



**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

**TRANSCRIPT OF TRIAL PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

1 September 2016  
Trial Day 449

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 10-Jan-22, 11:30  
CMS/CFO: Sann Rada

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

The Accused: NUON Chea  
KHIEU Samphan

Lawyers for the Accused:  
Doreen CHEN  
Victor KOPPE  
LIV Sovanna  
Anta GUISSSE

Trial Chamber Greffiers/Legal Officers:  
Roger PHILLIPS  
SE Kolvuthy

Lawyers for the Civil Parties:  
Marie GUIRAUD  
LOR Chunthy  
PICH Ang

For the Office of the Co-Prosecutors:  
Dale LYSAK  
William SMITH  
SONG Chorvoïn

For Court Management Section:  
UCH Arun

I N D E X

Ms. PHAN Him (2-TCW-914)

Questioning by Judge LAVERGNE.....page 2  
Questioning by Ms. CHEN.....page 7  
Questioning by Ms. GUISSÉ.....page 19

**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
Ms. CHEN	English
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LOR Chunthy	Khmer
Mr. LYSAK	English
Ms. PHAN Him (2-TCW-914)	Khmer
The President (YA Sokhan)	Khmer

1

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 Today, the Chamber will continue hearing the witness Phan Him, to

6 the conclusion. After the conclusion of the testimony, the

7 Chamber will hear oral submissions in relation to 2-TCE-93.

8 Ms. Se Kolvuthy, please report the attendance of the parties and

9 other individuals to today's proceedings.

10 THE GREFFIER:

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

12 are present except Mr. Kong Sam Onn, the National Counsel for Mr.

13 Khieu Samphan, is absent because of personal reasons.

14 Mr. Nuon Chea is present in the holding cell downstairs. He has

15 waived his right to be present in the courtroom. The waiver has

16 been delivered to the greffier.

17 The witness who is here today to testify is Phan Him. She is

18 already here in the courtroom. And today, there is no reserve

19 witness, Mr. President.

20 [09.02.20]

21 MR. PRESIDENT:

22 Thank you, Ms. Se Kolvuthy. The Chamber now decides on the

23 request by Nuon Chea.

24 The Chamber has received a waiver from Nuon Chea, dated 1st

25 September 2016, which states that due to his health, headache,

2

1 back pain, he cannot sit or concentrate for long. And in order to  
2 effectively participate in future hearings, he requests to waive  
3 his right to be present at the 1st September 2016 hearing.

4 His counsel has advised him about the consequence of his waiver,  
5 that in no way it can be construed as a waiver of his rights to  
6 be tried fairly or to challenge evidence presented to or admitted  
7 by this Court at any time during the trial.

8 Having seen the medical report of Nuon Chea by the duty doctor  
9 for the accused at ECCC, dated 1st September 2016, which notes  
10 that Nuon Chea has a chronic back pain and it's become even more  
11 painful when he sits for long and recommends that Nuon Chea --  
12 the Chamber shall grant him his request so that he can follow the  
13 proceedings remotely from the holding cell downstairs.

14 Based on the above information and pursuant to Rule 81.5 of the  
15 ECCC Internal Rules, the Chamber grants Nuon Chea his request to  
16 follow today's proceedings remotely from the holding cell  
17 downstairs via an audio-visual means.

18 AV Unit personnel are instructed to link the proceedings to the  
19 room downstairs so that Nuon Chea can follow. That applies for  
20 the whole day.

21 Judge Lavergne, you may now proceed.

22 [09.04.30]

23 QUESTIONING BY JUDGE LAVERGNE:

24 Yes. Thank you, Mr. President. Good morning, Madam Witness. Good  
25 morning to all parties.

1 Q. Madam Witness, I will have a few additional questions to ask  
2 of you.

3 Yesterday during your testimony, you indicated that among the  
4 functions that were assigned to you during Democratic Kampuchea,  
5 you were in charge of children. And I think that this was <in>  
6 two separate <instances>. <You took care of these children> when  
7 you worked for the Ministry of Commerce.

8 Did I understand correctly your witness testimony from yesterday?

9 MS. PHAN HIM:

10 A. That is correct. I was at a cooperative and later I went to  
11 the Ministry of Commerce in charge of teaching the children. That  
12 is correct, Mr. Co-Prosecutor<>.

13 [09.05.40]

14 Q. What I wanted to know was, how old were the children under  
15 your charge?

16 A. The children at Ministry of Commerce were three years old and  
17 above, and some -- the age range is between three and 12 years  
18 old.

19 Q. And what was your role as a teacher? What, exactly, did you  
20 teach them? Did you teach them to read and write?

21 A. Initially, I started to teach vowels to children, and also the  
22 alphabets. And then I taught them how to read the letters in  
23 combination of alphabets and vowels. And also, I taught them  
24 about mathematics, addition, subtraction, division, etc.

25 Q. When you were asked to work with these children, did the

1 teaching also encompass a political aspect? Was there a portion  
2 of what you taught that corresponded to political teaching to  
3 these children?

4 [09.07.44]

5 A. No. I was instructed to teach only Khmer literature. Nothing  
6 was involved in politics.

7 Q. Were you not asked to explain what the role of Angkar and the  
8 role of the family was and, for example, what loyalty was and to  
9 whom it should be given?

10 A. I was told and instructed that the children should be on time  
11 and adhere to the disciplines of Angkar.

12 Q. But were you told that you needed to explain to the children  
13 that it was more important or just as important to obey Angkar  
14 <as they did> their own biological parents?

15 [09.09.12]

16 A. They were told to respect Angkar because they were in the  
17 Party. They were instructed to be punctual and to listen to the  
18 instructors or teachers.

19 Q. And what place did the parents have? Did Angkar recognize that  
20 the parents had a particular role vis-à-vis their children, or  
21 was Angkar meant to be the parents?

22 A. When I was teaching children, parents -- children's parents  
23 did not come -- did not come to visit them. Children were told  
24 that they had to respect the Angkar or disciplines of Angkar, and  
25 Angkar was their parents.

1 Q. So Angkar was their parents. You never saw their parents. They  
2 didn't exist.

3 A. I never saw that, Mr. President.

4 Q. Were there songs that were taught to the children, and were  
5 these songs meant to help them learn the revolutionary  
6 principles?

7 A. I never taught songs to children. I, myself, could not sing.

8 Q. Were you asked to tell the children that they needed to pay  
9 attention to enemies? Was the idea of enemies something that was  
10 taught to the children?

11 [09.11.54]

12 A. Yes, children were told of that. They were told that they had  
13 to be vigilant or <> pay attention toward enemies or spy agents.  
14 At the Ministry of the Commerce, the <> spy agents, KGB or CIA,  
15 came to throw the grenades, <sometimes they would disguise  
16 themselves as cows or tigers, because the cooperative where we  
17 were in was in the forest,> so I was instructed to tell the  
18 children to be vigilant against the enemies.

19 Q. Were you asked to teach the children that the Vietnamese were  
20 enemies?

21 A. No. I did not hear anything about Vietnamese or "Yuong".

22 Q. I have another line of questioning. In the context of your  
23 functions at the Ministry of Commerce, were you in contact with  
24 foreigners, whether those were people who had come to visit,  
25 people who came to purchase things, or diplomats that you met?



1 Did you see <any> foreigners?

2 [09.13.40]

3 A. I, on some occasions, saw foreigners inside the vehicles. And  
4 when I was working there, I did not see any foreigners.

5 Q. Very well. When you were working near the Tuol Tumpung pagoda,  
6 did you know if there were embassies <around or> near the pagoda?

7 A. I did not know. I was inside the compound. I was not allowed  
8 to go outside. I had to be in the warehouse doing the register or  
9 ledger, and I had time only to go and have meal. And I did not  
10 know where the embassy was.

11 Q. And you never heard that nearby the pagoda, there were, for  
12 example, embassies such as the Embassy of China?

13 A. I have never heard of it.

14 Q. And did you hear anything about S-21?

15 A. I heard of it, but I did not know where it was.

16 Q. And what did you hear about S-21?

17 A. It was said that there was a place named S-21. I, myself, did  
18 not know the responsibility of S-21 and also the function of this  
19 office.

20 Q. Very well. Thank you very much, Madam Witness. I have no  
21 further questions.

22 [09.16.10]

23 MR. PRESIDENT:

24 Lawyer for civil parties, do you still have some other questions?

25 MR. LOR CHUNTHY:

1 No, I don't.

2 MR. PRESIDENT:

3 Thank you very much, lawyer.

4 And now you may proceed, Counsel for Mr. Nuon Chea.

5 [09.16.35]

6 QUESTIONING BY MS. CHEN:

7 Good morning, Mr. President, Judges, parties, and good morning,

8 Madam Witness.

9 Q. I have just a few follow-up questions for you today. And my  
10 first line of questioning is about your experience right after  
11 the liberation of Phnom Penh.

