24 always do in our submissions, are not crimes as such. To  
25 internally purge people from ranks as such is not a crime against



1 humanity, or any other crime.

2 It is a way of categorizing certain events and, as such, we  
3 accept that term, although, as I said, we always put it between  
4 quotation marks. But it must be very clear internal purges, as  
5 such, are not crimes.

6 Having said that and in a related matter, it's also the reason  
7 why I do not understand one of the arguments of the civil party  
8 lawyers in a response to our recent submissions on the relevance  
9 of the rebellion.

10 [10.28.41]

11 If I understood that argument correctly, it says purges in the  
12 Northwest Zone are not part of the Closing Order, so any witness  
13 coming from the Northwest Zone talking about events in the  
14 Northwest Zone are not relevant, but Northwest Zone cadres ended  
15 up in S-21. And by being detained in S-21, then evidence as such  
16 coming from the Northwest Zone becomes relevant, maybe not so  
17 much as to the case or the defence case of Khieu Samphan, but  
18 very much for our case.

19 We find the subject of internal purges very material, very  
20 important to our defence, because it is the flip side of the  
21 argument that people were arrested because they were part of  
22 preparations for a coup d'état, rebellion, armed attacks on the  
23 Centre, etc.

24 So it is very important to understand what the reasons were for a  
25 majority of people being arrested and detained at S-21, so in

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1 that sense, we have no objections, as such, against the  
2 appearance of witnesses. But that doesn't change the fact that we  
3 fully understand the arguments from Khieu Samphan's defence team  
4 because, as I said, purges, as such, is an irrelevant subject  
5 when it comes to defining the actual crimes.

6 I think these are our submissions, Mr. President. Thank you.

7 [10.30.59]

8 MR. PRESIDENT:

9 Thank you.

10 And the floor is now given to the Co-Prosecutors to submit their  
11 response to the request by Khieu Samphan's defence team.

12 MR. KOUMJIAN:

13 Thank you, Mr. President, Your Honours.

14 Perhaps to be brief, it might help to go directly to the summary  
15 of this witness that Khieu Samphan objects to, to understand why  
16 Khieu Samphan is objecting. According to the summary, that was  
17 submitted to Your Honours by the Co-Prosecutors, the witness  
18 describes how his office in Kratie received a letter from Office  
19 870 in late 1978, ordering 11 leaders from Kratie sector and  
20 Division 117 to fly to Phnom Penh.

21 [10.32.00]

22 And the summary goes on to say that these individuals are -- it's  
23 confirmed in S-21 records, that these cadres entered S-21 in  
24 December 1978.

25 So as Nuon Chea just submitted, when evidence is relevant about

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1 how people got to S-21, it's relevant to this trial. Purges is  
2 not a crime by itself, but it's part of the policy and the  
3 implementation that led to the tortures, the murders, the  
4 exterminations, including those at S-21 and other security  
5 centres.

6 So the relevance is absolutely obvious. Khieu Samphan, in fact,  
7 was the only member of Office 870 at the time this letter was  
8 sent out, so we understand why Khieu Samphan would not want to  
9 hear this witness, but it's clearly relevant to his  
10 responsibility and to all of the evidence about the policy  
11 targeting enemies and the role of S-21 in that policy.

12 MR. PRESIDENT:

13 The floor is now given to Lead Co-Lawyers for civil parties. You  
14 may proceed.

15 [10.33.26]

16 MS. GUIRAUD:

17 Thank you, Mr. President, and good morning to all of you.

18 I'm simply going to explain orally what we have already explained  
19 in writing in two responses that we made to the request for  
20 additional witnesses on the part of the Nuon Chea team, and I'm  
21 quoting here the documents E391/1, at paragraph 14. This is a  
22 response that we filed on the 4th of April 2016; and response  
23 <E392/1>, in paragraph 15, which is a response that we filed on  
24 the 21st of April 2016.

25 And it is important for me to specify orally because I believe

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1 that the Nuon Chea Defence Counsel did not understand what we  
2 included in these responses. What we're saying is the following.

3 [10.34.27]

4 The Chamber is seized with two kinds of facts. It is seized with  
5 facts that will allow us to characterize, if necessary, the  
6 existence of policies within the <JCE> and, in this particular  
7 segment, the re-education policy of <bad> elements as well as the  
8 elimination of enemies. So you are seized with facts that will  
9 allow you, if necessary, to characterize the existence of a  
10 policy, and you're also seized with facts that will allow you to  
11 characterize, if necessary, the existence of crimes for which  
12 Nuon Chea and Khieu Samphan are appearing before this Court.

13 Now, regarding the crimes, we are clear about this. These crimes  
14 are limited, of course, to the three security centres that were  
15 mentioned by the Khieu Samphan counsel, that is to say, Phnom  
16 Kraol Au Kanseng and S-21. So here, we're speaking, indeed, about  
17 crimes for which the Accused are being tried in this particular  
18 trial.

