



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

7 December 2016
Trial Day 489

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
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For the Office of the Co-Prosecutors:
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SENG Leang

For Court Management Section:
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I N D E X

Mr. NUON Trech (2-TCW-1060)

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Questioning by Ms. GUISSÉ..... page 20

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. HONG Kimsuon	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. NUON Trech (2-TCW-1060)	Khmer
Mr. PICH Ang	Khmer

1 PROCEEDINGS

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 Nuon Trech.

7 Mr. Em Hoy, please report the attendance of the parties and other
8 individuals to today's proceedings.

9 THE GREFFIER:

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

12 Mr. Nuon Chea is present in the holding cell downstairs. He has
13 waived his rights to be present in the courtroom. The waiver has
14 been delivered to the greffier.

15 The witness who is to conclude his testimony today, that is, Mr.
16 Nuon Trech, is present in the courtroom. Thank you.

17 [09.04.52]

18 MR. PRESIDENT:

19 Thank you, Mr. Em Hoy. The Chamber now decides on the request by
20 Nuon Chea.

21 The Chamber has received a waiver from Nuon Chea dated 7 December
22 2016, which states that, due to his health, that is, headache,
23 back pain, he cannot sit or concentrate for long. And in order to
24 effectively participate in future hearings, he requests to waive
25 his right to be present at the 7 December 2016 hearing.

2

1 Having seen the medical report of Nuon Chea by the duty doctor
2 for the accused at the ECCC, dated 7 December 2016, which notes
3 that, today, Nuon Chea has a constant lower back pain and feels
4 dizzy when he sits for long and recommends that the Chamber shall
5 grant him his request so that he can follow the proceedings
6 remotely from the holding cell downstairs. Based on the above
7 information and pursuant to Rule 81.5 of the ECCC Internal Rules,
8 the Chamber grants Nuon Chea his request to follow today's
9 proceedings remotely from the holding cell downstairs via an
10 audio-visual means.

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

14 I now hand the floor to the International Deputy Co-Prosecutor to
15 put further questions to the witness. And the remaining time for
16 the <International> Deputy Prosecutor and the Lead Co-Lawyers is
17 45 minutes.

18 [09.06.44]

19 QUESTIONING BY MR. LYSAK RESUMES:

20 Thank you, Mr. President. Good morning, Your Honours, counsel.

21 Good morning, Mr. Witness. I have just maybe 10 or -- 10 minutes
22 or 15 minutes' more questions for you, and then I will turn it
23 over to the civil parties.

24 Q. And I have a few more questions about the Kampong Chhnang
25 airport site. We were talking yesterday about injuries or deaths

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1 to workers caused by the dynamite explosions at the airport site,
2 and I wanted to clarify something with you from your past
3 statements.

4 In your DC-Cam interview, and this is E3/7537; Khmer, 00019648;
5 French, 00291006; English, 00251256; you said, and I quote, "A
6 lot of people died because there were explosions each day." End
7 of quote.

8 [09.08.02]

9 But in a transcript that was just made by one of the defence
10 teams from the audio recording of your OCIJ interview -- this has
11 been put on the case file as E3/7877.1 -- what you said was that
12 you saw workers gravely injured from the explosions who were
13 taken away to the hospital, but you did not know whether or not
14 they survived or died.

15 Is it correct that what you personally witnessed was workers who
16 were gravely injured from the explosions, and can you clarify
17 whether or not you ever heard whether any of those workers died
18 from their injuries?

19 MR. NUON TRECH:

20 A. At the time, <I saw> those workers <> wounded and I did not
21 know what happened to them<, whether they died or not,> when they
22 were sent to a hospital in Kampong Chhnang. The airfield was
23 rather far from the Kampong Chhnang provincial town.

24 MR. LYSAK:

25 I'm sorry, Mr. President. I'm not -- I didn't get a translation

4

1 through my channel.

2 [09.09.46]

3 MR. PRESIDENT:

4 Other parties can actually listen to the interpretation. Maybe
5 it's a problem with your headset.

6 BY MR. LYSAK:

7 Q. Okay. Thank you, Mr. Witness. I missed your answer.

8 What I wanted to follow up with you on this, you had worked --
9 before coming to the Kampong Chhnang airport site, you had worked
10 the previous two or three years as a medic treating injured
11 soldiers.

12 Were you ever asked by any of your supervisors at the Kampong
13 Chhnang site to treat any of the injured workers?

14 [09.10.58]

15 MR. NUON TRECH:

16 A. At the time, I did not have any right to be a medic since I
17 was considered a prisoner engaging in breaking rock or digging
18 dirt. At the time, I was removed from being a medic, and since I
19 was accused of being an enemy or a traitor, a KGB or a CIA agent,
20 although that was beyond my knowledge. I do not know what it
21 meant, but I was accused of being a traitor.

22 Q. Thank you. Who were the other workers who were working in the
23 area -- the same area as you where these explosives were being
24 used to blast this tunnel?

25 Specifically, where did these workers come from who were at this

1 location?

2 A. There were mixtures of <> divisions because within Division
3 310, there were smaller units, namely, <brigades,> regiments,
4 battalions<. They were concentrated in that one place>. And I was
5 only familiar with members of my battalion. So there were all
6 sorts of people who were working there. They came from different
7 units, and I did not know them.

8 Q. Did you know whether there were any workers at this location
9 who were from the East Zone?

10 A. Yes, there were, but I did not know them. Some of the workers
11 said they came from the East Zone, while others said they were
12 from the North Zone army.

13 [09.13.10]

14 Q. Were there any Chinese technicians who were working at the
15 site where the explosives were being used to blast this tunnel?

16 A. Regarding Chinese engineers or technicians, they only came to
17 give us <brief> instructions, for example, how deep we shall dig
18 the dirt. So the Chinese would tell us, for example, <if there
19 was garbage waste in a five-metre depth pit, we must> remove <it>
20 when we dig the dirt and in order to compact the soil so that
21 when the plane landed, <the runway> would not <subside>.

22 Q. Now, you testified yesterday that the rocks that were blasted
23 from the side of the mountain were then used to help build the
24 airfield runway.

25 How were the rocks -- after they were blasted using the

6

1 explosives, how were they transported to where the airfield
2 runway was being built?

3 [09.14.41]

4 A. At that time, they used <human forces> and trucks to carry the
5 rocks. However, there were not so many trucks. Mainly, they used
6 labours from workers on site.

7 Q. And the people who had to carry the rocks, do you remember how
8 -- approximately how far they had to carry those rocks?

9 A. It was not that far from the airfield work site. It was less
10 than one kilometre. And those <Khmer> workers had to carry those
11 rocks <with the zinc containers>.

12 Q. Now, in order to be in condition to do this work with
13 explosives and carrying rocks, how many meals did you receive
14 each day, and what were you fed?

15 A. Regarding the food regime, workers received <only> two meals
16 per day, and the food ration was one bowl of rice mixed with
17 other <stuff; it was not only cooked rice>.

18 Q. The food you received, was it rice or was it gruel?

19 A. It was rice, but it was rice mixed with banana. However, the
20 amount of <cooked> rice <> was less than the banana.

21 [09.16.48]

22 Q. What was the condition of the workers at the site? Were you
23 all healthy? Can you describe the condition of yourself and the
24 other workers at the site?

25 MR. KOPPE:

1 Mr. President --

2 MR. PRESIDENT:

3 Witness, please hold on.

4 And Counsel Koppe, you have the floor.

5 MR. KOPPE:

6 I object to the formulation of this question. Of course, the
7 witness is able to testify about his condition and the condition
8 of the immediate co-workers. However, I believe at one point
9 there were about 20,000 soldiers working to finish this airfield,
10 so the question should be only limited to the witness himself and
11 his direct surroundings.

12 [09.17.42]

13 BY MR. LYSAK:

14 Obviously, Mr. President, I'm asking about yourself and the
15 people you worked with and were able to observe.

16 Q. Can you tell us what the condition was of the people that you
17 worked with, and yourself?

18 NUON TRECH:

19 A. Regarding the health condition of workers, there were not many
20 workers who were healthy. <That place was a tempering site.
21 Therefore everybody was> very skinny.

22 Q. How many hours were you expected to work every day while you
23 were being fed these two meals a day?

24 A. We started from around 4 o'clock in the morning until 11:00
25 <a.m.>, and for the afternoon, in fact, we had a rest for an

8

1 hour, and then we started working from 12:00 <p.m.> to 5:00

2 <p.m.>

3 [09.19.07]

4 Q. Did you have to work at night-time and, if so, how often?

5 A. We worked every night from 6 o'clock to 10 o'clock.

6 Q. And were there lights that were installed at the site where
7 you worked so that you were able to work while it was dark?

