



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

9 December 2016
Trial Day 490

ឯកសារដើម
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ថ្ងៃ ខែ ឆ្នាំ (Date): 07-Feb-2017, 13:47
CMS/CFO: Sann Rada

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

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
SON Arun
Anta GUISSSE

Trial Chamber Greffiers/Legal Officers:
CHEA Sivhoang
Maddalena GHEZZI

Lawyers for the Civil Parties:
Marie GUIRAUD
LOR Chunthy
PICH Ang
SIN Soworn
TY Srinna

For the Office of the Co-Prosecutors:
Nicholas KOUMJIAN
SREA Rattanak

For Court Management Section:
UCH Arun

I N D E X

2-TCW-971

Questioning by The President (NIL Nonn) page 23

Questioning by Mr. KOPPE page 26

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
2-TCW-971	Khmer
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0903H)

3 MR. PRESIDENT:

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

5 Today, the Chamber hears testimony of a witness, 2-TCW-971, via
6 video link from Ourdor Meanchey province in relation to security
7 centres and internal purges.

8 And before we proceed, the Chamber wishes to inform parties to
9 the case that, for today's proceedings, Judge You Ottara, who is
10 a National Judge, is absent for some urgent matters so that he
11 cannot attend the proceedings today. And after the Judges of the
12 Bench deliberated the matter, Judge Thou Mony<, a reserve
13 National Judge,> is appointed to replace the Judge You Ottara.
14 And that decision is based on Rule 79.4 of the ECCC Internal
15 Rules.

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

18 [09.04.39]

19 THE GREFFIER:

20 Mr. President, for today's proceedings, all parties to this case
21 are present except Kong Sam Onn, National Counsel for Khieu
22 Samphan, who informs the Chamber that he is absent today for
23 personal reasons.

24 Mr. Nuon Chea is present in the holding cell downstairs. He has
25 waived his rights to be present in the courtroom. The waiver has

2

1 been delivered to the greffier.

2 The witness who is testify today, namely, 2-TCW-971, confirms
3 that, to his best knowledge, he has no relationship, by blood or
4 by law, to any of the two accused, that is, Nuon Chea and Khieu
5 Samphan, or to any of the civil parties admitted in this case.

6 The witness took an oath this morning, and the witness will
7 testify via a video link from Ourdor Meanchey province. And he
8 has Mr. Moeurn Sovann as his duty counsel, and he is ready to
9 testify.

10 The AV Unit also informs that the video link has been
11 established.

12 MR. PRESIDENT:

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

15 The Chamber has received a waiver from Nuon Chea, dated 9
16 December 2016, which states that, due to his health, that is,
17 headache, back pain, he cannot sit or concentrate for long. And
18 in order to effectively participate in future hearings, he
19 requests to waive his right to be present at the 9 December 2016
20 hearing.

21 [09.06.24]

22 Having seen the medical report of Nuon Chea by the duty doctor
23 for the accused at the ECCC, dated 9 December 2016, which notes
24 that, today, Nuon Chea has a lower back pain when he sits for
25 long and recommends that the Chamber shall grant him his request

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

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

9 [09.07.30]

10 And today, before we proceed to hear testimony of 2-TCW-971, the
11 Chamber wishes to hear oral submissions from parties in relation
12 to two issues. First, the request by Khieu Samphan's Defence,
13 pursuant to Rule 87.4, to admit into evidence document
14 E319/43.3.7, which is a WRI of an individual in relation to
15 witness 2-TCW-823.

16 And the second issue is the Rule 87.4 request in relation to
17 documents obtained from Professor Heynowski.

18 And before we begin to hear oral submissions from these two, we
19 first hear it on the first issue.

20 The Chamber was notified by Defence Counsel for Khieu Samphan, by
21 email on 7 December 2016, that they wish to request for the
22 admission of document E319/43.3.7, which is a WRI of an
23 individual as evidence. And the Chamber wishes to hear opinions
24 from other parties regarding this request.

25 First, the floor is given to the defence team for Khieu Samphan

4

1 to make their oral request. You have the floor.

2 [09.09.16]

3 MS. GUISSÉ:

4 Thank you, Mr. President. Good morning. Good morning to everyone.

5 This is a very brief request that I am submitting today. In fact,

6 the Chamber very recently decided to summon Witness 2-TCW-823,

7 who was a member of Division 164. And in the context of our

8 initial preparation for this witness, our attention was drawn to

9 a WRI, E319/43.3.7, which came from either Case 003 or 004. I am

10 not sure which one. He was the head of a company within Division

11 164.

12 And during the testimony, <it was clear> he had very close ties

13 with 2-TCW-823, and there were very close links also with <the

14 testimony of> 2-TCW-1000, who has already appeared before this

15 Chamber. And they were <such> close ties, and so we're asking for

16 the <admission of the> WRI of this witness, who was in the same

17 regiment as 2-TCW-1000.

18 [09.10.49]

19 The WRI that we are asking <to admit into evidence> today was

20 transmitted to us <by the OCP> after the appearance of

21 2-TCW-1000, and that is why -- <our attention was not drawn to it

22 until we were preparing for the next witness. But in any case,

23 insofar as we want to confront this statement with the future

24 witnesses,> we are now making a Rule 87.4 request. And we believe

25 that this is, therefore, timely and in proper form.

5

1 We would just like to have the document relating to someone who
2 had a position of authority in Division 164 so <we can confront
3 the witness with different statements that were made, regarding>
4 the treatment of the Vietnamese <at sea>.

5 That's very briefly my request, Mr. President.

6 MR. PRESIDENT:

7 Thank you.

8 The Chamber now hands the floor to the Co-Counsel for Nuon Chea
9 to respond or to observe the request made by the defence team for
10 Khieu Samphan.

