



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

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

27 August 2015

Trial Day 319

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
LIV Sovanna
SON Arun
Arthur VERCKEN
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:
EM Hoy
Maddalena GHEZZI

Lawyers for the Civil Parties:
Marie GUIRAUD
PICH Ang
CHET Vanly
VEN Pov

For the Office of the Co-Prosecutors:
William SMITH
Travis FARR
SONG Chorvoin
Vincent DE WILDE D'ESTMAEL

For Court Management Section:
UCH Arun

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
The GREFFIER	Khmer
Mr. KHIEU Samphan	Khmer
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer
Mr. NUON Chea	Khmer
Mr. PICH Ang	Khmer
Mr. SMITH	English
Mr. SON Arun	Khmer
Mr. VERCKEN	French

1

1 PROCEEDINGS

2 (Court opens at 0918H)

3 MR. PRESIDENT:

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

5 Based on the schedule that we have today, we will hold the key
6 documents presentation hearing in relation to three worksites:
7 the 1st January Dam worksite, the Kampong Chhnang Airfield
8 worksite, and Trapeang Thma construction worksite.

9 [09.19.57]

10 These three worksites have been debated in the hearings and we
11 have heard testimonies of witnesses and civil parties in relation
12 to the three worksites.

13 Yesterday, the defence teams for the Accused boycotted the
14 hearing and they left the courtroom.

15 So, in order to be able to proceed with our hearings in relation
16 to key document presentation, the Chamber needs to address the
17 matter first.

18 Now, the Chamber would like to hear the position of Parties who
19 left the courtroom yesterday. So the Chamber would like to hear
20 the position from the defence teams of Mr. Khieu Samphan and Nuon
21 Chea.

22 [09.21.02]

23 First, please, give reasons in relation to your boycott
24 yesterday.

25 First, start from Mr. Nuon Chea. And, after that, other Parties

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1 will be granted the opportunity to respond to what have been
2 mentioned by the defence teams. By doing so, the Chamber hopes to
3 be able to address the matter as soon as possible. So now, I
4 would like to invite either, the Defence -- either, Co-Lawyer, be
5 the International or National Co-Lawyers, to make any -- present
6 any reasons in relation to yesterday's incident or events.

7 You may now proceed, Koppe.

8 [09.22.09]

9 MR. KOPPE:

10 Thank you, Mr. President. Good morning, Your Honours. Good
11 morning, Counsel.

12 I would like indeed to take the opportunity to give an
13 explanation as to what happened yesterday. I shall be needing
14 about half an hour to explain the context and rationale of that
15 decision. And I would like to request to be able to make that --
16 make those submissions uninterruptedly. Because I think that's
17 very important for you and the public to have a clear
18 understanding of what happened yesterday. However, I would like
19 to request the Chamber to allow our client to speak first. As you
20 know, due to his health, he is not able to sit here for long.
21 So, Mr. President, with your leave, my client would like to say
22 few things first. And then, if there is no objection from the
23 Parties or from your side, I would like to give the rational, as
24 you called it yesterday in your memo, of what happened yesterday.

25 [09.23.40]

1 MR. PRESIDENT:

2 Mr. Nuon Chea, you can now proceed.

3 MR. NUON CHEA:

4 Thank you, Mr. President. Good morning venerable and national
5 compatriots. Yesterday, my lawyers left the courtroom. It was not
6 planned. They just couldn't take anymore what was happening in
7 this courtroom, in an unjust way. It was the straw that broke the
8 camel's back. Mr. President, I want to make it clear now. I fully
9 support the decision of my defence counsels to leave the
10 courtroom yesterday.

11 I believe and I am confident in what my Defence team had been
12 doing. The decision by the Trial Chamber yesterday is not
13 acceptable.

14 Yesterday, it was the key document presentation hearing. It was
15 the time that the Parties are presenting documents to the public
16 and everyone, in particular documents which have something to do
17 with what happened in the past. In contrary, the Co-Prosecutors
18 presented to Judges the documents or written records of
19 interviews of witnesses.

20 [09.25.55]

21 Mr. President, I have followed the proceedings very closely, and
22 I observed that many witnesses do not speak the truth. And some
23 other witnesses do not really truly say what happened. My lawyers
24 stated already that many witnesses changed their testimonies when
25 they are before the Chamber.

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1 And, in addition, what has been stated in the written records of
2 interviews is contrary to what has been said here before the
3 Chamber.

4 So, if any witnesses want to tell the Court, they should come
5 here before the Chamber, and they should respond to questions put
6 by my defence counsel. Today and yesterday, it was the key
7 documents presentation hearing, it was not the hearing for
8 Parties to present what witness said.

9 Documents are very important for all of us. Yesterday, the
10 Co-Prosecutor said that they did not have any documents to
11 present.

12 And my lawyers stated that they have 40, almost 40 important
13 documents to present to the Court.

14 However, in light of what happened yesterday, I told my court --
15 my defence counsel to present the documents whenever the
16 Co-Prosecutors presented the documents rather than reading from
17 the written records of the interviews of any documents.

18 I would like to conclude my statement, Mr. President.

19 [09.28.34]

20 MR. PRESIDENT:

21 What else do you want to state, Mr. Nuon Chea?

22 MR. NUON CHEA:

23 I would like to follow the proceeding downstairs, Mr. President.

24 MR. PRESIDENT:

25 The defence team for Mr. Nuon Chea, could you give a reason why

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1 Nuon Chea request to go downstairs to follow the proceeding?

2 You may proceed now.

3 MR. SON ARUN:

4 Good morning, Mr. President. Good morning everyone in and around
5 the courtroom.

6 Every day, there is a medical report of Mr. Nuon Chea on a daily
7 basis. And as normal, he requests to follow the proceeding
8 downstairs.

9 After his speech concerning what he thinks and what he
10 understands, he now would like to go downstairs to follow the
11 proceeding, because of his health reason.

12 [09.30.00]

13 MR. PRESIDENT:

14 Thank you.

15 You may now proceed, International Deputy Co-Prosecutor.

16 MR. SMITH:

17 Good morning, Mr. President. Good morning, Counsel. Good morning,
18 Defence and public.

19 Your Honours, before Mr. Nuon Chea goes down to the -- to the
20 room to monitor the proceedings, we would ask that the Judges ask
21 Mr. Nuon Chea, whether or not he instructs his counsel to not
22 appear at the document hearing today.

23 He's explained to the Court that he adopted the decision
24 yesterday. But I think it's important as we go forward whilst
25 he's still is in the room to ask him whether he's telling his

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1 counsel not to participate.

2 [09.30.50]

3 Because, from what Mr. Nuon Chea said, he said that if the
4 Prosecution presents some documents that fit within the category
5 that he believes a document to be produced at the hearing today,
6 then his counsel would be allowed to present documents. So the
7 Prosecution will be presenting written records of interviews
8 today, and also will be presenting contemporaneous documents as
9 well. So we would ask that that be clarified before we lose the
10 opportunity, when he goes down. Because that may have an effect
11 on how the proceeding continues, if he instructs counsel to stay
12 away or if he instructs counsel to stay.

13 Thank you.

14 [09.31.46]

15 MR. KOPPE:

16 Mr. President, we can provide a very clear answer to this.
17 He has instructed us not to walk away. He has instructed us not
18 to hold a key document presentation if you do not reverse your
19 decision. So we're not here to boycott this hearing, as you
20 called it yesterday. So the instruction from our client is very
21 clear.

22 MR. SMITH:

23 It's getting clearer, but perhaps it can be a slightly clearer
24 again. So I believe what defence counsel has said is that Mr.
25 Nuon Chea has said the defence team must stay in the courtroom

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1 for the document presentation, but not to present documents.
2 So he's instructed him to be -- counsel to be at the hearing
3 until it ends. I'm just wondering whether Counsel can confirm
4 that.

5 [09.32.56]

6 MR. KOPPE:

7 As I just indicated, we are not boycotting this Trial.
8 We walked away in anger yesterday, and I would very much like to
9 explain why we did so.

10 But the instruction is clear. We are not boycotting this Trial.

11 (Judges deliberate)

12 [09.35.33]

13 Mr. PRESIDENT:

14 Having heard the submission by Nuon Chea and the additional
15 observation by the -- his counsel, that he request that he be
16 allowed to follow the proceeding from the holding cell downstairs
17 due to his health reason, the Chamber grants Mr. Nuon Chea leave
18 to follow the proceeding from the holding cell downstairs,
19 through audio-visual means for the whole day.

20 The Chamber takes that Mr. Nuon Chea has waived his right to
21 participate directly in this courtroom. And it is important that
22 the defence team for Mr. Nuon Chea submit to the Chamber the
23 waiver of Mr. Nuon Chea, with the thumbprint.

24 And AV personnel are now instructed to link the audio-visual
25 means to the holding cell downstairs, so that Mr. Nuon Chea can

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1 follow the proceedings from the holding cell for the whole day
2 today.