8 A. At the time, light was installed everywhere.

9 Q. I want to finish -- I want to ask you about something you said
10 in your DC-Cam interview. This is E3/7537; Khmer, 00019649;
11 English, 00251256; and French, 00291007. And you made the
12 following statement:

13 [09.20.33]

14 Question: "Was it hard to work there?"

15 Answer: "It was hard to do the digging job. We dug out the
16 garbage buried five metres deep. We worked day and night."

17 Question: "Why were you asked to dig?"

18 Answer: "They were afraid of airplanes sinking if the ground
19 subsided when they landed and when there was garbage on the
20 ground. We were afraid of being punished, so we tried to work
21 hard." End of quote.

22 What I wanted to ask you, Mr. Witness, why did you say that you
23 worked hard because you were afraid of being punished? Why were
24 you afraid?

25 A. They said that we were traitors and that we had to work there

1 to refashion ourselves. And if we could not refashion ourselves
2 <to catch up with the wheel of history>, then we might die, as I
3 testified earlier that the wheel was turning and if we could not
4 catch up with it, and when -- if somebody put an arm or a leg
5 through the turning wheel, then the arm or the leg would be
6 <cut>.

7 Q. And you testified to the same thing in your DC-Cam interview
8 about being warned that you had to keep up with the moving wheel.
9 And you said that it was your chief who said this in meetings.
10 Can you just tell us, my last question, where were the meetings
11 where you were told -- warned you needed to keep up with the
12 moving wheel, and do you remember who the chief was who said
13 this?

14 [09.22.46]

15 A. While I was at Kampong Chhnang, we were allowed to stay near
16 the airfield work site. And the chief was a person from the
17 Southwest who held a meeting and said that we were the offenders
18 and that we had to strive to work hard to <temper> ourselves. And
19 if we cannot catch up with the history, then we might be punished
20 further.

21 MR. LYSAK:

22 Thank you very much for your time, Mr. Witness.

23 We have no further questions, Mr. President.

24 [09.23.36]

25 MR. PRESIDENT:

10

1 Thank you.

2 And the floor is now given to the Lead Co-Lawyers for civil
3 parties to put question to the witness.

4 MR. PICH ANG:

5 Good morning, Mr. President. Please allow Counsel Hong Kimsuon to
6 put questions to this witness.

7 MR. PRESIDENT:

8 Yes. <Counsel,> Hong Kimsuon, you may proceed.

9 QUESTIONING BY MR. HONG KIMSUON:

10 Thank you, Mr. President, Your Honours. And good morning,
11 everyone. And my respect to the venerable monks who are in the
12 public gallery.

13 Q. My name is Hong Kimsuon. I'm a lawyer for the <Cambodian
14 Defenders Project and also the Lead Co-Lawyer for civil parties
15 in this case>. And Mr. Witness, I only have some supplementary
16 questions to put to you in relation to your work as a medic at
17 the Preah Ket Mealea Hospital.

18 When you entered Phnom Penh after Phnom Penh fell on 17 April
19 1975, what was your unit? Was it a military unit or was it a
20 civilian unit?

21 [09.25.00]

22 MR. PRESIDENT:

23 Witness, please observe the microphone before you speak.

24 MR. NUON TRECH:

25 A. At the time, I was a zone medic, and they told us that we had

11

1 to attack the Lon Nol soldiers and <we were ordered> that we had
2 to <knock> them <down> in every spearhead <in 1975>.

3 BY MR. HONG KIMSUON:

4 Q. <I am sorry to interrupt, but my question was, after> Phnom
5 Penh fell and after you entered Phnom Penh, what I want to ask is
6 about your unit, even if you were a medic. Was your unit a <pure>
7 military unit or was it a civilian <group>?

8 [09.25.52]

9 MR. PRESIDENT:

10 Witness, please <observe> the microphone. You should only speak
11 when you see the red light on the tip <of the microphone>.

12 MR. NUON TRECH:

13 A. At the time, <during our entry into Phnom Penh,> we were <all
14 military medics,> not a civilian unit.

15 BY MR. HONG KIMSUON:

16 Q. Yesterday, in your response to the Co-Prosecutor, you spoke
17 about the arrest of your <superior>, Oeun, as well as the arrest
18 of his wife and children.

19 Was <> Oeun's wife <and children> arrested <or were there wives
20 or children of other civilians also> arrested <in that unit>?

21 MR. PRESIDENT:

22 Witness, please hold on.

23 And Counsel Koppe, you have the floor.

24 [09.26.59]

25 MR. KOPPE:

12

1 I object to this question. The implication in the question is
2 that Division Commander Oeun's wife was arrested because she was
3 the wife of Oeun. She was arrested because the accusation was
4 that she was involved in that same rebellion and coup d'état
5 attempt, and there was indication that she was the wife of Oeun,
6 but she was also referred to as the chief of the hospital. So the
7 implication in the question is incorrect and should -- therefore,
8 the question should be rephrased.

9 JUDGE FENZ:

10 Sorry, Counsel. You're drawing implications but, at the moment,
11 we are at the beginning of questions. How do you rephrase the
12 questions were other wives arrested? Obviously, follow-up
13 questions should come, but why would that be the question to be
14 objected to at this point in time?

15 [09.28.08]

16 MR. KOPPE:

17 Because the implication or the underlying assumption is obvious,
18 that whenever a commander was arrested, his wife would be
19 arrested, too. But that's -- that's the underlying assumption,
20 and that's something which is incorrect.

21 JUDGE FENZ:

22 But that doesn't prevent this question. It might lead to the
23 necessity to ask further questions. I agree with that. But it
24 doesn't prevent this question.

25 MR. KOPPE:

13

1 Well, if that is going to happen, then I'm fine with it.

2 BY MR. HONG KIMSUON:

3 Allow me to continue with my questioning.

4 Q. After the wife of Oeun was arrested, were there any arrests of
5 the wives and children's of other people who were under the
6 supervision of Oeun in that unit?

7 [09.29.09]

8 MR. NUON TRECH:

9 A. They said the North Zone soldiers and Division 310 were
10 traitors, and that Zone 203 from the east were also traitors. And
11 people were arrested subsequently.

12 I also saw the arrest of the wives as well, but I did not know
13 what happened to them or where they were taken to. <They all
14 disappeared.>

15 Q. My question to you is that were there arrests of wives and
16 families of other <people>. I referred to the wives and children
17 of other people, and not just the wife of Oeun.

18 A. There were successive arrests. For example, in my -- my
19 Battalion 313 (sic), Ta <Vaen (phonetic)>, the driver, was
20 arrested along with his wife. And I didn't know where they were
21 taken to.

22 Q. Thank you. I am asking you now about what you said yesterday.
23 You stated that in your -- in the division you were part of, you
24 stated that there was a unit working on the farm<, but it was
25 from the same unit.> Did that unit compose of soldiers and

14

1 family members of those soldiers?

2 [09.30.59]

3 A. < At that time every> soldier was single<. The soldiers who
4 were> working on the farm <> were all single. And in Battalion
5 314, not so many people <> were married. The rest <were> single.

6 Q. Thank you. I am now asking you about your -- the statement you
7 made to the DC-Cam. In that statement, you stated that:

8 "My supervisor was arrested in 1976, based on the network, and I
9 was also accused <as a traitor and then I was arrested." I would
10 like to quote document E3/7537>; Khmer ERN, 00019645; English,
11 00251253.

12 So what do you mean by saying that those people were arrested
13 according to "their network"? So could you explain that to the
14 Chamber?

15 [09.32.32]

16 MR. NUON TRECH:

17 A. It was said that the soldiers of the zone were all traitors,
18 so<, one by one,> people <were successively selected for the
19 arrests>. And if the head <of Division 310> was a traitor, the
20 subordinates would be considered the traitors as well.

21 Q. Thank you. The Co-Prosecutor asked you about the arrests of
22 those who were linked to CIA<, KGB> or Yuon agents. <Before the
23 arrest,> did they explain <the words> "the involvement with the
24 KGB or CIA agents"?

25 A. No, they did not explain about the reason of the involvement.

15

1 I was <rather young,> around 20 years old at the time. I did not
2 know what KGB or CIA <network> was. They came and they made
3 mention about the notion, which I did not know at the time.

4 [09.33.56]

5 Q. Thank you. I would like to backtrack a little bit. I want to
6 ask about your statement when you stated that you were at Preah
7 Ket Mealea <hospital>.

