



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 16-Nov-2012, 14:02
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

12 November 2012
Trial Day 130

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

The Accused: NUON Chea
IENG Sary
KHIEU Samphan

Lawyers for the Accused:

SON Arun
Jasper PAUW
ANG Udom
Michael G. KARNAVAS
KONG Sam Onn
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

DAV Ansan
Roger PHILLIPS
SE Kolvuthy

Lawyers for the Civil Parties:

For the Office of the Co-Prosecutors:

SENG Bunkheang
William SMITH
Dale LYSAK

PICH Ang
Élisabeth SIMONNEAU-FORT
SIN Soworn
VEN Pov
Nushin SARKARATI
Christine MARTINEAU

For Court Management Section:

UCH Arun
SOUR Sotheavy

INDEX

ORAL SUBMISSIONS ON IENG SARY’S FITNESS TO STAND TRIAL

Mr. Karnavas..... page 3

Mr. Smith..... page 25

Ms. Simonneau-Fort page 39

MR. PE CHUY CHIP SE (TCW-507)

Questioning by the President..... page 59

Questioning by Mr. Seng Bunkheang..... page 64

Questioning by Mr. Lysak..... page 77

Questioning by Mr. Ven Pov..... page 103

Questioning by Ms. Sarkaratipage 111

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MR. LYSAK	English
MR. MOEURN SOVAN	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PAUW	English
MR. PE CHUY CHIP SE (TCW-507)	Khmer
MR. PICH ANG	Khmer
MS. SARKARATI	English
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MR. VEN POV	Khmer

1

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

2 (Court opens at 0905H)

3 MR. PRESIDENT:

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

5 During today's sessions, the Chamber is going to have two
6 separate hearings: first, the hearing on the submissions by
7 parties concerning the examination of Mr. John Campbell's report
8 and testimony, the hearing conducted on the 8th of November 2012
9 -- that hearing was for the health, medical condition of Mr. Ieng
10 Sary, and that it is now opportunity for the parties to make
11 their final submissions concerning such hearing; then we would
12 proceed to the hearings of Case File 002/1, in which the Chamber
13 will be hearing the testimony of witness TCW-507.

14 Ms. Se Kolvuthy is now instructed to report to the Chamber on the
15 current status of the parties to the proceeding, indeed, for each
16 particular hearing session.

17 [09.07.32]

18 THE GREFFIER:

19 Good morning, Mr. President and Your Honours.

20 All parties to the proceeding are present except Mr. Ieng Sary
21 and Khieu Samphan, who are present but in the holding cells.

22 Mr. Ieng Sary has waived his right to be present during the
23 testimonies of Witness TCW-507 -- the witness whose testimony
24 will be heard momentarily.

25 The witness is at the holding cell awaiting calls from the

2

1 Chamber. The witness already emphasized that, biologically, the
2 witness has no connection, or relation to any of the civil
3 parties, or parties to the proceeding, including the accused
4 persons. The witness took an oath already this morning.

5 And we also have reserved witness -- rather civil party TCCP-82,
6 who is ready.

7 [09.08.45]

8 MR. PRESIDENT:

9 Thank you very much, Ms. Se Kolvuthy.

10 Next, we would like to proceed to the first session concerning
11 the final submission by parties to the proceedings with regard to
12 the medical issue. The Chamber would like to proceed to counsel
13 for Mr. Ieng Sary, first.

14 And counsel for Mr. Nuon Chea is seen on his feet. Could you
15 please wait until at a later stage that you can raise your
16 concern? Because we would like to make sure that this session is
17 dedicated to counsel for Mr. Ieng Sary and other parties for the
18 purpose of the final submission with regard to the medical report
19 by Professor Campbell. You may do that after this session is
20 concluded. Indeed, you will be given the opportunity to raise
21 your concerns only after this session, please.

22 And please be seated.

23 [09.10.07]

24 Indeed, the Chamber has already ruled on this, and please do not
25 interrupt the proceedings. We already informed your colleagues as

3

1 well, during last week, that you were part of the – you are part
2 of the proceedings as observer. And, on Thursday, the Chamber
3 made it very clear that the parties would be here to listen to
4 the final submission by parties concerned with regard to Mr. John
5 Campbell's medical testimony.

6 Counsel for Mr. Ieng Sary, you may now proceed.

7 MR. KARNAVAS:

8 Good morning, Mr. President, and good morning, Your Honours, and
9 good morning to everyone in and around the courtroom.