3 And security guards are now instructed to bring Mr. Nuon Chea to
4 the holding cell downstairs and make sure that he can follow the
5 proceedings today through audio-visual means as he has been doing
6 so far.

7 And next, I hand over the floor to the defence team for Mr. Nuon
8 Chea to present the reasons why he boycotted the hearing
9 yesterday.

10 Counsel, you may proceed.

11 [09.37.29]

12 Mr. KOPPE:

13 Mr. President, two small requests, what I'm about to say is
14 something that I would like Nuon Chea to follow completely. So I
15 would request to have a two minutes or three minutes recess until
16 he has settled himself downstairs.

17 Secondly, I haven't heard any implicit or explicit decision on my
18 request to be able to speak for half hour uninterruptedly. I
19 presume that I am allowed to do so.

20 (Judges deliberate)

21 [09.39.02]

22 MR. PRESIDENT:

23 The International Deputy Prosecutor, you may proceed.

24 MR. SMITH:

25 Yes, Your Honour, just a very brief remark. Of course, we have no

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1 objections for the Defence Counsel to explain why he walked out
2 of the proceedings, but we do question why that would take half
3 an hour. Yesterday, Defence Counsel said that the Prosecution
4 reading of documents was in fact a closing submission. So, I
5 would just like Defence Counsel to -- would request that they be
6 brief, and would suggest, particularly as the Defence Counsel is
7 a very eloquent barrister, that he can be brief, concise, and
8 state his reasons in that manner. Otherwise, Khieu Samphan's
9 counsel may want to do the same thing and we end up chewing up
10 the day and then we waste more time.

11 [09.40.15]

12 MR. PRESIDENT:

13 Thank you. The request is granted but the Chamber wishes to
14 advise the Counsel that the Bench has the discretion to address
15 all the issue that is happening, particularly the issues that
16 deviate from the topic, subject to the hearing. So, if you want
17 your explanation of reasons and the -- uninterruptions (sic)
18 doing this is not up to you, it is a discretion of the Chamber
19 solely to manage the proceedings of the hearing and that is to
20 ensure the efficiency and the -- efficiency of the proceedings.

21 Mr. Koppe, you may proceed.

22 [09.41.31]

23 MR. KOPPE:

24 Of course, Mr. President, order in this courtroom is all to be
25 decided by you. I have no problem with this. But I thought it

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1 wise to say in advance that I need some time to explain fully and
2 properly what happened yesterday. So, with your leave, Mr.
3 President, I will start explaining what happened yesterday. And
4 in order to be able to do this, I think I should paint a broader
5 context. And for this, we have to go back and I would like to
6 start with something that happened on the 8th of February 2013.
7 There was a decision of the Supreme Court Chamber, a decision
8 which is documented as E163/5/1/30; English, ERN 00885759 and
9 following. It was a decision on the Co-Prosecutors' immediate
10 appeal of the Trial Chamber's--

11 MR. PRESIDENT:

12 Mr. Koppe, please identify the document reference again because
13 that is for the clear record. For that reason, you cannot say
14 that you should be allowed to proceed without interruption
15 because there are instances when we need to interrupt to ensure
16 effective proceedings.

17 [09.43.18]

18 MR. KOPPE:

19 Of course, Mr. President, I am referring to document E163/5/1/30.
20 It is the Supreme Court Chamber's decision on the Co-Prosecutor's
21 immediate appeal of your Decision concerning the scope of Case
22 002/01. In English, page 00885784; Khmer, 00885826; and French,
23 00891313; in consideration 51, the Supreme Court Chamber, six
24 months before closing submissions in the first trial, ruled as
25 follows, I quote:

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1 "It must also be considered at this stage that one trial panel
2 alone maybe unable to fulfil the ECCC's obligation to conclude
3 proceedings on the entirety of the charges in the Indictment
4 within a reasonable time. As such, in the event of a renewed
5 severance of Case 002, the Supreme Court Chamber considers that
6 the ECCC should explore the establishment of another panel within
7 the Trial Chamber to support the timely adjudication of the
8 remainder of Case 002."

9 [09.45.07]

10 Now comes the important part:

11 "A composition of a second trial panel would safeguard against
12 any potential concerns about actual or appearance of bias of
13 Judges from the first trial adjudicating the second trial." End
14 of quote.

15 So, to summarize, not only for reasons of expediency, also
16 because of fear that you would not be impartial after having
17 rendered the judgement in the first trial, Mr. President, the
18 Trial Chamber chose to ignore this advice. Then in August 2014,
19 the Judgement came, which was a total shock to our client, Nuon
20 Chea. Not only because of its poor quality, we have identified
21 223 grounds of appeal, which must have been a record in the
22 history on international criminal justice.

23 [09.46.15]

24 The Judgement was also a shock because of the way it was
25 formulated. It was clear to us that the Supreme Court Chamber had

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1 been right and that it was not possible that Nuon Chea could have
2 had a second trial with the same Judges that would also be fair.
3 Precisely, for this reason, in October last year, we filed a very
4 lengthy and very principled motion for disqualification. One of
5 the things we said was that, you, Judge Lavergne, had made
6 cowardly decisions and lack judicial integrity.
7 Judge Fenz, we didn't ask for your disqualification, but I am
8 regretting this decision to do this very much. Compared to what
9 we have experienced in this second trial, Judge Cartwright was
10 indeed a shiny and bright beacon of impartiality. Let me quote
11 some words--

12 MR. PRESIDENT:

13 The International Deputy Co-Prosecutor, you may proceed.

14 [09.47.30]

15 MR. SMITH:

16 Your Honour, the Prosecution have no objections with Defence for
17 Nuon Chea explaining the reasons why he wasn't here yesterday in
18 brief, but these arguments have been put forward already in the
19 disqualification application; it's all public knowledge these
20 arguments. Why do the Defence need to go through their
21 application line by line? It's really not necessary. If what
22 Defence Counsel for Nuon Chea is saying, look he doesn't feel --
23 or the client doesn't feel that he is getting a fair trial
24 generally, why doesn't he just say that? And say we felt that we
25 are not getting a fair trial throughout the process and yesterday

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1 was the straw that broke the camel's back, as Mr. Nuon Chea said?
2 But to go through all of the decisions and applications that
3 they've made to state the unfairness of what he perceived to be
4 of this Trial, I don't think it's a good use of time; I don't
5 think it's relevant. He can state his point concisely. Thank you.

6 [09.48.48]

7 MR. KOPPE:

8 This was precisely what I expected to happened; that's why I
9 asked you to be able to give a 30 minutes explanation. If you--

10 MR. PRESIDENT:

11 Mr. Koppe, we did not want to hear the issues that have already
12 been ruled upon. We have addressed your written submissions as
13 well so far. As for the decision of the SCC, document E163/5/13,
14 this has already been decided upon. The Trial Chamber has
15 followed the decision and to date we have not received any
16 application for annulment, and the Chamber -- the Court does not
17 have the necessary resources to establish the second panel. And
18 that has already been ruled upon. So the reason for your
19 withdrawal yesterday was not related to that issue; it related
20 solely on the issue of the presentation of key documents. So you
21 have the leave for the explanation of the reasons for your
22 withdrawal yesterday in the context of the presentation of the
23 key documents relating to three key -- three worksites. And I
24 made it clear this morning so that the Parties are clear and the
25 public is aware of what is going.

14

1 [11.50.53]

2 For that reason, we advise you that we have the discretion to
3 intervene when you raise the points. We need to make sure that
4 you actually address the points that are relevant to the
5 proceedings. And you are supposed to give the reasons for your
6 withdrawal in relation to the presentation of the key documents.
7 And yesterday the hearing that was supposed to be happening for
8 the whole day and it cost the Court a lot to delay the
9 proceedings. And I have to ensure that the Court proceeds in an
10 efficient and expeditious manner. So, you have to now explain the
11 reason for your withdrawal yesterday in the proceedings conducted
12 by the Trial Chamber in relation to the presentation of the key
13 documents relating to the three worksites. So I do not expect
14 that you would go back to the previous issue and I am sure that
15 those who are following the proceedings at the Khmer Rouge
16 Tribunal, they would know that very well, the challenges that we
17 have encountered and the various issues that we are faced so far.
18 Everyone is well aware of that.

19 [09.52.32]

20 MR. KOPPE:

21 Mr. President, it is indeed true that it is your prerogative to
22 shut me up; it is my prerogative not to say a word anymore. So
23 it's take it or leave it, or nothing.

24 MR. PRESIDENT:

25 Judge Jean-Marc Lavergne, you may proceed.

15

1 JUDGE LAVERGNE:

2 Yes, Counsel Koppe, I think it's -- your strategy is a bit easy.
3 We are asking you to provide specific legal reasons that explain
4 why you walked of the proceedings yesterday, and now you are
5 expressing a certain number of frustrations regarding decisions
6 that you are not satisfied with. I think that it is our right to
7 listen to you -- listen to the exact reasons why you walked out
8 of the proceedings yesterday and why you refused to continue
9 participating in the key documents hearing.