8 You stated that there were Korean and Chinese experts working at
9 that hospital. I am now quoting from E3/7537; Khmer, ERN
10 00019644; and English, 00251252.

11 Regarding the Korean and Chinese assistants or experts, <were>
12 they <accompanied by any> Khmer Rouge <leaders>?

13 A. Those Chinese made the visit at the hospital. I did not know
14 the senior leaders at the time. I was told that they were the
15 Chinese.

16 Q. In the same document, you made mentioned about Ieng Thirith.
17 You stated that Ieng Thirith came to visit the hospital two or
18 three times.

19 Besides her, did you know other senior leaders of the Khmer Rouge
20 at the time?

21 A. I could recognize only Ieng Thirith at the time because I
22 often saw her. As for other leaders, namely, Khieu Samphan and
23 Nuon Chea, I never saw those individuals, but I heard of their
24 names.

25 Q. You stated that there was a three-day meeting. In the course

16

1 of that meeting, did you see Khieu Samphan or Nuon Chea attending
2 that meeting?

3 A. I did not see them. I saw <only the leaders> who were in
4 charge of my unit. <I did not see those leaders' faces.>

5 [09.36.37]

6 Q. I am now asking you about the arrests. You told the
7 Co-Prosecutor about the arrests <and meetings>. In the same
8 document, you made mention about the year 1976.

9 From early 1976 up until you were transferred to Kampong Chhnang,
10 did arrests happen from time to time?

11 A. First, Bong Yiet, my supervisor, was arrested. Then I was sent
12 to Kampong Chhnang, and members of my battalion were reassigned
13 to other locations from time to time, and <there was no one
14 staying at that battalion. People disappeared one by one.>

15 [09.37.35]

16 Q. Thank you. I am now asking you about <the construction of>
17 Kampong Chhnang airfield. You have told the Court extensively
18 about the working conditions at that location. My question now is
19 about the shelters <of where you stayed.>.

20 You <already testified> about <working conditions and> food
21 conditions. Concerning the place where you lived, were shelters
22 or houses built <appropriately> for workers to stay in?

23 A. They built a long hall with thatch roof, and we were allowed
24 to stay in that long hall, but there were partitions installed in
25 that long hall. And there was sheets on the floor for us to sleep

1 on.

2 Q. What about water and latrine? Did they build enough latrines
3 for you?

4 A. Yes. In fact, we had enough water to drink, but for water to
5 bathe ourselves, we did not have enough water. We <were> very
6 busy with our work. We did not have much time to go and bathe
7 ourselves. Sometimes we would have no water for two days. < Our
8 work was an intensive labour. We were made to temper ourselves.>

9 Q. Thank you. You made mention about <blowing up> rocks or the
10 ignition of the <dynamite> fuse<>, in order to <collect> the
11 stones or rocks to build <Kampong Chhnang> airfield runway. You
12 made mention also about the injured people. My question now is
13 about whether or not there were medics to treat people who got
14 injured at that airfield?

15 [09.39.53]

16 A. There were medics, but those medics could only wrap the
17 wounds, and then the injured workers would be sent to Kampong
18 Chhnang <hospital>. Bandages were used to wrap the wounded, and
19 then they were sent to the hospital.

20 Q. Did workers suffer from fever and cold <or diarrhoea>?

21 A. Yes, the medicines were limited for treatment of those people.
22 And for serious patients, they would be sent to Kampong Chhnang.

23 Q. What about the sick worker <in your unit>? If they felt sick,
24 were they allowed to take rest?

25 A. We would be diagnosed properly by the medics because they were

18

1 afraid that we pretended to be ill. When we were not seriously
2 sick, we would still try to go to work, although we were
3 exhausted. We understood at the time that the place was for
4 refashioning. That's why we had to work hard.

5 [09.41.25]

6 Q. Regarding the diagnosis, how did they know that one individual
7 was really sick or not, as you were a medic at the time?

8 A. They had the medical equipment <called Te-Ar-Tau (phonetic)
9 and another medical check up tool> to diagnose us, and if we had
10 a fever, they would prescribe paracetamol for us to drink. And if
11 we was really sick and had a fever, they would allow us to take
12 rest for a brief moment. And if we <had a temperature but we
13 could still work>, we would be made to go to work.

14 Q. And did people die <on site in your unit> ?

15 A. One of my colleagues collapsed at the time, and he was sent to
16 the hospital. I did not know if he died later on. <All> workers
17 there were <weak and became> skinny.

18 Q. Now I am continuing my question in relation to the statement
19 you made about the removal of people <and their disappearance. I
20 would like to quote> the same document, <E3/7537; ERN in Khmer
21 0019648 >; English, <251256 (sic) in relation to the removal of
22 people> where were these people sent to?

23 A. I did not know. I <minded only> my work in order to keep
24 myself survived <because I was considered as a prisoner.> I did
25 not care about others people's lives. I did not care about them

1 because it was said that Angkar had pineapple eyes.

2 [09.43.44]

3 Q. To your observation <at the rock-blowing site> or airfield of
4 Kampong Chhnang, did you observe there were female and male
5 workers? So <what gender> was the majority?

6 A. There were no female workers. All of them were male workers.

7 Q. Were there children working at a work site close to that
8 airfield < but they were in different units>?

9 A. I did not observe that there were children, but there were
10 <young> soldiers of around 17 or 18 years old.

11 Q. During the three months there, did you ever observe the
12 leadership making the visit at the Kampong Chhnang airfield?

13 [09.44.58]

14 A. Yes, they were walking with the Korean and the Chinese, but I
15 did not know which level they were from.

16 Q. I asked you whether or not you have heard of the name Meas
17 Muth or Sou Met?

18 A. I did not know at the time because I did not dare to ask
19 others. While we were working, we were not allowed to speak to
20 one another. And when we returned to our shelters, we were on our
21 own and take rest to prepare for the next working time.

22 Q. <What> about meetings? <Were> meetings held <on a> weekly or
23 <> daily basis?

24 A. Meetings would be held once in every three days.

25 Q. Since there were meetings, did Angkar or heads of groups come

20

1 to call people out <or remove them> at night?

2 A. Yes, but we were told that these people were removed from one
3 place in order to be reassigned to another location.

4 Q. My question is, were people removed at night<>?

5 A. No. People were removed at daytime, and the next morning <or
6 evening,> we would be told that these people were reassigned to
7 another location.

8 [09.47.14]

9 Q. My last question now is about the members of your unit,
10 particularly regarding those who were removed <after 7 January>
11 1979. Did you <see> their return back home after they were
12 removed?

13 A. We were living not close to one another. I never saw them, and
14 they never saw me. After 1979, I have never seen each other.

15 MR. HONG KIMSUON:

16 Thank you very much, Mr. Witness.

17 Mr. President, I am done with my questioning.

18 [09.48.00]

19 MR. PRESIDENT:

20 Thank you. <Next,> the floor is now given to the defence team for
21 Mr. Khieu Samphan to put questions to the witness. You may now
22 proceed.

23 QUESTIONING BY MS. GUISSÉ:

24 Thank you, Mr. President. Good morning to everyone. Good morning,
25 Mr. Witness. My name is Anta Guisse. I am the International

21

1 Co-Lawyer for Mr. Khieu Samphan, along with my colleague, Kong
2 Sam Onn, and I have several follow-up questions on your
3 testimony. I will be relatively brief.

4 Q. What is essentially of interest to me is when you were at the
5 construction site for Kampong Chhnang airport. You said that you
6 remained there for three months, <at that work site>.

7 I wanted to know if you knew <whether it was> a military airport
8 <that> was being constructed, or if it was a civilian airport
9 being constructed?

10 MR. NUON TRECH:

11 A. I was not aware of that. I did not know whether that airfield
12 was for civilians or for military. What I was told at the time
13 was that the airfield would be built for <fighting> aircrafts.

14 [09.49.28]

15 Q. So nevertheless, you knew that this would be <housing> combat
16 aircraft. How did you come by <this information>?

17 A. I was reassigned to that location to work. I was urged by my
18 supervisors at the location that <we> had to work hard because
19 the airfield was used for the war planes <and> big airplanes to
20 land.

21 Q. You mentioned your supervisor. Do you know if your supervisor
22 was a military or civilian person?

23 A. My direct supervisors were all soldiers. They were not
24 civilians.

25 Q. You also said <that> at the Kampong Chhnang airport you were

22

1 accompanied by certain people who were from your battalion. These
2 were people that you knew. And I believe I understood that you
3 also said that there were other people who came from other
4 regiments that you did not necessarily know.