10 [09.11.11]

11 Before I begin, I was informed prior to coming here today, that
12 the Nuon Chea team has another matter it wishes to raise, at this
13 stage, concerning their client who apparently is suffering from
14 dizziness. And I think that was the nature of the submission that
15 they wish to make. So, with that in mind, perhaps--

16 MR. PRESIDENT:

17 Indeed, the Chamber has already ruled on this and Nuon Chea's
18 counsels will be offered this opportunity immediately after this
19 first session is concluded.

20 You are not allowed to be heard now, and please be seated.

21 Counsel for Mr. Ieng Sary, you may proceed now.

22 [09.12.09]

23 MR. KARNAVAS:

24 Thank you, Mr. President. I'll begin, Mr. President.

25 First of all, let me, on behalf of the entire Ieng Sary defence

4

1 -- Mr. Ang Udom and I would like to begin our presentation by
2 thanking the Trial Chamber for a number of reasons.

3 First, thank you for having Mr. Ieng Sary examined by the various
4 medical professionals, including Dr. Campbell. You did this on
5 your own accord, and we are grateful.

6 Thank you for holding two separate public hearings concerning Mr.
7 Ieng Sary's health, and we are grateful that we were able to
8 receive the reports and hear from the doctors, as well, and given
9 an opportunity to question them.

10 Third, we wish to thank you for providing us this opportunity
11 today, to make our submissions concerning Dr. Campbell's
12 testimony of 8 November 2012. To paraphrase Thomas Jefferson, one
13 of the founding fathers of the United States of America, the
14 primary author of the Declaration of Independence and our - the
15 third President of the United States -- quote:

16 "Sound heads and honest views need nothing more than explanation
17 and mutual understanding to enable them to unite in some
18 measures, which might enable them to get along," and if I may
19 add, in our case, in finding a just and acceptable solution.

20 [09.14.15]

21 We can safely say that we are doing exactly that. We have begun
22 to explore the facts in the hope of finding a mutual
23 understanding that will enable us to deal with Mr. Ieng Sary's
24 current health challenges; and how these challenges, currently
25 and most definitely in a not so distant future, impact on the

1 trial proceedings, which include, unquestionably, Mr. Ieng Sary's
2 fundamental fair trial rights guaranteed to him, and to all
3 Cambodians, for that matter, by Articles 31 and 38, of the
4 Cambodian Constitution, and of course, Article 14 of the ICCPR,
5 the International Covenant on Civil and Political Rights, which
6 as we all know, is incorporated in the Cambodian Constitution and
7 embedded in the Agreement the Establishment Law and the Internal
8 Rules of the ECCC.

9 [09.15.32]

10 While many of our questions posed to the doctors, both at the
11 hearing of 21 September, and especially on 8 November, turn on
12 the issue of competency to stand trial, as related to the fair
13 trial right of being able to meaningfully participate in the
14 proceedings, you must not lose sight of the fact that we -- that
15 is the Ieng Sary defence, have not made submissions calling for
16 the termination of the proceedings against Mr. Ieng Sary.
17 From the medical reports, the testimony of the doctors, and the
18 contextual reality that we are dealing with -- that is, an 88
19 year old accused, in precarious physical condition -- it is
20 rather self-evident that the issue of competency will, at some
21 point, blossom into an issue that will need to be confronted head
22 on and, no doubt, will require us to meet the challenge in
23 finding a mutual understanding to enable us to unite, in some
24 measures, in finding a just and acceptable solution. Certainly,
25 we are not there yet.

6

1 [09.17.15]

2 We submit that to use today's hearings for the purposes of making
3 lengthy submissions on competency is not only premature, but a
4 misuse -- if not an abuse -- of the time that you, the Trial
5 Chamber, has graciously allotted the parties to make observations
6 today.

7 Judge Cartwright, in her remarks at the close of the hearing last
8 Thursday, rightfully reminded us all that, for the time being,
9 Mr. Ieng Sary has waived his presence at the proceedings of all
10 the witnesses listed to appear for the remainder of this month
11 and, I would dare say, perhaps for the month of December as well,
12 given the pace of the trial proceedings and the nature of the
13 testimony of these witnesses.

14 Therefore, aside from the fact that no submissions have been made
15 as to competency -- and let me underscore -- the questions
16 however sharply put to the physicians do not amount to
17 submissions of application, the matter is not ripe for discussion
18 because the proceedings can carry on without interruption,
19 irrespective of Mr. Ieng Sary's current state of health. Now,
20 that may change in the next days, weeks or months, or it may not,
21 but here's where we are today.