12 So yesterday in your questions from the Prosecutor, you said that  
13 after the fall of Phnom Penh in 1975, you were sent to do the  
14 cleaning at Phsar Thmei. After you cleaned the area and collected  
15 all the war spoils, you were assigned to take care of the  
16 warehouse to supply food to the workers.

17 My question is actually in relation to you mentioning collecting  
18 war spoils. Can you tell me what kind of war spoils you  
19 collected?

20 MS. PHAN HIM:

21 A. I collected war spoil in the office at Phsar Thmei. There <>  
22 were cutting boards and other stuff belong to the vendors at that  
23 market. I collected all different kind of stuff and then I  
24 cleaned the area. It took me one month to clean everything, and I  
25 collected them to throw away at Stung Mean Chey or Prek Phnov.

1 There were cutting boards, big cutting boards. That was all.

2 [09.18.12]

3 Q. Okay. Moving, then, to my next line of questioning, this is  
4 just about an incident you very briefly mentioned yesterday when  
5 you were discussing your assignment to teach children at Ruessei  
6 Keo.

7 Yesterday at 14.07, in answering a question from the Prosecutor,  
8 you said you were sent to teach children at Ruessei Keo. The  
9 situation was rather quiet at Ruessei Keo.

10 "There were some soldiers from Chrouy Changva bridge who came at  
11 night to steal rice from the warehouse. One day, they came to  
12 your sleeping quarters. They took your scarves, sandals and  
13 cattle (sic), all those things. Since it was quiet, then Angkar  
14 assigned you to Tuol Tumpung to teach children again.

15 Here's my first question. You mentioned that the soldiers who  
16 stole those things from you were from Chrouy Changva bridge. How  
17 did you know where they were from?

18 [09.19.16]

19 A. I knew them from Chrouy Changva because we laid ambush and  
20 they ran toward Chrouy Changva <bridge and they went inside a  
21 place near the area and disappeared>.

22 Q. So you laid an ambush for them. Did they actually manage to  
23 steal the things from you, or were they unsuccessful?

24 A. They went into the kitchen stealing rice and some meals. After  
25 we ate, we kept some leftover in the kitchen so they unlocked --

1 those soldiers unlocked <> the back door and went inside to steal  
2 the stuff and meal.

3 After I took a bath, I slept. Then the soldiers came to steal  
4 sandals, kettles and meals. After the stealing of those stuff <>,  
5 I made a report to the upper echelon and then I was removed to  
6 work in <Tuol Tumpung instead>.

7 Q. Did you hear about other incidents like this during the DK  
8 period where people would have their belongings stolen?

9 A. I did not hear of it. I was working inside the Ministry. I did  
10 not hear anything about what happened at other Ministries or  
11 other locations.

12 [09.21.14]

13 Q. And my last question in this subject. Do you happen to know  
14 what military unit was stationed near Chrouy Changva bridge?

15 A. No, I don't. I do not know which divisions they belonged to.

16 Q. Okay. Now I'm going to move on to talk to you about the  
17 circumstances of your marriage.

18 First thing I want to discuss, yesterday, when you were talking  
19 about the circumstances of your marriage, you mentioned a couple  
20 of times, including at 14.26 and 14.29, that there were study  
21 sessions on the 10th and the 30th of every month.

22 Can you tell me how many people would there typically have been  
23 in a study session group?

24 [09.22.15]

25 A. Everyone attended the session. <All> members of mobile units

10

1 <of the Ministry of Commerce, both the national and international  
2 commerce,> attended the meeting, so the meetings happened on the  
3 10th and the <30th> day. Everyone from different parts of the  
4 country attended that session.

5 Q. Can you estimate how many people that would have been? We're  
6 talking about 10, 30, 100, for example?

7 A. There were many, many people. And people from outside, I mean  
8 from abroad, were about 20. And from my <mobile> unit <were about  
9 50 to 60>, <so in total,> there were around 80.

10 Q. Okay. I'll come back to this.

11 Now, yesterday in answering a question from the prosecutor at  
12 14.26, you said that the man who later became your husband, and  
13 who still is, was not known to you. He did not know you as well.  
14 And then you then said when you were sent for study sessions on  
15 the 10th or the 30th of the month, then you saw him. At that  
16 time, a fan fuse broke. He was asked to fix it. You saw him, but  
17 you did not notice him because, at that time, he did not make any  
18 proposal.

19 [09.23.53]

20 Now, Madam Witness, you've just said that there were many, many  
21 people in study session groups at any one time. You said 20 from  
22 overseas and 80 from your group, so that sounds like around 100  
23 people. You also said you didn't know your husband and you said  
24 that you didn't notice him.

25 My question is, how were you able to identify him as the person

11

1 who fixed the broken fan?

2 A. I had not known him in advance, but one day, there was an  
3 issue with the electricity and Comrade <Rath> was called in to  
4 fix the power cut. And then there was a proposal to marry me, and  
5 the one who made the proposal was Rath, so there was only one  
6 Rath in the Ministry, not other Rath.

7 At the time of fixing fan, I had a glance of him, but I did not  
8 pay attention to him.

9 [09.25.10]

10 Q. So just to confirm, this Rath who fixed the fan and made the  
11 proposal, is this the man who would become your husband?

12 A. That is correct. That was Rath. And he is now my husband.

13 Q. Okay. And you said that he made a proposal to you. Can you  
14 tell me more about the circumstances of that proposal?

15 A. He was in a unit at the Ministry of Finance away from my  
16 ministry. One night, the <> chief of female unit from his  
17 ministry came to my ministry <at about 9 p.m.> and I was called  
18 and asked, "Comrade, Angkar wanted to marry you. What did you  
19 have to say? But the one who proposed to marry you was Rath from  
20 ministry in charge of international commerce."

21 And <>I replied that I was not mature yet. I wanted to work. <> I  
22 did not want to marry any man. And the <> female chief said that,  
23 "No matter what you said, <you have> to agree with Angkar, and  
24 Angkar would organize the marriage for you. <You> have to respect  
25 Angkar and adhere to the principles or direction set by Angkar."

12

1 And I was told then that in the next morning, I did not have to  
2 go to work. <>I would receive some clothes and then, the day  
3 after, in the morning, I went to do some little work, that is,  
4 growing vegetable. And at around 9.00 a.m., I was given <a set of  
5 clothes, a scarf,> a toothpaste, Lux soap and some detergent,  
6 washing detergent, and some other stuff. I received all those  
7 stuff.

8 [09.27.54]

9 Q. Okay, Madam Witness. If I understood correctly, what you've  
10 said is that your chief discussed with you the proposal, but that  
11 your chief told you that the proposal was coming from this person  
12 named Rath, who later became your husband.

13 My question is, have you ever spoken to your husband since you've  
14 been married about why he made the proposal to you?

15 A. I asked him. He said that he had not known me in advance  
16 before the period. He said he had heard of my name. I also asked  
17 him why he proposed me. He said that he was told of the name Thi, <who was at the Ministry. So he agreed  
18 to propose me. I did not really know his background.> that <> he had to marry, so I did not know him<>.

19 [09.29.05]

20 Q. Okay. Now let's talk a little bit about the wedding ceremony.  
21 Yesterday at 14.25 in answering a question from the prosecutor,  
22 you said that before your wedding day, you were told not to work  
23 and rest, as you would have to be involved in a marriage ceremony  
24 the next day. Who advised you not to work and rest instead?

25 A. <The person who came to tell me about the marriage proposal

13

1 named> Comrade Im (phonetic), chief of a unit at the Ministry of  
2 Finance in charge of international commerce. That woman came to  
3 tell me, although I refused, she explained me the reasons. And  
4 she told me that the next morning was the day of my marriage and  
5 I did not need to go to work. And I was <> told as well that I  
6 would be given clothes and also some other stuff at around 9.00  
7 a.m. the next morning. <Comrade Im (phonetic) was the lower rank  
8 chief.>

9 Q. Did Comrade Im (phonetic) tell you why it was important to  
10 rest and not work before being involved in a marriage ceremony?

11 A. I did not know the reason. She only told me like that. She  
12 told me that I did not need to go out to work because it would be  
13 the day of my marriage.

14 [09.30.50]

15 Q. Okay. Now, yesterday at 14.31, you were talking about the  
16 circumstances of the marriage ceremony. You said that your family  
17 members were not there, your parents were not aware of your  
18 marriage. There were the would-be husband and wife there together  
19 with the organizers of the wedding, Ta Rith, Ta Hong and two of  
20 your direct supervisors.

21 Now, you said that your parents and family members were not  
22 there. Did the parents, relatives or friends of any of the other  
23 21 couples attend the wedding ceremony?

24 A. On the day of the marriage, there were no relatives or  
25 siblings attended it. There were only those who were matched up



14

1 to be spouse, and the ceremony was attended by the <leaders> of  
2 the place. And as for parents and sibling, they were not aware  
3 that their children were married on that day.

4 [09.31.59]

5 Q. So does that also extend to the parents and siblings of the 21  
6 couples? They were also not aware of the marriages that day?