5 Do you remember or do you know which divisions or regiments these
6 people came from even if you don't know the names of the
7 individuals?

8 [09.51.13]

9 A. It was a mixture of people from different divisions. For
10 example, <members of> Division 310 were sent there. Those members
11 from a certain division who were linked to a political trend were
12 considered enemies.

13 Q. Aside Division 310, do you remember any other details, other
14 regiments, <other divisions> or <other> battalions?

15 A. I was not familiar with the divisions. They were from
16 different regiments. <There,> we <minded only our work for our
17 very own survival>.

18 Q. I believe that you said you worked quite closely with a
19 specialist in <laying explosives or> dynamite. Did this person
20 who worked with you come from your division, or was this expert
21 coming from somewhere else?

22 A. There, <all> workers were sent from divisions, but some of
23 them were from different battalions and regiments <within the
24 division>. We did not know each other <even though we were
25 prisoners.>

1 [09.53.12]

2 Q. Do you know, for the people who were in charge of laying
3 dynamite, where they received their training? Was it from the
4 Chinese technicians that you mentioned? Were they the ones who
5 trained them, or had they had this training previously?

6 A. I did not know about that. I did not know where they learned
7 that kind of skill from because they knew how to ignite the
8 dynamite, but I did not know <> who they learned that skill from.

9 [09.54.05]

10 Q. I'd like to come back for a few moments to something that was
11 brought up by the Co-Prosecutor.

12 In fact, he referred to a transcript, an audio passage from your
13 interview with the investigators of the OCIJ, and I wanted to
14 come back to a particular passage.

15 So it's the audio passage E3/7877.1. In French, the ERN is
16 01358654; in Khmer, 01357613; and unfortunately, I don't believe
17 we have the translation of the transcript in English yet. But
18 there are time references, and it's <a partial transcription of
19 audio document> D231/24R between 00.58.45 and 00.59.31. And the
20 investigator asked you very clearly if you knew of what happened
21 to those who were injured <following> the explosions and did they
22 die afterwards, and you answered that:

23 "No, there was no one who died from that. There were those who
24 suffered serious injuries."

25 And then you said afterwards that, "Those who had been seriously

1 injured were sent to the hospital."

2 Responding to the Co-Prosecutor, you said that those people were
3 transferred to the provincial airport (sic), <I think you said,>
4 of Kampong Chhnang.

5 You answered that earlier when you were speaking to the
6 Co-Prosecutor.

7 This hospital, do you know by whom it was controlled? Was it a
8 military hospital, was it a civilian hospital? Do you know who
9 was in charge of that hospital?

10 [09.56.34]

11 A. That hospital was in charge by <Division> 502, a division from
12 Southwest.

13 Q. All right. Then from your answer, I understand that it was a
14 military hospital. Is that correct?

15 A. Yes, that hospital was a military one<, opened to> treat
16 workers who <committed offences at that site of> Kampong Chhnang
17 airfield.

18 Q. Does that mean, and if you know, since the first point I want
19 to ask is did you, yourself, go personally to this hospital?

20 A. I was once hospitalized because I was so exhausted at one
21 point in time, and I was suffering from a malaria, so I was sent
22 to the hospital.

23 Q. From the descriptions that you gave earlier, I assume that you
24 went to the hospital after undergoing an examination by the
25 medics who were on site at the airport. Is that correct?

1 [09.58.18]

2 A. Yes.

3 Q. You answered a bit earlier that this hospital was specifically
4 dedicated to people who were working at the Kampong Chhnang
5 airport site. Did I understand correctly? Were there only
6 patients from the airport site in this hospital? Is that correct?

7 A. That hospital was used to treat <all airfield workers>. Those
8 who were sick were sent to <there>.

9 Q. Fine. Since you were sent to that hospital, do you remember
10 how you were brought there? Was there a special unit in charge of
11 transporting the people who were injured or sick to that
12 hospital?

13 So how was your transfer organized?

14 A. Regarding the <transportation>, there was a vehicle, the
15 Korean-made one. <When someone> was found <> seriously sick, that
16 individual would be <trucked to> the hospital in Kampong Chhnang
17 <provincial town>.

18 [10.00.10]

19 Q. I am done with my questions regarding the hospital, and now I
20 would like to speak a little bit about your work at the Kampong
21 Chhnang <airport>. And I would like to focus in particular on the
22 questions you answered regarding meals.

23 The first question, you spoke about your work with the people who
24 were in charge of explosives in order to blast the rock, and you
25 also spoke about people who were in charge of transporting this

1 rock to build the runway.

2 So my question is, were you all part of the same unit, or was
3 there <one> unit for the people who were in charge of digging the
4 earth and blasting the rock, and a different unit for those who
5 were transporting the rock?

6 [10.01.19]

7 A. We were divided into <separate> groups, and we worked based on
8 our assignment. Sometimes we were ordered to <dirt-digging
9 group>, while at other times, we were ordered to <rock-breaking
10 group>. So we did not do any particular work all the <times. It
11 depended on the order.>

12 Q. Now, regarding meals, would you eat with the people of your
13 unit <or group> only, or were these collective meals with all of
14 the people who were working at the same location <at that time>?

15 A. During the break time, we ate in our group and we did not eat
16 with other groups. <We also slept in separate groups.>

17 Q. Fine. So if I understood you well, regarding food rations and
18 regarding the frequency of meals, you can only speak about your
19 group. Is that correct?

20 A. Yes. I only knew about what happened in my group. I did not
21 walk to see what other groups were doing. We were not allowed to
22 do that <in that regime>.

23 Q. You said that you left the Kampong Chhnang <airport> and then
24 you were reassigned to the unit in charge of offering medical
25 care, because the Vietnamese had attacked Democratic Kampuchea,

1 <that's what I understood>.

2 So can you place that period in time? Can you tell us when you
3 were in charge of offering care?

4 A. In 1978, they said that Vietnamese troops <invaded and>
5 attacked Cambodia and all prisoners at the airfield <who> had
6 refashioned <> were no longer considered offenders. For that
7 reason, we were sent to counter the advancement of <> the
8 Vietnamese troops <who invaded Cambodia.>

9 [10.04.15]

10 Q. You speak about 1978. Well, do you remember more specifically
11 when it was in 1978; at the beginning of the year, in the middle
12 of the year, at the end of the year? Do you maybe remember the
13 season when this happened?

14 A. It was during the big flooding season in 1978. Parts of Phnom
15 Penh <and other parts> were flooded, so it was a rainy season.

16 Q. How did you obtain the information when you were still at
17 Kampong Chhnang airfield that you were going to be reassigned to
18 the medical unit? Who came to give you this information; in which
19 form?

20 Did somebody come speak to you directly or was it during a
21 meeting? Can you be a little bit more specific about that,
22 please?

23 [10.05.18]

24 A. We were removed from Kampong Chhnang, and then we stayed at a
25 school near Takhmau market. And we were told that we would be

1 sent to fight in Memot because, in Memot, the Vietnamese troops
2 attacked fiercely. So we <boarded> a speed boat and disembarked
3 at Tonle Bet, and when we arrived at Suong, I was assigned as a
4 medic attached to the army.

5 Q. Fine. So I will ask you the following question, then.

6 You said that you were removed and then you were given that
7 information. So before you left <alongside> the people who were
8 with you that day, possibly, were there other groups of soldiers
9 who were removed and reassigned elsewhere? Do you know this, or
10 do you not?

11 A. Many people were reassigned, but I did not know them. And I
12 saw many of them while we were at the school at Takhmau.

13 Q. When you tell us, "I saw many when we were at the school in
14 Takhmau", do you mean that you saw people again at the place
15 where you were told that you were reassigned to a medical unit?
16 <Did you see> other people who were not part of your battalion
17 but who, before that, were at Kampong Chhnang airfield and who
18 ended up in the same school as you? <Is that it?>

19 [10.07.21]

20 A. There were many workers who came from Kampong Chhnang airfield
21 and <they> stayed at that school in Takhmau.

22 MS. GUISSSE:

23 Mr. President, I'm done with my questions. My colleague, Kong Sam
24 Onn, has no extra questions, so <the Khieu Samphan team is> done
25 with our cross-examination.

1 MR. PRESIDENT:

2 Thank you.

3 And Mr. Nuon Trech, the Chamber is grateful of your testimony as
4 a witness. It is now concluded, and your testimony may contribute
5 to the ascertainment of the truth in this case. You are no longer
6 required to be present in the courtroom, and you may return to
7 your residence or wherever you wish to go to. The Chamber wishes
8 you all the very best.