19 Now, regarding the characterization of the existence of a policy,  
20 our position is that the Chamber is seized with facts that are  
21 related to the purges in the north and in the east only. This  
22 being said, it's clear that some of the witnesses may be relevant  
23 for other segments of this case and, in particular, the segment  
24 linked to the role of the Accused and to the joint criminal  
25 enterprise.

1 [10.36.19]

2 But, to sum things up, when we're speaking about the re-education  
3 <policies for bad> elements as well as the elimination of  
4 <enemies>, <the Chamber is seized with the facts> related to the  
5 purges of the north and in the east, and when we're speaking  
6 about the crimes resulting from the implementation of this  
7 policy, you are seized only with crimes at Phnom Kraol, Au  
8 Kanseng and S-21.

9 This is our understanding of the scope of this case, and we will  
10 <refer to it when determining whether> the witnesses you called  
11 are relevant to this segment, and to what <extent> they are  
12 relevant with regard to the role of the Accused and the JCE,  
13 which will be discussed at the end of this case.

14 [10.37.15]

15 MS. GUISSSE:

16 Thank you, Mr. President. A few words to respond here.

17 First, a short response to the Co-Prosecutor -- to the  
18 International Co-Prosecutor, I believe that there was maybe a  
19 problem of understanding here with regard to our request.

20 We requested clarification. Of course we <disagreed about> 1005,  
21 but <in the meantime,> the Chamber issued a decision that we  
22 cannot appeal, so our request is not an objection to the  
23 appearance of this witness. No. It's, rather, a simple request  
24 for clarification because -- and here, I agree with my colleague  
25 from the civil party, said, in part at least, there will be an

1 issue of how are we going to question this witness <and why>.

2 So yes, indeed, we, with my civil party colleague, have a similar  
3 analysis on the facts that you are seized of regarding the North  
4 and East Zones.

5 Now, the recurring question always comes back, which is; if this  
6 is not part of the scope of the trial, therefore, why is it  
7 relevant, and to what extent are you going to use the evidence  
8 and to which purpose? And it is regarding this particular point  
9 that we have serious questions because, as we said, we do not yet  
10 have your reasons for <calling> the other witnesses <asked to  
11 appear> regarding this segment. But there is an issue as well, if  
12 we look at the summary, regarding the <jurisdiction> that I just  
13 spoke about.

14 [10.39.05]

15 Now, speaking about JCE and the role of the Accused, that's not a  
16 problem, but if each time we're going to speak about the role of  
17 the Accused and of their possible guilt with regard to such and  
18 such a point, if this leads to bringing up facts that are not  
19 part of the Closing Order or that are not included in your  
20 severance order, then we're really facing a real procedural  
21 problem, which is: Can we disregard Rule 98.2 of the Internal  
22 Rules, saying that we cannot rule on facts that are not mentioned  
23 in the <Indictment> and, second of all, what's the point, if you  
24 are systematically going to step out of your severance order,  
25 what's the point in this case to have a severance order?

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1 These are two issues that result directly from my colleague's  
2 observations, so here we're facing a real procedural problem and  
3 we're asking for you to shed light on this because this is going  
4 to have implications on how we're going to <be able to> question  
5 the witnesses to come and <obviously>, how we're going to object  
6 if we believe that certain questions are outside of the scope of  
7 this trial.

8 (Judges deliberate)

9 [10.43.36]

10 MR. PRESIDENT:

11 The Chamber is grateful to the comments by all party, and also to  
12 the responses by parties to the request by the defence team of  
13 Mr. Khieu Samphan, in relation to document E420. The Chamber will  
14 take into consideration all the arguments made by the defence  
15 team for Khieu Samphan and also by other parties.

16 Due to the complicated matter, combined with the request formally  
17 submitted by the defence team last Friday, the Chamber will need  
18 time to deliberate on the issues so that a reasonable decision or  
19 ruling will be issued. Therefore, the Chamber cannot proceed to  
20 hear 2-TCW -- 2-TCCP-236 today, and the Chamber will <resume>  
21 tomorrow on Tuesday, 28 June 2016, at 9 a.m.

22 <>

23 [10.45.44]

24 MR. PRESIDENT:

25 So, the hearing is adjourned today, and the Chamber will resume

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1 its hearing on Tuesday, 28th June 2016, at 9 a.m. Tomorrow, the  
2 Chamber will hear 2-TCCP-236.

3 So in fact, the Chamber is scheduled to hear 2-TCCP-236 today,  
4 but cannot do so, so the hearing to hear this witness -- this  
5 civil party will start tomorrow.

6 Security personnel are instructed to bring the Accused to the  
7 ECCC detention facility and have them returned tomorrow before 9  
8 a.m.

9 Court officer, please work with WESU to send the civil party to  
10 the place where he or she is staying now, and please invite him  
11 into the courtroom tomorrow at 9 a.m.

12 The Court is now adjourned.

13 (Court adjourns at 1047H)

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