10 Now, regarding the disqualification motion, this no longer
11 concerns us today.

12 [09.53.48]

13 MR. PRESIDENT:

14 Next, I hand over the floor to Counsel Son Arun.

15 Mr. Son Arun, please advise the Chamber whether or not you have
16 received instruction from your client when you decided to
17 withdraw yesterday.

18 MR. SON ARUN:

19 Good morning, Mr. President, and Your Honours. Yesterday my
20 esteemed colleague, Mr. Koppe was surprised and he decided to
21 leave the courtroom and as a team member and a partner with him,
22 I decided to leave in order that I could discuss with him. And we
23 also needed to discuss with our client whether or not the client
24 was aware of the ongoing proceedings. And he said that he had
25 followed the proceedings and he supported the withdrawal of his

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1 defence team.

2 And for my personal reason, I decided to withdraw because my
3 partner, Mr. Victor Koppe, withdrew abruptly without
4 consultation. So I went to consult with him and with the client
5 as well and then I could get the position on the issue. So that
6 is the reason for my withdrawal yesterday.

7 MR. PRESIDENT:

8 Judge Jean-Marc Lavergne, you may proceed.

9 [09.56.03]

10 JUDGE LAVERGNE:

11 The Chamber is still awaiting explanations regarding the legal
12 grounds of the decision that led you to walk out of the
13 proceedings. Today, what is your stance from a legal standpoint?

14 MR. KOPPE:

15 I was giving you my reason and you don't want to listen.

16 JUDGE LAVERGNE:

17 No, Counsel Koppe. Counsel Koppe, we are asking for the reasons
18 why you refused to have the Co-Prosecutors present documents that
19 have already been declared admissible. It's quite simple. There
20 are rules and we want to hear you. If you don't want to provide
21 any explanations, well then we consider that there are no valid
22 explanations.

23 [09.57.07]

24 MR. KOPPE:

25 To be honest, Judge Lavergne, I don't really care what you think.

17

1 You either give me time to express my reasons or you don't.

2 MR. PRESIDENT:

3 Mr. Son Arun, can you clarify your position? Yesterday you said
4 that you got the instruction from your client before you left the
5 courtroom, or you left the courtroom to seek his advice on that?

6 MR. SON ARUN:

7 When I left, I had not discussed with my client yet because it
8 did not happen yet, so I did not consult with my client. Once it
9 happened, I went down to discuss with Mr. Koppe, my esteemed
10 colleague and my client.

11 MR. PRESIDENT:

12 So what were your legal grounds for the withdrawal from the
13 proceedings yesterday, or you simply followed your international
14 colleague?

15 (Short pause)

16 [09.58.36]

17 MR. SON ARUN:

18 I share the view of my client. Actually, it has happened for some
19 time already and that's why Mr. Koppe requested 30 minutes for
20 the explanations of the various reasons because it has happened
21 for so long and it culminated yesterday and he decided to leave
22 the courtroom. And I followed him; I did not have legal grounds
23 but I only share the views that this issue has happened for a
24 long time and we have not been happy with that for a long time.
25 Then it culminated, we could not stand anymore and then he left

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1 the courtroom and I had to leave as well to discuss because we
2 were working as a team. And when my partner left, I needed to go
3 and discuss with him so that I could inform the Chamber of the
4 reasons afterwards.

5 [09.59.56]

6 MR. PRESIDENT:

7 Thank you. The International Deputy Co-Prosecutor, you may
8 proceed.

9 MR. SMITH:

10 Thank you, Mr. President. I'd just like to make a brief remark
11 before the moment gets away. Counsel for Nuon Chea told His
12 Honour, Judge Marc Lavergne - Jean-Marc Lavergne, "I don't care
13 what you think." As a practitioner in this courtroom, I don't
14 think it's acceptable for barristers, people appearing before
15 this Court, to speak to Judges in that manner. I think it demeans
16 the proceedings and I would ask, Your Honours, to consider
17 warning Mr. Koppe under Rule 38. And if I just read the rule,
18 warning him that his conduct is, "offensive or abusive to a
19 Judge". I don't think it's acceptable, because if these types of
20 comments continue this will turn into a barroom discussion. And I
21 must say, I do respect the advocacy of Mr. Koppe, generally, but
22 I think it's inappropriate that that type of remark is directed
23 towards a Judge, and I think that he should be warned, not just
24 for that remark but to all barristers in this courtroom,
25 including myself, that that is not the standard in which we treat

1 Judges in a court. Thank you.

2 [10.01.42]

3 MR. KOPPE:

4 I'm actually happy to react to this. Mr. President, I would like
5 to read to you what I actually had written down as my last words,
6 because I knew or predicted that this might be coming. What I
7 wrote down or what I wanted to say is; the walking out yesterday
8 from Court, indeed without any legal justification, in a common
9 law court might have been considered as contempt of court. But we
10 are not in a common law court, but if we were and if I were
11 charged with contempt of court, I would happily plead guilty. I
12 have indeed nothing but professional contempt for the
13 International Judges of this Tribunal.

14 [10.02.45]

15 MR. PRESIDENT:

16 Mr. Smith, I think there were a few rounds of discussion and it
17 is not like a theoretical argument, so you have to be brief. And
18 now I notice you are on your feet again and again and the matter
19 may have greater impact and it can hinder the proceedings. So
20 please be brief and on the point.

21 MR. SMITH:

22 I would again ask, Your Honours, to warn counsel under Rule 38,
23 to refrain from using that language towards the Bench.

24 MR. PRESIDENT:

25 The floor is now given to the defence team for Mr. Khieu Samphan.

20

1 Mr. Khieu Samphan, you may now proceed first.

2 [10.04.09]

3 MR. KHIEU SAMPHAN:

4 Thank you, Mr. President. Good morning, Your Honours, and
5 everyone here. Good morning all compatriots. First of all, I
6 would like to inform that I fully support the two co-lawyers, who
7 withdrew themselves yesterday from the courtroom. They received
8 instructions from me. I gave the instruction to my lawyers that I
9 am not happy. I am not satisfied that the Trial Chamber has been
10 -- has not been neutral and it will be time that I instruct my
11 lawyers to express my unhappiness and my dissatisfaction (sic). It
12 is now the straw that broke the camel's back.

13 I would like to add further on this point. I told the Court at
14 the beginning of the Trial, Case 002/02, I told the Court
15 already, I lost trust in the Trial Chamber to find justice for
16 me. It is because Your Honours has already convicted me life
17 sentences, so how could you provide any justice for me. And I
18 have observed that it is clear for all of us, the fact reflects
19 what has been happening. Yesterday, I could say, it was the straw
20 that broke the camel's back.

21 [10.06.58]

22 There is another point I would like to address before the Chamber
23 now. I actually instructed my co-lawyers to be here to present in
24 the courtroom today. However, I instructed my lawyer not to
25 present any relevant documents. This is my position, this is my

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1 submission. And now I would like to cede the floor for my
2 co-lawyers to present any further details.

3 MR. PRESIDENT:

4 Thank you very much, Mr. Khieu Samphan. You now proceed, Counsel
5 for Mr. Khieu Samphan. Please address the Court concerning the
6 legal grounds in relation to your withdrawal from the Court
7 yesterday.

8 [10.07.55]

9 MR. VERCKEN:

10 For some time now we have been hearing the expression, "the last
11 straw that broke the camel's back". Quite obviously, on the side
12 of the Prosecution and the side of the Chamber, we want to
13 examine only that last straw. That last straw is a small straw,
14 doesn't -- is not worth anything. There are many others, hundreds
15 of others, and the situation is such that today we cannot believe
16 that the Chamber cannot stick to what it wrote in Decision E318,
17 of the 13th October 2014, in which you pointed out what appears
18 to be a promise that you cannot meet. I'll read the Decision of
19 the Chamber:

20 "As part of the second trial, the Trial Chamber will not be bound
21 by the findings it reached in its Judgement following the first
22 trial. Not only because you have based on relevant evidence in
23 light of the pursuit of the second trial." I'll skip a passage
24 and go to the second sentence: "In case of the second trial, the
25 Trial Chamber will not take into account those responsible for