11 MR. KOPPE:

12 We have no observations, Mr. President.

13 MR. PRESIDENT:

14 Thank you.

15 I now hand the floor to the Co-Prosecutors to respond or to make
16 a remark to this request.

17 [09.12.16]

18 MR. KOUMJIAN:

19 Mr. President, we have no objection to admission of that
20 document.

21 MR. PRESIDENT:

22 And the Lead Co-Lawyers for civil parties?

23 MR. PICH ANG:

24 Mr. President, we rely on the wisdom and the discretion of the
25 Bench. Thank you.

6

1 MS. GUISSÉ:

2 Mr. President, since the floor has been given to me and since we
3 are raising the issue of 2-TCW-823, I would like to raise a
4 technical question. I don't think it's a Rule 87.4 request in and
5 of itself. I'll explain.

6 [09.13.07]

7 In the case file, we have two WRIs of 2-TCW-823, who will be
8 coming on Tuesday, so we have one statement, E3/9817 to the OCIJ,
9 and there is also a DC-Cam <statement from this witness>,
10 document E3/9069.

11 In preparing for this witness, we realized that, in the context
12 of his WRI from the OCIJ interview, the witness made a certain
13 number of comments <on> his DC-Cam <statement>. And as an annex
14 to this document, there were annotations and notes made by the
15 investigator to the DC-Cam document.

16 And so when we look at the annex <to that statement before the
17 OCIJ>, E3/9817, we don't have the reference as usual, E3/9817.1,
18 that we would normally have. We simply have the former number
19 that came from the other investigation. And I would, therefore,
20 like to be sure that in the context of the discussion with this
21 witness, we will be able to clearly raise issues in this annex.

22 And the most simple way that the Chamber could handle this would
23 be by giving it a reference number, E3/9817.1, because it's an
24 annex to this WRI <in> which <he himself> made comments on the
25 DC-Cam document. So it's just a technical issue, but I just want

1 to be certain that when we're raising questions, we will be able
2 to know that both documents are connected since it's an annex to
3 the OCIJ document.

4 [09.15.11]

5 So it's just a technical issue that I wanted to raise. And I
6 would also like to inform the Chamber and the parties that we
7 noted that there were several translation problems, and so there
8 is a request under way for correction of the translation of this
9 DC-Cam document. I think it will be done by Monday, but I will
10 keep the Chamber and the parties informed.

11 MR. PRESIDENT:

12 Judge Lavergne, you have the floor.

13 JUDGE LAVERGNE:

14 Yes. Thank you, Counsel Guisse.

15 Just for this information, the Chamber is aware of this
16 challenge, and I think that there will be a solution very quickly
17 to solve this issue.

18 [09.15.57]

19 MR. PRESIDENT:

20 Thank you.

21 Let me now move to the second item. It is related to a Rule 87.4
22 request concerning documents obtained from Professor Heynowski.
23 The Chamber recalls its decision issued on the 21st of September
24 2016, in which the Chamber notes that the Chamber obtained
25 information from Professor Heynowski concerning his knowledge on

1 the relevant documents in lieu of his testimony. Please refer to
2 document E446.

3 After the Chamber contacted Professor Heynowski from 13 September
4 2016, requesting information as to a log book and any other
5 documents that were depicted in the film "Die Angkar", which was
6 produced by Professor Heynowski, document E443/2, paragraph 2.

7 Then on 7 November 2016, Professor Heynowski informed the Chamber
8 that he had found some documents, namely:

9 One, an <S-21> essay log book concerning a time period in 1977,
10 which weighs two kilograms and is well preserved;

11 two, photos of detainees; and three, translations of confessions
12 made by a Cambodian living in Germany who had accompanied his
13 filming crew.

14 [09.17.56]

15 He also reiterated his request that the documents be provided to
16 the Tuol Sleng Museum after the trial. The Chamber replied to the
17 professor that only items 1 and 2 would be requested. Please
18 refer to E443/2, paragraph 5.

19 On 2nd December 2016, the Chamber received documents from
20 Professor Heynowski, including: One, an orange log book with
21 about <446> pages containing entries; and
22 two, several loose pages in German and Khmer which are badly
23 deteriorated.

24 No photos were received. Document E443/2, paragraph 6.

25 [09.18.50]

1 In a cover letter, Professor Heynowski describes five categories
2 of documents that he included in the package of loose pages and
3 sets forth the contact details of the interpreter involved in
4 producing the German translations of the Khmer documents,
5 reiterating his wish that the documents should be donated to the
6 Tuol Sleng Museum. The letter and its translation into English
7 will be placed on the shared materials drive. E443/2, paragraph
8 7.

9 And at present, the Records and Archives Unit is scanning the
10 orange log book and will place it on the shared material drive.
11 The loose pages are of such poor quality that they cannot be
12 scanned by RAU without risking further damage. Therefore, the
13 Chamber has asked the Director of the Tuol Sleng Museum to
14 determine whether the documents can be preserved and scanned and,
15 if so, how much time will be necessary to achieve this task.

16 Document E443/2, paragraph 8.

17 And due to the importance and relevant natures of these documents
18 in Case 002/02, the Chamber wishes to hear oral submissions from
19 parties whether they wish to request for these documents pursuant
20 to Rule 87.4.

21 First, the Chamber hands the floor to the Co-Prosecutors to make
22 their submission on their request or to make observations in
23 relation to these documents. You have the floor.

24 [09.20.52]

25 MR. KOUMJIAN:

10

1 Thank you, Mr. President.

2 In regards to the log book that has been put on the drive, we
3 believe it's very relevant. It appears to indicate the numbers of
4 individuals arriving and going out of Tuol Sleng each day, and I
5 think it covers, in a period of about eight months, over 4,000
6 individuals.

