



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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Before the Judges: NIL Nonn, Presiding
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
MS. CHET VANLY	Khmer
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MR. KUNG KIM (TCW-362)	Khmer
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PAUW	English
MS. YE	English

1

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

2 (Court opens at 0901H)

3 MR. PRESIDENT:

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

5 Today we will continue to hear the testimony of the witness Kung
6 Kim, and the floor will be given to the Lead Co-Lawyers for civil
7 parties. You have one hour time allocation.

8 QUESTIONING BY MS. CHET VANLY:

9 Mr. President, good morning, Your Honours. Good morning, everyone
10 in and around the courtroom. Good morning, Mr. Kung Kim. My name
11 is Chet Vanly, the civil party lawyer for--

12 Yesterday you made some statements before this Chamber, and today
13 I'd like you to clarify some matters through my questions. And we
14 thank you for your cooperation. And we will ask you questions
15 regarding your written record of interview, D166/74, as well as
16 document IS 19/96 (sic).

17 Q. Let me go back a little bit. And the question is: In what year
18 did you start working as a messenger?

19 MR. KUNG KIM:

20 A. Since I joined in 1974. And while I was in the battlefield, I
21 was assigned as a messenger.

22 Q. Where was the location of that battlefield?

23 A. I worked as a messenger at Preaek Kdam location.

24 [09.04.34]

25 Q. Were you appointed as a messenger or did you volunteer?

2

1 A. At that time, I was appointed by the group chief.

2 Q. In the performance of your job as a messenger, from whom to
3 whom did you convey the messages and what uniform were you
4 wearing back then?

5 A. I wore black uniform with car tire thongs.

6 Messages were conveyed from the rear to the front of battlefield,
7 and also to carry the wounded from the battlefield to the offices
8 and then to the rear.

9 Q. As a messenger, did you carry a gun?

10 A. While I was working as a messenger, I was not alone. There
11 were other messengers and I was quite young; I did not carry a
12 gun. But other people carried guns while we were working together
13 as a team.

14 Q. How old were you back then?

15 [09.06.38]

16 A. I cannot recall clearly, but I was around 15 years old.

17 Q. As a messenger, did you work as a group and how many members
18 in that group?

19 A. There were messengers for various companies, battalions or
20 regiments. And then those messengers form as a squad between
21 three to five messengers per squad.

22 Q. Regarding the letters that you convey, where were you mostly
23 sent and did you have to wait to receive the letters and convey
24 back to its original places?

25 A. At that time, there were no letters. The instruction was to

3

1 relay between the front and the back and the rear.

2 Q. You stated that you work as a messenger in that division. My
3 question is: Did you convey the messages or letters to various
4 destinations, if you can recall?

5 A. I was a messenger for the front battlefield, so the messages
6 were to convey between the front battlefields to the rear. The
7 front battlefields were at Anlong Kra Ngan, Trapeang Prey, for
8 example, and at the Thum village. So we were within the barracks
9 -- the military barracks -- within those locations.

10 [09.09.05]

11 Q. When you reached your destination with the letter that you
12 conveyed, was there a signature to acknowledge the receipt of the
13 document or the letter? And did they give any letter for you to
14 return?

15 A. At that time, there was no acknowledgement signature of the
16 letters. But the orders were to convey from the rear to the front
17 battlefield, and then I conveyed the message back from the front
18 battlefield to the rear.

19 Q. Were the orders in the form of a written letter or was it in a
20 verbal form?

21 A. The orders were verbal; there was no written instruction or
22 letter. It was conveyed verbally.

23 [09.10.15]

24 MR. PRESIDENT:

25 Counsel for civil party, you're reminded of the facts to be

4

1 questioned before this Chamber. What your question was the facts
2 before 17 April 1975, and here we are questioning the witness
3 regarding the evacuation facts.

4 And you have already lost 10 minutes, so you have only 50 minutes
5 remaining for your team.

6 Please try to frame your questions accordingly based on the facts
7 before this Chamber at this stage of the proceeding.

8 BY MS. CHET VANLY:

9 Thank you, Mr. President.

10 Q. Mr. Witness, besides the duty as a messenger, did you perform
11 any other duties during the regime of Democratic Kampuchea?

12 MR. KUNG KIM:

13 A. Initially, when I joined, I was appointed as a messenger so I
14 could get used to the conditions. And later on I, myself, engaged
15 in the fight in the front battlefield.

16 Q. Thank you.

17 [09.11.45]

18 Yesterday you responded to various questions through the
19 Prosecution regarding the military structure and the evacuation
20 of people. My question is: Who actually inducted you to join the
21 army?

22 A. At that time, at the rear base, people were recruited to join
23 the military, both the young teenagers and the young men.

24 Q. Were you provided with any military training?

25 A. When I became a sector soldier and -- I stationed at the

1 Cheung Prey district for one month and I received military
2 training there.

3 Q. Thank you. In what year were you promoted to become the unit
4 chief?

5 A. I became the unit chief after the fall of Phnom Penh. So,
6 while I was in Phnom Penh after the fall, I was promoted.

7 [09.13.31]

8 Q. Thank you.

9 Can you describe a little bit further regarding the military
10 structure in the old -- in that regime? So it started from the
11 unit - or from squad, and it goes up. And as you was part of the
12 military structure, you should be very familiar with such
13 structure.

14 A. I was a unit chief -- or squad chief under the command of the
15 platoon chief by the name of Pon. And the platoon was under the
16 control of the company, and the company was headed by Yim. As for
17 the regiment or the division, I only knew the designated number,
18 but I was not familiar with the command structure.

19 Q. Did you know the names of the commanders of the battalion or
20 the regiment or the brigade? And who actually led those military
21 divisions or structure?

22 A. In the division from the sector controlling the three
23 provinces, Oeun was the division commander and Song was the
24 Regiment Commander 53, and then there was Battalion Number 32.

25 [09.15.25]

6

1 Q. Who was the commander of the special battalion?

2 A. (Microphone not activated)

3 MR. PRESIDENT:

4 Please, Witness, you need to wait until you see the red light on
5 the microphone on the console.

6 MR. KUNG KIM:

7 A. In one regiment, there was one special battalion, but I did
8 not know who actually was the commander of the battalion. And
9 Chet and Song were the commanders of a regiment.

10 BY MS. CHET VANLY:

11 Q. Thank you.

12 Can you tell us regarding the Centre Division? What was the
13 designated number for that Centre Division?

14 MR. KUNG KIM:

15 A. I did not know about the designated numbers of all centre
16 divisions; I only knew one -- that is Centre Division 310.

17 [09.16.52]

18 Q. Thank you. Division 310, was it under any other divisions?

19 A. I do not have that knowledge whether that Division 310 under
20 any other divisions, as I was myself only familiar with the squad
21 platoon and company levels.

22 Q. Before the attack on Phnom Penh, was there special arrangement
23 for the -- first attack headquarters, second attack headquarters,
24 for example?

25 A. During the fierce attack on Phnom Penh, I was not aware of

7

1 such arrangement. But I knew that the meeting was held in order
2 to inform about the gathering of all forces for the final attack
3 on Phnom Penh.

4 Q. I would like to ask you on another point regarding the
5 disciplinary measures. What were the disciplinary measures within
6 the military?

7 [09.18.40]

8 A. During that time that I worked as a soldier, everything was
9 strict. We would not go anywhere freely. At the front
10 battlefield, we focused on the attack, and at the rear, we stayed
11 at the barrack. So we did not go around freely.

12 Q. What about if there was a violation of a disciplinary measure?
13 What would happen to such a soldier?

14 A. During the fighting in the battlefield at that time, there was
15 no such issue because soldiers attacked in the front battlefield
16 -- and those behind the battlefields were ready themselves to
17 assist or to replace other soldiers at the front battlefield.

18 Q. Thank you. As a soldier and as a squad leader at the time, who
19 would be the highest superior or commander of the military at the
20 time?

21 A. As I said, I did not know much about the senior leadership of
22 the military structure. I only heard of the division and the
23 designated number of the division. As I said, I was only familiar
24 with the company and the platoon level.

25 [09.20.30]

8

1 Q. Now I move on to another point -- that is, the attack on Phnom
2 Penh and the evacuation. Yesterday you testified before this
3 Chamber that prior to attack on Phnom Penh, you joined in the
4 meeting regarding the plan for the attack on Phnom Penh.,

5 And my question is: Who led that meeting?

6 A. The meeting was organized for the commanders from the platoon
7 leaders upward and then those commanders of the companies or
8 platoons would then relay the information to the lower level
9 subordinates.

10 Q. You stated that the plan was given from the upper echelon.

11 And the question is: What was the plan that you received?

12 A. When I received the order from the company and the platoon
13 level, the plan was to gather an overall forces for the final
14 attack on Phnom Penh and to gain victory. And for the final
15 attack, it means all the forces has to be gathered as one,
16 including those reserve forces at the rear except some forces
17 that needs to be ready for the wounded.

18 [09.22.25]

19 Q. Thank you. Immediately prior to the attack on Phnom Penh,
20 which direction was you responsible for and who was your
21 immediate superior?

22 A. I was assigned to be responsible for Anlong Kra Ngan location
23 under the command of Yim who was the chief of the platoon. And
24 then there were -- the platoons were under the command of
25 companies.

9

1 [09.23.14]

2 Q. Regarding the plan to attack Phnom Penh -- and in your units
3 together with the platoon and the company commanders, were you
4 responsible for the shelling into Phnom Penh?

5 A. I was a front battlefield combatant -- that is I engaged in
6 personal attack, one-on-one fighting. I did not know about the
7 shelling by the artillery unit.

8 Q. Regarding the military equipment, logistics and the food
9 supply, who were in charge?

10 A. Regarding food supply and logistics, I did not have that
11 knowledge. I only knew when they were delivered to my group, but
12 I did not know who actually authorized for the delivery from the
13 upper echelon.

14 MR. PRESIDENT:

15 Counsel for civil parties, you have spent 25 minutes already, and
16 your questions are further from the facts before this Chamber
17 today. Please try to redirect your questions so that you can gain
18 the facts and make it more effective.

19 You are reminded that you will not be granted additional time
20 beyond the one hour time allocation.

21 [09.25.15]

22 BY MS. CHET VANLY:

23 Q. During the attack on Phnom Penh, what -- I mean, after you
24 gained the victory on Phnom Penh, which spearhead or direction
25 were you responsible for -- that is after the victory?

1 MR. KUNG KIM:

2 A. After the victory in Phnom Penh, I received my order from the
3 company level to be responsible for a road -- a stretch of road
4 from Wat Phnom to Chrouy Changva Bridge, and there were three
5 platoons in charge of that stretch of road. And we were also
6 responsible for guarding day and night. And we saw nobody else
7 except the company and the platoon commanders and soldiers in
8 those military structures present.

9 Q. When you searched and forced people to leave Phnom Penh, what
10 kinds of event did you observe or witness? Did the former
11 soldiers or the civilians protest against such order?

12 [09.26.45]

13 A. Immediately after the victory, both the civilians in Phnom
14 Penh and the soldiers, they were kind of confused. So, initially,
15 I did not go up into the houses. However, there was announcement
16 by mobile loudspeakers for people to go down from the upper
17 floors and that they had to leave. And later on, after the
18 situation became a bit more calm, there was still remaining
19 soldiers and civilians on the upper floors of some country
20 houses. And some of the soldiers -- or the former soldier threw
21 grenades onto the Khmer Rouge soldiers. So there were sporadic
22 clashes here and there.

23 Q. Thank you.

24 Yesterday you confirmed that you were in charge of the spearhead
25 to make a final cleansing so that all the civilians had to

11

1 completely leave the city. Can you tell us, how long did it take
2 for the city to be completely evacuated?

3 A. During the chaotic situation, it means there were a lot of
4 civilians on the road during the first three days and then it
5 became a little bit less in a week's time. And it became even
6 more less in two weeks' time, and by one month later there were
7 only pockets of remaining soldiers or civilians on the upper
8 floors of various concrete houses.