1 the criminal acts found in the second trial."
2 [10.09.51]
3 You don't have the gift of ubiquity; you are professional judges;
4 it is not possible for you to rule fairly in a case like this. To
5 sentence two Accused to life and go into the second trial with a
6 claim that you can be independent, that is the last straw that
7 has broken the camel's back. It is the last straw because, Mr.
8 President, I will not go into the list of my colleague, Koppe,
9 your decisions in Case 002/02 accumulate to show that the
10 commitment you made in E318, in October 2013 (sic), cannot be
11 met.
12 Yesterday, that last straw was what? It is very simple, since the
13 beginning of the second trial, we have Co-Prosecutors who have
14 been manipulating you, who are manipulating us, and who avail
15 themselves of the following situation. We are here in a trial, we
16 are not in a common law criminal trial; we are in a civil
17 criminal process. That is so clear, but my learned colleague
18 seems to ignore the fact that the evidence presented to you is
19 limited. It is well defined, well circumscribed. You cannot
20 change it unless under very specific circumstances. But what is
21 happening, as we have Cases 003 and 004 over which we have no
22 influence, the Co-Prosecutor is using information that he obtains
23 for inculpatory purposes in Cases 003 and 004 and introduces them
24 in this Case, whereas normally that should be completely
25 prohibited. You, yourself, Mr. President, you have prohibited

1 this practice from the very outset. You wrote in a Decision, a
2 memorandum of the 24th January 2012, and I quote:

3 [10.12.11]

4 "The Chamber considers that Rule 53.4 of the Internal Rules,
5 imposes on the Co-Prosecutors an obligation -- a permanent
6 obligation to disclose all documents in their possession that
7 would enable us to reach a finding of guilt for the Accused, to
8 attenuate their guilt or to rule on their reliability." This is
9 normal, Mr. President, this is meaningful, this is fair. And what
10 are we faced with since the beginning of the second trial
11 segment, we have prosecutors who are turning into evidence, 1355
12 witness depositions drawn from Cases 003 and 004. Describing in
13 their disclosure, and I quote the prosecutor, "The Trial Chamber
14 has indicated that the obligation to disclose relevant documents
15 whether for inculpatory or exculpatory reasons is an obligation
16 that is incumbent on the Trial Chamber and on the Accused." End
17 of quote.

18 [10.13.30]

19 May I request you, Mr. President, to tell us who you are making a
20 mockery of; of us or of you? Of course, of you and your
21 decisions. It's a mockery of law, a mockery of the rules. What
22 are we going to do? You can fault us for not having reacted
23 sufficiently early enough, in the face of this mountain of 1355
24 records of interview and the prosecutor doesn't want to tell us
25 which are inculpatory or exculpatory, but they have contented

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1 themselves with remaining in vagaries, artificial vagaries. We
2 have prepared a motion, at length to tell you that we are
3 requesting you to reject the use of all those documents which are
4 very questionable and which you, yourselves, have prohibited
5 because they are inculpatory. And we have requested that, even
6 though 149 of those documents were admitted into evidence, we
7 have written that motion that we would like that, for the time
8 being, pending your decision, you should not authorise the
9 prosecutors to use those documents. That there were -- whether
10 they were disclosed in the first stage, whether, in the case of
11 the 149, they have been admitted into evidence and those 149
12 documents are inculpatory. You did not authorize their admission.
13 You would not have issued that decision. You can go back on that
14 decision. These are inculpatory documents and the proof of this
15 is that yesterday the prosecutors wanted to use 18 of those
16 documents before this Chamber. That is abnormal. It is not
17 possible to do so in a fair trial, it is not acceptable.

18 [10.15.29]

19 So, bearing in mind that the situation was urgent, we filed a
20 Motion, for the time being it is only in French and it will be
21 filed today. Because when we draft documents in French we have to
22 wait for the documents to be translated into Khmer in order to be
23 able to tender them officially into evidence. So we have filed
24 that motion, we might file that motion in French on Monday and we
25 forwarded it, as a courtesy copy, only in French. But we knew

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1 that you would have to face this difficulty. Yesterday, you said
2 that, for the time being, it is only a courtesy copy and since
3 you sent us a memo in a single language, it is a courtesy copy.
4 And it has also happened in the past that regarding courtesy
5 motions filed in one language, you've convened hearings. This is
6 a crucial subject, Mr. President; it is of capital importance for
7 us. It is a matter of finding out whether this Trial, 002/02, is
8 also Case 003 or 004, because if that is the case we can't do
9 anything, Mr. President, we can no longer defend our client. The
10 prosecutor wants to tender into evidence 1355 records of
11 interview from another investigation that is ongoing and they are
12 relying on that to ask for anything. They can ask for interviews,
13 they can have witnesses examined on issues concerning this
14 particular case. It is not normal, it is not acceptable, it is
15 not fair. And that is why that last straw broke the camel's back.
16 That is the legal reason why we are leaving this courtroom -- why
17 we left this courtroom yesterday, because it is abnormal. You
18 cannot accept this from the prosecutor.

19 [10.17.31]

20 And of course we have the context, the fact that we are being
21 deprived of our right to speak. I understand that there are
22 cultural differences, I don't know whether this is customary in
23 Cambodia, to abruptly prevent lawyers from talking or deprive
24 them of the microphone. It is not a practice in the international
25 judicial arena and I have been working in this arena for the past

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1 10 years, Mr. President. In any case, quite obviously, everyone
2 is losing control, everyone is on edge in this courtroom and we
3 see the reaction of some of you, which is quite excessive in many
4 cases, it is human and for me it is part of due process and it
5 once more, highlights the fact that Your Chamber, with all due
6 respect to the members of this Chamber, is humanly unable to
7 conduct this second trial in a fair manner, quite simply, because
8 you have sentenced the Accused to life imprisonment. And as
9 things stand, it is proper that another Bench try the Accused in
10 order for the trial to be fair. The incident of yesterday and the
11 reasons for it are once more another illustration of this
12 situation.

13 [10.19.11]

14 MR. PRESIDENT:

15 Now, the floor is given to Counsel Kong Sam Onn to present legal
16 grounds in relation to your withdrawal from the courtroom
17 yesterday. Please be brief on legal grounds concerning the
18 matter. Please avoid going back to any issues that have already
19 been addressed by the Chamber or by the Court.

20 MR. VERCKEN:

21 Mr. President, I would like to give the floor to my colleague.
22 For the record, I would like to add that --
23 to explain our decision yesterday to leave the courtroom after my
24 colleague Koppe. We had taken precautions at the beginning to
25 send you an email in which we said that in order not to encroach

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1 on the time for hearing tomorrow, for the presentation of key
2 documents and to take no one unawares, Khieu Samphan's Defence
3 will now address by email the issue of the 18 records of
4 interview from Cases 003 and 004. When the hearing started, Mr.
5 President, you summed up the situation and answered a number of
6 questions, and I was expecting you, since we sent you a courtesy
7 motion and since we sent you an email the day before to say that
8 we were opposed to the use of those documents, I was expecting
9 you to say at least a word and you said nothing. And I found
10 myself in a situation in which I have to rise to object, raise
11 the issue again and I was deprived of the microphone. And this is
12 a vicious circle.

13 When you do not respect the rights of the Defence, we face an
14 extreme situation which is very unpleasant for everyone. That is
15 what I wanted to add.

16 Mr. Sam Onn, you have the floor.

17 [10.21.29]

18 MR. PRESIDENT:

19 Yesterday, the Court addressed the matter and we solved the
20 matter already. And yesterday the Bench spent 20 minutes to
21 deliberate and discuss and we were late and we could only start
22 our hearing at 9.20 a.m. in the morning because the Judges were
23 discussing and deciding on the point you made. We already decided
24 on those points, and Judge Lavergne mentioned already about the
25 eight concerned documents. And the Chamber decided to receive two

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1 documents that you requested and the Co-Prosecutor agreed not to
2 present the two documents. And we have adhered to Rule 78.3 and
3 4. We decided already, although we did not send an email in
4 response to your request. And the Chamber has always taken into
5 issues raised by Parties, and we had to decide on the requests
6 which are reasonable and we admit them , and we grant them. And
7 however, for those -- for the requests which have no legal
8 grounds, the Chamber have to reject those requests.

9 [10.23.31]

10 I recalled very clearly that the President -- yesterday I -- as
11 the President, yesterday I brought the matter up and discussed
12 and decided on the matter. And as of now, you can see we are here
13 to address all the issues mentioned by the Parties so that we can
14 proceed forward.

15 You have the floor now, Counsel Kong Sam Onn.

16 MR. KONG SAM ONN:

17 Thank you, Mr. President. I would like to recall the incident
18 yesterday leading to the withdrawal of lawyers yesterday. I was
19 in the team to agree with the withdrawal. Yesterday there was an
20 objection by Koppe concerning the presentation of documents.
21 Number one, there was a video footage projected by the
22 Co-Prosecutor; number two, WRIs were presented by Co-Prosecutors.
23 I agreed that the decision of the -- the ruling of the President
24 yesterday was clear in relation to objection one. But objection
25 two, as for ruling, it is not clear to me. We can go back to our

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1 transcript yesterday, at time mark 10.42.49. There is one point
2 which is unclear to us. The point is whether or not the WRIs of
3 the deceased witnesses are considered as the key documents. I
4 believe the Co-Prosecutors themselves were confused before the
5 ruling of the President, and that incident led to the time that
6 Smith was on his feet to request leave to present those
7 documents.