7 We don't have a lot of those -- I think we have very few of those
8 daily recordings of numbers of those in and out, so we think it
9 does have probative value and it would be important to add that
10 to the case file, as it shows the vast numbers of individuals
11 being sent to Tuol Sleng in 1977, those eight months.

12 [09.21.46]

13 As for the loose pages, it's very difficult to take a position on
14 whether they should be admitted without seeing them. Clearly,
15 issues such as confessions or reports based on confessions, the
16 -- Your Honours, have ruled, correctly, I believe, that they
17 would not be considered for the truth of their contents. However,
18 there still could be matters of interest in those such as the
19 names of those who confessed who may not otherwise be recorded in
20 the paperwork that does survive from Tuol Sleng.

21 So I think on -- our position on those is that we agree with,
22 Your Honours', position to try to get those scanned, and we would
23 ask to submit on whether they should be admitted once we have
24 access to them.

25 MR. PRESIDENT:

11

1 Thank you.

2 The Chamber hands the floor now to the Lead Co-Lawyers for civil
3 parties.

4 MR. PICH ANG:

5 The Lead Co-Lawyers do not have any further observation to make,
6 Mr. President.

7 [09.23.01]

8 MR. PRESIDENT:

9 The floor is now given to the Defence Counsel for Nuon Chea.

10 MR. KOPPE:

11 Yes. Thank you, Mr. President. Good morning, Your Honours.

12 I think it would be beneficial to the discussion if we briefly
13 indicate the broader context of Walter Heynowski. I think it --
14 parties and the Chamber should be reminded of the fact that
15 already in 2011, we asked for Walter Heynowski, together with his
16 co-filmmaker, to be called as witnesses.

17 Heynowski is the maker of, we believe, at least two, maybe three,
18 very interesting and relevant documentaries shortly after the
19 Vietnamese invaded Democratic Kampuchea. He made -- he was an
20 East German filmmaker. He was one of East Germany's most
21 important Marxist-Leninist filmmakers. He has produced many other
22 films about Vietnam, East Germany, etc.

23 [09.24.35]

24 He is the producer of a film called not "Die Angkar" as in "die",
25 but "Die Angkar", which is the German word for "The". And he's

1 also the maker of a film called, in German, "Sterben und
2 Auferstehen", in English, "Birth and Rebirth", two propaganda
3 documentaries made at the request of Vietnam to, we believe,
4 depict DK in a black light as much as possible.

5 We requested Heynowski, and I would like to refer to our witness
6 request because we said at the time that he could describe his
7 experience filming these documentaries, describe his contacts
8 with Vietnamese authorities at the time and, of course, also we
9 said he could assist in authenticating and ascertaining chain of
10 custody of documents pertaining to S-21.

11 The Chamber might recall that on a few occasions in this trial,
12 the second trial, we have confronted witnesses, more
13 particularly, I believe, Suos Thy, with this orange -- with
14 stills from the documentary having -- where you can see this
15 orange log book.

16 I believe Suos Thy responded to the questions that he hasn't seen
17 this or it doesn't look familiar, but I'm not sure about that.

18 [09.26.28

19 We -- but let me finish painting the broader context first. We
20 again asked for the filmmaker, Heynowski, to appear, again not
21 only about S-21 documents that one can see in his film, but also
22 about the chain of custody. More particularly, certain other
23 things that can be seen on the film.

24 The Chamber might recall that, I believe it was, Judge Lavergne
25 who showed at least one or maybe more witnesses that sign that

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1 one could see at the entrance of S-21. Duch said of that, that it
2 was a fake, that it was presumably planted there by the
3 Vietnamese.

4 So our prime interest in Heynowski was not only, of course,
5 ascertaining whether these documents were somehow still
6 available, but also to ask him how he has made these
7 documentaries, how the input from the Vietnamese authorities was
8 effectuated, etc.

9 [09.27.53]

10 Instead, maybe also because of his old age, the Chamber decided
11 not to call Walter Heynowski as a witness and, instead,
12 contacting him directly. And this has led to the result that we
13 now have, in fact, the original orange log book, two kilos, I
14 believe, and 200 and something pages, which we believe, is,
15 indeed, unique material because I don't think even Tuol Sleng
16 Museum has such log books in its possession.

17 So if the Director of the Tuol Sleng Museum is listening, I'm
18 sure he's quite excited about the prospect of having this orange
19 log book added to his collection.

20 However, the question subsequently now raised in -- in relation a
21 to Rule 87 issue, should that log book be admitted into evidence.

22 At this point in time because it was such a recent request, I
23 don't think we are ready to respond in either way to this
24 request.

25 Team members of me have had a look yesterday at this log book. I

14

1 will have my own appointment today at 11.45 in the lunch break.

2 [09.29.33]

3 So my request would be, Mr. President, to defer the discussion to
4 either Monday or Tuesday to -- to give the request some more
5 consideration because we -- we're not able to make up our mind
6 yet.

7 I would also like to discuss the issue with Nuon Chea, so I think
8 that is our preliminary view at this moment.

9 I don't think I've forgotten anything.

10 One thing I -- there's one other thing that I would like to ask
11 the Chamber. I believe, if I understood the memo correctly, Judge
12 Fenz, it was you who telephoned with Professor Heynowski. And my
13 question is whether he, at any point in time during the
14 conversation, had indicated a willingness to testify in this
15 courtroom, either by coming here or presumably, more practical,
16 by video link.

17 That is a question that, of course, we still have, and that
18 brings us -- brings me back to why we originally requested Walter
19 Heynowski to come and testify.

20 So these are our preliminary -- preliminary views so far, Mr.
21 President.

22 [09.31.04]

23 JUDGE FENZ:

24 I can clarify the last question immediately. I didn't raise the
25 subject with him. I tried to keep my role down to interpreter.