22 [09.18.51]

23 Now, we can devote with relative ease a significant period of
24 time arguing the merits and shortcomings of Dr. Campbell's report
25 and testimony; in fact, I could do so, on the cuff, and spend the

7

1 next day, if not the entire week, dicing and slicing his
2 testimony. We see no point of doing so, at this moment. This
3 should not be interpreted, however, as a concession or as a
4 purposeful exercise in tacitly accepting the views expressed by
5 Dr. Campbell. Quite the contrary, we take grave exception to the
6 manner and scope of his latest examination of Mr. Ieng Sary, as
7 well as, some of his rather -- how should I put it -- fanciful
8 conclusions. And I mean no disrespect to the doctor, but from my
9 observation, my personal observations of Mr. Ieng Sary, and I
10 know that I've been cautioned by the Prosecution that I'm giving
11 evidence, the man that I see, when I meet, is quite a different
12 man than the one described by Dr. Campbell, but again, this is
13 neither the time nor place to go into the merits of his
14 particular testimony and findings.

15 [09.20.25]

16 With that in mind, however, we submit that the time is indeed
17 ripe, and that we do submit that it is both reasonable, and
18 necessary for the Trial Chamber to engage an expert, who is not
19 connected to, or associated with Dr. Campbell's examination of
20 Mr. Ieng Sary, and to provide an independent evaluation.
21 And this is, I should add, something very common within the civil
22 law system, even though experts are chosen from a list by the
23 Trial Chamber, where testimony is taken and where it would
24 appear, that there are some differences, or questions arise from
25 the testimony; nothing prevents the judges from selecting

8

1 additional experts to hear from. And I dare say that nothing
2 prevents the parties from making recommendations to the judges,
3 as to who may be a suitable expert to be called upon.

4 As Dr. Campbell himself acknowledged during his testimony,
5 second, and even third opinions from other experts are common in
6 the medical field. Those were his submissions, and we suggest
7 that that is exactly what we are seeking to do here today.

8 [09.21.58]

9 Dr. Bursztajn was consulted on a pro bono basis, given the
10 limited confines of the time and, of course, material that we
11 were allowed to provide to him. He submitted a letter, and we
12 have indicated quite expressly that that letter was not a medical
13 report. It did, however, call into question the methodology and
14 the sources by Dr. Campbell, albeit, he did not have the -- all
15 relevant material that Dr. Campbell had available, himself,
16 including the previous report and, of course, the one on one
17 examination. But nonetheless he did provide a basic assessment in
18 the form of a letter.

19 He is not associated and has never been associated with the Ieng
20 Sary defence team. I've never met the man, never spoke to him
21 personally. We submitted an email, as you noted, as was provided
22 to you, merely seeking a consultation on a pro bono basis and he
23 did so. He is, however, highly regarded in the field in the
24 United States, and he comes from perhaps one of the most
25 prestigious -- if not the most prestigious -- medical schools in

1 the United States; he's a professor there. He has a long standing
2 interest in issues dealing with competency, including the
3 relationship of the physical and emotional factors of competency.
4 He has authored extensively in the field, and he is highly
5 regarded in the field of forensic psychiatry.

6 [09.24.03]

7 We see no reason why the Trial Chamber should not reach out to
8 Dr. Bursztajn, even for exploratory reasons, to determine his
9 bona fides, and the extent to which he may be of assistance to
10 the Trial Chamber and what will, undoubtedly, become an issue in
11 the future; and that is Mr. Ieng Sary's status and fitness for
12 trial.

13 And let me pause here for a second. This is an issue that is not
14 going to go away. At 88 years old, with heart problems, with
15 breathing problems, with prostate problems, with back problems --
16 you name it -- Mr. Ieng Sary is simply not going to get better.
17 He may be stabilized, but at his age, normally, the status quo is
18 about the best one can do. And it's even -- Dr. Campbell's rather
19 generous -- generous description of Mr. Ieng Sary admitted that
20 we need to be guarded on the future health status of Mr. Ieng
21 Sary.

22 [09.25.41]

23 We ask that the Trial Chamber contact Dr. Bursztajn to request an
24 independent evaluation of Mr. Ieng Sary's condition to enable him
25 to render a complete evaluation.

10

1 We also request that the Trial Chamber provide him with all the
2 information that was made available to Dr. Campbell; that is all
3 medical reports and evaluations of Mr. Ieng Sary, that have been
4 completed to date, all transcripts of the previous doctors'
5 testimony regarding Mr. Ieng Sary's health and all related
6 documents and memorandum from the Trial Chamber.