9 [10.08.16]

10 Court officer, please work with WESU and make arrangements for
11 Mr. Nuon Trech to return to his residence or wherever he wishes
12 to go to.

13 And Mr. Nuon Trech, you are now excused.

14 (Witness exits courtroom)

15 [10.08.47]

16 MR. PRESIDENT:

17 Next, the Chamber wishes to hear oral submissions or responses by
18 parties pursuant to Rule 87.4 in relation to expert 2-TCE-1062.

19 And <the> second issue is in relation to the testimony of a civil
20 party, Sar Sarin, that is, 2-TCCP-237, who testified in this
21 courtroom but who did not conclude his testimony.

22 So first let's hear the oral remarks or submissions by the
23 parties concerning the first issue.

24 The Chamber decides to <appoint an> expert, 2-TCE-1062, who will
25 come to testify on the 14 December 2016. And <on the 1st of

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1 December 2016, the Chambers was informed> through an email by the
2 legal officers that the parties shall inform the Chamber if they
3 wish to make submission pursuant to Rule 87.4 in relation to the
4 testimony of this expert, 2-TCE-1062, by the latest 6 of December
5 2016, and that the Chamber would hear the oral submissions and
6 responses on the 7th of December.

7 And yesterday, the Chamber received confirmation from Defence
8 Counsel for Nuon Chea, Khieu Samphan, OCP and the Lead Co-Lawyers
9 that they do not wish to make any submission in relation to Rule
10 87.4 concerning this expert.

11 [10.10.47]

12 And the OCP wishes to submit three documents as evidence, and for
13 that reason, the Chamber would like to hear the oral submissions
14 and the responses by other parties.

15 First the floor is given to the Co-Prosecutor to make the oral
16 submission in relation to your request, that you wish to submit
17 three documents as evidence concerning the expert, 2-TCE-1062.

18 You have the floor.

19 MR. LYSAK:

20 Thank you, Mr. President. I will be brief.

21 These three documents are documents that the Trial Chamber
22 obtained from the expert himself and put on the shared material
23 drive in October this year. So these are documents that were
24 clearly not available to the parties before the start of trial.
25 They are clearly relevant to the issues in this case, including

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1 this expert's testimony.

2 First -- the first two are additional information relating to the
3 study he did of the remains at Choeung Ek, including a very
4 detailed list of the evidence and numbers of skulls that bore
5 marks of torture, force or execution, so these are clearly
6 materials that will be of use in examining this expert.

7 [10.12.29]

8 The third is submitted primarily because it is an interview that
9 the expert or his team conducted of Him Huy, a key S-21 witness
10 who has testified in this courtroom and, therefore, pursuant to
11 the Court's practice, we believe it's appropriate to admit this
12 interview that was conducted of Him Huy.

13 So in short, that is the basis for our request to admit these
14 three documents that had been attained by the Trial Chamber.

15 MR. PRESIDENT:

16 Thank you.

17 And Judge Marc Lavergne, you have the floor.

18 JUDGE LAVERGNE:

19 Yes. Just a point of clarification.

20 Can you tell us if these documents are available in Khmer or
21 possibly in other languages? I must confess that I don't quite
22 remember.

23 I believe that these were documents that were originally drafted
24 in Khmer, but were they translated?

25 [10.13.38]

1 MR. LYSAK:

2 Yes, they've -- all three of them have been translated into both
3 languages, so in the email I circulated I list the ERNs in all
4 three languages for each document, so yes, they have been
5 translated.

6 MR. PRESIDENT:

7 Thank you.

8 And I'd like now to hand the floor to the Lead Co-Lawyers for
9 civil parties to respond or to make an observation regarding the
10 OCPs request.

11 MS. GUIRAUD:

12 Thank you, Mr. President. We will rely on the Chamber's wisdom.

13 MR. PRESIDENT:

14 Thank you.

15 And I'd like now to hand the floor to the defence team for Nuon
16 Chea.

17 [10.14.35]

18 MR. KOPPE:

19 Yes, Mr. President, no objections to the request. We do have some
20 question marks in respect to the relevance of Him Huy's
21 interview. However, we believe that the interview is relevant in
22 order to be able to assess the methodology of the research that
23 the expert has done, so that's the reason why we do not object to
24 that particular document being admitted into evidence.

25 MR. PRESIDENT:

1 Thank you.

2 And now the Co-Counsel for Khieu Samphan, you have the floor.

3 [10.15.25]

4 MS. GUISSÉ:

5 No specific observations regarding the two first documents.

6 Regarding the last document, however, which is a transcript or,

7 in any case, a summary -- I don't know exactly how to qualify it

8 -- of statements from Him Huy, nothing new in relation with

9 statements that Him Huy has already given before this Chamber, so

10 this seems a bit superfluous, but otherwise, no objection.

11 MR. PRESIDENT:

12 Thank you.

13 Let us now move to the second item, and the Chamber would like to

14 hear oral responses from the parties in relation to the testimony

15 of civil party Sar Sarin, who testified <in the afternoon of> the

16 8th of November 2016, and who was <already> questioned by Lead

17 Co-Lawyers <for> civil parties <and the Co-Prosecutors. But> Mr.

18 Sar Sarin no longer wished to continue his testimony <before the

19 Chamber>. <Since> Mr. Sar Sarin <is> a civil party, the Chamber

20 cannot compel him to <finish the testimony> before this Chamber.

21 [10.16.44]

22 And the Chamber recalls that on the 29 November 2016, the Chamber

23 informed the party via an email from the senior legal officer

24 that the Chamber decided to remove civil party Sar Sarin from the

25 list of witnesses and civil parties.

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1 Yesterday, the Chamber informed the parties that it wishes to
2 hear oral responses from parties in relation to the use of
3 inculpatory evidence provided by civil party Sar Sarin.

4 First the Chamber hands the floor to the Co-Prosecutors to
5 provide oral remark or observation regarding this matter.

6 Rather, first I'd like to give the floor to Counsel Koppe.

7 You have the floor.

8 [10.17.33]

9 MR. KOPPE:

10 Yes, Mr. President. It was, indeed, us who requested the Chamber
11 to be allowed to make some oral submissions in respect of Sar
12 Sarin, which I'm happy to do.

13 As parties and Chamber all know, we have a history with Sar Sarin
14 in Case 002/01. He was also summonsed to testify, but all of a
15 sudden decided that he didn't feel like testifying any more.

16 There's no need to repeat all history, but there was a request of
17 the Prosecution at the time to have him come back into the
18 courtroom.

19 Ultimately, he didn't, so we were a bit surprised that now he was
20 apparently available to testify in Case 002/02 in this courtroom.

21 He initially, as we all know, answered questions from the
22 Prosecution and civil party Lead Co-Lawyers, then we had to break
23 because I think, if I remember correctly, we were running out of
24 time and he was supposed to come back and answer questions from
25 the defence teams.

1 [10.19.12]

2 However, as you indicated, Mr. President, we received an email
3 from one of the legal officers indicating that apparently he was
4 sick and couldn't come. However, at one point in time, we also
5 received a report from WESU that was provided to the parties some
6 time at the end of last month, I believe. It's E29/501. And from
7 this WESU report, we -- in this report, we can read that Sar
8 Sarin has indicated to WESU that he doesn't want to testify,
9 quote, "if he's not granted to live in third countries".

10 And apparently, in his conversations with WESU, he indicated that
11 he requested the Court to, quote, "help him intervene of his
12 request to live in third countries by appealing for the
13 diplomatic corps and non-government organizations in Cambodia, or
14 others."

15 It's a bit of a variation of concerns that he uttered, I think,
16 in the summer of 2013.

17 Interesting is, I believe, to recall also the recommendations by
18 WESU. It says in that report of 24 November 2016, allow me to
19 quote again:

20 "WESU is not able to develop a complete understanding of Mr. Sar
21 Sarin's high level of fear due to a number of inconsistencies,
22 nor is WESU able to identify any objective basis for his fear."

23 [10.21.35]

24 And then it says subsequently:

25 "Mr. Sar Sarin's initial -- initially requested for protection

1 measures made in the courtroom indicates 002/01 before he
2 continued to testify. It then was not granted."
3 "This time", says WESU, "he does not request protective measures,
4 but asked the Court to seek asylum in the third countries. It
5 seem inconsistent with his expressed fear of former Khmer Rouge
6 soldiers taking reprisals against him for his cooperation with
7 the Court."