15

1 The reason I got involved was because we didn't get an answer
2 from him at first, and it would have been very difficult to find
3 a German interpreter who does retractions, etc., so really
4 tried to confine my role to interpreting the original memorandum
5 which -- or request which he had misplaced to him and keep all
6 the questions within the limits of that.

7 So to answer your question, no, I didn't ask him if he would be
8 willing to do that, so I can't tell you if there was any
9 indication. What he did -- and you saw that he mentioned another
10 person as a potential witness.

11 MR. PRESIDENT:

12 Please hold on.

13 The floor is given to the Lead Co-Lawyer for civil party.

14 [09.32.24]

15 MS. GUIRAUD:

16 Thank you, Mr. President, for giving me the floor again.

17 I also had a question for Judge Fenz and the Chamber because in
18 reading your decision, E443/2 at paragraph 5, we understand that
19 during the conversations, photographs of prisoners were referred
20 to and that Professor Heynowski had indicated that he had
21 photographs in his home. The Chamber indicated that it would wish
22 that those photographs be sent to the Tribunal. And if I
23 understand correctly, the photographs were never received.
24 What is important for us, since the photographs are <sometimes> a
25 means for civil parties to identify some of their close relatives

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1 who disappeared at S-21, I would like to know whether the Chamber
2 did follow up the matter and understand why Professor Heynowski
3 had not sent the photographs.

4 I thank you.

5 [09.33.26]

6 MR. PRESIDENT:

7 The floor is given to the Defence Counsel for Khieu Samphan.

8 MS. GUISSÉ:

9 Thank you, Mr. President.

10 In concrete terms, as regards the submissions we want to make
11 today, we doubt, nevertheless, that if the Chamber would expect
12 us to make submissions because it's already inclined to have
13 these documents tendered into evidence.

14 Now, the remarks I would like to make today will necessarily be
15 limited because we are talking of a 250-page document. As we were
16 able to <briefly consult it> yesterday very briefly, we were not
17 able to cross-check them against other elements on record. We
18 looked at one particular page and we realized that the document
19 that we already have on record which contains some information
20 which is different, and this immediately raises the essential
21 question, if we admit this document, how would we assess its
22 probative value.

23 [09.34.45]

24 I say so because, as a matter of fact, we can make all sorts of
25 comments on that document, on all those documents, but there are

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1 only two persons who can possibly authenticate them and verify
2 them, and it's Suos Thy, who testified before this Chamber, and
3 Duch.

4 Obviously, as regards the issue of chain of custody, we also have
5 Professor Heynowski. At this stage, my application is that
6 Professor Heynowski be summoned to appear to explain how he went
7 about obtaining those documents and keeping them in his custody
8 since the date of his documentary in 1980 up to 2016, without
9 anyone being aware of the existence of these documents in his
10 possession.

11 [09.35.40]

12 We've had two investigations, that of the Duch case and the case
13 of 002/02, and <while> these documents existed, no one deemed it
14 necessary to go and seek them in advance. So he should be called
15 to explain how he was able to keep them in his custody since
16 these documents should be in the archives of the country <at the
17 time he made his documentary>.

18 Who were the persons who were in possession of that document in
19 the intervening period? Were any annotations made by those
20 persons after 1980, that is, annotations on those documents?

21 So in brief, we are talking of legitimate questions regarding
22 <the sequence of possession for a document that had disappeared
23 from Cambodia, at least,> since 1980. That is the first point.

24 The second point, obviously, is that we confronted Suos Thy and
25 Duch with a number of documents relating to S-21 as part of our

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1 examination of those persons. We have a new document that no one
2 had seen before, at least not by those witnesses, and I deem it,
3 therefore, necessary <and useful> to do a real assessment of the
4 evidence in order that those two witnesses should come to this
5 Chamber, consult the <original> documents and have the parties
6 question them on different passages in those documents. That
7 could be useful for the manifestation of the truth.

8 [09.37.10]

9 That is my application at this stage. And it appears that, of
10 course, given the age of Professor Heynowski, we could have him
11 testify via video link. Given his age, that would be the best
12 approach.

13 As for Suos Thy and Duch, who testified not too long ago, their
14 testimonies don't have to be long, but at least we'll be able to
15 confront them with the originals of those documents so that they
16 can take questions from the parties.

17 JUDGE FENZ:

18 Can I just ask for a clarification? So you ask for Heynowksi and
19 somebody else as a witness, or just -- because you just said "two
20 people", or did I misunderstand?

21 [09.37.57]

22 MS. GUISSSE:

23 It may well be that there was something that was lost in the
24 interpretation.

25 I'm talking of two persons, Suos Thy and Duch, who worked at

1 S-21, in addition to Professor Heynowski.

2 MR. KOPPE:

3 And if I may add one point, Mr. President, of course, it might
4 also potentially affect the testimony of the upcoming OCIJ
5 witness, who is the author of the OCIJ list who is going to
6 testify next Thursday. I'm sure she hasn't seen such a document
7 before. Maybe individual similar pages.

8 But we need to also think about the effects of admittance of that
9 log book on the testimony of the OCIJ employee who's coming to
10 testify next week in Court.

11 MR. KOUMJIAN:

12 If I could just -- my understanding is that the log book does not
13 contain names, but simply numbers. I don't think it will have any
14 significant effect upon the list of names collected by OCIJ but,
15 of course, it's better we have this book in case anyone wants to
16 use it during their testimony. But clearly, it was not used by
17 OCIJ in compiling the list, and it does not, as I understand it,
18 contain names.