7 Now, the Trial Chamber may feel that, again, this request may not
8 be quite right yet, that we may have to wait. But, nonetheless,
9 we wish to put the Trial Chamber on notice that the Ieng Sary
10 defence, respectfully requests an independent evaluation,
11 irrespective of Dr. Campbell's examination and reports and his
12 expertise and his willingness to come and give testimony. We
13 submit, an independent evaluation will be required in the future.

14 [09.27.18]

15 Of course, we have no objections to the Prosecution and the civil
16 parties in proposing experts of their own, since, no doubt, they
17 are likely to assume that anything proposed by the Ieng Sary
18 defence is self-serving, defence-oriented, subjective. And that's
19 understandable, that's the world over; that's how defence lawyers
20 are normally viewed by the prosecution, when it comes to making
21 such proposals, as proposing experts who are defence-oriented. We
22 submit the doctor that we are proposing is not. You have his
23 c.v.; we leave it up to you.

24 Mr. President, Your Honours, these are our submissions. If the
25 Trial Chamber wishes for us to make written submission in asking

11

1 for the appointment of an independent expert, especially the one
2 that we have recommended, we are prepared to do so. On the other
3 hand, if the Trial Chamber is inclined to reject this request,
4 then we would appreciate a reason written decision. Unless there
5 are any questions, these are our submissions.

6 And, again, we wish to thank the Trial Chamber for examining Mr.
7 Ieng Sary and for providing us with two public hearings on Mr.
8 Ieng Sary's status. And we want to stress that we note -- and it
9 has been noted -- that this was on the Trial Chamber's accord,
10 and we are grateful for that. Thank you very much.

11 (Judges deliberate)

12 [09.32.02]

13 MR. PRESIDENT:

14 I would like to hand over to Judge Sylvia Cartwright.

15 You may proceed.

16 JUDGE CARTWRIGHT:

17 Thank you, President.

18 Mr. Karnavas, the Chamber has a couple of questions arising out
19 of your submission. We are left being unclear as to whether you
20 assert that Ieng Sary is currently unfit or not or whether, for
21 example, he can participate from the holding cells.

22 And if you are submitting that he is - he's still fit to stand
23 trial -- and we clearly understood your submission that this is
24 an elderly man who's health is frail, that's not the issue here
25 -- but if it is indeed your position that he remains fit, albeit

12

1 with all these health difficulties, why is it that you are
2 proposing another expert, and on what basis? Just to help us get
3 a really clear path through this, please.

4 [09.33.16]

5 MR. KARNAVAS:

6 Thank you, Judge Cartwright.

7 Well, let me be very clear; our position is and has been for some
8 time that he is not fit. He cannot participate -- he cannot
9 participate meaningfully, at least not on the basis of
10 international standards that this tribunal has decided to
11 implement, which are already in the Cambodian Constitution. So
12 those are -- that's our starting point.

13 However, we have taken a -- what I would call a very measured
14 approach, because we are dealing with some witnesses and civil
15 parties who may not require Mr. Ieng Sary's participation. And
16 given that Mr. Ieng Sary has gone over the material with us and
17 has agreed that he would not -- that he would waive his
18 constitutional right to assist in his own defence and participate
19 in the proceedings for these limited witnesses, we have agreed to
20 go forward with the hope that perhaps Mr. Ieng Sary would improve
21 -- would physically improve to the point where he could be in the
22 holding cell and he could follow the proceedings, just as he was
23 able to do prior to his last hospitalization.

24 [09.34.51]

25 Up until that point, he was able -- with the exception of one

13

1 day, I think, when he was feeling overly dizzy -- he was able to
2 follow. Since that day, if "participation" means having a window
3 of opportunity to consult with Mr. Ieng Sary five minutes, 10
4 minutes, 15 minutes, then it is our rightful submission that
5 that's not meaningful participation.

6 For Dr. Campbell to say that he has dozed off at lectures and
7 didn't miss much - well, let's look at it. This is not a lecture;
8 this is a trial proceeding. Also, Dr. Campbell at least seemed to
9 me to be in perfect health or in very good health. He's also 20
10 years younger than Mr. Ieng Sary; he's not dozing in and out.

11 We have observed our client and we are of the opinion that as of
12 this moment he is not able to participate in his own defence.