8 And then WESU says:

9 "WESU is not currently able to recommend any other protective
10 measures." End of quote.

11 We fully agree or understand these recommendations. I believe
12 there is really no reason to accept the reasons that were
13 provided to WESU by Sar Sarin.

14 [10.25.54]

15 Now, then, of course, the important question, what should happen
16 now since the Chamber has indicated that it doesn't want to hear
17 his further testimony, what should be done with the evidence that
18 he has already given while responding to questions from the
19 Prosecution and the Lead Co-Lawyers.

20 There is substantial amount of evidence that he has given in this
21 courtroom on the 8th of November that is really of no concern to
22 the Defence. You might recall, Mr. President, that at one point I
23 stood up reacting to certain questions from the Prosecution and
24 asking the question why is this witness even relevant for the
25 role of the Accused.

1 All the evidence that he gave about trips to dams, we have no
2 problem with that. We weren't anticipating asking any questions
3 about that.

4 [10.24.05]

5 However, there is one very important subject that I was actually
6 fully prepared already to ask him follow-up questions on, and
7 that is the subject that was raised by the Prosecution, and the
8 subject of whether former Lon Nol officials or military personnel
9 were killed in the area, in the East Zone where he was, at that
10 time, from.

11 You might recall that the Prosecution confronted the witness with
12 an excerpt from a statement or an interview that Ouk Bunchhoeun
13 gave to Ben Kiernan. We objected because we felt it was
14 unrepresentative and he should have quoted Heng Samrin's
15 testimony as well.

16 It seems that the Supreme Court Chamber is agreeing with that
17 position considering its recent appeal judgment. But what is very
18 interesting to the Defence, particularly, is that he's the first
19 ever witness to appear in this courtroom who has given evidence
20 of possible executions of former Lon Nol officials and soldiers
21 in the East Zone.

22 As the Chamber is undoubtedly aware, Ben Kiernan, in his book,
23 "The Pol Pot Regime", makes extensive efforts to show that there
24 was no policy in the East Zone to have former Lon Nol officials
25 or soldiers executed.

1 [10.26.15]

2 I might, for that matter, refer to, specifically, E3/1593;
3 English ERN -- I just have the quote, I will present the ERNs a
4 bit later.

5 He talks about release of, at one point, 400 former Lon Nol
6 regime officials who were "Given permission to rejoin their
7 families" and another 580 Lon Nol army personnel who were allowed
8 to return to their villages.

9 So having a witness who for the first time potentially
10 contradicts this view is, I think, an interesting aspect. Whether
11 it is actually true, what he claims he has heard, that's of
12 course another matter.

13 Also very interesting for us that -- is that if his evidence
14 would be correct, then that would most likely mean that the
15 person responsible for the execution is someone who we like to
16 have summonsed into this courtroom very much and whose appearance
17 we requested often, that is, Ouk Bunchhoeun, because it was in
18 his district that these alleged executions might have taken
19 place.

20 [10.27.53]

21 So, if he's not coming, understandably I will not be allowed -- I
22 will not be able to cross-examine the witness on these issues.
23 However, the consequence of that should be that the evidence that
24 he gave when answering questions from Prosecution should be
25 deleted or should be deemed not usable because of a lack of

1 opportunity on the side of the defence to cross-examine him.
2 It's a, I think, legally very interesting debate, what should
3 happen with evidence that has been given in a courtroom already.
4 I believe there might be a difference between the common-law
5 system and the civil law system. In common-law system it is
6 possible to have evidence completely deleted from the record.
7 From the civil system, the French system and my own domestic
8 system, that would be very difficult since it is deemed that
9 professional judges should be able to disregard evidence under
10 certain circumstances.

11 [10.29.15]

12 I don't think the situation has arisen so far in this Court,
13 however, the request is, I suppose, primarily to reconsider the
14 decision and to have him summonsed again to the courtroom. I
15 don't think there are any valid reasons that Mr. Sar Sarin has
16 given that would allow him to simply ignore your summons.
17 If that is not the case, if that is not deemed to be in the
18 interests of justice, then we would submit that the evidence that
19 he has given will be stricken from the record.
20 So that is, I believe, the position that we are taking, Mr.
21 President.

22 MR. PRESIDENT:

23 Thank you.

24 <> I'd like now to hand the floor to the Co-Prosecutor to respond
25 to the request or the remarks made by the Defence Counsel for

40

1 Nuon Chea. Defence Counsel for Khieu Samphan, do you wish to
2 stand last or do you wish to make your observation now?

3 [10.30.43]

4 MS. GUISSÉ:

5 I am not sure, perhaps just to complement what the civil party
6 Co-Lawyers <and the Co-Prosecutors> have said. Perhaps all of us
7 could speak at the same time so that the Co-Prosecutor doesn't
8 have to answer several times.

9 <I will leave it up to you>, but I think perhaps <it would be
10 most logical, given that we share> similar views on certain
11 points <with the Nuon Chea defence team,> we could lay out our
12 position now. But it is according to what you would like.

13 Thank you, Mr. President, you've authorized me.

14 The Khieu Samphan defence team has <a> more radical position than
15 that of the Nuon Chea defence team because for us the issue is
16 very clear -- <as is> the answer to the question "what should we
17 do with the testimony of Sar Sarin <before> the Chamber?", <which
18 is very clear>. You simply cannot take into account <any topic>
19 at all, and I will explain myself.

20 [10.31.52]

21 We are in a jurisdiction where we are inspired by civil law and
22 common law. So up to this point, the principle of the Chamber --
23 <which has been re-affirmed again by a recent memo -- is that>
24 not only is there <an adversarial> debate -- <which is a tenet of
25 the Chamber, but also a general principle> in criminal law -- so

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1 there <isn't just an overarching principle of adversarial debate
2 regarding all elements involved,> but also -- when we call a
3 particular witness or civil party to give testimony to the
4 Chamber -- to take into account the statements, <we need them to>
5 answer to the questions <from> all parties, whether they be
6 lawyers for Civil Parties, the Prosecution, the Chamber itself,
7 <and obviously,> the Defence.

8 If the Defence has not had the opportunity to ask its questions,
9 then there has been no <adversarial debate,> and <under these
10 conditions, it means that the evidence is not reliable and cannot
11 be used>.

12 [10.33.06]

13 <I must say, on behalf of the Khieu Samphan defence team, that>
14 we saw this challenge coming <as well as> the situation that we
15 find ourselves in today. Because, and I refer to our submissions
16 E305/9, from 30 May 2014, where, when we <were informed that> the
17 civil party Co-Lawyers and the Prosecution <requested for> the
18 civil party Sar Sarin <to come> back to testify before the
19 Chamber, we said enough is enough. Because as my colleague
20 mentioned, there was a precedent in Case 002/01 and not only one
21 precedent but, in fact, two because Sar Sarin came to speak to
22 this Chamber twice and twice he refused to continue with his
23 <examination>.

24 Knowing that <just like in Case> 002/02, Sar Sarin refused to
25 answer questions when the civil party Co-Lawyers and the

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1 Prosecution had finished asking <their> questions.

2 And I would like to recall what we said in paragraph 38 of our
3 submissions, and I quote:

4 "It is clear that the Defence is strongly opposed to calling him
5 <back>, because, aside from the fact that it is repetitive and
6 <futile> given the experience of Case 002/01, <it> also exposes
7 the Chamber to the risk of a situation <bordering on the
8 ridiculous, before an unruly civil party devoid of credibility.
9 We have wasted enough hours of hearings and working days on this
10 civil party>." End quote.

11 So here we are, on the 7th December 2016, having again to express
12 ourselves on the issue of Sar Sarin who, as a civil party, has
13 the right to not wish to testify before this Chamber. He's not a
14 witness, he is a civil party and so therefore he has <about> the
15 same rights as an Accused regarding his testimony.

16 [10.35.19]

17 And he has shown in his behaviour, not only in Case 002/01 but
18 recently for Case 002/02, that he is at the very least unstable
19 and that he does not wish to engage in <an adversarial debate
20 before this Chamber>.