19 [09.39.52]

20 MS. GUIRAUD:

21 One last remark, Mr. President. I thank you for giving me the
22 floor again.

23 It is up to the Chamber to apply Rule 93, because that will
24 enable you to issue a rogatory commission and you'll be able to
25 <ensure verification of the> documents as well, which will meet

20

1 the concerns of our colleague. But you are free to use that rule
2 to specify a number of points as regards those documents.

3 JUDGE FENZ:

4 Okay. As far as I see, we have now a new request to hear
5 Heynowski and a request to recall Suos Thy and Duch. Can we have
6 comments from the other parties on that?

7 [09.40.44]

8 MR. KOPPE:

9 The Heynowski request is not new. That -- that--

10 MR. KOUMJIAN:

11 Your Honour, in my -- my preliminary view is these witnesses,
12 it's not necessary. I think it would add -- it would have been
13 good to have the book during their examination, but I don't
14 believe the value of bringing the witnesses back would be worth
15 the time and the delay. This is simply one of a great many pieces
16 of evidence that we had from S-21, and as I indicated, it doesn't
17 include names. It includes numbers of individuals going in and
18 out each day.

19 So my preliminary remark on that is, in my view, well, it's not
20 necessary to bring back witnesses, and to call the new witnesses.
21 We submitted -- obviously, we have an indication through the
22 Court's investigation of where the document comes from, from
23 Heynowski. I don't know that much would be added by his
24 testimony, but I won't object to it. My only concern is
25 completing the trial.

21

1 [09.42.09]

2 MS. GUISSÉ:

3 Mr. President, let me make one remark, perhaps, to have you
4 understand why it is important --

5 MS. GUIRAUD:

6 <If I may -->

7 MR. PRESIDENT:

8 Now please stop discussing. Please sit down.

9 You're not allowed to speak. You are not allowed to speak.

10 And the floor is given to Anta Guisse.

11 [09.42.42]

12 MS. GUISSÉ:

13 As I was saying, perhaps to explain why I believe Duch and Suos

14 Thy would be useful to make comments on the document, let me give

15 you an example because it is between <yesterday> and today that

16 we've been able to look at the document.

17 We have one <interesting> example. We have an entry on the 25th

18 of October 1977, that is, document E3/8763, ERN in Khmer

19 00008083, and we have a similar table on the document in

20 question. The ERN is 01356100. On the document E3/8763 with a

21 similar table, we have a signature by Hor (phonetic) <and some

22 comments on> some documents on the list. <On the document on the

23 registry,> we don't have <Hor's> (<phonetic>) signature, and

24 apparently there's an additional <sentence> in Khmer.

25 So on documents that appear to be similar with the same entries,

1 the same day, we have differences. This is a typical issue, the
2 kind of issue that we would like either Duch or Suos Thy to
3 clarify, to enable us to know whether there were two types of
4 documents, documents that have different entries and different
5 elements.

6 <In brief,> these are issues regarding things that may <appear
7 to> be similar <but from which> differences <emerge>. <Why are
8 there differences? Are these things that were referred to <later>
9 or not?

10 So these are <legitimate questions>. This is just one example to
11 show why we believe even a brief summoning of these witnesses
12 would be useful.

13 [09.44.58]

14 MR. PRESIDENT:

15 Thank you. Thank you for parties' submissions and observation.

16 The Chamber will take them into consideration, and the request by
17 Counsel Victor Koppe will also be taken into consideration
18 regarding his request for time to review the document.

19 The Chamber now does not have a clear position on this issue yet,
20 and we will notify parties of its decision in the near future.

21 Now we hear testimony of 2-TCW-971. And before we hear the
22 testimony of the witness, the Chamber notes that the witness is
23 part of an ongoing investigation <of another separate case>, and
24 the International Investigating Judge categorized the witness in
25 Category A <of the three categories in its memorandum E319/35>.

1 And the Investigating Judge requested <that> a pseudonym <should
2 be used for this witness> in order to protect <the
3 confidentiality of the investigation>.

4 [09.46.43]

5 The Chamber concurs with this request, <> the Chamber needs to <>
6 balance between the public discussions <in this trial> and the
7 integrity of the ongoing investigation.

8 Therefore, the Chamber instructs parties to stick strictly to
9 this principle in <document E319/7 in using documents from other
10 cases>.

11 The witness has a duty counsel that stay with him throughout the
12 whole testimony. It's Mr. Moeurn Sovann.

13 QUESTIONING BY THE PRESIDENT:

14 Good morning, Mr. Witness. Are you ready?

15 2-TCW-971:

16 A. Yes, I am.

17 [09.47.37]

18 Q. In this proceeding in the courtroom and based on the
19 International Co-Investigating Judge, we will use only pseudonym
20 to address you and your pseudonym is 2-TCW-971.

21 Generally, parties will address you as only witness; therefore,
22 the Chamber would like to inform you that parties, including the
23 Chamber itself, will not be allowed to address you by your name.

24 Mr. Witness, can you read the statements on the document in front
25 of you?

1 <A. Yes, I can.>

2 Q. Mr. Moeurn Sovann, could you please assist with providing
3 document E3/9593; in Khmer, ERN 00968029, <to the witness for his
4 review>?

5 [09.48.52]

6 Mr. Witness, the Chamber would like you to have a look at your
7 identity in document E3/9593; with Khmer ERN, 00968029; and ERN
8 in English, 00978765 to 66; and French, <00979910>. And please
9 have a look at the orange highlighted parts; whether your names,
10 your surname, your national identity,<your date of birth,> your
11 place of birth, your occupation, your parents' names, your
12 current address, your wife's name, and the number of children;
13 <is> this information correct? Please have a look at them and
14 tell us whether the information <is> correct or not.

15 And have you already have a looked at them and whether the
16 information highlighted are correct or not?

17 A. Yes, they are all correct.

18 Q. Thank you. Based on the report by the greffier that to your
19 best of knowledge, you are not related to the two accused, that
20 is, Nuon Chea or Khieu Samphan, or to other parties accepted in
21 this case; is this report correct?