9 [09.28.55]

10 Q. Thank you.

11 After all the people had evacuated from Phnom Penh, what event
12 did you observe?

13 A. I did not go around in Phnom Penh; I only positioned myself in
14 the location where I was assigned to monitor. So what we did was
15 to clear the roads, to clean up the houses, but we could only do
16 that based on the instructions.

17 Q. During the time when you had to clean the roads, have you
18 noted that the roads were littered with dead bodies in your
19 location?

20 A. During the course of cleaning the roads, sir, in Phnom Penh, I
21 did not see corpses. I only saw dead bodies on the roads leading
22 to Phnom Penh during the fierce fighting. But when I was tasked
23 with cleaning the roads in Phnom Penh, I never saw any dead body
24 again.

25 [09.30.33]

12

1 Q. When you were in Phnom Penh, had you ever seen any senior
2 leaders of the Khmer Rouge coming to the city?

3 A. No. I hadn't known any of the leaders, but there were orders
4 for us to protect the senior leaders and the diplomats. For
5 example, Korean and Cuban diplomats, and we were tasked with
6 giving protection to them. But I did not know at what level or
7 the ranks of those senior leaders.

8 Q. I would like to go back a little bit. You indicated that you
9 were in charge of some spearheads in Tuol Kork, Kilo Number 6 and
10 Preaek Pnov. During the evacuation, did you notice any diplomats
11 being evacuated as well?

12 A. Within my blocks under our control in Kilo Number 6, these
13 blocks were managed by the division from the North. But my small
14 role was only to conquer or to control the very confined block
15 where we had to manage.

16 [09.32.28]

17 Q. Were you aware at that time that the French Embassy was within
18 the vicinity of your controlled block?

19 A. At the Wat Phnom vicinity, it was under the control of a
20 company and a company controlled three platoons, and each platoon
21 had different duties. And I do not know whether -- where the
22 French Embassy could have been, but the Cuban Embassy was to the
23 north of the Wat Phnom location.

24 Q. You talked about Cuban and the embassies of Korea and Cuba.
25 Have you noted any chaotic situations happen at those embassies?

13

1 A. During that period of time, the situation was quiet. Indeed,
2 there were cars on some roads but on some other roads it was
3 quiet. And people had different roles from the upper echelon to
4 control different locations separately.

5 [09.34.29]

6 Q. I may also seek your clarification on the evacuation. With
7 regard to the people -- the civilians who had to be evacuated,
8 can you tell the Court please, to which direction these civilians
9 would be evacuated and who were in charge of each spearheads?

10 A. During the course of the evacuation, I had no idea where
11 people would be sent to because I was a soldier and I was in
12 charge of making sure that the people were wiped out of the city
13 - or were taken out of the city.

14 Q. Did you notice any appeals, for example, that made by the
15 Khmer Rouge to bring back some officials who would be needed to
16 rebuild the country? Have you ever noticed such plan or policy?

17 A. I had not been aware of this, and we never saw them back.

18 Q. Mr. Witness, in your capacity as a soldier, can you tell the
19 Chamber, please, who were your superiors? And, apart from your
20 superiors, were you aware of any other senior leaders?

21 A. I have heard of their names, but I never met them in persons.
22 I heard about -- of their names in the forest. When I came to
23 Phnom Penh, I heard of Mr. Khieu Samphan as a leader.

24 [09.37.14]

25 Q. Thank you.

14

1 The next question. Yesterday you testified that you were a
2 security prison guard near Wat Phnom. Can you please be more
3 precise where the prison could have been located?

4 A. This prison was located to the east of – to the southeast of
5 Wat Phnom.

6 Q. But where is it now, then?

7 A. I don't know, but if I am taken there I am able to locate the
8 location for you. But I don't remember the name of the location.

9 Q. Is it to the east of the current railway station?

10 A. No. It is not near the train station because it is to the
11 southeast of Wat Phnom, so it's not near the railway station.

12 Q. Thank you. When you worked as the guard for the prison, did
13 you observe any senior leaders visiting the prison?

14 [09.39.06]

15 A. I did not see any superiors other than the chief of the
16 company and platoon. Perhaps there could have been other senior
17 leaders or leaders coming to the prison to conduct interrogation,
18 but I don't know.

19 Q. (Microphone not activated)

20 MR. PRESIDENT:

21 Counsel, could you please make sure your mic is activated before
22 you put question?

23 BY MS. CHET VANLY:

24 Q. So, after Oeun, Song, and Pho had been arrested, who were
25 their successors?

15

1 MR. KUNG KIM:

2 A. At the same time when Oeun and my other superiors were
3 removed, I also was removed and transferred to Kampong Chhnang.
4 [09.40.26]

5 Q. Who came to take over from your superiors?

6 A. I was disconnected when I was transferred to Kampong Chhnang
7 and I don't know anything about this.

8 Q. Thank you. Who sent you to Kampong Chhnang?

9 A. I do not know who sent us, but I believe that they must be the
10 chiefs of the company or platoons who would be in charge of
11 sending us to work at the airfield in Kampong Chhnang.

12 Q. As a prison guard, did you observe any prisoner escaping from
13 the prison?

14 A. There was no such incidents. However, as the guards, we were
15 instructed to shoot any prisoner who escaped and if we failed to
16 shoot or arrest the prisoner, who would be escaping, then we,
17 ourselves, had to be jailed instead of the escapees.

18 MS. CHET VANLY:

19 Thank you, Mr. Witness.

20 Due to time constraints, I would like to conclude the questioning
21 now and I would like to cede the floor to my colleague.

22 [09.42.33]

23 MR. PRESIDENT:

24 Counsel for the civil party, you may proceed, but you have 20
25 minutes left.

16

1 QUESTIONING BY MS. YE:

2 Thank you, Mr. President. Good morning, Your Honours. Good
3 morning, everyone in and outside of the courtroom. Good morning,
4 Mr. Kung Kim. My name is Beini Ye. I am one of the international
5 civil party lawyers and I would like to ask you a few questions
6 on the period after the fall of Phnom Penh.

7 Q. You said yesterday that after the fall of Phnom Penh you
8 became a squad leader.

9 And my question is: As a squad leader, did you have to make
10 reports on the activities of your squad?

11 [09.43.28]

12 MR. KUNG KIM:

13 A. After Phnom Penh had been evacuated, I was in charge of the
14 squad of 12 combatants and I had to make a regular report. But
15 the report was not regular anyway because we had little to
16 report, and we only stood guard to protect ourselves from the
17 attack of the enemies, and there was not much work. We only
18 guarded and there was no busy schedule. For example, there was no
19 such visit of leaders to the city to keep us busy with anyway.

20 Q. And when you were searching for remaining people in Phnom
21 Penh, did you have to make reports on this?

22 A. Of course, after checking the remaining people -- and if we
23 noted that people remained and we were at the location, then we
24 had to make a report to the head of the platoon or company, but I
25 rarely met these chiefs of the institutions.

1 [09.45.18]

2 Q. And did you know or do you know what the head of the company
3 or the platoon that you reported to, what did they do with these
4 reports?

5 A. The head of the company is by the person by the name of Ren,
6 and Pon was in charge of the platoon, and Yim as well.

7 Q. And what did these people do when you reported on the people
8 left in Phnom Penh?

9 A. I am afraid I cannot get your question. Please repeat it.

10 Q. When you reported to Ren and Pon about your activities of the
11 squad, how did they react and what did they tell you?

12 A. We received orders to clean the area under our charge. If we
13 noted that people remained, indeed people who are brought down
14 from their apartments had to be sent to the company and they
15 would take them from there, but we don't know what happened next.
16 At that time, again, as I already indicated, for a company there
17 was three platoons, and the platoons also classified into squads,
18 and I was in charge of a squad, and I only was supposed to
19 understand my duties in the squad and I would not be able to
20 understand what happened to the other squads and even the platoon
21 and the company.

22 [09.47.47]

23 Q. Do you know then if other units also reported like you did?

24 A. I don't know. I know what happened to the platoon and there
25 were meetings in the platoon, so I never joined meetings at the

18

1 company level. So I don't know much about what happened in the
2 company because we were tasked with the functions that we
3 received from meetings when the platoon met.

4 Q. And during the meetings with the platoon, all the three squads
5 attended these meetings; is that correct?

6 A. Upon having received instructions from the company, the
7 platoon would convene joint meetings where squad members would be
8 attending, and the items -- or the agenda of the meeting would be
9 about strengthening our force, the group, to guard and clean and
10 evacuate the remaining civilians.

11 [09.49.39]

12 Q. You said yesterday that your platoon leader told you that the
13 orders to clean Phnom Penh came from the division. Did he tell
14 you that during these meetings?

15 A. I heard of this person by the name Oeun from Division 310 who
16 rendered orders all the way from Division and then to the
17 company, and platoon, and to the squad, and I received such order
18 from this level, channel of communication.

19 Q. And do you know where Oeun, the commander of the division,
20 received his orders from?

21 A. I don't know because I was of a very small rank -- low rank,
22 and we did not enjoy freedom of movement. Wherever we located, we
23 would remain there for the entire period.

24 Q. Now, yesterday you said that when -- after the fall of Phnom
25 Penh, your division arrived in the city; you belonged to the

19

1 Centre. Which unit did you belong to before that?

2 A. The military was classified into zone military. For example,
3 the North Zone military would be covering Kampong Cham, and other
4 two provinces, and altogether a soldier belonged to the Centre,
5 what we call the Central Soldier.

6 Q. What was the difference between belonging to the Centre and
7 belonging to one of the zones?

8 [09.52.41]

9 A. At that time, there were soldiers for sectors who attacked the
10 provinces and also the soldiers who had to attack Phnom Penh, but
11 people -- the soldiers who were reintegrated from the zone, then
12 they combined to form the soldiers for the Centre to attack Phnom
13 Penh.

14 Q. And when you became the soldiers for the Centre, did that
15 change your task or the chain of command or the personnel?

16 A. At that time, the soldiers remained in the unit. In
17 particular, those who had to attack Phnom Penh would have to
18 remain in the unit even after Phnom Penh was liberated. There
19 were no new recruitments.

20 Q. Now, my last question is a follow up question on what you have
21 said this morning. You said that you were clearing the houses.
22 What did you exactly do when you were clearing the houses?

23 [09.54.32]

24 A. This morning I said I was tasked with clearing the houses or
25 the roads. It is more about making the roads clean. And we only

20

1 were supposed to work according to the designated block or area
2 to make sure that the roads were clean to receive some visiting
3 guests.

4 Q. Do I understand it correctly that you did not clear the houses
5 inside?

6 A. Well, we were tasked with cleaning the roads only. We were not
7 allowed to go into houses. Indeed, we would be allowed to go into
8 the apartment where we were allowed to stay in, but not to --
9 into other apartments.

10 MS. YE:

11 Thank you, Mr. Kung Kim. I have no further questions.

12 I wish you a safe journey back. Thank you very much.

13 MR. PRESIDENT:

14 Thank you, Counsel.

15 I would like to know if Judges of the Bench wish to put questions
16 to the witness.

17 Judge Lavergne, you may now proceed.

18 [09.56.28]

19 QUESTIONING BY JUDGE LAVERGNE:

20 Yes, thank you, Mr. President. I have a few questions to put to
21 the witness.

22 Good morning, Mr. Kung Kim, I am Judge Lavergne and I would like
23 to put a few follow up questions to you.

24 Q. First of all, you explained to us that before you entered
25 Phnom Penh you had been a messenger and then a soldier, and I'd

21

1 like to know if in the context of these activities -- that is to
2 say, before the capture of Phnom Penh, you participated or you
3 were aware of the capture of other cities? For example, were you
4 aware of the capture of Kratie or Udong or other cities before
5 the fall of Phnom Penh?

6 MR. KUNG KIM:

7 A. I was not able to know what happened at other targets, because
8 we were obliged to concentrate and know only on the target we
9 were attacking; in this case, Phnom Penh.