21 <Solely this point, of refusing to participate> in this
22 <adversarial> debate, means that <no part whatsoever of> his
23 testimony can be used in any way by the Chamber. The Defence's
24 position is very clear, Mr. Sar Sarin does not want to come and I
25 would like, nevertheless, to emphasize that <the> WESU's report,

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1 which was referred to by my colleague, <is a second example of
2 this,> there was a mention of Sar Sarin's <leaving> his hotel
3 room <in an timely fashion, in the middle of his testimony, and
4 he> was not reachable. <In view of this, it is best to base
5 ourselves on the ongoing consequences of this recurrent behaviour
6 and modus operandi -- because I know that it's a term which
7 pleases the Chamber -- Sar Sarin's recurrent modus operandi draws
8 its own consequences, and his testimony should not be used under
9 any circumstances. So unlike the> position of Nuon Chea's team
10 <this is not simply a matter of sorting through statements. We
11 simply> cannot base ourselves on Mr. Sar Sarin's deposition in
12 any way, and this is the very firm position of Khieu Samphan's
13 defence team.

14 MR. PRESIDENT:

15 Thank you. And, Deputy Co-Prosecutor, do you have any responses
16 to the submissions made by the two defence teams?

17 MR. LYSAK:

18 Thank you, Mr. President. A few comments.

19 First, Mr. Koppe himself said this is a legally complicated
20 matter, so I must wonder why it's being brought up orally and is
21 not being properly briefed.

22 MR. PRESIDENT:

23 Please wait a few seconds because we need to change the DVD.

24 (Short pause)

25 [10.38.13]

1 MR. PRESIDENT:

2 You may now resume, <International> Deputy Co-Prosecutor.

3 MR. LYSAK:

4 Thank you, Mr. President. Let me just reiterate in case it didn't
5 get caught.

6 As Nuon Chea's counsel himself acknowledges, this is a legally
7 interesting, complex issue and because of that it seems to me
8 this is a matter that should be briefed before any final decision
9 is made.

10 The question of whether you're going to proceed to try to bring
11 him back to this courtroom is a different question. I understand
12 you've decided that, there's a decision forthcoming that we
13 haven't seen.

14 It's a separate issue as to what happens to his testimony, and
15 let's not forget, we're not just talking about his testimony in
16 this courtroom, this is someone who has a lengthy DC-Cam
17 interview that has been admitted and is in evidence.

18 How we deal with all that seems to me something that should be
19 briefed by the parties since we're hearing even from the defence
20 teams different views on what the Court should do.

21 Let me say that this is a very unfortunate situation, that this
22 civil party refuses to appear. Something should be very clear
23 though. Mr. Koppe started his presentation by saying that he was
24 -- Mr. Sar Sarin was summoned to testify.

25 The fact of the matter is -- is that we had this argument in the

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1 first trial. We asked you to order the civil party to return. You
2 concluded that you did not have the authority to compel a civil
3 party to testify. So it is incorrect that this person is under
4 any summons.

5 When we raised this argument -- our view is that you surely must
6 have authority to order a party to this proceeding. I understand
7 that we've argued this already and I certainly would not disagree
8 if Mr. Koppe and our team may be in agreement on this issue that
9 you do have authority.

10 The Khieu Samphan team, however, has a different view and has
11 argued that you don't have authority to compel this person to
12 appear.

13 [10.40.51]

14 Why is that significant? Because this person -- and assuming that
15 nothing changes and he is not cross-examined by the Defence -- we
16 certainly agree that his statements, his testimony in this Court,
17 and his prior DC-Cam interview that's in evidence has to be
18 treated as an out-of-court statement that was not subject to
19 cross-examination by the Accused. That much I think we certainly
20 agree with.

21 For parties who are not cross-examined, the Court has a very
22 detailed decision as to the circumstances in which that evidence
23 can be considered limited weight and with respect to evidence
24 relating to the role of the accused, it cannot be considered
25 unless the witness is considered unavailable.

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1 [10.41.56]

2 So there are standards and a decision already in place that we
3 believe as to how to deal with this. The specifics of the
4 circumstances of this civil party, however, I think would
5 benefit, call for some briefing from the Court.

6 We have not had the opportunity, for example, to research if a
7 person who the Court has not authority to compel to testify
8 refuses to appear, is that a circumstance that makes him
9 unavailable under the standards that the Court has set? I don't
10 know the answer to that, we haven't had a chance to see if there
11 is any precedent for that or not. But that is the type of issue
12 that I think should be subject to legal briefing.

13 But we certainly are in agreement that if this person is not
14 subject to cross-examination, his -- all his evidence has to be
15 treated as an out-of-court statement.

16 MR. PRESIDENT:

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

19 [10.43.23]

20 MS. GUIRAUD:

21 Thank you, Mr. President. I will make several observations, which
22 are perhaps a bit cautious because <this is a> very delicate
23 issue and we have not had the opportunity to carry out the
24 appropriate research.

25 So, I will simply respond to the request of our colleague,

1 Counsel Koppe, as precisely as possible. Indicating, <initially>,
2 that we have no doubt that the Chamber will apply the proper
3 conditions <to ensure a fair trial> and especially the right of
4 the Defence to cross-examine <the witnesses>, as <this right> has
5 been re-affirmed <and explained> by the Supreme Court in
6 paragraph 287 of its recent decision.

7 On the first proposal of our colleague to call the witness
8 <again>, I think it is clear that it is impossible to force the
9 civil party to come and testify before this Court again.

10 [10.44.55]

11 Our position <on this side of the Bar> is clear. It is the civil
12 party who is losing an opportunity to come and present his
13 testimony to this courtroom. So Sar Sarin, in refusing to come,
14 is giving up an opportunity to come and <contribute to the
15 manifestation of the truth,> and also to explain his <suffering>
16 and the reasons for which he became a civil party.

17 So on the first point brought up by Counsel Koppe, it seems to me
18 that it is impossible for the Chamber to force the civil party to
19 come and testify to the Chamber.

20 However, <we agree with Counsel Koppe when he notes> that there
21 are fundamental differences between common law and civil law. It
22 seems to me, therefore, to be impossible to follow the path that
23 Counsel Koppe has proposed and to simply erase the testimony of
24 the civil party even though it was not finished.

25 This testimony is a part of the hearing transcripts, so the

1 question is to know how the Chamber will use this information and
2 if the Defence believes that this evidence has been unduly or
3 excessively used, they will have the right to appeal.

4 But I do not see how we can simply delete public testimony, which
5 took place in this courtroom, <from the hearing records>.

6 [10.46.45]

7 So from our point of view, the testimony is part of the
8 transcript. This oral debate allows the Chamber to become
9 familiar with the parties' positions and particularly the
10 position of the Defence who believe that all of Sar Sarin's
11 testimony should be set aside <in> the context of deliberations.

12 It is up to you to take your decision with a clear conscience, to
13 know how you will make use of this testimony, and the Defence
14 will then have the opportunity to make an appeal if they believe
15 that the use of Sar Sarin's testimony has gone too far. I don't
16 see how we can do anything else other than follow these
17 principles that I have just recalled.

18 Now, once again, we will leave it to the discretion of the
19 Chamber, and I have said it throughout the <two> years of this
20 trial, but I will repeat it here. We are very attached to
21 respecting the rights of the Defence. <It is within this context
22 as well that the civil parties are seeking> some sort of
23 reparation <in the> proceedings <underway. So no concessions
24 should be made by the Chamber regarding the rights of the
25 Defence,> and we will leave it to your discretion.

1 [10.48.11]

2 MR. PRESIDENT:

3 <Hold on.> Judge Fenz, you may proceed first.

4 JUDGE FENZ:

5 Before this enters into a longer debate, may I just ask for two
6 minutes on the Bench?

7 (Judges deliberate)

8 [10.53.20]

9 MR. PRESIDENT:

10 Judge Lavergne, you have the floor now.

11 JUDGE LAVERGNE:

12 Yes, thank you, Mr. President. I appreciate the opportunity to
13 speak.

14 <I would like to hear the arguments from the Lead Co-Lawyers> for
15 the civil parties and <perhaps from> Mr. Sar Sarin's <lawyer>.

16 <What I would like to know is whether> Sar Sarin, <today,>
17 intends to maintain his status as a civil party -- because I must
18 admit that his attitude is a bit incoherent for that of a civil
19 party -- is Mr. Sar Sarin's lawyer in contact with him and can he
20 tell us what exactly he <plans> to do?

21 On the one hand, he doesn't intend to come to the Chamber, <on
22 the other,> we can <ask whether> he still <intends to avail
23 himself of his civil party application>. Do you have any clear
24 information to provide to us in this regard?

25 [10.54.43]

1 MS. GUIRAUD:

2 Thank you, Mr. President, Your Honour Judge Lavergne.

3 I will provide you with a partial response, because Sar Sarin's
4 lawyer is not present in the courtroom.

5 I believe <that> in the WESU report you have the various
6 telephone conversations between the civil party and his lawyer --
7 which <were> mentioned -- so the lawyer is in contact with the
8 civil party, Sar Sarin.