22 A. Yes, it is correct.

23 Q. Have you already taken an oath based on your religious belief
24 before you come to testify?

25 A. Yes, I took an oath already.

1 [09.50.48]

2 Q. Thank you. Now, we would like to inform you of your rights and
3 obligation as a witness. Your rights. As a witness in the
4 proceedings before the Chamber, you may refuse to respond to any
5 question or to make any comments, which may incriminate you, that
6 is your right against self-incrimination.

7 Your obligations. As a witness in the proceeding before the
8 Chamber, you must respond to any questions by the Bench or
9 relevant parties except where your response or comment to those
10 questions may incriminate you, as the Chamber has just informed
11 you of your rights as a witness. You must tell the truth that you
12 have known, heard, seen, remembered, experience, or observed
13 directly about an event or occurrence relevant to the questions
14 that the Bench or parties pose to you.

15 Mr. Witness, have you ever provided interviews to the
16 investigators from the Office of the Co-Investigating Judges and
17 if so, how many times and where they happened?

18 [09.51.58]

19 A. It happened one time at my home.

20 Q. Thank you. And before you come to testify here, have you
21 already reviewed those statements that you provided with the
22 interviewers at your home?

23 A. Yes, I have reviewed it already.

24 Q. And can you tell us whether the statements of your interviews
25 that you have reviewed, in order to recall your memory, is

26

1 consistent with what you have provided to the interviewers during
2 the interview at your home?

3 A. Yes, it is consistent.

4 MR. PRESIDENT:

5 Thank you.

6 And in putting question to this witness pursuant to Rule 91bis,
7 the Chamber provides the floor to the Nuon Chea Defence Counsel
8 to put question to this witness first and the two defence counsel
9 teams have two sessions to put questions.

10 [09.53.20]

11 QUESTIONING BY MR. KOPPE:

12 Thank you, Mr. President.

13 Good morning, Mr. Witness. I'm the International Co-Lawyer for
14 Nuon Chea and I would like to ask you some questions this
15 morning.

16 My questions will be mostly about the period after you went to
17 Battambang on the 1st of January 1978. Let me ask you a few
18 questions about that -- the period before.

19 Q. One specific question: In your WRI, E3/9593, in -- in the
20 first question and answer, you said that before 1975, you were,
21 "Coerced to become a soldier of Lon Nol." End of quote.

22 Can you explain to me what you mean with that; who wanted to
23 coerce you for instance?

24 [09.54.30]

25 2-TCW-971:

1 A. Thank you. At that time, after the coup toppling Samdech
2 Sihanouk, there was no coercion. There was simply a propaganda
3 encouraging people to join the movement, but there was no
4 coercion.

5 Q. So no -- no coercion from the side of Lon Nol to -- to join
6 their army, correct?

7 A. No.

8 Q. Is it correct that, at one point in time, you were assigned to
9 be a teacher and that in the beginning of 1977, you were the
10 deputy chairman of the commerce office at Angk Ta Saom, which is
11 in Tram Kak district in the Southwest Zone, correct?

12 A. The commerce office was not at Angk Ta Saom; it was, in fact,
13 at Angk Roka. In fact, it was briefly located at Angk Ta Saom,
14 but later it was relocated to Angk Roka.

15 Q. And -- and did you become a deputy chairman at one point in
16 time?

17 A. I could not recall the timeframe.

18 [09.56.37]

19 Q. Can you describe your activities as a deputy chairman of the
20 commerce office in the Tram Kak district?

21 A. My work at the office -- in fact, it was not called an office
22 because it was small. It was simply part of the district. It was
23 called the district commerce.

24 My work included the recording down of the numbers of materials
25 brought in and taken out, <those materials included salt and

1 black> clothes, so that was my main task. There was nothing
2 important.

3 Q. Were -- were you also in charge, for instance, of -- of
4 keeping records of stock or rice, that kind of thing; is -- is
5 that what your work at the commerce office entailed as well?

6 [09.58.01]

7 A. No, there was no rice. The time when I was there, there were
8 only salt and clothes <to distribute to cooperatives>.

9 Q. Just a -- a few questions about other members in Tram Kak
10 district and that you worked with. Can you tell us who was Ta Ti
11 Chay?

12 A. At that time, he was the deputy of the district committee.

13 Q. And is it correct that you were appointed as deputy chairman
14 of the commerce office by Ta Khit?

15 A. Yes, he was the one who called me to come and help supervise
16 things there.

17 Q. One -- one last question or rather, two: I think you also
18 mentioned, in your WRI, Ta Pech Chim; who was he?

19 A. When I was there, Ta Pech Chim had already left; there was
20 only Ta Khit. For the other person, he's already had left; only
21 Ta Khit remained there.

22 Q. And my final question about the Southwest Zone before we move
23 to Battambang, Mr. Witness, is Ta Mok. Did you know him
24 personally; Ta Mok, the Southwest Zone leader?

25 A. Yes, I knew Ta Mok. Ta Mok had worked there for a long time.

1 He had worked there since <after> the coup and I saw his face
2 there. I saw his face there since after the coup.

3 [10.00.45]

4 Q. Thank you for that clarification, Mr. Witness. Now, let me
5 move to the 1st of January 1978.

6 In your WRI, you said you left for Battambang by train. My first
7 question is: How do you know so certain that it was, in fact, on
8 the 1st of January 1978 that you left for Battambang?

9 A. I remember it by myself.

10 Q. So -- so you have no doubt that it was, in fact, that very
11 particular day, the 1st of January '78, that you and others left
12 for Battambang; correct?