10 [09.58.06]

11 Q. You explained to us that you were not aware of an evacuation
12 plan of Phnom Penh before the capture of Phnom Penh, but can you
13 tell us that this order came immediately after the capture of
14 Phnom Penh or -- and if this was the case, were you given any
15 kind of explanations of why evacuations were taking place?

16 A. When attacking Phnom Penh, during the fierce fighting, we were
17 not able to receive any further plan or other plans, including
18 the evacuation of the population, and we did not receive such
19 order. The orders we received were mainly to attack Phnom Penh,
20 the target area, and that we would be guided and instructed to go
21 to the confined direction that we supposed to attack. Then, when
22 I approached Phnom Penh, I noted that people were on the move
23 already.

24 [09.59.30]

25 Q. When were you, in particular, aware of an order for the

1 evacuation of Phnom Penh? Did you get to know about it when you
2 saw people leaving or an order was effectively issued to you for
3 the evacuation of Phnom Penh?

4 A. I started to know that people had been evacuated when I was
5 stationed at the target area, and when we were asked to carry out
6 the evacuation plan in our target area.

7 Q. And at that point in time, you, as a soldier, were you told
8 why that an evacuation had to take place?

9 A. Regarding the plan to evacuate the people, I did not know
10 about the plan in advance, and later on, there was evacuation of
11 people from Phnom Penh, but I did not know the intention of the
12 Upper Echelon for such evacuation.

13 Q. You stated earlier that you observed that messages were
14 announced using loudspeakers to members of the population asking
15 them to leave Phnom Penh. Can you tell us what was the nature of
16 the messages, and who were the people in particular who had to
17 leave, and who owned the equipment that had to be used for
18 disseminating the messages? Was the equipment from the division
19 or from another unit?

20 [10.02.09]

21 A. At that time, I did not get the full understanding of the
22 message regarding the evacuation of people. However, there were
23 other mobile units. As for my squad, we stationed in one place
24 and those mobile units they were all mobiles, they made
25 announcements for people in Phnom Penh to prepare themselves for

1 the evacuation.

2 At that time, immediately after the fall of Phnom Penh, the
3 situation was confusing and chaotic. There were remaining former
4 soldiers who clashes -- who clashed with the Khmer Rouge soldiers
5 and there was those civilians living on the upper floors of the
6 apartments.

7 Q. But did you hear the messages that were announced, and what
8 was said specifically?

9 A. I did not get the full message. However, I can recall that the
10 announcement was to invite the Phnom Penh residents to leave the
11 city temporarily so that they can repair the city, and that was
12 what I can recall.

13 [10.03.51]

14 Q. You have stated that there were mobile units scouring the town
15 that were in charge of disseminating the messages. Were those
16 mobile units part of the divisions or they were under other
17 military authorities? What equipment were they using? Were the
18 loudspeakers the property of the division or any other military
19 entities?

20 A. I did not have that knowledge. As I said, I was at the lower
21 level and I did not know about the arrangement at the upper
22 level. My duty was to defend the location where I was assigned to
23 station, and I did not cross into other parameters. And what you
24 said was the decision or the arrangement of the Upper Echelon.

25 Q. Could you please simply tell me whether, in your division, you

24

1 had the kind of equipment used for informing the people? Did you
2 have loudspeakers in your division?

3 [10.05.21]

4 A. In my squad, no, there was no loudspeaker, only the mobile
5 units; they had their vehicle and they had their loudspeakers for
6 that announcement.

7 Q. I would like us to go back to the description of the zone,
8 which was under the control of your division, including Phnom
9 Penh.

10 I have understood that, at a point in time, Phnom Penh Town was
11 divided into different zones, and some divisions were in charge
12 of one zone or the other, and I take it that your division was in
13 charge of the north zone of Phnom Penh; is that correct?

14 A. My division, prior to the fall of Phnom Penh, was responsible
15 for the area between Preaek Kdam to Phnom Penh, and after the
16 fall of Phnom Penh, I was assigned to charge of the section from
17 Wat Phnom to the north. And as for Division 310, they also
18 stationed to the north of Wat Phnom.

19 Q. So, that part of the north of Wat Phnom was -- run along Tonle
20 Sap, and then went to Chrouy Changva, and up to Tuol Kork, and
21 right to the railway station? Did it go as far as the Norodom
22 Boulevard? How far did it go?

23 [10.07.31]

24 A. Regarding the locations under the control of that division, I
25 did not gain that full knowledge, but in the vicinity of Wat

25

1 Phnom, it was within the parameter of my division to the west of
2 the riverbank. As for the areas in Tuol Kork, it was also part of
3 the parameter under the control of my division.

4 Q. Now, I suppose that there were a number of public buildings in
5 that zone, which was under your division's control. Let us take,
6 for instance, the National Bank. Was it part of the zone under
7 your control, and do you know what happened to the National Bank
8 after the capture of Phnom Penh?

9 A. When we entered Phnom Penh, I did not know where the National
10 Bank was located. As I stated earlier, wherever I was assigned to
11 take charge of, I would only walk within that parameter. I did
12 not cross that parameter to other areas under other people's
13 control. So 24 hour, 24 -- on 24, I would only station within my
14 assigned parameter.

15 [10.09.26]

16 Q. Mr. Witness, throughout the time you spent in Phnom Penh, you
17 never passed in front of any premises and were told that the
18 National Bank was located in those premises?

19 A. Although the area was within my division control, I only moved
20 within my assigned parameter. As I was in charge of my squad and
21 it was rather limited, I made movement only within the limited
22 parameter and I did not have the knowledge or the full control of
23 the parameters of that division.

24 Q. Mr. Witness, apart from the National Bank of Cambodia, in
25 principle, there were other public buildings under your division.

26

1 There were, for instance, hospitals. Can you tell us the names of
2 the hospitals that were under your division?

3 A. I did not know which hospital was under my division. However,
4 there was the Preah Ket Melea Hospital, which was within my
5 squad's parameter.

6 [10.11.12]

7 Q. Now, let us talk about that particular hospital. You went to
8 Ket Melea Hospital. Among the general orders issued by superiors
9 for the evacuation of Phnom Penh, did those orders also apply to
10 Ket Melea Hospital?

11 A. During the evacuation, I did not know what happened inside
12 that hospital; only after the conclusion of the evacuation, and
13 the hospital was cleaned out, and my soldiers who had been
14 wounded were transferred to that hospital for further treatment.

15 Q. What do you mean when you say that "the hospital was cleaned"?
16 What do you mean by that?

17 A. After the fall of Phnom Penh and after the chaotic situation
18 as I described earlier, I did not know whether the people inside
19 the hospital had been evacuated or how the arrangement was made.
20 Only later, other people went to clean the hospital and after the
21 hospital was cleaned, then those soldiers who had been wounded
22 were sent for treatment in that hospital, and then there were
23 military medics who also came to that hospital to provide
24 treatment to the wounded soldiers.

25 [10.13.30]

1 Q. Were any civilians treated at that hospital?

2 A. After the liberation, there was no civilian being treated at
3 that hospital. Only the soldiers who participated in the attack
4 on Phnom Penh and who had been wounded were treated in that
5 hospital. There was no civilian.

6 Q. Was Division 310 in charge of ascertaining whether other
7 public buildings had to be cleaned, for instance, buildings that
8 housed ministries previously, or the post office, and the railway
9 station? Were there any operations carried out with a view to
10 ascertaining whether those buildings had been rid of their
11 inhabitants?

12 A. Upon entering into Phnom Penh, I, myself, did not know which
13 building was what. I was quite young and I never entered Phnom
14 Penh before, and when I entered Phnom Penh I was not authorized
15 to walk around and to be familiar with the various iconic
16 locations or buildings. I stationed within my parameter day and
17 night. So, even after the liberation I was not allowed to wander
18 freely inside the city.

19 [10.15.36]

20 Q. Now, we have already talked about it somewhat, but in your
21 zone, in 310, there were also embassies. A while ago you talked
22 about Korean diplomats and Cuban diplomats. It may well be that I
23 did not understand what you stated, but I thought I understood
24 that your division was in charge of protecting Cuban and Korean
25 diplomats. Is that indeed what you stated?

1 A. Within the parameter of the control of my division, regarding
2 the Korean Embassy and the Cuban Embassy, these two embassies
3 were within the parameters of my squad. It means they were under
4 the protection of the guard of my squad. They were to the north
5 of Wat Phnom, but my duty was to protect those embassies at the
6 outside parameter or outside compound of the embassies. I did not
7 enter the Embassy.

8 [10.17.00]

9 Q. Did they remove all those living in those embassies or there
10 were still diplomats in those embassies? Had some people sought
11 refuge in those embassies?

12 A. During the fall of Phnom Penh, I did not know whether there
13 were still people living inside the embassies. What I knew was
14 that after Phnom Penh had been liberated and after the streets
15 had been cleaned up, the diplomatic representatives had set up in
16 Phnom Penh, but they were not the former diplomatic
17 representatives.

18 Q. In the course of carrying out your duties as part of
19 controlling specific sectors, were you in charge of controlling
20 foreigners? Did you receive any particular instructions
21 concerning foreigners? Did you have to direct those people to
22 specific locations or were there any people in the division who
23 were specifically tasked with controlling such persons?

24 A. I, myself, did not know about the foreigners. I was -- I only
25 focussed on my assigned duties within my parameter. I never saw

1 any foreigner.

2 [10.19.10]

3 Q. Did you know someone by the name Nhem who occupied certain
4 positions in Division 310? Nhem was Yim.

5 A. In that division, I did not know many of the senior
6 commanders. I knew Ta Oeun. Ta Oeun was the overall commander and
7 I knew him through the platoon and company commanders, but I was
8 not close to him and I did not know who were his deputy
9 commanders.

10 Q. Mr. Kung Kim, were you able to listen to the radio when you
11 were about to attack Phnom Penh or when you were in Phnom Penh,
12 did you listen to the radio?

13 A. Before we entered Phnom Penh and during the time that we
14 entered Phnom Penh, I did not listen to the radio. I received
15 direct orders from my superiors.

16 Q. Did you, at any point in time, hear of a list of seven super
17 traitors who had to be eliminated?

18 A. No, I did not hear that and I did not know about that.

19 [10.21.16]

20 Q. Do names like Sirik Matak, Long Boret, and Ung Boun Hor mean
21 anything to you?

22 A. I did not hear those names.

23 Q. You stated that you participated in the cleaning up of streets
24 to pave the way for the reception of important delegations that
25 came to visit Phnom Penh. Did you yourself participate in the

1 reception of those delegations? Were you asked to play any role?
2 Were you a member of the public? Were you in the guard core? What
3 was your role vis-à-vis those visitors?

4 A. As for receiving guests, my responsibility was in charge of
5 the security within my assigned parameter for those guests. But I
6 did not accompany guests when those guests went for a meeting or
7 went for a visit somewhere. I would only provide the security to
8 them within my parameter.

9 Q. Did you ever hear anyone talk of the Royal Hotel? Were any
10 delegations received in the Royal Hotel? Was it in your sector?

11 A. I did not know that the hotel -- I didn't know where that
12 hotel was located. However, to the west of Wat Phnom and to the
13 north of the garden, there were big hotels there.

14 [10.23.37]

15 Q. And when those delegations of visitors came to visit Phnom
16 Penh, were some soldiers asked to dress in civilian attire, and
17 if yes, why?

18 A. When delegations or visitors crossing my sector, our soldiers
19 still dressed in our uniform providing the protection. There were
20 other people who were like textile workers. They would dress in
21 civilian clothes to greet those delegations or visitors.

22 Q. Do you recall whether any particular arrangements were made
23 for particularly important events? Do you remember a visit by
24 important delegations, a Chinese delegation, a Korean delegation?

25 A. I was not familiar with such an arrangement. At that time,

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1 soldiers were not allowed to know about all of that. We only
2 implemented the duties assigned to us at the location where we
3 were stationed. If we made a mistake, rather than a soldier we
4 would be considered an enemy. So, as a soldier, we strictly
5 adhered to the disciplines and the orders.