9 If you wish, we can contact Ven Pov, the lawyer, during the
10 break, so that he <might be able to> respond to you directly, or
11 so that we can talk to him during the lunch break and then report
12 to you on the discussion that we're able to have with him, on
13 whether or not <he has spoken> to his client on whether or not he
14 wishes to remain a civil party. Right now, I am not able to
15 respond to you on that point.

16 JUDGE LAVERGNE:

17 I believe that the question needs to be clearly put to Mr. Sar
18 Sarin, and obviously we would like to have a response as soon as
19 possible.

20 I think that this could also be of importance to the discussion
21 that could follow afterwards.

22 MR. KOPPE:

23 Yes, Mr. President, if I may briefly respond to the observations
24 from the Lead Co-Lawyer in respect of Sar Sarin' status.

25 Of course, it's correct that he entered this courtroom as a civil

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1 party, but I cannot cite specific paragraphs of the appeal
2 judgement, but what I can say is that we filed -- we submitted
3 numerous appeal grounds in relation to the status or the
4 differences in treatment of civil party testimony and testimony
5 coming from witnesses.

6 [10.56.53]

7 I have been able to fully read the Supreme Court Chamber's
8 judgement one time and my understanding of the judgement is that
9 once a civil party comes into this courtroom and gives material
10 evidence whether he has given an oath, yes or no, is apparently
11 of no concern, the person becomes a real witness.

12 Materially, the person is a real witness and the evidence that
13 the person, whether he was a civil party before or not, that
14 evidence can contribute to a possible guilty verdict.

15 [10.57.37]

16 So while maybe technically true that the civil party cannot be
17 summonsed, of course that doesn't change the fact that the
18 Chamber itself still has its own power to summons anyone it deems
19 necessary.

20 But the bottom line is once the civil party testifies materially
21 he should be treated as a normal witness, and what does lead
22 civil -- Lead Co-Lawyers are saying about civil parties
23 volunteering to appear, I believe that is only true when it comes
24 to the impact that a civil party is giving. Of course, that is
25 his own free will, but if he testifies again materially then he

1 should be treated as any other witness.

2 MS. <GUISSE>:

3 Thank you, Mr. President. Two points to react to what my
4 colleague, Victor Koppe, has just said and maybe because there
5 might be a cultural gap, legally speaking, between us.

6 But for me it's very clear, and <this also goes back> to Judge
7 Lavergne's <question>, a civil party has never been obliged to
8 testify before any court whatsoever. If a civil party does not
9 want to come, does not want to testify, as long as there's a
10 civil party application, as long as the civil party is
11 represented by a lawyer, the Chamber will draw the conclusions of
12 the absence of statement before the Chamber and this should have
13 no incidence on the person's civil party status.

14 [10.59.38]

15 <That is the> first point <and it is> regarding the probative
16 value of the information that they are going to give to the
17 Chamber <or the resulting consequences from the other elements
18 provided. That, for me, is very clear>. In a system in which
19 we're used to having civil parties, the question of whether or
20 not the civil party retains its status because the civil party
21 <does not testify> should not even be raised. <That question is
22 not even asked.> That is the first point.

23 The second point -- because this needs to be clarified as well --
24 <it is true that> we have not yet heard a decision from the
25 Chamber regarding this issue. However, the reason leading us to

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1 have this discussion today is based on an email from the Senior
2 Legal Officer of the 22nd of November <2016,> at 8.58 in the
3 morning, responding to the Nuon Chea team's questions. This is
4 what was said in English and I quote:

5 [11.00.34]

6 "The Trial Chamber has decided to drop the civil party. Reasons
7 will be given in the forthcoming decision." End of quote.

8 So it's true that drop -- I don't know how this is translated
9 legally speaking -- but I understand from this that the Chamber
10 does not intend to hear the civil party and this is why we're
11 making our comments this morning. Since the Chamber does not
12 intend to hear the civil party and that the Chamber is "dropping"
13 this civil party, <and taking him off the list - the Chamber will
14 have to clarify.> <It seems> clear to me that the Chamber has
15 taken a decision in that regard and therefore we should draw
16 conclusions <from> that.

17 So the <very> question of <forcefully> calling the civil party
18 <back> for me is completely irrelevant here <because they are
19 indeed a civil party,> and this question is even more irrelevant
20 because the Chamber has <already> decided, <at least> according
21 to the Senior Legal Officer, to drop the civil party. For me
22 therefore the discussion is closed.

23 [11.01.35]

24 The question now is, what do we do with the statements of the
25 civil party for the rest of our discussions and also with regard

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1 to <the work we will have to do to prepare for> our final
2 submission? And here I'm telling you that the Defence's position
3 is very clear in that regard <and even reaffirmed.> We have spent
4 <an infinite amount> of time, whether it be 002/01 or 002/02,
5 <dealing> with the this civil <party's flip-flopping> regarding
6 the statements that he wishes or not to give to the Chamber.
7 So <in this context,> we should stop wasting <more> time and we
8 should simply set aside the civil party's statements, that no
9 party should be able to use these statements and the Chamber
10 should not use these statements in its <deliberations. It's very
11 clear.>

12 [11.02.33]

13 MR. PRESIDENT:

14 Thank you for all the remarks and observations <made by the
15 parties> on the two issues, and the Chamber will make the
16 following decision first in relation to the request by the
17 Co-Prosecutor to submit three documents as evidence. The Chamber
18 will issue a ruling on this issue very soon.

19 <Secondly,> in relation to the request by Nuon Chea on the issue
20 of using the inculpatory evidence provided by civil party Sar
21 Sarin on 8 November 2016, and by the majority of the Bench, the
22 Chamber decides that legally and factually speaking this matter
23 is of a complicated and interesting nature and, for that reason,
24 majority of the Judges of the Bench <within the ECCC> would like
25 to have <written> submissions from the parties and the Chamber

1 will use that as a basis for our decision <in the future or
2 during the analysing process.>

3 Allow me to confirm <,in case, it is unclear. According to> my
4 colleague sitting to <next to me indicated one point as if I
5 spoke incorrect.> I, as the Chamber, <now> would ask the parties
6 to submit <> written submissions on this matter. So the Chamber
7 would not give the floor to any party on this same issue. <This
8 issue is done now. No more talking allowed.>

9 [11.05.07]

10 MS. <GUISSE>:

11 I apologize, Mr. President. I'm not going to get back to the same
12 topic again but this is just a point of clarification.

13 For our submissions to be complete and consistent, <and for us to
14 be aware of how to intervene,> we would like to know what is the
15 Chamber's reasoning <for "dropping" the civil party> so we can
16 know what we should focus on in our written submissions,
17 otherwise we are kind of at a loss.

18 MR. PRESIDENT:

19 From my recollection, <in Khmer language,> I have not signed on
20 any decision to remove him yet. We only held our internal meeting
21 as the word "remove" in English, it is not in the Khmer language.
22 <Second,>as the President <of the Chamber> when I say to remove,
23 it <is absolutely> removed and that matter would not be discussed
24 any more since we already held our internal meeting and I would
25 not change my position regarding this matter <even though the

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1 other three judges wish to change their positions.> But the
2 issues raised by Counsel Koppe are that the testimony already
3 provided by Sar Sarin whether it can be used for our judgement,
4 in particular the inculpatory evidence provided by him, and that
5 is the sticking point.

6 [11.06.47]

7 As for other matters, that they are not of the most important
8 points because Counsel Koppe was the requesting party and we need
9 to hear his <written submission first> regarding that and then
10 other parties would respond to that submission. <If> you have
11 other matters, then those matters will be dealt with
12 subsequently.

13 And the Chamber will adjourn for today <because> we do not have
14 any reserve civil party or witness for today. For that reason, we
15 will adjourn now and resume on Friday, 9 December 2016,
16 commencing from 9 o'clock in the morning.

17 On Friday, the Chamber will hear testimony of Witness of
18 2-TCW-971, via video-link from Oudor Meanchey province.

19 As for tomorrow, that is, Thursday 8 December 2016, the Chamber
20 will hold the Trial Management Meeting. The <> parties <be
21 informed and participate as scheduled>.

22 Security personnel, you are instructed to take the two accused,
23 Nuon Chea and Khieu Samphan, back to the detention facility <of
24 the ECCC> and have them returned to attend the proceedings on 9
25 December 2016, before nine o'clock.

1 The Court is now adjourned.

2 (Court adjourns at 1108H)

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