13 A. I left on the last day of the previous month and I arrived in
14 Battambang on the first of the new month.

15 Q. Thank you. Mr. Witness, do you recall that before you left to
16 Battambang, there was a meeting presided over by Ta Mok and Ta
17 Chay at the district office of Phsar Angk Roka where Ta Mok and
18 Ta Chay explained to you and others the reasons why you and
19 others had to go to the Northwest Zone?

20 [10.02.37]

21 A. It was not a major meeting; they only called us to tell us
22 about the information and to prepare ourselves for the trip. It
23 was not a major meeting at all. And it was his habit that he
24 would call us and inform us of what happened.

25 Q. And although it was a short meeting, do you recall what it was

1 that either Ta Mok or Ta Chay told you -- told you about the
2 reasons why you would be going to Battambang?

3 A. Ta Chay was not aware of the reasons, as well, and it was not
4 Ta Chay who informed us, but it was Ta Mok.

5 Q. Thank you for that clarification. And -- and what was it that
6 Ta Mok told you, Ta Chay, and others?

7 A. He told us to prepare ourselves to go to Battambang because
8 the situation in Battambang was not good, so that we should
9 prepare ourselves to go there, quickly, in order to resolve those
10 issues.

11 Q. And what did he mean when he said the situation in the
12 Northwest Zone was not good?

13 [10.04.17]

14 A. I did not understand it, as well, but only upon my arrival
15 that I realized what happened. <I just went there as he told me
16 to.> But before I left, I did not understand it.

17 Q. And -- and what was it that you realized upon your arrival;
18 can you explain what it was that you saw or experienced once you
19 had arrived in the Northwest Zone?

20 A. When I arrived, he organized us to go to see what happened at
21 the various cooperatives; first, to go to Doun Teav for a few
22 days. And I asked what the purpose was; he said that people there
23 did not have enough rice to eat and that some people were
24 detained there and that we had to go and see it ourselves.

25 Q. And what was it that you saw; how did you -- how were you able

1 to observe that people had not enough to eat or that there was
2 not enough rice; what exactly did you do to observe that?

3 [10.05.33]

4 MR. KOUMJIAN:

5 Actually, the witness hasn't testified to that yet; counsel said
6 it. He only said that's what Ta Mok told him.

7 BY MR. KOPPE:

8 No, I think the witness said that it wasn't clear what Ta Mok had
9 meant and that it only became clear upon his arrival; that's what
10 he just testified to. So I think the question is appropriate, Mr.
11 President, so I will repeat it.

12 Q. Mr. Witness, what did you observe, for instance, in Doun Teav
13 that made you understand that people did not have enough food?

14 2-TCW-971:

15 A. When I arrived, there was no detention of anyone. I saw people
16 working in groups.

17 As for food, the food supply was normal; however, in some areas
18 where we went, we were asked about our purpose <of the visit> and
19 I said that I came because I heard that you did not have enough
20 rice to eat and that their freedom was deprived since they were
21 detained. But in fact, no one was detained and I did not see any
22 detention place.

23 [10.07.10]

24 Q. Well, let's -- let's talk about food -- the food issue first.

25 In various places in your WRI, you talk about the food situation.

1 In question and answer 4, you said, "They had me resolve the
2 problem of foodstuffs."

3 In question 23, you answered, "The people did not have food to
4 eat." And in question and answer 63, you said the following, and
5 let me quote you again.

6 "When we arrived in the Northwest Zone, we saw rice and sugar
7 abandoned in storage and clothes left tattered and mouldy." End
8 of quote.

9 Is that something that you recall saying, Mr. Witness?

10 [10.08.20]

11 MR. KOUMJIAN:

12 Your Honour, it's just the practice has been that with witnesses,
13 they're first asked what they recall before their answers are
14 read back -- read back to them, so I'd ask Counsel -- from this
15 point on; I don't care at this point, to -- to adopt that
16 practice.

17 BY MR. KOPPE:

18 I started with an open question first, Mr. President, so I think
19 I should be allowed to -- to read back to what he said.

20 Q. Mr. Witness, is that what you -- what you told the
21 investigators that you saw rice and sugar abandoned in storage
22 and -- and clothes left tattered and mouldy and that you had to
23 resolve the problem of food?

24 2-TCW-971:

25 A. Yes, that's what I saw.

1 [10.09.20]

2 Q. Let -- let's start with those storage that you -- those
3 storage facilities that you spoke about. What exactly did you
4 see? You said, "We saw rice and sugar abandoned in storage"; for
5 instance, how did you observe that this rice and sugar was
6 abandoned in storage?

7 A. We saw rice was being stored in a rice warehouse.

8 Q. But storage of rice in itself is, I imagine, not atypical or
9 unusual; why did you connect food shortage to rice storage? What
10 -- what's the relation between the two, at the time, in your
11 observation?

12 A. It was -- my understanding was that if rice was stored for a
13 long time, the quality would be bad and in some areas, the
14 workers in various groups did not have sufficient food to eat.
15 As for the rice in storage, some of them had been stored for a
16 long time, so the quality became bad. As for sugars, sugar was
17 stored in in big jars and the quality remained good.

18 [10.11.26]

19 Q. But did you, when you observed that, have reason to -- to
20 conclude that the storage of rice was done on purpose and that
21 people were not fed on purpose?

22 A. I did not understand why they left it there or why it was not
23 given to the people, but from what I saw I thought that the rice
24 had been stored there for a long time, so the quality became bad.
25 And as I said, in some areas, the people did not have sufficient

1 food to eat or it's maybe because the rice was bad, that's why it
2 was not distributed to the people. I did not know <their idea>.

3 Q. Let -- let me read to you something another Southwest Zone
4 cadre told investigators of the International Co-Investigating
5 Judge. I will read it to you and then I will ask your reaction.