8 [10.26.07]

9 At first we believe and we are well aware of WRIs concerning the
10 deceased witnesses, and those WRIs are key documents. Later on
11 there was a ruling by the President that any document can be
12 considered key documents. So it is confusing ruling for me as a
13 lawyer. I do not really understand what key documents are. If we
14 cannot determine the definition of key documents, how can we go
15 forward to present key documents?

16 In relation to key document presentation hearings, we do not know
17 for sure when to present the key document presentation. And some
18 documents are to be considered evidence, so we have no time to
19 challenge, to debate on evidence. So the hearings yesterday,
20 today, are considered the final submissions. For all of these
21 reasons, the -- it led the lawyers to the withdrawal from the
22 courtroom, and we considered that this leads to the violation of
23 my client's rights.

24 [10.27.57]

25 MR. PRESIDENT:

30

1 Thank you very much, Counsel Kong Sam Onn. You have the floor
2 now, Arthur Vercken.

3 MR. VERCKEN:

4 I would like make one clarification in light of what has just
5 been said, to be sure that your Chamber fully understands our
6 reasoning.

7 For legal certainty, we are in a very abnormal in this Trial,
8 particularly yesterday when you started by saying that the
9 Co-Prosecutors could use records of interviews of witnesses, even
10 they were deceased because Co-Prosecutor Vincent de Wilde pointed
11 out that the records of interview he intended to use were those
12 of deceased persons. And shortly before the break, Mr. Bill Smith
13 came to say that there were testimonies of people who were alive
14 and that were drawn from Cases 003 and 004 and that he was going
15 to use them, and you immediately said, "Yes, of course, you can
16 also use the records of interview of people who were alive,
17 insofar as we have admitted them into evidence in a trial."
18 And we denounce this and we informed the Chamber that we denounce
19 this on principles that are crucial in a fair trial.

20 [10.29.29]

21 MR. PRESIDENT:

22 First, I think the ruling perhaps may have been cleared, but I
23 was very clear in my ruling concerning the first objection. The
24 first objection was granted at that time. And the Co-Prosecutor
25 has to adjust what has been requested by Victor Koppe. And

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1 objection two was overruled because I mentioned the documents,
2 any documents, such as written records of interviews of the
3 deceased people.

4 I noticed that yesterday the incident was caused by -- first by
5 Counsel Nuon Chea (sic), and now there are no legal grounds for
6 the Chamber concerning the matter. And for Khieu Samphan Defence
7 team, I have heard no legal grounds as well -- either. And I have
8 now heard that the national counsel made mention that it was a
9 confusing ruling. So I believe this incident is not too serious
10 to lead the defence counsels to express their boycotts. And
11 perhaps it is not to the -- satisfactory manner to the defence
12 team.

13 [10.31.19]

14 As a President, I have been in the hearings for so long and we
15 have tried to satisfy everyone, including the public. We have
16 done our utmost for the sake of justice. This is a clear approach
17 that we have to follow. We cannot do whatever we want.

18 Now I would like to ask the Co-Prosecutors, and after that, the
19 Lead Co-Lawyers, to present any responses or submissions in
20 relation to the position of the defence counsels for the Accused
21 who withdrew themselves from the courtroom yesterday. So I would
22 like to remind the Co-Prosecutor and also Lead Co-Lawyers that,
23 please, only raise the new points, not what has been addressed
24 and decided already.

25 [10.32.28]

1 MR. SMITH:

2 Thank you, Mr. President. I think, Mr. President, it's clear that
3 you are right that it appears to be -- the walkout yesterday
4 appeared to be a culmination of Defence's frustration with a
5 number of decisions in this process. And it's also clear that
6 Nuon Chea wasn't consulted whether in fact they should walk out,
7 and it was unclear about Khieu Samphan. But it looked like it was
8 a spontaneous reaction that led to that.

9 We would submit that if that happens in the future, Your Honour,
10 that the Defence ask for an adjournment for five or ten minutes
11 so they can speak to their client. Because we have lost a day's
12 hearing because of this.

13 [10.33.26]

14 In terms of whether -- obviously there was no instructions and
15 there was no real legal justification other than being unhappy
16 with the decision yesterday for allowing the Prosecution to use
17 written records of interview for these hearings.

18 Your Honours, we discussed that a little yesterday but if I can
19 just refer you to E96/7, and that's your decision back on 20th
20 June 2012, that allowed Parties to put for admission written
21 records of interview of witnesses that would not necessarily
22 attend the proceedings. And Your Honours outlined a number of
23 criteria and the probative value that those statements would
24 have. And particularly Your Honours said that, in accordance with
25 international practice, written records of interview could be

1 admitted and taken into account in this hearing, but certainly
2 not in relation to the acts and conduct of the Accused. And that
3 has been viewed to be too important to rely on statements that
4 haven't been cross-examined.

5 [10.34.52]

6 But, the defence counsel are well aware, Your Honours, obviously
7 were aware in the Decision, that international practice allows,
8 witness statements as corroborative evidence of testimony at
9 trial in relation to crime base and other issues that don't
10 relate to the acts and conduct of the accused. And that's clearly
11 written out, the jurisprudence from the international tribunals
12 is written out in E96/7.

13 As far as -- there was no legal basis, but as far as the
14 reasonableness of leaving the courtroom, we would also submit
15 that it was really an unreasonable approach to take. Your
16 Honours, courtrooms are based on disputes and disagreements,
17 that's the nature of the courtroom, and it's not the lawyers'
18 role or function to walk out of the courtroom if they disagree
19 with the decision. They ask for reconsideration or they appeal
20 it. It throws the proceedings into disarray and Your Honours have
21 a responsibility to make sure that these processes, this Trial,
22 moves forward efficiently.

23 [10.36.10]

24 Your Honour, in relation to Khieu Samphan's position about the
25 use of written records of interview, their position was quite

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1 inconsistent, because it seemed that what they had -- they had
2 done yesterday was just follow the lead of the Nuon Chea counsel.
3 The only written records of interview they objected to were the
4 ones that were recently admitted by this Chamber, those 18 or so
5 that were discussed yesterday, admitted under Rule 87.4, which,
6 as we are all aware, if the Defence or if the Prosecution come
7 into possession of new evidence, they can make an application to
8 the Chamber to put that evidence forward. And that was done --
9 that was done, but I think defence counsel for Khieu Samphan
10 didn't realize that those documents were in fact admitted by your
11 Decision, which we've already discussed. And because of that, I
12 think that led to the objection in the list. I think oversight on
13 their part.

14 [10.37.24]

15 But further, in the lists that were provided by the Prosecution
16 to the defence counsel yesterday, or on Wednesday -- sorry on the
17 25th, the Prosecution provided three lists from three worksites.
18 Khieu Samphan's team only objected to those 18 statements that
19 were recently admitted but they didn't object to a number of
20 other written records of interview which the Prosecution were
21 using for the Kampong Chhnang airfield and also for the 1st
22 January Dam. So, it's clear that, because of what happened in
23 Court, the Khieu Samphan team decided to take their objections
24 further, which they didn't have them in the first place, in
25 relation to about 20 other records of interview that were on the

1 Prosecution's list.

2 Your Honour, another thing, I think, it's important to consider
3 in terms of reasonableness, is that the defence counsel and
4 particularly defence counsel for Nuon Chea, have used written
5 records of interview of witnesses that have not and will not
6 likely appear in this courtroom, to cross-examine witnesses; to
7 put information to other witnesses that help support their
8 defence. So, on the one hand, they are quite happy to use written
9 records of interview of witnesses that haven't testified to
10 challenge other witness' testimony, yet on the other hand, they
11 don't want the Prosecution to use them. And obviously, the reason
12 why they don't want the Prosecution to use them is that it would
13 demonstrate and rebut some of the claims that the Defence have
14 been making.

15 [10.39.24]

16 And in terms of fairness, obviously, that's not fair. If parties
17 can use written records of interview, all parties should be able
18 to do it. So it's a contradictory position that the Defence have
19 taken. And I will remind Your Honours in relation to the Tram Kak
20 segment of the trial -- the Krang Ta Chang segment, a number of
21 written records of interview of people that are not being brought
22 before these proceedings were used by Nuon Chea's counsel to
23 challenge evidence. The Prosecution has a right to rebut that.
24 Secondly -- I think I've been asked for a list; there's quite a
25 few we can get you a list later. But secondly, the Defence -- in

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1 terms of fairness, the Defence have had an opportunity to present
2 written record of interviews themselves, but if they choose not
3 to take it, that's up to them.