6 [10.25.50]

7 Q. Were you, for instance, informed of the possibility that
8 Prince Norodom Sihanouk would return to Phnom Penh?

9 A. No, I was not aware of that. I did not have the right to know
10 about that major event or arrangement.

11 Q. So, throughout the time you spent in Phnom Penh you never knew
12 whether Prince Norodom Sihanouk was in Phnom Penh or not?

13 A. I stayed in Phnom Penh shortly after the liberation, and
14 during that short stay I did not know about that. Even when I was
15 transferred to work in Kampong Chhang, I did not know about the
16 status of Prince Sihanouk.

17 Q. Mr. Witness, you stated that you participated in keeping watch
18 over prisoners. You made the distinction between the types of
19 prisoners kept in that prison. I am particularly interested in
20 the prisoners you saw at the very beginning. You talked of people
21 who were ordinary; you talked of prisoners who were officials or
22 politicians in Democratic Kampuchea. Regarding the ordinary
23 prisoners, who were they?

24 [10.27.56]

25 A. While I was watching prisoners, I did not know about the

1 classification, whether some prisoners were considered political
2 prisoners. To me, they were all prisoners. So, when prisoners
3 were brought in, the building that housed the prisoners were two
4 story buildings. There were beds inside the cell, and as for the
5 underground housing of prisoners, they were to house those
6 soldiers who violated the disciplines.

7 Q. Do you know whether among the prisoners, at least at the
8 beginning, former officers or former civil servants from the Lon
9 Nol regime?

10 A. While I was guarding the prisoners, what I could -- what I
11 knew was that they were not related to the former regime. They
12 were those who were arrested by the Angkar and they were former
13 workers of the Angkar.

14 [10.29.45]

15 Q. How did you know that? How did you know that no one -- there
16 was no one tied to the former regime, that the prisoners were
17 only prisoners from the Angkar? Was this something that you were
18 told or was this something that you noticed yourself? Were you
19 able to ask questions to the prisoners?

20 A. As a guard, I had the right to guard and look at the
21 prisoners. I did not have a chance or allow -- were not allowed
22 to ask each of the prisoners in person, however, I heard over the
23 interrogation, for example, where they were arrested and sent
24 from -- each zone, for example.

25 Q. And without going into the detail of what you might have

1 heard, can you tell us what these people were accused of?

2 A. I did not understand in detail what could have been the motive
3 behind their arrest. I heard briefly when interrogation took
4 place, but they were tortured and I saw this. But I don't know
5 what kind of wrongdoings or mistakes they committed before they
6 had been arrested.

7 [10.31.52]

8 Q. Now, let's go back a little bit and let's speak about the
9 cleansing of the city. Did you ever hear about or did you receive
10 any directions regarding what is called the war booty -- what we
11 could call the war booty? Did you receive any specific directions
12 regarding war booty?

13 A. I was never aware of this or any instruction concerning this.

14 Q. And the people who were obliged to leave Phnom Penh, were they
15 searched? And if these people were searched, were there certain
16 objects that had to be confiscated?

17 A. What I saw and what I heard from others, when people being
18 evacuated, some items would be seized -- for example, weapons --
19 but their money and other properties would remain with them.

20 Q. And were there certain objects or food in the houses that had
21 to be sent to certain storage houses? Were certain directions
22 given regarding this?

23 [10.34.08]

24 A. The food or the collection of other items was not to my
25 knowledge. I did not know anything about this. The soldiers who

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1 came to Phnom Penh did not come to own anything collected in
2 Phnom Penh. We came with a sack of clothes like military
3 equipment and that's all, and in our group we had very few
4 members and we did not know much about how these things would be
5 managed.

6 Q. I was not speaking about seizing by military personnel. I was
7 speaking about a certain kind of organization, organized to store
8 goods for Angkar. Was this organized in any fashion or not?

9 A. I'm afraid I do not know or I was never instructed to deal
10 with these goods.

11 JUDGE LAVERGNE:

12 Thank you, Mr. Witness. I have no further questions to put to
13 you.

14 MR. PRESIDENT:

15 Thank you, Judge Lavergne, and thank you, Mr. Witness.

16 It is now appropriate moment for the adjournment. The Chamber
17 will adjourn for -- until 11 o'clock. Court officer is now
18 instructed to assist the witness and his duty counsel during the
19 adjournment and have him returned to the courtroom when the next
20 session resumes.

21 The Court is adjourned.

22 THE GREFFIER:

23 (No interpretation)

24 (Court recessed from 1036H to 1100H)

25 MR. PRESIDENT:

35

1 Please be seated. The Court is now back in session.

2 The floor will be given to Nuon Chea's defence to put questions
3 to this witness. You may proceed.

4 QUESTIONING BY MR. PAUW:

5 Thank you, Mr. President. And good morning to everyone in and
6 around the courtroom, and especially good morning to you, Mr.
7 Kung Kim. Thank you for being with us today. My name is Jasper
8 Pauw. I'm the international counsel for Nuon Chea, together with
9 my national colleague, Mr. Son Arun, and I will be asking you
10 questions relating to your earlier statements to the OCIJ and to
11 the DC-Cam representatives. I will try to speak slowly for the
12 benefits of the translators.

13 Q. And my first questions will relate to the period before the
14 fall of Phnom Penh in 1975.

15 [11.02.00]

16 You have stated that before Phnom Penh fell there was heavy
17 fighting and there were heavy casualties on both sides. Can you
18 give us an estimate as to for how long you were actually in
19 combat before you liberated Phnom Penh?

20 MR. KUNG KIM:

21 A. Before the final attack on Phnom Penh, as I said earlier,
22 initially I was a messenger to carry rice supplied to the front
23 battlefield and messages between the front and the rear. And
24 sometimes, when I was carrying rice to the front battlefield, I
25 noticed the gunfire and the shelling. So I spent my life as a

1 messenger for two months, and later on I was assigned to the
2 front battlefield, and it took about two months for the battle in
3 order to finally attack and seize Phnom Penh. At that time, there
4 were bombardments -- aerial bombardments and armoured tanks, and
5 I was at my spearhead. And during the surge of the attack by
6 soldiers, there were casualties. Each time, there were between 20
7 to 30 casualties, and that's how I observed at my direction or
8 spearhead.

9 [11.03.47]

10 Q. And do you know who conducted the aerial bombardments of your
11 troops?

12 A. At that time, I knew and I was told that the planes were the
13 U.S. planes which were given to Lon Nol side.

14 Q. And while you were in battle, did you find out what the Lon
15 Nol soldiers would do with Khmer Rouge soldiers that were
16 captured? Did you, for example, see what happened to them?

17 A. I could not grasp the situation -- whether the Lon Nol
18 captured the Khmer Rouge soldiers or the Khmer Rouge soldiers
19 captured the Lon Nol soldiers. Could you be a bit more specific?

20 [11.05.02]

21 Q. I will try to clarify. Did you see or did you experience
22 whether or not the Lon Nol soldiers ever captured Khmer Rouge
23 soldiers?

24 A. During the battlefield, I did not see if any of the Khmer
25 Rouge soldiers was captured by the Lon Nol side because the Khmer

1 Rouge soldiers were absolute. If any of them were captured by Lon
2 Nol, they believed that they would be tortured. So, for that
3 reason, they fought until their death rather than being captured
4 alive.

5 Q. And another question relating to the battle before Phnom Penh
6 fell: Did -- now, let me rephrase that question--

7 I will drop that question and move on to the next topic, and we
8 are now speaking about orders that you may have received before
9 Phnom Penh fell. And on the case file, there is an interview with
10 Mr. Heng Samrin with Mr. Ben Kiernan, dated the 2nd of December
11 1991. And for the reference, the E3 number is E3/1568, English
12 ERN is 00651886, and Khmer ERN is 00713958.

13 [11.07.22]

14 Just by way of introduction, Heng Samrin commanded a division of
15 the East Zone that arrived in Phnom Penh on April 17 in the
16 morning, and he has spoken to Ben Kiernan about his experience
17 during the conquest of Phnom Penh. But my question relates to the
18 period before that and I will quote a statement by Mr. Heng
19 Samrin about this period -- and I quote:

20 "At that time, we received plans from the Centre, from high
21 levels, just to engage in production after liberation to grow
22 rice, to support ourselves and under no circumstances to ask the
23 population for anything. The army had to support itself, work
24 hard to grow rice and plant other crops to support itself. This
25 was the orders to the army. So we worked hard and in my division

1 we planted crops and vegetables and even gave some to the people
2 to eat as well." End of quote.

3 [11.08.35]

4 My question to you, Mr. Kung Kim, is: Did you receive similar
5 orders? Did you receive orders to not ask the population for
6 anything?

7 MR. PRESIDENT:

8 Witness, please wait.

9 The Prosecution, you may proceed.

10 MR. ABDULHAK:

11 Your Honours, we would object to this technique being employed by
12 my learned friend. The technique of reading to this witness the
13 -- an unsworn statement of another individual from a completely
14 different unit and then asking this witness whether similar
15 things happened to him is not proper. It's an attempt to
16 influence or guide the witness in a particular direction. The
17 other statement has no relevance.

18 My learned friend can ask this witness direct questions from his
19 own experiences and from his own extensive statements. So, that
20 would be our objection.

21 [11.09.42]

22 MR. PAUW:

23 Mr. President, with all due respect, that's exactly what I'm
24 doing; I'm asking this witness about his experience.

25 It is relevant. Mr. Heng Samrin participated in the liberation of

1 Phnom Penh. He was in the Khmer Rouge Army.
2 Yesterday we saw the Prosecution trying to elicit from the
3 witness statements as to what was Khmer Rouge policy. Clearly, it
4 is relevant that another high ranking division commander has
5 received orders to not ask the population for anything. That, at
6 least, begs the question whether or not this witness has received
7 similar orders.

8 I am not making this up. This is in a statement that is part of
9 the case file and on which, by the way, the Prosecution wants to
10 rely.

11 Again, whether or not this witness received similar orders is
12 relevant, and I would like the witness to answer this question.

13 (Judges deliberate)

14 [11.13.36]

15 MR. PRESIDENT:

16 The objection and its grounds by the Prosecution is grounded and
17 sustained.

18 Therefore, the defence counsel cannot use the interviews of other
19 people as a basis for your question to a witness appearing before
20 the Chamber. However, you can put other questions related to the
21 experience by the witness directly related to the relevant facts.

22 MR. PAUW:

23 I am not sure I understand your ruling, Mr. President.

24 So, before I proceed, I would ask for clarification. Can we now
25 not base questions on interviews that are part of the case file

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1 and that have an E3 number? Is this yet another refinement of the
2 case law of this Chamber?

3 MR. PRESIDENT:

4 Counsel Michael Karnavas, you may proceed.

5 MR. KARNAVAS:

6 Thank you, Mr. President. I just wish to point out that in the
7 past I have used the exact same technique with other witnesses
8 where I was able to show statements, and there was no objection
9 by the Prosecution, and the Trial Chamber did allow that.

10 [11.15.27]

11 So, now, it would appear that there is a different position being
12 taken by the Prosecution, a different ruling by the Trial
13 Chamber. And, frankly, not only is it confusing, but it is not in
14 the interest of justice. Thank you.

15 MR. PRESIDENT:

16 The Prosecution, you may proceed.

17 MR. ABDULHAK:

18 Mr. President, thank you. I just want to be clear. For the
19 record, we are certainly not objecting to Defence using
20 statements of other witnesses, which relate to facts on which the
21 witness before us is testifying. The reason I rose to object is
22 because a fact was put to the witness that had nothing to do with
23 his prior testimony. It related to life under the Khmer Rouge
24 after the forced evacuations of the cities. There was no nexus
25 with the evidence that this witness had been giving.

1 [11.16.26]

2 The witness had not been asked anything about life and production
3 after the fall of Phnom Penh. It is a completely new topic being
4 explored by counsel. My objection was simply that it was not
5 proper to start an examination of an entire new topic by
6 reference to statements of other witnesses.