7 A. All the 21 couples who were married on the same day with me,  
8 none of them had their relatives attending the ceremony.

9 Q. Okay. I'm trying to understand this, so maybe I'll try a  
10 different way. Do you know if the parents or relatives of any of  
11 the other 21 couples were consulted or otherwise involved in the  
12 decision for those couples to get married?

13 A. All the parents and relatives of the 21 couples who were  
14 married were at the cooperatives. They did not come to attend the  
15 ceremony.

16 Q. Did you know if they knew about the marriages in advance?

17 A. They did not know because they were at their respective  
18 cooperatives while their children were based in the city. And  
19 they received no news about the marriage.

20 [09.33.54]

21 Q. Okay. I'll move on to my next line of questioning.

22 Yesterday at 14.28 in answering a question from the prosecutor,  
23 you said that, at that time, you did not want to have a husband,  
24 and that's why you refused. Since 1975, you kept refusing, but by  
25 1978, you could no longer do that. You wanted to be by yourself

15

1 and you did not want to get married. But on that day, despite  
2 your refusal, you were told that, despite your refusal, Angkar  
3 would organize it and you had to respect the discipline by  
4 Angkar, and you said something similar this morning.

5 Now, the part that I'm interested in is the part where you said  
6 that, since 1975, you kept refusing. What did you mean by this?

7 [09.34.45]

8 A. I meant that since 1974, while I was still at the cooperative  
9 at the Seh Sar office, the district committee brought me to a  
10 study session at the district office <in Khnaor Dambang>. And  
11 after three days of study session, I saw handicapped people were  
12 transported in from Prey Chhor district. They were brought in  
13 three or four horse carts, and they'd lost legs and arms.  
14 And then, the next day, he talked about the marriage. He said  
15 that he came here to teach about politics, about policy of the  
16 Angkar and that we should follow the line of Angkar. And he also  
17 said that the handicapped soldiers who were transported in were  
18 meant to marry to all of us. And he asked us whether we agreed to  
19 marry them. <We did not say anything, but> some of the  
20 handicapped people said that they did not want to get married to  
21 the woman because the woman were too young, so if they get  
22 married to them, they would not have a good future. <And then the  
23 handicapped people were transported back to their units.> And  
24 that was the first request about marriage.

25 Q. And at that time, did you also refuse to get married to the

1   handicapped soldiers?

2   A. At that time, he only told all of us who attended the study  
3   session, but because the handicapped people refused to get  
4   married to us, so he just left it aside. He did not take any  
5   further action, and the handicapped soldiers were returned back  
6   to their respective units.

7   And all of those handicapped soldier <>were old, and they said  
8   that they did not want to get married to us because we were too  
9   young. The future of the marriage would not be successful if the  
10   marriage took place. <So Angkar decided not to go through with  
11   the arrange marriage at the time.>

12   [09.37.28]

13   Q. And you were describing that as something that happened in  
14   1974.

15   Now, after the liberation of Phnom Penh in 1975, and all the way  
16   until you were actually married to your husband, Rath, were there  
17   any other occasions when you were proposed to be married?

18   A. In 1975, I do not remember the date, there <was a> female  
19   <unit> in charge of supervising our group. She asked us<,> when  
20   we were based at Phsar Thmei in Phnom Penh, she asked me that a  
21   marriage proposal was made to her to get married to me, and she  
22   asked me whether I wanted to get married. I told her that I was  
23   still young. I did not want to get married yet. And she said  
24   that, "So you don't respect Angkar?"

25   And then I said, "No, I respect Angkar, but talking about

17

1 marriage, I do not want to think about it yet because I'm still  
2 young and still want to work for Angkar." <She said if that was  
3 the case, she would report that to them.>

4 [09.38.53]

5 Q. And what was her reaction to you when you said that?

6 A. She reacted. She told me a few things. She <> scolded me that  
7 I did not follow the line of Angkar, I did not respect Angkar,  
8 but I did not dare to respond back to her. I kept silent. <Since  
9 then she never came to ask me again about the marriage.>

10 Q. So she scolded you. But did anything else happen to you after  
11 that?

12 A. No, there was nothing happening. There were nothing happening  
13 since that time until 1978.

14 Q. Now I'm up to my last line of questions, and this relates to  
15 the other couples that you were married alongside, the 21 other  
16 couples.

17 Yesterday afternoon at 14.22, you said to the prosecutor -- you  
18 were talking about your marriage in November 1978. And you said  
19 that all people in your group actually got engaged a month or two  
20 previously, but for you, you were asked that evening, but you  
21 refused. And then later, in answering a question from the Civil  
22 Party lawyers at 15.45, you said that before the wedding, the 20  
23 couples knew about the plan to marry a month before.

24 First I want to check, when you said that all the people in your  
25 group got engaged a month or two previously, were you referring

18

1 to the 20 other couples who were part of your marriage ceremony?

2 [09.40.52]

3 A. Among the 20 couples, about one month or two months before the  
4 marriage, they proposed to each other first. But the males and  
5 female did not meet each other personally. It was their  
6 respective chiefs who asked them. And then the chiefs would tell  
7 to the male side that the female side agreed to the marriage, but  
8 they did not inform yet about the exact date of marriage. And  
9 after that, the marriage ceremony was arranged.

10 I did not know about the marriage ceremony for me. I was informed  
11 only in the evening, and then the next day, the marriage ceremony  
12 took place.

13 Q. Okay. So just one follow-up question on that.

14 Not talking about you, but the other 20 women that were involved  
15 in the marriage ceremony, to your understanding, did they express  
16 their agreement through their unit chief to get married about a  
17 month before the marriage ceremony?

18 [09.42.13]

19 A. They told their respective chiefs that they agreed to get  
20 married, and that's why the ceremony was arranged for them.

21 Q. And my last question to you is, do you know about anyone who,  
22 during the DK period, was able to marry someone that they chose?

23 A. At that time, we cannot choose our partner by ourselves. It  
24 happened only when there was a proposal from the man to us. There  
25 was no relationship -- prior relationship before the marriage.

19

1 MS. CHEN:

2 Thank you for your patience, Madam Witness.

3 Mr. President, I have no further questions.

4 MR. PRESIDENT:

5 Thank you, Counsel.

6 And next, the floor is given to Defence Counsel for Khieu

7 Samphan.

8 [09.43.23]

9 QUESTIONING BY MS. GUISSÉ:

10 Thank you, Mr. President. Good morning. Good morning, everyone.

11 Good morning, Madam Witness. I have only a few short questions to  
12 put to you.

13 Q. In regard to a question that was put to you this morning by  
14 Judge Lavergne, you referred to the fact that when you taught  
15 certain children, when you were in charge of teaching them, you  
16 were asked to tell the children to <be careful with> enemies. And  
17 you stated that it was because grenades had been thrown at the  
18 Ministry of Commerce.

19 Can you specify the events you're referring to and what you heard  
20 in that regard?

21 [09.44.19]

22 MS. PHAN HIM:

23 A. It did not happen at the Ministry <of Commerce>. <>It happened  
24 at the cooperative. And at the cooperative where I was based <in  
25 Seh Sar office>, <> it was close to the forest, and there were

1 spies who came in to spy on us. <They disguised themselves as  
2 cows.> And the spy called in airplane to bomb on us. And the  
3 cooperative chief told the children to be vigilant about any spy  
4 that <>they would see. <They were told to report to the Angkar if  
5 they met any strangers. But it did not happen in the Ministry of  
6 Commerce in Phnom Penh.>

7 Q. What cooperative are you talking of in particular, and where  
8 was it located?

9 A. At Seh Sar office. It was located near the national road. And  
10 at that Seh Sar office, it was to the west of a road <to Knaor  
11 Dambang>, and it was close<> to a forest.

12 Q. I understood from your previous answer that you talked of the  
13 presence of a plane.

14 Did you hear the plane and did you see it?

15 [09.45.58]

16 A. The planes came to bomb in the area near our base. At that  
17 time, I was about 200 metres away from where the bomb fell. And  
18 before the plane came to bomb, I saw militiamen came <> to build  
19 a bridge because the bridge had been cut previously. And then  
20 while they were building the bridge, there were two planes came  
21 in circulating the area, and then they dropped bombs. And that's  
22 why the chief of the area told us to be vigilant for enemies or  
23 spies.

24 And he said that, one day, he saw a cow running into the forest  
25 <toward the north>. And then about three days later, a plane came

21

1 to bomb the area. And that was what he told us. <I did not know  
2 the rest.>

3 Q. And do you recall on what date that incident occurred?

4 A. I cannot recall it because it happened in 1974.

5 [09.47.36]

6 Q. So that was prior to the fall of Phnom Penh. Is that correct?

7 A. Yes. It happened before we were sent to the battlefield.

8 MS. GUISSÉ:

9 Thank you. I do not have any further questions, Mr. President.

10 MR. PRESIDENT:

11 Thank you, Counsel.

12 The hearing of testimony of witness Phan Him now is concluded.

13 The Chamber would like to thank you, Madam Phan Him. We thank you  
14 for your time here, for the two-day session here. Your presence  
15 at the courtroom now is not required.