6 Mr. President, I'll be referring to E3/10750; it's the testimony
7 of a person, I presume, I -- I can't mention either, so I won't
8 mention his name. What I can say is that he, in question and
9 answer 7, told the investigators that he had been working as a
10 sector messenger in Takeo province.

11 And Mr. Witness, this is what he said to investigators, question
12 and answer 67. He's talking about Northwest Zone cadres.

13 [10.13.30]

14 "When they" -- and people in the Northwest Zone, quote: "When
15 they received supplies such as clothes and rice from the
16 warehouse, they did not distribute them to the people. They kept
17 them until they were old and perished. The former cadres hide the
18 rice and gave the people gruel to eat instead. The Northwest Zone
19 was full of rice. There was no reason why the people had to eat
20 gruel." End of quote.

21 Mr. Witness, is this something that you and others came to
22 conclude as well?

23 A. When I saw those rice which was bad -- and, of course, we all
24 knew that in Battambang, there should be abundant of rice and why
25 in some areas, workers did not have sufficient food to eat -- I

1 did not understand of their <way> of thinking and why they did
2 not distribute the rice to the people.

3 [10.14.52]

4 Q. What was it that you and others subsequently had to do to fix
5 the situation to solve the problem of food?

6 A. As for the food in storage, I called the people nearby or
7 people in the <mobile units> to come to take those rice to eat.
8 Although some of the rice was bad, but I had to allow them to use
9 all the rice in the storage so that <there was no left over.> We
10 had to distribute all the rice in the storage, although some rice
11 was bad.

12 Q. Where exactly did you do that, Mr. Witness; where was it that
13 you took out that rice and gave it to the starving people?

14 A. It was at Thma Kuol, because I saw the rice in storage in Thma
15 Kuol and I called the neighbouring people, as well as those from
16 the mobile units to come and get the rice. So I distributed all
17 the rice in the storage.

18 Q. And do you recall the reaction of the people that received
19 this rice?

20 A. When I gave them the rice, they did not have any reaction, but
21 they was happy that I did it. And I did not know how they felt to
22 those people, previously, who didn't give them the rice. <They
23 thanked me and they told me that> they could never go there
24 previously, but when I arrived, I called them to go and get the
25 rice and so they could get as much rice as they could when I

1 arranged that. <And they admired me for that.>

2 [10.17.21]

3 Q. Mr. Witness, in your WRI, question and answer 27, you said,
4 and I quote you:

5 "When we arrived there in Doun Teav district, we had to rearrange
6 to help the starving people and help the detainees."

7 Then the question is asked, "You said there were detainees. Where
8 were they detained?"

9 And then you answer:

10 "There was no detention site but people were placed in each
11 commune."

12 The re-arranging of the rice --

13 2-TCW-971:

14 (No interpretation)

15 [10.18.02]

16 MR. KOPPE:

17 Excuse me, the re-arranging for the rice, was it also meant for
18 the people who were being re-educated or were being placed in the
19 communes?

20 A. I do not understand your question.

21 Q. It's just a follow-up question of -- in respect of what you
22 said. You said in your WRI, "We had to re-arrange to help the
23 starving people and to help the detainees."

24 You said, "There was no detention site, but people were placed in
25 each commune. Those people were already tempered and made to do

1 hard work without adequate food."

2 And then you say they were not shackled.

3 My question is, did you also give food to people who apparently
4 had been tempered or re-educated?

5 [10.19.14]

6 A. When I arrived, I observed that people ate communally and that
7 the food was cooked in big pot and they did not really have much
8 <dishes> to eat <with rice>. Or I could say that the food ration
9 was limited, so for that I made a new arrangement to ensures that
10 people had enough food and rice to eat and I did not allow rice
11 to be storage there; <that is,> to store at the commune. <I did
12 not allow that anymore> so that they could have enough rice to
13 eat. <That was one issue. Another issue was that> people were not
14 detained anywhere, but people were put into units, that is
15 working groups or working units, <it was called> mobile units.
16 And <those in mobile units,> after we gave rice to the chiefs so
17 that people could have enough food to eat, I then allowed them to
18 return to their respective villages.

19 [10.20.29]

20 MR. KOPPE:

21 Mr. President, I'm going to the next subject, working conditions.

22 Is this a time to break or do you want me to continue?

23 MR. PRESIDENT:

24 It is now appropriate time for a short break. The Chamber will
25 take a break now and resume at half-past ten. And, Witness, we'll

1 meet at 10.30.

2 The Court is now in recess.

3 (Court recesses from 1020H to 1057H)

4 MR. PRESIDENT:

5 Please be seated.

6 The Chamber would like to notify parties that the proceeding to
7 hear testimony of 2-TCW-971, we cannot continue it because there
8 is problem with internet system. Because in that area there has
9 been a replacement of electricity poles, they have affected the
10 internet connection.

11 And the Chamber has not yet coordinated or contacted with WESU or
12 the expert units <or the witness>, therefore the Chamber cannot
13 <set the date for the next hearing> of this witness.

14 The Chamber will notify parties via email from our legal officers
15 about what to do next with this witness.

16 [10.59.35]

17 Since we cannot continue hearing the testimony of this witness
18 now, because of the problem of internet connection, the hearing
19 is now adjourned.

20 And the Chamber will resume its hearing on Monday 12 December
21 2016, and we will hear testimony of 2-TCW-1070, related to the
22 facts of armed conflict and we will hear the testimony via
23 video-link.

24 And the Court is now adjourned.

25 Security personnel are instructed to bring Khieu Samphan and Nuon

1 Chea back to the detention facility <of ECCC> and have them
2 returned to the courtroom on Monday, 12 December 2016 before 9
3 a.m.

4 The Court is now adjourned.

5 (Court adjourns at 1100H)

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