7 So, I want to be clear that we certainly do not object to counsel
8 using statements of other witnesses that relate to facts on which
9 this witness is testifying. It was a technique, in this case,
10 that we found improper, and that was the reason for our
11 objection.

12 MR. PRESIDENT:

13 Judge Lavergne, please take the floor in order to shed light on
14 this issue.

15 [11.17.26]

16 JUDGE LAVERGNE:

17 Yes, thank you, Mr. President. I believe what the Chamber would
18 like to underscore here is that there was a problem in the manner
19 in which the question was asked in the way the reference was made
20 to an interview of Mr. Samrin. That approach was not appropriate
21 for asking the question because the witness had not been
22 questioned on that topic.

23 Statements by Mr. Heng Samrin are not related to this witness's
24 testimony. So the witness answered a question, as was asked to
25 him, on his knowledge. If the Defence wishes to dwell on any

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1 inconsistencies observed through the testimony of this witness,
2 they are free to do so.

3 MR. PRESIDENT:

4 The Defence Counsel, you may now proceed with your further
5 questions.

6 MR. PAUW:

7 Just to be sure that I understand, our position would be that we
8 have in the statement of Mr. Heng Samrin, clearly, exculpatory
9 position on under which orders the Khmer Rouge soldiers operated.
10 Orders were to under no circumstances ask the population for
11 anything. According to Mr. Heng Samrin, these plans came from the
12 Centre, from high levels, and I am simply trying to verify
13 whether those high level orders were transmitted to the people
14 much lower down, which would be Mr. Kung Kim, and that's all I'm
15 trying to do.

16 [11.19.28]

17 So I would submit that is relevant. We're trying to establish
18 whether the positive strategies by the Khmer Rouge leaders were
19 actually transmitted to the lower downs. So I would submit that
20 we should be able to pursue that.

21 MR. PRESIDENT:

22 Judge Lavergne, please take the floor.

23 JUDGE LAVERGNE:

24 Pardon me; there is no objection to the question as such. You can
25 ask the question -- such questions.

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1 What we find strange is to use an assertion made by another
2 witness at the very beginning of your questioning. If you find
3 any inconsistencies, subsequently, you may refer to another
4 document in the case file.

5 [11.20.32]

6 The relevance of the questions is not absolute and you are free
7 to change the type of questions you have to ask. Furthermore, we
8 do not object to you using documents in the case file to lay the
9 foundation for your questions.

10 BY MR. PAUW:

11 Thank you, Judge Lavergne. You have clarified things -- that
12 clarifies things.

13 Q. Mr. Kung Kim, did you receive orders while you were in the
14 army to not ask the population for anything and to support
15 yourself?

16 MR. KUNG KIM:

17 A. When I was a soldier at the front battlefield, I did not
18 receive such order as to -- not to ask for food from the people.
19 The orders that I received were to attack the enemy and nothing
20 else.

21 [11.21.55]

22 Q. According to the excerpt I just read to you, in which, Mr.
23 Heng Samrin speaks about his experiences, he states that:
24 "At that time, we received plans from the Centre from high levels
25 just to engage in production after liberation to grow rice, to

1 support ourselves, and under no circumstances to ask the
2 population for anything. The army had to support itself." End of
3 quote.

4 And I remind you that Mr. Heng Samrin was a division commander at
5 that time.

6 Do you know whether or not your division commander, Mr. Oeun,
7 received similar orders from the Centre, from high levels?

8 A. The plans prior to the attack of Phnom Penh, was out of my
9 grasp. Later on, when I stationed at my assigned sector I knew
10 about a plan that some soldiers were allowed to work in a rice
11 field at Anlong Kra Ngan. However, that was after the liberation
12 of Phnom Penh, and I did not know about such a plan before the
13 liberation of Phnom Penh.

14 [11.23.32]

15 Q. Thank you, that is a clear answer, but my specific question
16 was: Do you know whether or not your division commander, Oeun,
17 received orders similar to the ones that Mr. Heng Samrin claimed
18 to have received? If you don't know, that is perfectly fine.

19 A. I did not know because that was the affairs of the division
20 commander. I only knew that after Phnom Penh was liberated there
21 was an arrangement for a company to work in the rice field in
22 Anlong Kra Ngan.

23 Q. Thank you for that answer. More generally speaking, and you
24 have -- more generally speaking, you have spoken about this
25 already yesterday and today, but I want to make it clear. Did

1 you, before or while entering Phnom Penh, ever received written
2 orders or were these orders always transmitted orally?

3 A. During that time, the orders were not in writing. The
4 transmission was through meeting and it was done orally.

5 [11.25.29]

6 Q. And before the liberation of Phnom Penh, while you were
7 advancing on Phnom Penh, would you report it every time that you
8 shot at a soldier? Would you report it to a superior, for
9 example?

10 A. During the attack on Phnom Penh, at that time, I was still
11 quite young and I was a combatant, so I did not make any report
12 to the upper echelon. The report was made by my superior.

13 Q. And yesterday you told us, and I'm quoting from the transcript
14 on page 77, Trial Day 123, the third line. Yesterday you stated
15 -- and I quote: "Upon receiving the order, I was in both the rear
16 and the battlefields. I never met civilians. I only encounter
17 soldiers. We clashed with the soldiers. We never saw civilians in
18 the battlefields." End of quote.

19 Just to be clear, is that an accurate statement that you
20 personally did not see civilians in the battlefields?

21 [11.27.34]

22 A. In the battlefield that we engage in at the outskirts of Phnom
23 Penh, there were various military barracks at the outside
24 parameters of the city, and there was no civilian at all. As for
25 the soldiers, they were only present only by the arrangement and

1 there was no presence of the civilian or any civilians at all.

2 Q. And then, when you enter the city, you have testified that you
3 were charged with evacuating people from their houses. And I
4 would like to read you a quotation from your statement to DC-Cam.
5 That is document number 19.96, and the English ERN is 00633875,
6 and the Khmer ERN is 00054835. And you state in that interview:

7 [11.28.58]

8 "Some people in the houses at that time even owned guns with an
9 experience to use them. Some people shot at our soldiers first
10 while we were climbing their house, and others threw hand
11 grenades on us while we were walking on the street." End of
12 quote.

13 So, here, you speak about people in the houses at that time that
14 even owned guns with an experience to use them. Could you tell
15 us, were these people civilians, were they soldiers, or were they
16 perhaps soldiers dressed as civilians, or could you not tell the
17 difference?

18 A. Regarding the grenade throwing, that happened after the
19 majority of the people had been evacuated, and there were those
20 people who were living upstairs or on the upper floors, and based
21 on the plans that I received from the upper echelon -- that is
22 from the platoon, that we had to clear those houses at the
23 assigned sector, and those people who were there, they threw
24 grenades at us. Of course, we did not see them; we only saw
25 grenades being thrown at us.

1 Then there was an order for us to go upstairs, and among -- we
2 saw that among those people, sometimes we saw a group of three or
3 four people and two among them would dress in military uniform
4 and the others would dress in civilian attire, and our order was
5 to smash them.

6 [11.31.04]

7 Q. So is it a fair summary of your words to say that when you
8 went up into those apartments, you could not tell for sure who
9 had been throwing grenades at you? Is that what you are saying?

10 A. After a grenade was thrown from up above at our soldiers, we
11 identified the location of the apartment where the grenade was
12 thrown as the location occupied by the enemies, and we received
13 orders or instructions to contain the area, and then searched the
14 building for the people there.

15 Q. And you have now specified your answer to those people
16 throwing grenades. You have also stated, as I just quoted, that
17 you -- that there were people in these houses that even owned
18 guns with an experience to use them, and that "some people shot
19 at our soldiers first while we were climbing their house".

20 Can you tell us who these people were that shot at you?

21 A. Obviously, these people were soldiers. After the ceasefire, or
22 when the fire stopped, other people who used to be soldiers
23 remained soldiers and fighting could still happen, because some
24 individuals would still take arm and exchange fire.

25 [11.33.23]

1 Q. And as far as you experienced, those soldiers that were
2 shooting at you, would they all be wearing uniforms or had some
3 of these soldiers changed to civilian clothing?

4 A. After the people were smashed they were in military uniforms.

5 Q. And did you ever hear during that time about Lon Nol soldiers
6 that took off their uniform and still continued to fight the
7 Khmer Rouge?

8 A. At my location, I did not remember seeing any Lon Nol soldiers
9 who were wearing civilian clothes and fighting us, but indeed,
10 there was incident when the internal Khmer Rouge enemies wearing
11 the leftover soldiers' uniform by the Lon Nol soldiers, and then
12 we could not identify one another and we mistakenly shot at each
13 other.

14 Q. Thank you for that answer.

15 You also spoke yesterday about the practice when people were
16 being evacuated. And I will quote from page 104 from the
17 transcripts and on the -- starting on the eighth line, which is
18 time segment 15.26.07, and your statement is the following -- I
19 quote:

20 [11.35.43]

21 "The reality is that when the people were being evacuated, if
22 there was no exchange fire from the other opponents or soldiers,
23 then people would not be shot at. But if there fire from among
24 the civilians, then there would be soldiers inside and we would
25 be ordered to shot at them. But if there were only pure

1 civilians, then we were not ordered to shoot them." End of quote.
2 Is it a fair summary of your answer to say that if there was fire
3 coming from somewhere, then you would be ordered to shoot at
4 them, but if there were only pure civilians you would not be
5 ordered to shoot at them?

6 A. People got injured in the vicinity between Preaek Pnov and
7 Phnom Penh because these people were caught during the fire. And
8 in Phnom Penh, we noted that the situation was chaotic, I mean,
9 the movement was chaotic, but there was no fighting. And later on
10 a lot of people, almost the whole population of Phnom Penh, had
11 been evacuated. During the evacuation, there was no gunfire or
12 fighting, but then after people had been moved, there was still
13 more fighting.

14 [11.37.59]

15 Q. And as you have testified before as well, you or your unit
16 encountered former Lon Nol soldiers, and you have testified about
17 this yesterday during questioning by the Prosecution -- and I
18 quote from page 106, line 23. Your statement is:

19 "When we got to Phnom Penh, soldiers who did not resist and
20 agreed to go along with the people being evacuated, they were
21 spared, but those who resisted, particularly those who -- those
22 soldiers who are within the group, they did not retreat so we had
23 to shoot them." End of quote.

24 You have also testified on this topic before representatives of
25 DC-Cam, and that was document number 19.96, English ERN is

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1 00633878, and Khmer ERN is 00054839. And on that page you state:
2 "Everyone had to leave, including the soldiers of [the previous
3 regime]. As for the soldiers, if they took off their uniform,
4 they would have a chance to live longer, but if they did not take
5 off the uniform and resisted, they would be shot to dead."

6 [11.39.55]

7 Just to be clear on this issue, as far as your experience goes,
8 when you encountered Lon Nol soldiers, they were given a chance
9 to take off their uniform and then they would be evacuated with
10 the rest of the population. Is that what your experience was?

11 A. During the time of the evacuation, I noted that people had to
12 go through National Road Number 5, and the population was mixed
13 up with soldiers, monks, and other peoples, and for the soldiers
14 who were still seen wearing uniforms, would only be allowed to
15 walk along with the whole population on the condition that they
16 surrendered their arms, and we allowed them to make sure that
17 everyone left Phnom Penh immediately.

18 Q. And as far as you could tell -- so based on your experience --
19 was that the policy of the Khmer Rouge soldiers to surrender --
20 to let the Lon Nol soldiers surrender their arms and let them
21 carry on their way?

22 [11.41.49]

23 A. I do not know the Upper Echelon's policy concerning whether
24 the soldiers were allowed to surrender their arms, and -- but for
25 us, the orders were very precise, that as long as the people in

1 uniform were armed and did not surrender their arms, they were
2 subject to be shot at; but if they surrender their arms, they
3 could mingle with the population and move on.

4 Q. Thank you for that answer.

5 Today you already spoke about what people could bring along with
6 them. You've been briefed about it, so I want to ask you a follow
7 up question.