4 [10.40.22]

5 In terms of Khieu Samphan's counsel's question about: what is a
6 key document hearing? What does "key" mean? I think if the
7 counsel doesn't know what the word means, or he needs some
8 explanation, I think they should ask. They should ask Your
9 Honours. But clearly, what are key documents for the Prosecution
10 and what are key documents for the Defence, are quite different.
11 And the Parties, of course, have the right to decide what types
12 of documents we would like to illustrate to the Chamber.

13 I then -- perhaps that deals with the -- I suppose one other
14 point I need to address: the defence counsel for Nuon Chea said
15 that, by reading out excerpts from written records of interviews,
16 that's the Prosecution presenting a closing argument, that's just
17 not correct. The Prosecution reading parts of written records of
18 interviews as evidence; we are not making great elaboration on
19 what that means because that would be a closing argument. So that
20 point, just is not correct. The fact that evidence is highlighted
21 in a certain segment of the Trial and it highlights very
22 inculpatory evidence, which we would like Your Honours to be
23 taken into account and give the appropriate weight at the end of
24 the proceedings, that is no reason to object. The purpose of key
25 document hearings, Your Honours have said, is to highlight

1 evidence that the public may not have had, or bring evidence to
2 your attention. Clearly, what the Defence would like to see that
3 not happen so much, and it more being, sort of a general terms,
4 from books and journals and other propaganda. But that's their
5 choice and this is our choice, to bring this evidence forward.

6 [10.42.42]

7 Your Honours, it is said that the probative value of written
8 records of interviews is something you address, that you decide,
9 you decide that when you look at the testimony and other
10 documents as a whole, and that's your decision at the end of the
11 case. But the Parties should be able to talk about the evidence;
12 the proceedings should be transparent.

13 And so perhaps, Your Honours, that deals with the straw, "the
14 straw that broke the camel's back", yesterday leading to the
15 frustration with the Defence. But just in relation to two points
16 that have been made: one in relation to disclosure by the Khieu
17 Samphan team. They say that it's completely unfair and it's
18 completely problematic, the fact the Prosecution are making
19 available statements from Cases 003 and 004, and I think it's
20 fair to say all counsels here would in fact prefer not to have
21 Cases 003 and 004 running in parallel with Case 002, because what
22 it requires is that, the Prosecution to review that material, and
23 if it's exculpatory, disclose it; that's it's obligation. And
24 again, the difficulty about determining what's exculpatory and
25 what is not, if you remember Your Honours words -- and this is

1 consistent with international tribunals -- other international
2 tribunals -- that the Prosecution is under an obligation to
3 disclose any evidence that could affect the reliability of the
4 evidence at trial. And that's the test that Your Honours have
5 given us, and we apply that test to the material that's coming
6 in.

7 [10.44.41]

8 Defence counsel is -- I can't hear him. He is shouting-

9 And so, as the material comes in -- those investigations -- we
10 review it. When we get, for example, a lot of statements on
11 Trapeang Thma Dam, and one witness says, I had to work at 5
12 o'clock in the morning, one witness says I have to work at 5.30,
13 or one witness says I have to work at 6 o'clock; one witness says
14 many people were killed, one witness says a few were killed, we
15 have to provide that, unless you tell us otherwise, to the
16 Defence. Because every statement of a witness will affect the
17 reliability of the other statement because there are so many
18 different facts to take into account.

19 I can imagine a time where if the Prosecution left all those
20 documents in the Prosecution office and didn't disclose them to
21 the Defence, on appeal the Defence saying, the Prosecution had
22 all of this relevant evidence but they didn't disclose it to us.
23 We are simply fulfilling our obligations. That's the first thing
24 and that's the obligation to the Accused, and to the Trial
25 Chamber.

1 [10.46.01]

2 The second obligation -- or the second phase which the Defence
3 seem to be upset with is when the Prosecution has disclosed to
4 the Defence but uses that evidence to help proof the issues in
5 the case. That is a separate issue and that's, as Your Honours
6 are aware, that's under Rule 87.4, and that requires the parties
7 within a reasonable time to put the new evidence that is
8 discovered forward and make an application to the Chamber for
9 admission of that evidence. And so when Khieu Samphan's counsel
10 says, we don't know which document we are going to be using for
11 Rule 87.4 purposes, or which documents we are just disclosing to
12 the Defence, they will know when we file the application.

13 [10.46.55]

14 And just -- in relation to do that, it's very late in the day for
15 Khieu Samphan's counsel to come to this Court today and yesterday
16 and walk out. When we made the Rule 87.4 application, we made
17 that application to admit those 18 documents quite a while ago.
18 The Khieu Samphan Defence did not bother to respond. They
19 understand the Rules of Evidence here. If a Party files
20 something, the other Party has an opportunity to respond. If they
21 don't object, they can say so, or they cannot file anything. The
22 Defence did not file anything in response and now, after it's all
23 over, a number of weeks later, they start complaining about the
24 situation. What Nuon Chea -- sorry, what Khieu Samphan's counsel
25 seems to be saying is that in this hearing, they are not getting

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1 an opportunity to be heard. They are saying that, all this
2 evidence is rolling in and they've got nothing that they can do
3 about it. Well, they have and they didn't bother.

4 [10.48.15]

5 And in relation to Parties not being given the microphone to
6 speak, this counsel -- Khieu Samphan's counsel has said, at other
7 international tribunals they give counsel any opportunity to
8 speak. They don't. They don't. They run the trial -- they run the
9 proceedings in an orderly manner. They don't hand over the
10 microphone to any counsel to speak on anything at any time. And
11 so just in relation to that, I would like to say that Khieu
12 Samphan's counsel have had significant amounts of opportunity to
13 speak at the right time in this hearing.

14 And just lastly, Your Honour, in relation to this issue of bias,
15 the Defence being unhappy that Your Honours are hearing this
16 case: applications have been made; they have been rejected by
17 other Judges of this tribunal; it's the obligation of a lawyer to
18 move on; to deal with the decisions and act according to the
19 decisions and the rules of this hearing. If their frustration is
20 so great, that they actually can't cope to work in this
21 environment anymore, they should say so and they should make the
22 appropriate filings. But, for as long as they are counsels for
23 these Accused, as lawyers, they should abide by the rules of the
24 Court; they should abide by the decisions of the Court. If they
25 don't like them, they can appeal them at the appropriate time.

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1 [10.50.02]

2 So Your Honours, I would conclude: there was no legal
3 justification from leaving, and also, in fact there is no factual
4 reason -- good reason for them to leave Court the other day.
5 Obviously, they are extremely frustrated with a number of issues.
6 But those issues have been dealt with and I think it's important
7 that they move on. Thank you.

8 MR. PRESIDENT:

9 The International Lead Co-Lawyer for the civil parties, followed
10 by Counsel Arthur Vercken; you may reply later on. The
11 International Lead Co-Lawyer for the civil parties, you may
12 proceed.

13 The floor is not granted to you, Counsel. Your microphone is
14 not--

15 [10.51.15]

16 MR. VERCKEN:

17 It's not a response; simply to tell you that this morning, my
18 client had 16 blood pressure and it's already 10 to 11.00. So,
19 maybe we should take a short break so that he can rest so that
20 his blood pressure may come down.

21 MR. PRESIDENT:

22 Thank you. Let's take 20 minutes break. We will resume at 10 past
23 11.00.

24 The Court is now adjourned.

25 (Court recesses from 1051H to 1113H)

1 MR. PRESIDENT:

2 Please be seated.

3 The Court is back in session and now the floor is given to Lead
4 Co-Lawyers for civil parties to respond to rationale raised by
5 defence counsel in relation to the withdrawal yesterday. You may
6 now proceed.

7 MS. GUIRAUD.

8 Thank you, Mr. President. Good morning to all of you.

9 I am going to be brief, but I must say I was quite surprised by
10 the violence of the statements by Counsel Koppe. I simply would
11 like to repeat what I have been saying since the beginning of
12 this Trial -- that is, that it is in the direct interest of the
13 civil parties for the Defence's right to be respected, and to be
14 respected fully. The stronger the Defence, the more meaningful
15 the judgement will be for the civil parties. The civil parties
16 who are here in this room and who come here every day -- and they
17 are very interested in seeing the defendants and in hearing them.
18 It's capital for them and this is one of the reasons why they
19 decided to join as civil parties, that is to say, they want to
20 receive explanations and they want to hear the defendants.