16 Court officer, in collaboration with WESU official, please make  
17 necessary transport arrangement to send Madam Phan Him to her  
18 home.

19 (Witness exits the courtroom)

20 [09.49.10]

21 MR. PRESIDENT:

22 As the Chamber informed the parties already by email of the  
23 senior legal officer of the Trial Chamber on 29 August 2016,  
24 that, after the conclusion of Phan Him, the Chamber will hear  
25 oral submission of parties in relation to the substance of the



1 witness, 2-TCE-93. The Chamber requested parties to provide any  
2 remarks on two issues.

3 Number one, do the Nuon Chea defence and Co-Prosecutor maintain  
4 their request to hear <the> testimony <of the witness, 2-TCE-93>?

5 Number two, if it is so, on which specific facts would you  
6 propose to hear her testimony?

7 Given the apparent uncertainty surrounding the figures in her  
8 report, the Chamber requests party to clarify how her testimony  
9 would be suitable to prove these facts, that is, in accordance  
10 with Internal Rule <> 87.3 (c).

11 First the floor is given to the Co-Prosecutors to make oral  
12 submissions on the two particular questions. You may now proceed.

13 [09.50.48]

14 MR. LYSAK:

15 Thank you, Mr. President. Good morning, Your Honours.

16 The view of the Co-Prosecutors at this time is that we do not  
17 consider it necessary to call 2-TCE-93 any longer as a trial  
18 witness. And this is in view of some of the factors in your memo  
19 and other considerations.

20 First, considering that we are in the last stages of this trial,  
21 the memo discusses that the expert had requested to be able to do  
22 additional analysis that would require months. We obviously do  
23 not favour any delay of this trial to update this previous report  
24 given where we are and that we are close to the completion of  
25 this trial.

1 Second, with respect to the other observation of the Chamber, the  
2 comments about the uncertainty, I would note that any demographic  
3 analysis, by nature, has a range of uncertainty. There is always  
4 a plus and minus range of certainty of any type of statistical  
5 analysis of this nature, of course.

6 What we do observe, though, is that this report was, I guess if  
7 you will, not based on the original statistical work of the  
8 author but, rather, was more a compilation and analysis in which  
9 it took the readers and would provide to Your Honours, of course,  
10 an analysis of all the available demographic analysis that has  
11 been done on the death numbers from the Democratic Kampuchea  
12 regime.

13 I think that is a relevant consideration because the author,  
14 herself, didn't perform the underlying statistical work, is  
15 relying on other sources which are laid out, I think, fairly  
16 clearly and discussed in the report.

17 [09.53.18]

18 I think that consideration as well, is one for us, that hearing  
19 live testimony from this expert may not bring a lot more than  
20 what is already in the report itself.

21 Given that, our current view is that it is not necessary to call  
22 this expert as a witness. Of course, we don't have any objection  
23 should the Chamber view it helpful to call this individual, but  
24 at this time we don't consider it necessary.

25 MR. PRESIDENT:

1 Thank you, Co-Prosecutor.

2 And the floor is now given to the defence team for Mr. Nuon Chea  
3 to have some views on the particular questions.

4 [09.54.32]

5 MR. KOPPE:

6 Yes. My colleague is a bit smaller, so I need to adjust a bit,  
7 Mr. President.

8 Good morning, Your Honours. Yes, we do have, in fact, quite a bit  
9 to say about the question whether this demographics expert should  
10 come to testify, yes or no.

11 As the Chamber is aware, but not necessarily the public, there is  
12 a very long extensive procedural history regarding this expert.

13 It is, I think, good to remind everyone that it was the Nuon Chea  
14 defence team that already, in October 2008, that is, almost eight  
15 years ago, asked for a demographic -- demographics expert to be  
16 appointed. It was, has always been and still is a very important  
17 issue to the Nuon Chea defence team.

18 [09.55.50]

19 Why? Because for many reasons, which I do not have to go into  
20 detail now, we do not accept the parameters that are set by  
21 various demographic experts in the past. We feel that the numbers  
22 of excess deaths, direct deaths, indirect deaths attributed to  
23 the DK regime are way excessive. There are other reports that we  
24 believe are much more reliable.

25 So with that very, very short summary in the background, it was

1 the reason that we asked the Co-Investigating Judges to appoint a  
2 demographic expert, which they did in 2009. That particular  
3 expert that we are now discussing, as the Chamber is aware, came  
4 with a report, which was, not only by us but also by the Ieng  
5 Sary defence team and at a later stage, also by the Khieu Samphan  
6 team, heavily criticized for many reasons, methodological flaws,  
7 but also matters arose in relation to her independence and  
8 impartiality because she was a prosecutor -- prosecutor's office  
9 employee within the ICTY.

10 [09.57.33]

11 That issue has been extensively debated in the pre-trial stage.  
12 What I think is important to bring back into the memory of all  
13 parties and the Chamber, that we filed a 26th request for  
14 investigative action in which we asked to appoint -- we asked the  
15 OCIJ to appoint a second expert. For many reasons, we believe  
16 that was necessary.

17 There is a very interesting decision, and it's also quite  
18 readable and useful from Judge You Bunleng and Marcel Lemonde. It  
19 is document D356/1, in which all our arguments are summarized  
20 and, of course, also subsequently rejected.

21 So with this background and knowledge, we went into the trial  
22 002/01 and we filed a request to have this particular expert  
23 testify as a witness or an expert.

24 As we all know, that didn't happen in 002/01, unfortunately, I  
25 might add. However, what did happen was that the Trial Chamber,

1 in its judgment, came to a factual finding about excess deaths of  
2 between 1.5 and 2 million people during the DK area -- era. I  
3 refer the Chamber to paragraph 174 of the judgment.

4 [09.59.45]

5 We have appealed this factual finding. In document F16, which is  
6 our -- which is our appeal, in paragraphs 222, 223 and 224, we  
7 argue that the Chamber, and I quote:

8 "Flagrantly erred in law, violating our client's right to fair  
9 notice of the crimes charged and to confront the evidence against  
10 him."

11 We believe that the finding of the Chamber in respect of the  
12 amount of people that allegedly died during the DK was improper.  
13 We also argued that there was -- there were additional errors,  
14 and I refer to paragraph 224, and let me quote from that  
15 paragraph of our appeal brief. It says:

16 [10.00.53]

17 "Alternatively, the Trial Chamber erred in fact in making this  
18 finding" -- the finding that there were between 1.5 and 2 million  
19 excess deaths -- "based on the limited record. The Trial Chamber,  
20 we say, itself noted that estimates of deaths in the DK era vary  
21 between 600,000 and 3 million, representing, and I quote again,  
22 "a preposterous difference of approximately 2.4 million deaths  
23 between the lowest and highest intervals."

24 We presume and we hope and we anticipate that the Supreme Court  
25 Chamber will issue a ruling on this error in fact and error in

1 law.

2 So I've briefly discussed the beginning of this factual and legal  
3 debate and the end. What I should, of course, also mention is --  
4 and that is responding to what the Prosecution just said -- that  
5 in 2015, we have asked the Chamber to expedite the appearance of  
6 this expert.

7 While we were at segment -- during the segment of the treatment  
8 of the Cham and the Vietnamese, we thought it would be very  
9 appropriate to have her called as an expert. As the Chamber is  
10 aware, this request was denied, leading now to a situation that  
11 we are, indeed, close to the end of these proceedings and that  
12 now, because of additional publications, it might be difficult to  
13 have her come and testify in time. That is a -- that is quite  
14 tragic in the light of the eight years of procedural history in  
15 terms of the demographics.

16 [10.03.13]

17 So there is -- there is -- there should be no doubt whatsoever,  
18 Mr. President, that the issue of demographics, the issue of how  
19 many people died during the DK regime but also, very important,  
20 how many people died between 1970 and '75 and how many people  
21 died in 1979 and subsequently is a crucial, fundamental issue for  
22 the Defence.

23 Now, having said that, where should we go, practically? Bearing  
24 in mind that we believe that 2-TCE-93 is unqualified as an  
25 expert, we feel it might be interesting to explore an alternative

1 option, and that is to see if the Chamber would be willing to  
2 investigate whether the person that the expert referred to would  
3 be able to testify as an expert. And that is someone, I believe,  
4 of French origin and now teaching at the University of California  
5 and who actually published this article in 2015 about excess  
6 deaths during DK, whether he should be able and willing to come  
7 instead of this expert.

8 I'm referring to, in French, I think, Patrick Heuveline. He is  
9 the person having written that article in 2015, which is  
10 particularly about DK and the periods before and after.