8 In your experience, could people transport their personal
9 belongings if they desired to do so?

10 A. I saw that it was the case that people could carry with them
11 their belongings, including jewellery or money, except guns.

12 [11.43.41]

13 Q. And did you see people carrying other belongings than
14 jewellery or money? Did they -- did you see that they were free
15 to bring other belongings with them?

16 A. During the evacuation, what I saw was that people were forced
17 to leave the city, and, indeed, people did not volunteer to leave
18 the city, so many had to carry their belongings, whatever they
19 could grab at that time. Some would have to push the carts
20 carrying their luggages, and some would have to go with their
21 vehicles and other means of transportation.

22 Q. Thank you, that is clear.

23 Another topic that was briefly discussed this morning is the
24 following. You talked about the fact that the city was divided
25 into different areas after the liberation of Phnom Penh. Would

1 you know into how many different areas Phnom Penh was divided
2 after the liberation?

3 A. It is true to say that Phnom Penh was divided into several
4 sections, but I have no idea how many and which zone controlled
5 which sections, because I was in charge of just a small block,
6 and I could not even understand whether the other groups would be
7 occupying other blocks, and I had no knowledge of this other than
8 the confined area where I took control.

9 [11.46.09]

10 Q. And to be clear on this issue, the area that you controlled
11 with your units after the liberation, was that the same area that
12 you searched with your units during the evacuation of Phnom Penh?

13 A. When it comes to the evacuation, the division was in charge of
14 the geographical location and division of labour, and for us, we
15 were in charge of the small block, and indeed, it was our task to
16 make sure that the people were evacuated from this area we
17 controlled.

18 Q. I think you've answered my question, but just to be sure, I
19 will repeat it once more in a slightly different form.

20 The area that you controlled with your units after the liberation
21 of Phnom Penh, this small area that you did not leave, according
22 to your statements, is that the same area that you searched on
23 April 17 and the days following April 17, or was that perhaps a
24 different section of the city?

25 A. When in Phnom Penh, our squads under the platoon did not

1 receive any orders to evacuate the people as yet, but we noted
2 that people were on the move already. People could be seen
3 walking in all directions, but then, at that moment, we were told
4 or ordered to help control the crowds, in particular, control the
5 crowds who were passing our area.

6 [11.48.42]

7 But then we had another plan. This plan was rendered to us only
8 after the majority of the people already had left the city, and
9 this next plan is to clean or to make sure that the last person
10 is leaving.

11 Q. Thank you; that clarifies things.

12 When you were in this section of the city that was controlled by
13 your unit, you've called it your own parameter, is -- why was it
14 not possible for you to leave that small part of the city?

15 A. That was an order. There was a strict order that wherever we
16 remained we had to remain in that area. If we were to step
17 outside that confined area we would be accused of being ill
18 disciplined and accused of being -- disobeying the order.

19 [11.50.16]

20 Q. And how many soldiers were within this small section of the
21 city that you could not leave? I know you've spoken about it
22 before, but I would like to get a specific answer.

23 A. The soldiers who came to Phnom Penh in my own group, we -- the
24 number has been reduced to only seven people, the rest already
25 perished during the fighting. And we had to control the area from

1 Wat Phnom to the north, and three groups were in charge of
2 controlling these blocks. And only the superiors would be allowed
3 to move from one place to another, but soldiers like us had to be
4 in the same place at all times.

5 Q. And you've spoken about guarding these blocks. Could you give
6 us an estimate as to how many blocks we are speaking about? If
7 you cannot, that is no problem.

8 A. For the task rendered by the company to the platoon, we were
9 pointed the geographical location, for example, from which
10 juncture of the road to which particular area. So we indeed
11 occupy several blocks.

12 Q. You mentioned that you occupied several blocks, but could you
13 try to be a bit more specific as to the number of blocks you --
14 your unit was guarding?

15 [11.52.47]

16 A. I note that the blocks under our supervision were rather very
17 small, and I belonged to the whole division, but the divisions
18 divided into different portion, including the smaller part as
19 small as the platoon and the squad. So our squad was in control
20 of even smaller confined area.

21 Q. And you just stated that your superiors were allowed to move
22 freely. Do you know whether the chairman of your division, Mr.
23 Oeun, was allowed to move freely in that part of the city that
24 his division stayed in?

25 A. Through my experience working for Division 310, which I

1 received the pass, the travel permit as well, and we had to also
2 -- I knew that he, Mr. Oeun, could be travelling across the whole
3 area, but the only thing I knew was that whenever he had to pass
4 our block -- the area we controlled -- then I would be able to
5 know and help him, you know, coming through.

6 [11.54.56]

7 Q. So you say that Mr. Oeun was free to travel. Do you know
8 whether he was free to travel in the city of Phnom Penh or was he
9 free to travel only in the section of the city that was
10 controlled by his division, Division 310?

11 A. The commander of the division could travel to different
12 places. However, I do not know to what extent he could feel free
13 to travel, because my task was, as I indicated, to station at one
14 location. And I believe that he could have been travelling to
15 attend meetings, or meet other people elsewhere, but that's just
16 my guess. So I may say that I don't know.

17 Q. Thank you for being that specific, that is very helpful. And,
18 indeed, we do not want you to guess.

19 You say that you were confined to the section that your unit
20 guarded. Did you have any idea what was happening in Phnom Penh
21 outside the section that you were guarding?

22 A. I received orders to stand guard days and nights. I was never
23 informed of any other situation, for example, what happened
24 outside this confined area. So I was learning only about my duty,
25 which is to stand guard, and at night I would only see people,

1 like head of the platoon or company, who would be coming to
2 inspect the guards who perhaps dozed off during the time when
3 they're on duty.

4 [11.58.03]

5 Q. So is it a fair summary of your words to say that you had very
6 limited knowledge as to what was happening in Phnom Penh as a
7 whole?

8 A. It is true to say so that, at that time, I was very young. I
9 was about 16 and 17 years old, and the position I held was very
10 low, and with that I could not be supposed to know what happened
11 or whether there were any plans by the superior. I only knew what
12 I supposed to know, at that time, I -- in my capacity.

13 Q. Thank you.

14 And I am sorry that I am returning to the issue, but I have a
15 question remaining as to what, exactly, you did when you entered
16 Phnom Penh. And then, more specifically, I'm interested to know
17 in which region of Phnom Penh you were operating when you entered
18 Phnom Penh on April 17.

19 [11.59.45]

20 And I'm trying -- I'm going to try to make it slightly more
21 specific for you to see if I can make myself more clear in this
22 way. You have stated, Mr. Kung Kim that your unit was in charge
23 of guarding several small blocks of buildings north of Wat Phnom.
24 When you entered Phnom Penh on April 17, and when you helped with
25 the evacuation of Phnom Penh, did that take place around or in

1 the neighbourhood of these small blocks of buildings north of Wat
2 Phnom?

3 A. I already testified that during the three days when -- the
4 early three days when we came to Phnom Penh, I did not engage in
5 the evacuation of the people. I saw them being evacuated for
6 sure, but there was no plan rendered to us to help evacuate the
7 people.

8 Our task at that time was to move to our location as soon as
9 possible and after that -- after the people had already been left
10 -- we were tasked with cleaning, with removing the remaining
11 people who still remained in their houses and apartments. And
12 that we were informed that some people were still hiding in the
13 apartments and they did not want to leave, so with that we
14 received the order to cut the water supply and to make sure
15 people frustrated and had to come down and leave.

16 [12.02.17]

17 Q. That makes it a lot clearer again. And just one follow up
18 question to make sure we fully understand. You stated that on
19 April 17 and the days after, your task was to get to your
20 location as soon as possible. When you speak about that location,
21 are you speaking about that section of the city that you later
22 guarded, this small section with several blocks of buildings
23 north of Wat Phnom?

24 A. When I approached Phnom Penh, the arrangement was made by the
25 company and we were appointed to the location where we would

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1 station. And again, during the chaotic situation of the
2 evacuation, I was not engaged in helping moving all the
3 population out of the city. I was only tasked with making sure
4 that I and the group in the squad moved to the location, as
5 indicated, immediately, and during these early three days we did
6 not receive any order to evacuate the population. And the plan to
7 evacuate the city was indeed rendered by the Upper Echelon to
8 other area -- other sections other than our squad or battalion.

9 [12.04.24]

10 MR. PRESIDENT:

11 Counsel, thank you very much. And Mr. Witness, we also thank you.
12 But it is now appropriate moment for the lunch adjournment. The
13 Chamber will adjourn until 1.30 p.m.

14 Court officer is now instructed to assist the witness and his
15 duty counsel during the adjournment and have him returned to the
16 courtroom by 1.30 p.m.

17 Counsel for Mr. Nuon Chea, you remain standing and you may
18 proceed.

19 MR. PAUW:

20 Thank you, Mr. President. Our client, Mr. Nuon Chea, would like
21 to follow this afternoon's proceedings from his holding cell, as
22 he is suffering from a headache, back pain and a lack of
23 concentration.

24 And we have the waiver and we will submit it to the greffier.

25 [12.05.20]

1 MR. PRESIDENT:

2 The Chamber notes the request by Mr. Nuon Chea through his
3 counsel, in which he has requested that he be excused and allowed
4 to observe the proceedings from his holding cell due to his
5 health concerns.

6 The Chamber therefore grants such request. Mr. Nuon Chea is now
7 allowed to observe the proceedings from his holding cell for the
8 remainder of the day.

9 And that the Chamber notes Mr. Nuon Chea has expressly waived his
10 right to participate directly in the courtroom. And the Chamber
11 would like counsels for Mr. Nuon Chea to submit the waiver by Mr.
12 Nuon Chea, given thumbprint or signed by him, to the Chamber in
13 due course.

14 [12.06.18]

15 AV Unit is now instructed to ensure that the AV equipment is well
16 connected to the holding cell so that Mr. Nuon Chea can observe
17 the proceedings from there for the remainder of the day.

18 And security personnel are now instructed to bring Mr. Nuon Chea
19 and Khieu Samphan to their respective holding cell and have Mr.
20 Khieu Samphan returned to the courtroom by the afternoon session
21 when we resume.

22 (Court recesses from 1206H to 1332H)

23 MR. PRESIDENT:

24 Please be seated. The Court is now back in session.

25 The floor is given again to Nuon Chea's defence to put further

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1 questions to this witness. You may proceed.

2 BY MR. PAUW:

3 Thank you, Mr. President. And good afternoon to you, Mr. Kung
4 Kim.

5 Q. I would like to proceed with asking you some questions about
6 your commander, Mr. Oeun.

7 In your experience, was he a good Commander? Did you like him as
8 a commander?

9 [13.33.56]

10 MR. KUNG KIM:

11 A. I could not grasp whether he was a good or bad division
12 commander.

13 Q. Did you interact with Mr. Oeun yourself?

14 A. As I stated earlier, I only interacted with the platoon and
15 the company level, and once in a while would interact with the
16 battalion level.

17 Q. So you had no personal interactions with Mr. Oeun, the
18 division chairman; is that correct?

19 A. I never met or spoke to him in person. I did not know him that
20 well.

21 Q. And you've spoken about Mr. Yim, who was also your superior.
22 Did you interact with him on a regular basis?

23 A. As for Yim, who was the commander of a battalion, I was not
24 close to him, but sometimes I saw him when he came to convene a
25 meeting at the company level.

1 [13.35.57]

2 Q. And did you -- excuse me. Did you appreciate him as a superior
3 during the interactions that you had with him?

4 A. During the performance of my duty as a soldier under the
5 leadership of the battalion level, I did not have a personal
6 relationship, but I always respected the orders that he issued.
7 And I always fulfilled those orders.

8 Q. And would you say he was a strict superior, or was he more
9 lenient when he was in charge of you?

10 A. From what I knew and based on my experience, Yim was a firm
11 person and always adhered to instructions. He strictly conveyed
12 the message from his upper superior to his subordinates.

13 Q. And in the structure of your company, was there anyone between
14 you and Yim, someone that was superior to you but inferior to
15 Yim?