21 [11.15.22]

22 Of course they are frustrated in this Trial -- 002/02 -- to no
23 longer hear the defendants, but in any case, they are still
24 interested and they still want to participate in these hearings,
25 and they perfectly understand the fundamental role that the

1 Defence has to play in this Trial.

2 I would like to make a personal comment following the statements
3 of our colleagues. Our colleagues say that they don't wish to
4 boycott the proceedings and they say that they want to continue
5 coming every day to this Trial. But how can we continue -- how
6 can they continue coming every day to the Trial when they have
7 just insulted two major officers of this Chamber? How can they
8 continue being paid by an institution that they hate? I must say
9 I don't understand the Defence's position in this regard. Either
10 they consider that the conditions are adequate and to remain
11 within the institution or they consider that these conditions are
12 no longer adequate and then the only logical step to take, in
13 that case, would be to leave. Because otherwise, the straw that
14 broke the camel's back yesterday -- well, the straw is going to
15 reappear next week, in two weeks, in three weeks, so I'm going to
16 say something that the defence counsel may not be able to accept
17 today, but I consider because I also worked as a defence counsel
18 in a similar system to this one. I consider that the Defence has
19 its full role to play in this Trial. And that the rights of the
20 Defence are indeed respected in this Trial.

21 [11.17.20]

22 I see the Defence is smiling; I see, of course, the frustrations
23 that they are feeling. But we are going to have to proceed
24 nonetheless. I have been saying this since the beginning of this
25 Trial: it is in the direct interest of the civil parties that we

1 move ahead.

2 Recently, as you know, Ieng Thirith passed away, and we take
3 advantage of such moments to remind that the civil parties are
4 also facing many, many of them passing away. About 20 civil
5 parties have requested their successors to take up on their civil
6 party applications. We have received information from villages,
7 from communes, from families, telling us that a much higher
8 number of civil parties have died since the beginning of this
9 Trial, so it is obviously capital for us that this Trial move
10 ahead and that this Trial moves ahead with the participation of
11 the Defence and with the active participation of the defendants,
12 such as the civil parties wish.

13 [11.18.45]

14 I understand the frustrations of the Defence, and of course, we
15 respect the work that is being done by our colleagues. But I also
16 would like to say that it seems to us, at least, with regards to
17 Nuon Chea's defence, that the frustrations stem from the fact
18 that the procedural context of this Trial are -- is misunderstood
19 by the Nuon Chea trial (sic). In a trial of this nature, we had a
20 preliminary investigation; there was a Closing Order; we have a
21 case file that is massive that is going to have an influence on
22 the verdict, and of course, we have hearings, and of course the
23 witnesses have different roles to play, when they are in the
24 courtroom or when they are being interviewed. And I think the
25 Defence has not really understood the role of the investigative

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1 -- of the preliminary investigation. I think a lot could have
2 been done by the Defence. Maybe the Defence did not understand
3 the importance of the appeal against the Closing order. Maybe the
4 Defence does not understand sufficiently the importance of what
5 the case file is or what the case is. And the Court officers may
6 use the documents in the case file to form their conviction even
7 if the witnesses are not necessarily heard in this courtroom.

8 [11.20.30]

9 And returning now to this specific point that led to the
10 explosion yesterday, it seems to me clear that the Chamber never
11 said that the written records of interview should be excluded
12 from the document -- presentation of key documents. And to proof
13 this, because these are key documents, that is to say, documents
14 that are part of the case file, documents that the Bench may rely
15 on in the preparation of their verdict. And that generally
16 speaking, the written records of interview that are quoted in the
17 key documents hearing do not concern the witnesses who are going
18 to testify before the Chamber. So, we believe that the written
19 records of interview of witnesses or of civil parties may be
20 presented during the key document hearings, and that in this
21 context, the Defence, of course, has entirely the right to object
22 to the presentation of these documents, which it has done, in
23 fact, since the beginning of this Trial.

24 [11.21.43]

25 Now regarding the specific point that led to this explosion

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1 yesterday, and that -- in fact the straw that broke the camel's
2 back, I wish to inform the Chamber and the Parties -- because
3 maybe not everyone remembers -- but I, myself, used a written
4 record of interview of a witness during the last key document
5 hearing for Tram Kak and Krang Ta Chan. This was document
6 E3/5519, and when I presented this written record of interview, I
7 did not face the same reactions as what we saw yesterday. So, my
8 only concern today is that, I believe we are in this courtroom
9 for maybe another year, and in that case, how are we going to be
10 able to proceed with a frustrated Defence? How are we going to be
11 able to proceed in the best conditions so that the straw that
12 broke the camel's back yesterday does not break the camel's back
13 tomorrow, the day after tomorrow, in two weeks, and in three
14 weeks, and each time this means that we lose one day of hearing
15 or even more.

16 I have finished with my comments, Mr. President, and we will now
17 rely on the Court's wisdom so that the appropriate measures are
18 taken in relation to what happened yesterday. Thank you very
19 much.

20 [11.23.20]

21 MR. PRESIDENT:

22 Thank you. Judge Lavergne, you have the floor.

23 JUDGE LAVERGNE:

24 Thank you, Mr. President. I have a few questions to put,
25 regarding this "straw" and I would like to be sure that I

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1 understood well the objections that were raised by the different
2 Parties. Do the defence teams object to the presentation of all
3 of the written records of interview in the key document hearing,
4 or does the Defence only object to the presentation of the
5 written records of interview of people who are still alive, or
6 does it object only to the presentation of written records of
7 interviews of people who have been heard in Cases 003 and 004 and
8 therefore whose -- and whose written records of interviews were
9 disclosed in Case 002/02?

10 [11.24.42]

11 And this morning I also listened with great interest to Counsel
12 Vercken's explanations about the differences between the common
13 law system and the civil law system, and I would like him to tell
14 us, what are the specific provisions in the civil law system, in
15 particular in the French system, that would forbid a tribunal to
16 put before the Chamber, evidence that is not on the case file,
17 except for, if I understood what was said, exculpatory evidence.
18 It seems that there is a certain discretionary power, in
19 particular for the president of the Assize Court, that allows
20 putting before the court any element of evidence that may
21 contribute to the ascertainment of the truth, which is not
22 exactly the same thing as I've heard this morning. So, if it was
23 possible, please, for the defence team to provide the necessary
24 clarification in that regard that would be very useful.

25 [11.25.55]

1 MR. VERCKEN:
2 I didn't come here this morning to be questioned or to pass an
3 exam. I'm here to explain to you only why we acted -- we reacted
4 the way we did yesterday. I, of course, I'm perfectly willing to
5 provide to you a detailed explanation of the legal rules but
6 before that I would like, however, to rely on common sense. The
7 people who are here in this courtroom or all of us here -- I
8 mean, how can we accept -- come on -- that a trial be so
9 multiform. I understand that there is some discretionary power
10 involved on the part of the Chamber to review elements that were
11 not maybe available in the past and that some -- now suddenly pop
12 up, this already happened to me before the Assize Court that the
13 prosecutor produces a document that was unknown until then. But,
14 okay, let's be realistic, what are we talking about? We're
15 speaking here about thousands, thousands of written statements
16 that are coming from another investigation in another case, in a
17 very special case, which -- because this is a case in which only
18 the prosecutors can act and put questions and continue then --
19 and then continue feeding the current case, in which normally the
20 production of evidence should be finished. We're not speaking
21 here about two to three documents, I mean, we're not speaking
22 about exceptional cases. Of course we can play around with the
23 rules. It may always be possible but here we're speaking about
24 thousands of statements and please listen to what the prosecutor
25 is saying. What is the prosecutor telling you? He's saying, "Oh,

1 I can't -- I can't work at distinguishing in a written record of
2 interview what is exculpatory and what is inculpatory." I mean
3 this is a joke.

4 [11.28.01]

5 "So, in that case, I'm giving you all of the statements. You
6 asked for deadlines and you -- and I'm giving you thousands and
7 thousands and thousands of statements and then you'll manage with
8 it." And we, with our six people in our team, we're going to go
9 read in detail and we're going to do the prosecutor's job. No.
10 Never, never in the first case have the prosecutors disclosed
11 statements from Cases 003 and 004. Why? Or barely, am I told. It
12 might have happened exceptionally but not in such proportions.
13 Why? Because we all know what's happening in these Cases 003 and
14 004. That these cases are politically threatened of never coming
15 to a conclusion, so under the cover of saving Cases 003 and 004,
16 they're blatantly violating the rights of the Defence. Maybe,
17 Judge Lavergne, you can say -- you can use legal arguments, and
18 this is of course our job to do so, to say, yes, indeed, it's
19 possible, it's always possible. Of course it's always possible,
20 but in such proportions, this has never happened and this has
21 never been seen and this is a blatant and absolute violation of
22 the Defence's rights.

23 [11.29.18]

24 This is common sense. I'm willing to give you thousands and
25 thousands of pages with regard to international jurisprudence to

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1 address this question, but the truth is, what is happening now is
2 completely abnormal, and you are going to have to react and the
3 Chamber is going to have to demonstrate impartiality and tell the
4 prosecutors, "Stop, please. Let's stop." We should -- maybe, okay
5 we could do so when it's really, really necessary in a reasonable
6 way but this is a joke. Not only is this is a joke, but they're
7 also making a mockery of you and your prior decisions.