11 [10.05.09]

12 It's this article that the other expert was supposed to take into  
13 consideration in order to update her report. So the question,  
14 considering the importance of this subject to the Nuon Chea  
15 defence team, why not change and not ask for 2-TCE-93 but,  
16 instead, considering his recent involvement in demographic  
17 research in DK, call Mr. or Professor Heuveline, as an expert.

18 I think he is -- he came to certain conclusions, which the  
19 Defence doesn't agree with, but we should at least be able, in  
20 public, to once have this discussion.

21 It's almost nine years since the case against our client has  
22 started. There hasn't been any single debate in public in a  
23 courtroom about how many people died because of DK policies, how  
24 many of those deaths were, in fact, violent deaths, how many  
25 deaths were indirect.

1 Of course, we accept that there will always be a measure of  
2 uncertainty, but at least it is a subject that is very much  
3 worthwhile to having been debated in public. As we all know,  
4 justice must be done, but justice must also be seen to be done.

5 [10.06.54]

6 So realizing this short notice, but considering the procedural  
7 background, considering the importance of this subject to the  
8 Nuon Chea defence team, we would like to give into consideration  
9 to the Trial Chamber to, instead of summoning 2-TCE-93,  
10 summoning Professor Heuveline from the University of California.

11 One last thing that I would like to add which I forgot to say:  
12 the importance of an expert testifying on demographics has been  
13 considerably augmented since another expert recently refused to  
14 testify. Many conclusions of Michael Vickery were conclusions  
15 that the Defence shared, especially conclusions in respect of the  
16 number of casualties of Cham people.

17 [10.08.07]

18 We had prepared for him our questions, which were, if I would  
19 make an estimate, were about 80 percent relating to demographics.  
20 Him not coming to testify is an additional reason that we should  
21 absolutely, before we close the evidence -- evidentiary hearings,  
22 have an expert on demographics come into this courtroom and ask  
23 -- and answer all the questions that are still remaining.

24 Thank you.

25 JUDGE FENZ:



1 Can I just ask a question?

2 First, a remark. Obviously, in the context of this trial, there  
3 are many interesting things that might merit public debate, but I  
4 think by now we should -- we all agree we should concentrate on  
5 those that are legally directly relevant and might very well be  
6 that issues that are historically important or relevant cannot be  
7 debated in this trial. So I want to focus this whole debate from  
8 it's interesting, it should be discussed, the public needs to  
9 know, on the legal issues. This is just as a preliminary remark.

10 Can I just ask, Counsel, have you actually read the Heuveline  
11 article, and which part of it do you think would -- would further  
12 clarify? We have obviously read it. Yes, there is some  
13 fine-tuning. But which part of it would be so interesting that  
14 you think it sheds light on important factors?

15 [10.09.55]

16 MR. KOPPE:

17 Well, one of the factors, which troubles us the most, is the  
18 heavy reliance on exhumation reports from DC-Cam drafted by Craig  
19 Etcheson, reports that, it seems, Heuveline is also relying upon.  
20 If we were able to establish with him fundamental flaws in these  
21 exhumation research, it would be very interesting if he would  
22 then, having accepted these potential new factors, whether he  
23 would agree with us that that number should go down.  
24 What is also very important is that he seems to speak not so much  
25 about deaths that can only be attributed to the period '75 - '79,

31

1 but he seems to be speaking about the period 1970 - 1979, because  
2 that's the only really relevant period that one can even come to  
3 certain conclusions.

4 In this light, it is very important for us to be able to discuss,  
5 in public, the impact of the United States bombing of Cambodia  
6 between '67 and '73, the impact of the civil war. There are many  
7 issues which we believe are important to discuss with him.

8 [10.11.38]

9 Now, of course, I understand that, at the end of the day, for  
10 legal findings, it doesn't make a difference whether there were  
11 800,000 violent deaths or 500,000 or 100,000. But the same  
12 argument, of course, goes to the amount of people that were  
13 detained and executed subsequently in S-21. But then, of course,  
14 the question is, why bother having this trial at all?

15 It is something that always comes up. It's the first thing that  
16 one sees when you Google "Democratic Kampuchea", it's 1.8, 2  
17 million. We believe this is highly exaggerated, and I think the  
18 Cambodian public and the international community deserves to have  
19 a proper debate.

20 Whether that ultimately leads to the legal conclusions that we  
21 seek, I understand why you're saying this. But does that mean  
22 that we then shouldn't be discussing this? No. I think this is a  
23 very important subject. It goes directly to what -- to how the  
24 world views the Democratic Kampuchea regime.

25 [10.13.01]

32

1 If the number is way more down than experts say, then it is very  
2 important to Nuon Chea, and I'm -- certainly also to Khieu  
3 Samphan. But the regime should not necessarily be seen in a  
4 different light than, for instance, the 1965 Indonesia regime in  
5 terms of casualties.

6 So it's -- it's maybe, strictly speaking, legally not of a  
7 consequence, but factually, historically, and certainly for my  
8 client, something very important.

9 JUDGE FENZ:

10 I think that was an important clarification. I think we all  
11 accept that the trial also has a historic dimension, but in the  
12 end, we might have to live with the fact that not all historic  
13 questions that don't have specific legal connotation might be  
14 clarifiable in this trial. There are decades to come for  
15 historians who, I'm sure, will go through the -- through all of  
16 the material.

17 I think one thing, since we are talking in the public, one of the  
18 problems here is that the only hard data we -- or not the only,  
19 but the two major hard data we are having are 36 years apart,  
20 those other two censuses, one from 1962 and I think the other  
21 from 1998. In between, there was a civil war, there was the Khmer  
22 Rouge period, there was the Vietnamese occupation, so lots of  
23 things that were obviously to blame for the, so far, lack of any  
24 really, what do you call it -- I'm not saying reliable, but  
25 clearer picture of this period.

33

1 But I think I've understood your arguments. Thank you.

2 MR. PRESIDENT:

3 Judge Lavergne, you may now proceed.

4 [10.15.24]

5 JUDGE LAVERGNE:

6 Yes. First of all, I have a question to the Nuon Chea Defence.

7 The Defence of Nuon Chea brought up the fact that it had asked

8 the Co-Investigating Judges that another expert be appointed

9 other than the one that was already appointed, and that it was

10 the 26th request, which was then rejected by the Co-Investigating

11 Judges.

12 I would like to know if this order refusing the appointment of a

13 new demographic expert was then appealed.

14 MR. KOPPE:

15 I am not certain, but I do not believe so. I will -- I will have

16 that checked.

17 It might be because there was a similar request, as I said

18 earlier, from the -- from the Ieng Sary defence team to have

19 another expert appointed. They appealed, and the Pre-Trial

20 Chamber did come to a ruling, but only a procedural ruling, not a

21 ruling on the content.

22 Whether we have appealed the 1 April 2010 decision, to be honest,

23 I cannot answer that question right now. But I'm sure we will be

24 able to do so shortly.

25 [10.17.01]

1 JUDGE LAVERGNE:

2 The second thing is more an observation than a question.

3 If I correctly heard the version in French of your proposal, Mr.

4 Koppe, is the Chamber expressed itself in case file 002/01

5 retaining the figures of the number of deaths in Democratic

6 <Kampuchea>, and I <believe, under> paragraph 174 <of the

7 ruling>, which I think is the paragraph that you referred to.

8 <I re-read it and> the Chamber there refers to the numbers that

9 were represented by experts, but the Chamber <did> make any

10 decision in that regard.

11 MR. KOPPE:

12 We do not agree with this, Judge Lavergne, as laid out in our

13 appeal brief.

14 We are saying that paragraph 174 of the judgment amounts to a

15 factual finding that there were excess deaths of between 1.5 and

16 2 million people during the DK era. Because -- and that's the

17 argument that we make -- let me quote ourselves:

18 [10.18.34]

19 "Since the Trial Chamber stated affirmingly that, quote unquote,

20 excerpt -- experts accept the accuracy of this suggested range of

21 excess deaths and then did not refer to it again, much less

22 dispute it, at any other point in the judgment."

23 So, by affirmingly stating that "experts accept this", we have

24 argued in appeal, that this was a factual finding that

25 consequently flagrantly erring in law.

1 Well, whether you agree with this or not, of course, is up to the  
2 -- is, at this stage, maybe not so important any more. We have to  
3 wait for the Supreme Court Chamber whether they agree with us,  
4 yes or no.

5 [10.19.22]

6 JUDGE LAVERGNE:

7 What is important, Mr. Koppe, is that we look at the facts and  
8 the decisions <accurately>. When we say that the experts accept  
9 these figures, this does not mean that the Chamber accepts these  
10 figures.

11 MR. KOPPE:

12 Well, what -- I can read it again, but we do not agree with the  
13 way it was phrased in the judgment, and the fact that there was  
14 no discussion about it, there was no reference made to our  
15 earlier arguments, because of this, we have interpreted the  
16 ruling or the paragraph 174 as a factual finding which flagrantly  
17 erred in law; hence, our appeal.