16 [13.38.05]

17 A. I did not know who was his deputy commander; Ren was the
18 company commander and he used to come to meet with us at the
19 platoon level. And, yes, I met -- I knew this person quite well.

20 Q. I would like to read to you an excerpt from a book by Philip
21 Short. The book is called "The History of a Nightmare", and the
22 document number is E3/9. And the English ERN of the part that I
23 will be reading is 00396489, and the French ERN is 00639818. And
24 I will quote the book:

25 "Unlike orthodox communist states, where decision-making is

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1 highly centralized and implementation is in theory monolithic,
2 Khmer Rouge Cambodia was unruly. That combination of attributes
3 would prove one of the most enduring features of Pol's--"

4 MR. PRESIDENT:

5 Counsel, could you please wait? I think there is a technical
6 problem in relation to the reference number of the document that
7 you provided.

8 (Judges deliberate)

9 [13.42.32]

10 MR. PRESIDENT:

11 I'd like to give the floor to Judge Lavergne to explain some
12 technical issue to the defence counsel for Nuon Chea regarding
13 using the quote from document E3/9 in putting question to this
14 witness.

15 The Chamber previously observed this kind of issue and already
16 ruled on that.

17 Judge Lavergne, you may proceed.

18 JUDGE LAVERGNE:

19 Yes, thank you, Mr. President.

20 Although the situation is not exactly the same, the Chamber would
21 like to recall that last week, during the documents presentation
22 session, it pointed out that it was not appropriate to present
23 documents written by a witness or an expert who would be called
24 to testify. So, to read an excerpt from a book written by someone
25 who is going to appear subsequently is not appropriate.

1 [13.43.57]

2 However, the Defence may use a document and the substance of the
3 document to put questions to the witness. But we should avoid
4 using complete quotations from such documents.

5 There we are. I hope we are clear enough. We are not preventing
6 you from asking questions, but you should do so in an appropriate
7 manner.

8 So perhaps you could rephrase your question.

9 MR. PAUW:

10 Thank you, Judge Lavergne. This is almost clear, but I would say
11 that three immediate questions pop up, and perhaps you could
12 provide some guidance because this will come up more often.

13 One thing is, could you explain the rationale behind this rule?

14 We have an expert. We have Mr. Philip Short, who has written
15 about the Khmer Rouge regime. And whether or not the things that
16 Mr. Short writes are correct, that would be a question for the
17 people that were there at the time. And I would submit that, in
18 this case, Mr. Kung Kim was present at the time in Phnom Penh.

19 [13.45.26]

20 So I don't see the harm in presenting to this witness the theory
21 of Mr. Philip Short. This witness will help to corroborate or
22 disprove that theory, and either way it will bring us closer to
23 the truth because he will be testifying from his own experience.

24 Second question that comes up is, let's say Philip Short comes to
25 testify one month from now and this witness would have appeared

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1 two months from now; could I then read this passage to him, and
2 if so, what is the fundamental difference between those two
3 situations?

4 Third question; in the past, all parties have been putting
5 documents to witnesses of experts that may be called to testify
6 before your Chamber. I know for a fact from recollection that the
7 civil parties did so based on a Ben Kiernan book. At that time,
8 it was still the plan that Mr. Kiernan would be heard. It might
9 still be the plan now. And, of course, writings by Mr. Heder have
10 been used.

11 So, if we could better understand the rationale as to why we
12 could not put findings of an expert to a witness whether or not
13 that expert has been heard already or not, it would greatly
14 assist us, at least, and I assume we're not the only party that
15 would like to receive some clarification on that issue.

16 [13.47.10]

17 MR. ABDULHAK:

18 If we could be heard on this, Mr. President, and very briefly, of
19 course we're here to abide by and implement the Chamber's
20 directions. I wanted to put forward the Prosecution's submission
21 on perhaps how to deal with the issue of books for your
22 consideration.

23 In principle, provided that there is an appropriate nexus between
24 specific facts that the witness has testified to or that are
25 within his knowledge, we would not object to a specific passage

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1 on those facts being put to a witness in order to elicit his
2 evidence or his comments on the assertions in a book. However,
3 the position here is very different.

4 [13.48.06]

5 The passage that my learned friend has been reading from relates
6 to the way in which the Standing Committee's directives were
7 understood and implemented by commanders at the zonal level.
8 Before the break, my learned friend examined the witness
9 extensively in order to elicit evidence that he knew nothing
10 beyond the confines, if you like, of his division. And the
11 witness, in fact, confirmed that he was familiar with matters
12 within his division but not beyond.

13 In light of that evidence, there is simply no proper basis to put
14 this particular passage to the witness and expect him to be in a
15 position to comment on it. It is purely amounting to expecting
16 the witness to speculate.

17 So it's on that basis that we would object to the use of the
18 document in this instance. But, more broadly, I wanted to put our
19 position on the record if there was a proper and direct nexus
20 between the witness's knowledge and a fact or an assertion in a
21 -- in written material, then we would not object to that material
22 being put to the witness.

23 MR. PRESIDENT:

24 Defence Counsel, you may proceed.

25 [13.49.32]

1 MR. PAUW:

2 Thank you. I do not want to muddle the issues, but just in
3 response to what the Prosecution has just asserted, had I not
4 been cut off, I could have continued to read and it would have
5 become clear that there is a clear nexus between what is written
6 in this passage and this witness.

7 I will not proceed to read the whole passage, but I will just
8 read the following two sentences: "Hence the welter of
9 conflicting signals during the evacuation of Phnom Penh. What was
10 true of the Zones was also true at lower levels."

11 And then he goes on to speak about a battalion commander. So
12 there is a clear nexus to this witness. And I appreciate the
13 Prosecution's position that, indeed, if there is a nexus, books
14 by experts should be allowed to be put before a witness.

15 (Judges deliberate)

16 [13.53.06]

17 MR. PRESIDENT:

18 Judge Lavergne, please take the floor.

19 JUDGE LAVERGNE:

20 Thank you, Mr. President.

21 The Chamber notes that the entirety of the quotation that -- the
22 passage the defence counsel wanted to put has already been quoted
23 before, so the Chamber is of the view that it is preferable to
24 put extensively analysis made by experts insofar as the expert
25 has not been heard, and we understand that the expert will be

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1 heard. It doesn't appear to be appropriate to ask a witness to
2 confirm the analysis made by an expert or an historian.
3 However, the Defence and the other parties have already been
4 directed to ask questions to the witness that are relevant and
5 that hinge on the knowledge of the witness and that have a
6 bearing on the analysis done by an expert. In future, we would
7 hope that our decision would be respected.

8 [13.54.35]

9 MR. PAUW:

10 Thank you, Judge Lavergne. And that's exactly what I'm trying to
11 do, and I have not read out the entirety of the passage that I
12 would like to read out. There is a little bit of information
13 missing. And so I am trying to abide by your rules, but again, a
14 rationale would help us in understanding it.

15 And I will make an oral application right now to provide a
16 rationale for not reading quotations by experts, other than the
17 fact that it's not appropriate.

18 So I hereby request the Trial Chamber to provide a rationale for
19 that ruling, and I will proceed now to the next questions and
20 respecting your ruling that I cannot quote from Philip Short's
21 book. So, if I--

22 MR. PRESIDENT:

23 Counsel, please wait.

24 (Judges deliberate)

25 [13.56.45]

1 MR. PRESIDENT:

2 Judge Lavergne, please proceed.

3 JUDGE LAVERGNE:

4 Very well. I thought I was clear enough, but in principle, it
5 appears not to be the case.

6 Let me repeat that quoting the analysis of an expert to lay the
7 foundation for a witness's question is not appropriate insofar as
8 that analysis has not been confirmed and discussed with the
9 expert and so we are not in a position to know whether we can
10 rely on it.

11 It would be much preferable to start by laying a foundation to
12 the analysis and eventually question the witness on the facts
13 which form the basis for that analysis, and we'll examine with
14 the expert what is the basis for the analysis. And to start with
15 the result is not a good idea.

16 [13.57.53]

17 I think it is clear enough now.

18 MR. PAUW:

19 Yes and no, Judge Lavergne. And I do not want to complicate
20 matters, but am I now to understand that we cannot use any
21 analysis by experts in questioning witnesses as long as they not
22 have been heard? So, that does away all the experts that have
23 written anything on the Khmer Rouge.

24 And the second thing is, do I get to question this witness on
25 this topic after Philip Short has testified and has explained his

1 analysis? I don't see any other way.

2 JUDGE LAVERGNE:

3 Listen, you have been told that you can put any questions you
4 wish to the witness on factual elements that are the basis of the
5 expert's analysis, as is apparent in the book.

6 However, it is not necessary to quote that analysis as such
7 unless that expert witness will not be heard by the Chamber. We
8 know that Mr. Short will, in principle, be heard.

9 [13.59.19]

10 MR. PAUW:

11 I will move on because time is short.

12 I do hope that I get allocated some additional time because, to
13 be honest, I'm not sure that it's entirely our fault that things
14 remain unclear.

15 BY MR. PAUW:

16 Q. I will quote from your statement to the Co-Investigating
17 Judges, Mr. Kung Kim, and it is found, this passage, on page
18 00278682 and Khmer ERN 00270164, and the document number is
19 D166/74.

20 And you have stated that there, when you speak about the soldiers
21 that participated in the evacuation of Phnom Penh -- I quote:
22 "Some had morals and did not fire; those who did not have morals,
23 did fire." End of quote.

24 Is it a fair reflection of your words that whether or not
25 soldiers fired at the people depended on those soldiers

1 themselves?

2 [14.00.56]

3 MR. KUNG KIM:

4 A. When we entered Phnom Penh, on the first day when we were
5 approaching Phnom Penh, soldiers were exchanging fire and people
6 could have already been -- I mean were being evacuate or were --
7 or had been evacuated. And the fighting took place when people
8 were still there, and only after the population of the city had
9 already been evacuated entirely that we were ordered not to
10 shoot.

11 So, at the beginning, I could say that people could not hold the
12 fighting because we were in the -- confused situation and
13 soldiers who were angry, for example, after such fierce fighting,
14 they also fired their guns. And during this time they were not
15 even punished for fire arbitrarily.

16 Q. Thank you. And what do you mean with this specific distinction
17 that you make between people that have morals and people that do
18 not have morals? And I will, just for clarity, quote it once
19 more: "Some had morals and did not fire and those who had no
20 morals, did fire."

21 [14.03.23]

22 A. To put it simply, people had different personalities and their
23 morals were different. Some who were engaged in the fighting had
24 been angry already being engaged in the exchange fire and having
25 experienced the casualties, noted the loss of their colleagues,

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1 so they were angry. And some could control their anger and for
2 that some people even shot at civilians because they were angry
3 and they shot at them.

4 Q. Thank you; that is clear answer

5 And I would have liked to ask you some questions based on Philip
6 Short's theory which amounts to the fact that -- which amounts to
7 the theory that what happens in Phnom Penh depended, to a large
8 extent, on individual commanders, but I will forego those
9 questions and I will move on to the next topic.

10 [14.05.00]

11 And I would like to ask you questions about your period when you
12 were stationed in Phnom Penh. Did you know at the time that you
13 were staying in Phnom Penh that there were troops -- Khmer Rouge
14 troops -- that came from the East Zone and the Southwest Zone?

15 A. When attacking Phnom Penh, I heard that people had to be
16 coming to Phnom Penh through the particular zone and we could see
17 that -- hear that the North would be in charge of one particular
18 direction while the other zone, military zone, would be attacking
19 from the other direction. That's what I heard.

20 Q. And while you were in Phnom Penh, guarding the section that
21 you were guarding, were you aware that there were troops from the
22 other zones in Phnom Penh?

23 A. I do not know what happened to the duties carried out by other
24 people from different sections, for example different zone or
25 different sector, and I only knew in my area.

1 Q. And speaking about that area, you've stated that this was
2 extending north of Wat Phnom. Did the area that you guarded
3 border an area that was occupied or ruled by the East Zone
4 forces?