8 [11.29.55]

9 And then, now, to answer what was said by the civil parties. I'm
10 a bit tired of hearing that the Defence is frustrated. No. This
11 is not a psychological issue here. This is not a personal issue
12 here. We're speaking about a legal issue. There is a real issue
13 of fairness. So please stop, I don't want to hear, "they're a
14 little bit frustrated, I wonder if they're going to be able to
15 stand everything." No. We're not here in a salon, we are here in
16 a courtroom, so -- and when we leave this courtroom we might
17 find, okay, that we are weak. Yes, and we are weak and that is
18 the problem. We are not -- we can only be listened to if we react
19 in a way that might seem minimal, but okay, but you must listen
20 to the message behind.

21 MR. PRESIDENT:

22 Judge Lavergne, you have the floor.

23 [11.31.00]

24 JUDGE LAVERGNE:

25 Very well, I'll try to repeat my first question. I didn't hear

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1 any answer to that question. Is it possible for the defence teams
2 to tell us whether they are objecting to the presentation of all
3 written records of interview in this key document presentation or
4 they only object to the written record of interviews of persons
5 who are alive or those of persons who were interviewed in Cases
6 003 and 004?

7 MR. VERCKEN:

8 We object to all evidence from the investigations in Cases 003
9 and 004.

10 JUDGE LAVERGNE:

11 Can the Nuon Chea defence team shed light on this matter?

12 [11.32.04]

13 MR. KOPPE:

14 Mr. President, I think our objection yesterday was very clear. We
15 objected to the use of WRIs during, what we call a key document
16 presentation hearing. Let me, just for all clarity, refer you to
17 E315/1, your Decision, your own Decision. It says, "In Case
18 002/01, the Trial Chamber", you, "established a practice of
19 holding key document presentation hearings, which provided the
20 Parties with an opportunity to present key documents, considered
21 to be particularly relevant to each Trial topic. These hearings
22 took into account that documentary evidence need not necessarily
23 be tendered during the examination of individuals appearing
24 before the Chamber and also serve to ensure a greater measure of
25 public accessibility to the documentary aspect of the Trial."

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1 [11.33.16]

2 Documents. People in that courtroom have to understand, not only
3 what witnesses are saying but what is being said in documents.
4 What is being said in "Revolutionary Flags", in minutes of the
5 Standing Committee, of the Central Committee of the CPK. These
6 are documents. Prosecution doesn't have enough documents to make
7 their case, so they resort to reading WRIs. Of course they can
8 use WRIs but not now, not at the key document presentation
9 hearing. And that was our objection and that was the "straw".

10 MR. PRESIDENT:

11 Judge Jean-Marc Lavergne, please, you may proceed now. Yes,
12 please proceed until we finish this issue.

13 JUDGE LAVERGNE:

14 So, if I understand correctly, the Nuon Chea defence is opposed
15 to the presentation of all records of interview since it believes
16 these are not documents in the meaning intended by the Chamber.

17 [11.34.27]

18 MR. KOPPE:

19 Again, you don't seem to understand what I'm trying to say. What
20 I'm talking about -- the parameters of a key document
21 presentation hearing. The Prosecution can say whatever they want
22 during the closing briefs; that's up to them. They can use WRIs,
23 of course they can. I'm talking about the key document
24 presentation hearing. That was what it is all about. It's about
25 documents, pieces of paper preferably contemporaneous and if

1 necessary, journal articles or academic scholarly work. That's
2 fine. But it is not, if you don't have enough evidence,
3 sufficient in this realm, in these parameters to just simply read
4 some excerpts of WRIs. What is that about? That doesn't make any
5 sense.

6 [11.35.20]

7 MR. VERCKEN:

8 Mr. President, I would like to add something and it is that -- it
9 is true that these hearings on key documents have always posed
10 problems. Personally, I have always found that things went really
11 wrong. At this stage of the Trial, to refer to records of
12 interview, why not? We still do not know the list of witnesses
13 who will appear before this Chamber up until the end of the
14 Trial. This presentation of witnesses, for reasons that may be
15 good, such a presentation of witnesses is varying continually. We
16 had several parties appear who hadn't been envisaged last week
17 and you clearly see that. These key document hearings are
18 supposed to occur at a time when one segment has ended but
19 segments being what they are, when you are talking of the role of
20 the Accused, how do you understand that. What does it mean to us?
21 Won't we end up having a segment on the role of the Accused with
22 witnesses whose statements have been read earlier on by the
23 prosecutor during an earlier key document hearing on different
24 subjects? And when the prosecutor says that we are not pleading,
25 that is false. That is the impression he gave yesterday from the

1 beginning of this hearing. I heard Prosecutor Vincent de Wilde
2 presenting a document, saying that this document is without
3 appeal and that is an interpretation he gave of the document
4 which we had before us and we find that we are in a very
5 ambiguous exercise, a very complicated, very difficult.

6 [11.37.24]

7 So, at this stage of the proceedings to authorise the prosecutor
8 to read documents, even when we do not know the witnesses who
9 will be called and to testify with regard to what subject we do
10 not know. And it is a very perilous exercise as far as I'm
11 concerned. There is a chronology of the background to the
12 problems we have faced regarding all the difficulties we have
13 faced in this Trial and in these key document hearings.

14 MR. PRESIDENT:

15 Thank you for the observations and comments on the issue of
16 withdrawal of the two defence teams. The Chamber notes that the
17 issues that have been raised since this morning concerning the
18 boycott or withdrawal of the defence teams for Nuon Chea and
19 Khieu Samphan and they failed to give the Chamber the reason for
20 their withdrawal and this morning we listened to the
21 clarification and the reasoning of the defence teams as well as
22 the observations by other Parties.

23 Secondly, there were some legal issues that have been raised
24 concerning the presentations of key documents before the Chamber
25 and which the issue has been contentious and the Chamber has

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1 reviewed the transcript of the proceedings and the Chamber notes
2 that this was the issue concerning the presentation of the key
3 documents together with the issue that happened yesterday. There
4 have been differences in the definition of the key documents,
5 entitled by the Parties to submit or to put before the Chamber.
6 So, this issue is wide in scope. Because these two issues are
7 broad that's why the Chamber will retire to discuss on these
8 issues so that we would issue the memorandum to notify to the
9 Parties so that we can conduct the proceedings in the future
10 smoothly.

11 [11.40.28]

12 The Chamber, therefore, decides that we would adjourn the hearing
13 now and resume on Tuesday, starting from 9 a.m. As for the
14 scheduled hearing on Monday, the Chamber shall continue to hear
15 the key document presentation and as for the hearing on the
16 testimony of the civil parties and the witnesses we have already
17 done, it means that we will postpone it to next week as per our
18 schedule, and since we are not going to have the hearing on
19 Monday, so we will continue the proceedings until Friday next
20 week. This is the notification to all Parties to participate in
21 the upcoming proceedings.

22 Counsel Pich Ang, you may proceed.

23 [11.41.22]

24 MR. PICH ANG:

25 Mr. President, earlier I did -- it may be because I could not

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1 understand the instructions clearly from the Chamber, because we
2 did not hear -- we did not know -- we actually want to know the
3 hearings on the injury (phonetic) or we are going to have the
4 hearing on the presentation of the key documents so that we can
5 talk to the civil parties and our colleagues. Because civil
6 parties have already arrived in Phnom Penh, so it is necessary
7 for us to make an arrangement. Mr President, if I did not catch
8 your directions very well.

9 [11.42.53]

10 MR. PRESIDENT:

11 Now, there has been interruptions that were not expected, so we
12 do not want this issue to disrupt the proceedings now and then.
13 So we will try to find the solution to this issue and to ensure
14 that the future proceedings will be efficient and expeditious,
15 particularly to ensure the conduct of the proceedings is
16 efficient and effective.

17 And as for the date, it has not been clear but we may be delayed
18 until Friday next week and then we will have to observe the
19 position of the Defence teams. If they maintain their position
20 that they are not going to respond or they are not going to
21 present the key documents concerning the three worksites, so
22 probably we can move faster. And this issue was not clarified
23 because the hearings in the -- next week, we are going to hear
24 the impact statement of the civil parties next week, and we will
25 clarify that. And of course, the Chamber will notify the Parties

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1 on this issue this afternoon or latest tomorrow to make the issue
2 clear as to how we can resolve this. If the conditions of the
3 Parties -- the defence teams maintain they do not present the key
4 documents and they would refuse to respond to the presentation of
5 the documents, then it won't take long time.

6 And as for the schedule, the Chamber has already put out that
7 will last from actually Tuesday to Friday, because we replaced
8 Monday because we would take that time for the deliberations on
9 this issue and to ensure the smooth proceedings in the subsequent
10 hearings.

11 The security guards are now instructed to bring the Co-Accused to
12 the detention facilities and have them back on Tuesday, 1
13 September 2015, before 9 a.m.

14 The Court is now adjourned.

15 THE GREFFIER:

16 All rise.

17 (Court adjourns at 1145H)

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