18 If we see it incorrectly, then I'm sure the Supreme Court Chamber  
19 will reject our appeal on this particular point. But this is how  
20 we interpreted paragraph 174.

21 And while I'm at it, this is something that I haven't mentioned  
22 earlier, but recently, I became aware of an interview that Judge  
23 Fenz gave on the 15th of January 2010. And the way Judge Fenz, I  
24 presume in her personal opinion, viewed the amounts of deaths  
25 within DK as 1.8, it seems to me that that is, indeed, what the

1 view of the Chamber is.

2 I'm happy to read it in German, but Judge Fenz says, "Why did 1.8  
3 million people have to die in Cambodia? Because there were 1.8  
4 million deaths, there were also many perpetrators."

5 [10.21.35]

6 So there's no, really, qualification, according to the Judge on  
7 the Bench in her, what I presume is personal opinion, there were  
8 1.8 violent deaths during DK.

9 So how we should read exactly paragraph 174, of course that's up  
10 to the Supreme Court Chamber, but to us, it is clear.

11 JUDGE LAVERGNE:

12 And Judge Fenz rendered the verdict in Case <002/01>.

13 MR. KOPPE:

14 True. But still.

15 [10.22.33]

16 JUDGE FENZ:

17 I'm usually very careful in interviews, so I don't remember this  
18 particular one because it's, what, six years ago.

19 MR. KOPPE:

20 Shall I read back to you?

21 JUDGE FENZ:

22 So I usually -- no, no. Not necessary. Certainly not parts of it.  
23 But having said that, just to clarify exactly, because we have  
24 talked a lot the answers to our -- to our memorandum, so you do  
25 not uphold the request to hear Ewa Tabeau, but you make a request

1 to appoint Mr. Heuveline as an expert, and the fact you wish to  
2 prove is general excess deaths; general as opposed to minority  
3 excess deaths because he obviously doesn't say anything about  
4 that.

5 Did I understand that correctly?

6 [10.23.24]

7 MR. KOPPE:

8 To be completely accurate and to be precise, what should be  
9 investigated is laid down in our fifth request -- fifth  
10 investigative request, our sixth request for investigative  
11 action, and our appeal against your filing. These three  
12 documents, in combination, that is what should be established by  
13 a demographic expert.

14 So, we are of the view that an expert should not limit her or  
15 himself to the amount of deaths among Cham people or Vietnamese  
16 people, but should make findings or have findings, and those  
17 findings should be discussed in relation to all excess direct or  
18 indirect deaths during DK, before DK and after DK.

19 [10.24.24]

20 JUDGE FENZ:

21 But I don't think he makes findings about Chams and the -- Cham  
22 and Vietnamese, or I've over-read something.

23 MR. KOPPE:

24 No, not in his -- not in his last 2015 publication, but he has  
25 also written quite extensively in 1998, and his article written



1 is extensively used. So it's not only his 2015 publication.  
2 I'm looking for the exact title, but it might be also in one of  
3 your footnotes. Yes, it is indeed. In footnote 523 of the  
4 judgment, reference is made to P. Heuveline, between 1 and 3  
5 million towards the demographic reconstruction of a decade of  
6 Cambodian history.

7 It actually has an E3 number, E3/1799. It is from 1998. So I  
8 believe -- I don't have it now completely by heart -- but he  
9 refers to other studies, including Vickery.

10 So in his 1998 publication, he's quite extensive and incorporates  
11 all previous studies. So it would be the combination of his 1998  
12 publication together with his 2015 publication which should be  
13 the basis, I believe, for the summoning of him as an expert.

14 [10.26.25]

15 Something that I haven't said, we have looked at his CV, of  
16 Professor Heuveline. I'm not sure if I'm correct on this, but it  
17 seems that his expertise in demographics far exceeds the  
18 expertise of 2-TCE-93, not only in general terms, but also in  
19 respect of his knowledge of Cambodia and DK.

20 MR. PRESIDENT:

21 You may now proceed, Mr. Co-Prosecutor.

22 MR. LYSAK:

23 Thank you, Mr. President. Just a couple of observations in  
24 response to this.

25 First, I think it's important, particularly for the public, to

1 understand why the total number of deaths during the democratic  
2 regime, while of immense, obviously, historical significance, is  
3 of limited legal significance to this proceeding.

4 [10.27.34]

5 This is -- this is not a debate here about the legacy of the  
6 regime. I'd be happy to have that with Counsel any time this  
7 trial is over at Meta House. This is a legal proceeding.

8 And the reason the Trial Chamber was discussing this issue in  
9 paragraph 174 of the prior judgment was simply for purposes of  
10 the chapeau element of whether or not there was a widespread and  
11 systematic attack against a civilian population during the  
12 regime. That is the reason this issue is discussed and, really,  
13 the only issue to which the total number of deaths would have any  
14 relevance.

15 I don't wish to engage in an argument here about the appeal. I  
16 think that any reasonable trier of fact here could reach no other  
17 conclusion other than that there was a widespread and systematic  
18 attack against a civilian population, and that depends --  
19 conclusion in no way -- in no way at all is affected by what the  
20 exact number is of deaths during the regime.

21 That's obviously a consideration to have some sense of the scope,  
22 but the precise number doesn't affect the finding.

23 [10.29.03]

24 We've heard -- there's indisputed (sic) evidence that there's  
25 security centres set up in every district, every zone, every

40

1 sector around this country where people were arrested, executed  
2 without any legal process. Findings of map -- DC-Cam going around  
3 this country, mapping all the execution sites and security  
4 centres; the testimony and accounts of victims from across this  
5 country that are essentially similar.

6 There are hundreds of facts that go into why there was a  
7 widespread and systematic attack against the civilian population,  
8 but it's important to understand that that is the only conclusion  
9 or finding that the Trial Chamber had to make here. So I do take  
10 issue with -- obviously with Counsel's characterization of that  
11 finding, the findings in the judgment.

12 [10.30.09]

13 With respect to the other expert, if the Defence wishes to  
14 propose, I would ask that they do a filing. I'm not prepared, as  
15 I sit here, to have gone through all of Patrick Heuveline's prior  
16 work to see if he has done any analysis on the number of Chams  
17 and Vietnamese deaths. I think, Your Honours, are correct that  
18 that is -- if we did have someone who had done work on that, that  
19 would be another issue.

20 Obviously, I think both of us would agree here that if Ben  
21 Kiernan was available, he would be interesting to hear from, so  
22 I'm not prepared as I stand here to know whether Patrick  
23 Heuveline has done any research on that issue. If the Defence  
24 wishes him to be called, we'll look at it and respond to any  
25 formal request on that.

1 MR. PRESIDENT:

2 Thank you, Mr. Co-Prosecutor.

3 And what about Lead Co-Lawyers for Civil Parties? Do you wish to  
4 address the Chamber?

5 [10.31.22]

6 MS. GUIRAUD:

7 Thank you, Mr. President. I would like to make a brief remark.

8 I would like to rely on the discretion of the Chamber regarding  
9 the discussion concerning Ewa Tabeau <but due to> the recent  
10 developments that have <taken place> in <the> public <hearing>, I  
11 would, nevertheless, like to make a brief remark so that the  
12 Chamber may be informed of our position and that the public may  
13 also be apprised of the position of the civil parties.

14 <As> Judge Fenz has said since the very beginning of this  
15 discussion<, we are of the view> that the number of victims,  
16 which is a historical matter of some importance, has no impact on  
17 the criminal responsibility of Nuon Chea and Khieu Samphan. The  
18 number of victims is not pertinent as regards crimes against  
19 humanity, war crimes, and also the charge of genocide against  
20 Nuon Chea and Khieu Samphan before this Chamber.

21 [10.32.29]

22 The number of victims in the genocide against the Vietnamese and  
23 the Cham is not relevant in order that the Court may rule on the  
24 legal characterization of genocide.

25 I understand that the Nuon Chea defence team is telling us that

42

1 the total number of victims is important for its Defence, but it  
2 is worth nothing that, from a legal standpoint, we are talking,  
3 nevertheless, of a trial and we are participating in this trial,  
4 from a legal standpoint, that issue is not pertinent. So, I would  
5 like the Chamber to take that fundamental element into account  
6 and to weigh it against the interests of the civil parties, who  
7 are bent on ensuring that the trial is expeditious.

8 I say so, particularly, in regard to the motion made by the Nuon  
9 Chea defence team today with a view to calling Professor  
10 Heuveline. If I properly understood what they said as regards the  
11 figures, when we are talking of the deaths of ethnic Vietnamese  
12 and Cham during the Democratic Kampuchea regime, insofar as the  
13 number of victims does not have any incidence on the legal  
14 characterization of genocide.