5 A. The area where I stationed was under the control of the North
6 Zone forces, and I -- the only thing I know is that I was tasked
7 with controlling the small area in that compound -- or complex.
8 [14.08.04]

9 Q. Thank you. To perhaps refresh your memory, I would like to
10 quote from the earlier-mentioned statements by Mr. Heng Samrin,
11 document number E3/1568 and Khmer page number 00713968, English
12 ERN 00651892, and the second section I will quote from is on
13 Khmer page number 00713946 and English ERN 00651879.

14 On that first page, Mr. Heng Samrin states, when he speaks about
15 the divisions from his zones -- and I quote: "My own, the first
16 that had fought in Phnom Penh, and the second, later changed to
17 the 290th." End of quote.

18 But Heng Samrin here indicates that his division was the first to
19 enter Phnom Penh or the first that fought in Phnom Penh -- at
20 least as far as the East Zone forces are concerned.

21 [14.09.27]

22 Then, on the second page that I want to quote, Mr. Heng Samrin
23 states:

24 "On 17 April at 9 a.m., I arrived at the Independence Monument.
25 After liberation there was a division of responsibility among

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1 three divisions from the East. There was my 1st Division, my
2 younger brother's 2nd Division, and Chhieu's 3rd Division, who
3 fought up to Chrouy Changva with marines."

4 Then we get to the section that might shed light on some issues
5 for you -- and I quote:

6 "And after liberation the responsibility for guarding the big
7 road was divided. From Wat Phnom right this way along the white
8 line [unclear Khmer words]. The eastern divisions were on that
9 side, Ta [unclear Khmer words] on that. Because at that time
10 there was the Special Zone, a Special Zone was created with Vorn
11 Vet as Secretary and Son Sen as Deputy Secretary." End of quote.

12 So, Heng Samrin states that the Eastern Zone forces were on one
13 side of a line that extended from Wat Phnom, so that means there
14 must have been -- if Mr. Heng Samrin is correct, there must have
15 been Eastern Zone forces at least close to Wat Phnom.

16 Do you remember there being Eastern Zone forces close to Wat
17 Phnom?

18 [14.11.38]

19 A. In Phnom Penh, when we arrived, indeed, division of
20 responsibility was made, and we had to control each block and I
21 was in charge of the area to the north of Wat Phnom, but I don't
22 remember having seen any of the forces you indicated in that
23 vicinity.

24 Q. And during the liberation of Phnom Penh on April 17 and a few
25 days thereafter, do you know what the Eastern Zone armies did

1 when they entered Phnom Penh?

2 A. I don't know because even in my own division I do not know
3 happened between one, for example, regiment to another.

4 Q. And do you know what happened in Phnom Penh in the area that
5 was controlled by the East Zone armies in the months after the
6 liberation of Phnom Penh?

7 [14.13.21]

8 A. Because we were in charge of different blocks and that I did
9 not get well informed concerning the events after the 17 April,
10 so we belonged to the only confined area. For that, we do not
11 know much what happened outside.

12 Q. Thank you. And is it a fair summary of your testimony that you
13 cannot tell us about anything the Eastern Zone forces did when
14 they entered Phnom Penh? You cannot tell us anything about what
15 happened in the zone that was controlled by the Eastern Zone
16 forces in the months after the liberation of Phnom Penh; is that
17 a fair summary of your statements?

18 A. Yes, it is. That's what happened during that time.

19 As a soldier, I had to obey the discipline and rules and orders,
20 and I had to be on duty at all times and I had to remain in the
21 area. And I was not allowed to move about freely.

22 [14.15.06]

23 Q. Thank you for that answer. So, you tell us you were not
24 allowed to move about freely. You have told us that you had a
25 low-level position. You have told us this morning that you had to

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1 stand guard and that you had no idea what happened in the rest of
2 the city. You stated that you were responsible for guarding a
3 section of small blocks north of Wat Phnom and that you were not
4 allowed to leave that section, and you have also stated that
5 superiors were allowed to move freely. And you have stated that
6 your commander, your division commander, Oeun, was free to travel
7 at least in the zone that was under the control of Division 310.
8 We spoke about your division commander, Mr. Oeun, yesterday -- or
9 at least the Prosecution asked you questions regarding Mr. Oeun
10 -- and I don't want to ask you the obvious, but do you know what
11 happened to him, where he is now?

12 A. I do not know what happens to Oeun because he was arrested at
13 that time and I only saw him passing by at the location where I
14 was on duty, but I never distributed or disseminated any of the
15 plans from him to other people because I was only in charge of
16 standing guard and protecting the vicinity where I stationed
17 there.

18 [14.17.16]

19 Q. Thank you. And while you were participating in the liberation
20 of Phnom Penh or the months just after that, did you meet any
21 other division commanders other than Oeun?

22 A. As I already stated, in my capacity as a low-level soldier I
23 did not meet senior people or leaders of the other sections. For
24 example, I never met with people from the regiment or
25 representing the regiment or battalion. And to be fair, I only

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1 been working in the platoon and the company and the meetings,
2 that's all.

3 Q. Yes, I think it's very clear that your evidence -- your
4 testimony is that you had very limited knowledge. I think that
5 you have made that very clear.

6 How long -- let me rephrase that question. Do you remember in
7 which year you left the Khmer Rouge movement?

8 A. It was in 1979 when I left the Khmer Rouge.

9 Q. So, in those four years after the liberation of Phnom Penh in
10 1975, did you, by any chance, meet any other division commander
11 that participated in the liberation of Phnom Penh?

12 [14.19.45]

13 A. When I moved to work in -- at the airport in 1976, I met
14 several division commanders, including Ta Lvey, Ta Thuok and other
15 people who represented Division 502.

16 Q. And just for our understanding, were those three division
17 commanders, all three involved in the liberation of Phnom Penh?

18 A. At that time, I was engaged in the work of -- at Kampong
19 Chhnang, and these people were in charge of the airfield and they
20 also talked to us about how they liberated Phnom Penh when they
21 attacked Phnom Penh from the southwest direction.

22 Q. And do you know what happened to these three individuals? Do
23 you know whether they are still alive or not?

24 [14.21.19]

25 A. In 1976 they still alive, but in 1977 I parted my way with

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1 them and I never knew where they could have been.

2 Q. And today, do you know whether they are still alive or not; do
3 you have any information as to their whereabouts?

4 A. I only was near them in 1976 and I left them in 1977, so I
5 have never had any information about their whereabouts ever
6 since.

7 Q. Thank you. Based on your own personal experience with the
8 Khmer Rouge army and its organization and its command structure,
9 would a division commander such as Heng Samrin, who arrived in
10 Phnom Penh on April 17, be able to give us more information as to
11 what happened in Phnom Penh during the evacuation of Phnom Penh,
12 at least with regards to what happened in the section for which
13 his division was responsible?

14 MR. PRESIDENT:

15 International Co-Prosecutor, you may now proceed.

16 [14.23.14]

17 MR. ABDULHAK:

18 Your Honours, we would object to this question. The witness
19 shouldn't be asked to speculate what other -- what information
20 other individuals may be able to give the Court. If counsel
21 wishes to make submissions to the Court, that's a separate
22 matter, but it's not a question appropriate for this witness.

23 BY MR. PAUW:

24 Mr. President, I'm happy to rephrase.

25 Q. Mr. Witness, based on your own personal experience with the

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1 Khmer Rouge army during the evacuation of Phnom Penh and the
2 months after, in your submission, who would have a better
3 overview of things that happened in the city during the
4 evacuation and in the months after the evacuation -- a simple 16
5 year-old foot soldier like you or a division commander?

6 [14.24.24]

7 MR. KUNG KIM:

8 A. I'm afraid I don't understand your question. Please repeat it.

9 Q. I will try to be more specific. You were a 16 year-old soldier
10 that had very limited freedom to move around Phnom Penh; is that
11 correct?

12 A. Yes, it is correct. At that time, I was authorized to guard
13 and to work all days and nights, no time to rest, and I had to be
14 on duty at the area assigned to us every now and then.

15 Q. And is it correct to say that you only knew about things that
16 happened in your small section that you were guarding, as you
17 mentioned, those small blocks north of Wat Phnom?

18 MR. PRESIDENT:

19 Witness, could you please hold on?

20 And, International Co-Prosecutor, you may now proceed.

21 [14.26.00]

22 MR. ABDULHAK:

23 Objection, Your Honours. The question is entirely repetitive.

24 We've heard it several times. We've even heard counsel

25 summarizing the evidence. This is about the fourth time the same

1 question is being asked.

2 MR. PAUW:

3 Mr. President, I am trying to be helpful to the witness. He
4 indicated he had trouble understanding the earlier question. I'm
5 trying to take him through the steps. I'm willing to move on--

6 MR. PRESIDENT:

7 The objection by the Co-Prosecutor is sustained. The question
8 itself is repetitive.

9 And witness is directed not to respond to a repetitive question.

10 BY MR. PAUW:

11 Thank you.

12 [14.26.54]

13 Q. Considering your limited role and knowledge during the
14 evacuation of Phnom Penh and the months after, would you submit
15 that division commanders like Oeun and like Heng Samrin would
16 have a better overview as to what happened in Phnom Penh in April
17 1975 and the months thereafter?

18 MR. KUNG KIM:

19 A. I have no idea whether -- or I have no idea about the plans or
20 the knowledge of the leaders because I only carried out the tasks
21 rendered to us at the location, and I never knew their plan or
22 their knowledge.

23 MR. PAUW:

24 Thank you. That is a straightforward and logical answer.

25 Mr. President, I have no further questions. Mr. Son Arun does not

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1 have any further questions.

2 We would like to thank Mr. Kung Kim for coming here and answering
3 our questions, and we wish him a safe trip back home.

4 [14.28.36]

5 I do not know for sure whether my colleagues have anything
6 further to add, but the Nuon Chea defence team rests.

7 MR. PRESIDENT:

8 We would like to now give the floor to counsels for Mr. Ieng Sary
9 to put questions to the witness if they wish to do so.

10 MR. ANG UDOM:

11 Good afternoon, Mr. President. Good afternoon, Your Honours, and
12 a very good afternoon to my learned colleagues and everyone in
13 and around the courtroom, and good morning to you, Mr. Kung Kim.
14 I am Ang Udom, and on my right-hand side is Mr. Michael Karnavas,
15 my colleague.

16 [14.29.37]

17 For the time being, we do not really have any questions to pose
18 to you, but on behalf of Mr. Ieng Sary, we thank you very much
19 indeed for taking the stand to give your testimony and we wish
20 you safe travels.

21 MR. PRESIDENT:

22 Thank you.

23 We would like now to proceed to counsels for Mr. Khieu Samphan to
24 put questions to the witness if they would wish to do so.

25 MR. KONG SAM ONN:

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1 Thank you, Mr. President. On behalf of the counsel for Khieu
2 Samphan, we do not have any questions for this witness. Thank
3 you.

4 MR. PRESIDENT:

5 Mr. Kung Kim, the hearing of your testimony has now come to a
6 conclusion and you are now excused. You may return to your
7 residence or wherever you wish to.

8 [14.30.33]

9 The Chamber is grateful of your valuable time to testify in this
10 courtroom for the last two days with patience and to the best of
11 your ability. Your testimony can contribute to ascertaining the
12 truth in this case. We wish you all the best and bon voyage.

13 Court Officer, could you assist with the WESU unit for the
14 witness to return to his residence or to wherever he wishes to do
15 so?

16 The hearing today is adjourned, and we will resume on Monday, the
17 5th of November 2012. And on the 5th of November we will hear the
18 testimony of TCW-690, who will be first questioned by the
19 Prosecution, and we will also have a reserve, TCCP-89.

20 Security guards, you are instructed to take the two Accused, Nuon
21 Chea and Khieu Samphan, to the detention facility and have them
22 returned on Monday, the 5th of November 2012, prior to 9 a.m.

23 The Court is now adjourned.

24 (Court adjourns at 1432H)

25