15 I thank you.

16 (Judges deliberate)

17 [10.34.25]

18 MR. PRESIDENT:

19 What about the defence team for Mr. Khieu Samphan, do you have  
20 any comments to make?

21 MS. GUISSÉ:

22 Thank you, Mr. President. Indeed, I have a few.

23 First of all, as regards the crux of the matter which brings us  
24 here today, that is the issue whether we would possibly support a  
25 request for the appearance of TCE-93, let me remind the Chamber

1 that in our submissions in E305/9, we were very clear in this  
2 regard. We are of the view that TCE-93, cannot be considered as  
3 an expert given her methodology and the contents of her work and  
4 lack of partiality. We cannot say the contrary today.

5 [10.35.19]

6 The true issue, which is at the crux of our discussions today, is  
7 not so much to know whether she will appear or not since I  
8 understand -- <that> if I read between the lines of the message  
9 she sent to the Chamber -- given current conditions, she <would  
10 rather not> appear.

11 The real question is what you do with her report that is in  
12 evidence, <E3/2413>. <That is the real question.> If indeed she  
13 cannot appear and we cannot confront her <with> her methodology  
14 and the sources and the manner in which she has worked, it is  
15 obvious that the Chamber can <only> consider her report with the  
16 greatest caution and that the Chamber cannot give it any  
17 probative value. And this is all the more so the case because the  
18 Prosecution has recognized it willingly as well.

19 If I have properly understood the methodology used in drafting  
20 that report, TCE-93 has merely compiled data that existed and  
21 analysed that data. Under those circumstances, it goes without  
22 saying, that we cannot but reiterate our position that her  
23 appearance, if it doesn't take place, in any case -- or rather  
24 the absence of her appearance, can only give a very limited value  
25 to that report.

44

1 One point that I would nevertheless like to raise, is that it is  
2 very complicated to talk about figures when we talk of the number  
3 of deaths because we should be clear on this -- and I believe it  
4 is valid to both the accusation and the defence -- one death is  
5 <always one death too many. Now that we are hearing that the  
6 number of deaths, the> number of violent deaths, the number of  
7 deaths <due to living conditions is not at least criminally  
8 pertinent,> when we are looking at the elements of law that the  
9 Chamber has to take into consideration. I would like us to <give  
10 some nuance to that argument.>

11 [10.37.36]

12 Why? Of course, when we're talking of legal characterization of  
13 crimes, <you> have extremely precise <legal> elements<, what are  
14 the elements as a whole?> In any case, as regards, for instance,  
15 the sentence that will be meted out to the accused if they were  
16 to be convicted, and also the notion of intent, taking into  
17 account the difference that could exist between <a violent death  
18 or a death due to> living conditions, that would have an impact,  
19 obviously, on the discussions that will lead to the legal  
20 characterization. So that it is not something <trivial>. This is  
21 something very important.

22 [10.38.23]

23 So the real issue that arises when we talk about of demography  
24 and figures is what the Chamber will do with those figures. And  
25 as our colleague has pointed out earlier referring to the figures

1 given in the paragraphs dealing with the facts of the case in  
2 Case 002/01, it is obvious that the figures have an impact on the  
3 manner in which the Chamber takes its decision. And it is so  
4 obvious <that> it is not something that we should take lightly<  
5 -- either, when the Prosecution or the Defence carries out its  
6 cross-examination -- for us to ask,> "was it <this many people,  
7 or this many> people", and "who took the decision, as to the  
8 number of persons who are to be arrested"<, etc., etc.>? Of  
9 course, that has an impact. It is obvious that it has an impact.  
10 The real issue in the absence of the appearance of a demographic  
11 expert as regards certain elements is what the Chamber will do or  
12 not do with the figures that are provided <in the various  
13 literature that is> placed at the disposal of the Chamber.

14 MR. PRESIDENT:

15 Please hold on for a few minutes because we need to change the  
16 DVD, Counsel.

17 (Short pause)

18 [10.40.02]

19 MR. PRESIDENT:

20 You may now resume, Counsel for Mr. Khieu Samphan.

21 MS. GUISSÉ:

22 Thank you, Mr. President. So another element that I would like to  
23 raise as regards the issue of demographic elements is that we  
24 have other elements, because , if I understood correctly, <soon  
25 we will welcome an expert on the conditions in which> certain



1 execution sites <were analysed>.

2 All that has an impact because from -- and I mean from a legal  
3 standpoint, because these are evidentiary elements that are  
4 tendered before the Court. When we criticize, for instance, the  
5 methods used shortly after the fall of the DK regime in 1979,  
6 <by> the Vietnamese authorities <who came to power, or by the new  
7 authorities on the ground> as regards the manner in which certain  
8 sites and security centres were used, it is very important when  
9 we are holding a trial so many years after the facts -- <in a  
10 country where - it's not as if everything stopped in 1979> -- we  
11 know <that in 1979, fighting continued, there were other events  
12 that took place>.

13 [10.41.26]

14 <Regarding the way in which we talk about execution sites, or  
15 pits where bodies have been found, all of these elements are part  
16 of the history of Democratic Kampuchea, since 1970 and  
17 beforehand, that has an impact on the factual conclusions you  
18 will reach.>

19 Once more, all I can tell you, on behalf of the Khieu Samphan  
20 defence team, is that what we have read in the report by <Ewa  
21 Tabeau> TCE-93 -- although we have already said the name -- <does  
22 not allow us to give it any> probative value.

23 <But,> to say that those figures <are not of any use regarding>  
24 the legal conclusions <beginning from the moment when they are  
25 useful regarding your factual findings, then they necessarily do

1 have an impact> on <the> legal <conclusions>. That is what I want  
2 to say at this stage. I don't want to <jump the gun with  
3 pleadings, because we have not yet heard all of the evidence in  
4 this trial.>

5 [10.42.38]

6 But <in any case> I would urge the Chamber to be extremely  
7 cautious when we are talking of figures, and if any expert  
8 reports or articles that we'd like to use as part of our  
9 discussions before this Chamber, we should be allowed to have the  
10 possibility of confronting the authors <with> their working  
11 methods and the factual elements they based themselves on.

12 And if that is not the case, the Chamber will have to live with  
13 the consequences of <these> limited discussions, and refrain from  
14 using the figures produced by authors <at random, where we have  
15 not taken the necessary precaution of explaining, in its future  
16 decisions, how these> figures, as explained in its memo, are  
17 disputable.

18 [10.43.31]

19 That is what I would like to say before this Chamber, bearing in  
20 mind the fact that our position regarding TCE-93, same as it was  
21 before and that <the> expert is not of any interest to the Khieu  
22 Samphan defence team.

23 MR. PRESIDENT:

24 You may now proceed, Judge Lavergne.

25 JUDGE LAVERGNE:

48

1 Thank you, Mr. President. We have properly understood that the  
2 Khieu Samphan Defence objects to the appearance of TCE-93, but  
3 does the Khieu Samphan team wish to call another expert? We have  
4 heard the position of the Nuon Chea team, what is the position of  
5 the Khieu Samphan team? <I did not understand this very well.>

6 MS. GUISSÉ:

7 We have not made any requests to that effect, Honourable Judge  
8 Lavergne.

9 JUDGE LAVERGNE:

10 <Very well.> So the only remark you are making is that <the>  
11 reports <that may be included on the case file have very little>  
12 probative value in the absence of the appearance of <their>  
13 author. <Did I understand correctly>?

14 [10.44.31]

15 MS. GUISSÉ:

16 That is correct.

17 MR. PRESIDENT:

18 The floor is given to Defence Counsel for Nuon Chea.

19 MR. KOPPE:

20 Yes, thank you, Mr. President. Two things; it seems that we did,  
21 indeed, appeal the decision from the Investigating Judges. As a  
22 matter of fact, it also seems that we asked the Chamber on 18th  
23 May 2011, in E88, to consider this matter. That is one point.

24 [10.45.10]

25 The second point is, I believe, also an important point but

1 hasn't been mentioned so far, but is related to the discussion of  
2 today I believe, and that is the following.

3 In the OCIJs order rejecting the request for a second expert  
4 opinion -- as I said D356/1 -- the OCIJ argued in paragraphs 7, 8  
5 and 9 and 10 the following.

6 It says -- let me quote. It says:

7 "The Co-Investigating Judge -- in fact, the Co-Investigating  
8 Judges gave due consideration to the possibility of organizing  
9 exhumations before finally deciding against conducting any."

10 Then it says:

11 "It was highly unlikely that forensic exhumations would provide  
12 any additional evidence that will be conducive to ascertaining  
13 the truth, whether exculpatory or inculpatory."

14 And then it talks more about exhumation operations.

15 Now, what is new, of course, is that since a few months we aware  
16 of exhumation operations or similar forensic research or whatever  
17 you would like to call it that has taken place in relation to  
18 both Choeung Ek and also to Krang Ta Chan.

19 [10.47.03]

20 So we are now in the process of filing submissions in respect of  
21 the appointment of an expert or whether this particular person  
22 who's in charge of Choeung Ek should be appointed as an expert,  
23 yes or no, but there is, of course, a very substantial new  
24 development since the decision of the OCIJ and that is that  
25 forensic examinations have taken place; exhumation of two

1 important sites has taken place.

2 So that is something I think should be a matter of consideration  
3 as well and this matter of fact, I believe, is a substantial new  
4 element that would have potentially influenced the decision of  
5 the OCIJ.

6 So that is something that I would like to mention and draw your  
7 attention to, Mr. President.

8 [10.48.09]

9 JUDGE FENZ:

10 Sorry. Might be a language issue but I'm not sure if the two  
11 reports you refer to were actually due to exhumation. My  
12 understanding was that these were already existing skulls.

13 MR. KOPPE:

14 True, but--

15 JUDGE FENZ:

16 Collected skulls.

17 MR. KOPPE:

18 Yes, that's my understanding as well, but they were counted, and  
19 one of the elements that is of great interest to Defence is  
20 whether the amount of skull and skeleton remains that were found  
21 matches the exhumation reports that have been also made by  
22 DC-Cam.

23 So we would have two very interesting examples of potential  
24 discrepancies between what is researched and found in the reports  
25 by DC-Cam under the supervision of Etcheson and what has, in

51

1 fact, been found by the people who have done this recent  
2 research.

3 So that would be a very interesting new element, I believe,  
4 because that is something that directly affects the number of  
5 violent deaths that has been established in all these reports.

6 [10.49.32]

7 JUDGE FENZ:

8 But, again, back to the difference between it's interesting and  
9 what is interesting, what is legally relevant. This would, at  
10 best, allow to assess the number of deaths at a certain crime  
11 sites or two certain crime sites.

12 But how does this relate to the issue of overall excess deaths?

13 MR. KOPPE:

14 Well, in respect of S-21, I understand your question and probably  
15 it doesn't really have any legal effects, but when it comes to  
16 Krang Ta Chan would it matter? It would, certainly, I believe  
17 matter to the way certain policies were implemented, if there's a  
18 very high discrepancy between the amount of deaths that is  
19 calculated and the amount of skulls that we actually find. That  
20 might say something about the policies that we are investigating  
21 and--

22 [10.50.42]

23 JUDGE FENZ:

24 No, that's a misunderstanding. I thought you made a case, among  
25 others, for the new expert by saying, "And he should also look

1 into the findings of these bone -- things. And the expert is  
2 supposed to talk about overall possible excess deaths. So how  
3 does -- would that help -- how would that work as a  
4 justification?

5 MR. KOPPE:

6 Well, all experts, they're all -- they're all demographic experts  
7 and they all rely on this exhumation project by DC-Cam.  
8 They haven't actually gone to any of those mass grave sites and  
9 actually checked whether the findings in these reports were  
10 accurate.

11 Now, we might have two potential real exhumation results done  
12 recently. That would be, I believe, potentially a very  
13 interesting question for the expert to testify on.

14 If there's a substantial discrepancy between the findings of the  
15 report that we -- that they all seem to be relying on and the  
16 actual findings, then that might be -- that might have an effect  
17 that would amount to a substantial reduction of the number of  
18 violent deaths in total.

19 [10.52.15]

20 MR. PRESIDENT:

21 Co-Prosecutor, the floor is yours.

22 MR. LYSAK:

23 Thank you. Just three more quick points.

24 Obviously, the analyses of experts remain admissible before this  
25 Court, whether they appear here or not. There is a wealth of

1 people who've analysed these issues. The value of the report that  
2 was done by 2-TCE-93, was that it put this all together for the  
3 Chamber and explained it.

4 [10.52.58]

5 It cannot be said that this Court cannot rely on the work of all  
6 these individuals that have been done on this issue of the number  
7 of deaths.

8 And let me reiterate. Whether you take the highest number or  
9 whether you take the lowest number of any of these people who've  
10 looked at this issue, it establishes beyond any question that  
11 there was a widespread and systematic attack against a civilian  
12 population.

13 A second point. One of the issues that has brought us here today  
14 is whether 2-TCE-93 should be called and have time to update her  
15 analysis based on the new report done by Patrick Heuveline.

16 Obviously, it would make more sense and be more expeditious for  
17 the Court, if it wants to look at the evidence of Heuveline, to  
18 call him himself rather than to have another expert spend a few  
19 months studying his work.

20 So if we are going to hear -- if we are going -- if we are going  
21 to hear from someone on the issue of the total number of deaths,  
22 this new analysis by Professor Heuveline, obviously the most  
23 expeditious way to consider this new evidence would be to call  
24 him rather than to have the previous expert spend months  
25 reviewing his work.



54

1 [10.54.29]

2 And the last point. I just want to -- I was about to say the same  
3 thing as, Your Honour, Judge Fenz. These were not exhumations  
4 that were done recently. The exhumations occurred a long time  
5 ago, and the reason that there simply is no issue about these  
6 bodies being from post-1979 conflicts is because when the people  
7 returned to Krang Ta Chan, to Choeung Ek, when they were allowed  
8 to return to their homes, they found these graves that hadn't  
9 existed when they were forced away from their homes in 1975.  
10 So there -- there is really no issue on this point of post-'79  
11 killings. But the point Counsel makes is actually an important  
12 one because the contrast between the expert that the Court is  
13 considering, someone who has done a study of the skulls that were  
14 recovered at Choeung Ek, is an issue directly relevant to this  
15 Court, the killings of people from S-21.

16 [10.55.39]

17 And, obviously, this expert was limited by the exhumations that  
18 were done back in the 1980s which I believe were two-thirds --  
19 only two-thirds of the graves at Choeung Ek were exhumed at that  
20 time. And that is -- that were -- that is the remaining evidence  
21 that he had to work with. And apparently the same individual is  
22 doing an analysis with respect to Krang Ta Chan.  
23 That is entirely different and obviously has an importance,  
24 immediate and direct importance, to the issues that we are trying  
25 in this Court. And so I just wanted to emphasize that as well.

1 MR. PRESIDENT:

2 Thank you, Co-Prosecutor.

3 Next, the Chamber will hear the oral submission related to the  
4 motion to admit document pursuant to Internal Rule 87.4 with  
5 regard to the testimony of 2-TCE-82.

6 [10.57.04]

7 MS. GUISSÉ:

8 Mr. President, I understood that the Chamber had requested the  
9 parties to state whether they were ready to respond to <the> Rule  
10 87.4 <motions that were> disclosed last <night, in any case we  
11 received them this morning.>

12 The Khieu Samphan team would like the Chamber to note that we are  
13 not ready to respond to <these motions>. <We were not aware - I  
14 was at the hearing this morning, and I was not aware -- > <and> I  
15 believe that we'll be able to do so on Monday morning. I wanted  
16 the Chamber to take stock of our position. I understand that the  
17 next expert is arriving soon, but I believe that on Monday  
18 morning, we'll be in a position to have taken full cognizance of  
19 the motions and to make any relevant submissions. <I will not be  
20 able to do so in just a few minutes or hours, without having had  
21 the> opportunity to look at all the documents <and make> any  
22 reasonable submissions on them <in the interest of my client>.

23 [10.58.14]

24 MR. PRESIDENT:

25 The floor is given to Defence Counsel for Nuon Chea.

56

1 MS. CHIN:

2 Good morning again, Mr. President. It's just a quick word to say  
3 that we are in the same position as the Khieu Samphan team.  
4 We just received notification of this yesterday. We've been  
5 preparing the witness and we've been in court this morning. We  
6 are not in a position to make submissions at this time, but on  
7 Monday morning we think that would be acceptable.

8 (Judges deliberate)

9 [10.59.08]

10 MR. PRESIDENT:

11 What about the Deputy Co-Prosecutor?

12 MR. SMITH:

13 Good morning, Mr. President. Good morning, Your Honours.  
14 The Prosecution would be able to respond to this today, however,  
15 if the Defence are responding on Monday perhaps it may be better  
16 to do them all together, but we're in, Your Honours', hands.

17 [10.59.41]

18 MR. PRESIDENT:

19 What about the Lead Co-Lawyer for Civil Party?

20 MS. GUIRAUD:

21 Thank you, Mr. President. I would like to inform you that we only  
22 received the documents last <night>, so we should be able to  
23 respond to the arguments <either> now, <this> afternoon or  
24 Monday, as the Defence has requested, as you so wish.

25 [11.00.14]

1 MR. PRESIDENT:

2 It is <> now time for lunch break. The Chamber will adjourn the  
3 hearing now and will resume on Monday, 5 September 2016, at 9  
4 a.m.

5 The Chamber will on Monday hear the motions in relation to  
6 Internal Rule 87.4 and also will hear the <the motions> in  
7 relation to 2-TCE-93.

8 Security personnel are instructed to bring the two accused, Nuon  
9 Chea and Khieu Samphan, back to the ECCC detention facility and  
10 have them returned into the courtroom on the 5th September 2016,  
11 before 9 a.m.

12 The Court is now adjourned.

13 (Court adjourns at 1101H)

14

15

16

17

18

19

20

21

22

23

24

25