13 However, because of what we are doing here in court, because of
14 the witnesses that the Trial Chamber must take evidence from, but
15 do not necessarily impact to a high degree on Mr. Ieng Sary,
16 we've agreed and Mr. Ieng Sary has agreed -- because it's his
17 right to waive or not waive -- to go forward.

18 [09.36.25]

19 Now, it could be that in January or December Mr. Ieng Sary
20 recovers. It could be, however, that we, at some point, will run
21 out of witnesses that he's waived, and at that point our position
22 is rather unmoving. We are not going to budge, we are not going
23 to waive; we're going to -- you know, we're going to hold our
24 ground, and you will need to make a decision.

25 Now, if the Trial Chamber is convinced on what Dr. Campbell says,

14

1 that Mr. Ieng Sary is competent and that he's capable and that
2 all he needs to do is will himself into paying attention, which I
3 think is rather generous of Dr. Campbell in saying so, then the
4 alternative, I think, is not to have Mr. Ieng Sary in the holding
5 cell but to have him here in Court, in a gurney, on a bed, where
6 the entire world and you can see whether he's dozing in and out,
7 whether he is actually participating, and then we will be asking
8 ourselves, as the world will be asking as well: Are these the
9 sort of international standards that are applied the world over
10 and the ones that this Trial Chamber, which is deemed to be the
11 model for the rest of the country, should be emulating?

12 [09.37.46]

13 So that's where we are. I thought -- or we submit that, because
14 of the report by Dr. Campbell and his testimony, that it would be
15 prudent, if not now, at least down the road - because, as I said,
16 when we get out of -- when we're through with witnesses that he's
17 waived, we will need to revisit this issue. We're basically
18 kicking the can down the road, as they say, but we were doing so
19 with the expectation that perhaps Mr. Ieng Sary will get better.
20 And one might think that he will get better, if Dr. Campbell is
21 correct and the Cambodian doctors are all wrong, as far as what
22 exactly is causing his dizziness, that his brain is getting
23 sufficient oxygen, and that all we need to do is apply a neck
24 brace and that should -- and with some adjustments he would be
25 able to get back to a normal position.

15

1 So, that's where we are. We are trying to -- in a very
2 challenging circumstance, here, to find a way that we do not hold
3 up the proceedings, because there's business to be done at this
4 stage where Mr. Ieng Sary is willing to waive his presence.

5 [09.39.29]

6 The alternative, of course, would be to file for a motion to
7 sever at this stage. And, of course, it would be our position
8 that were we do that, were we to do that, then the proceedings
9 would have to cease; they could not go on while this matter is
10 pending, they would have to come to a grinding halt. And it
11 might, in some ways, be premature because, who knows, maybe Mr.
12 Ieng Sary will improve; we doubt it, but we're willing to
13 accommodate the Trial Chamber because we do recognize that these
14 are important proceedings; we wish to be viewed as serious
15 litigants, we are not trying to obstruct the proceedings, and
16 we're trying to work with the parties as well, with the
17 Prosecution as well as with the civil parties.

18 And I believe even Mr. Smith acknowledged in the last
19 presentation -- not this one but before, when we had a hearing --
20 if I recall correctly, he'd indicated that we have enough
21 witnesses, we should proceed and see where that takes us.
22 I hope I have answered your question, Judge Cartwright.

23 (Judges deliberate)

24 [09.42.32]

25 MR. PRESIDENT:

16

1 I hand over to Judge Jean Marc Lavergne to present questions to
2 the defence team for Mr. Ieng Sary.

3 JUDGE LAVERGNE:

4 Yes, I apologize, Mr. Karnavas, for prolonging this discussion,
5 but the Chamber would like to receive some clarification.

6 It seems to me that when your client accepted to waive his right
7 to participate in the hearing of a certain number of witnesses,
8 the situation was different from the situation now. Back then,
9 your client was in hospital, we had received a certain number of
10 medical certificates that were attesting to specific problems
11 that a priori were -- while these conclusions were not accepted
12 by Professor Campbell, a priori.

13 But today, do you consider that your client is totally unfit to
14 participate in this trial? Is he unable to participate for full
15 days, or do you consider that we should maybe modify the schedule
16 a little bit? And if he's unable to participate in this trial,
17 what are the exact medical reasons that allow you to conclude
18 this?

19 [09.44.02]

20 MR. KARNAVAS:

21 Thank you, Judge Lavergne, and no need to apologize for
22 prolonging the proceedings. I am always grateful for the
23 opportunity to expand. I'll try to be cogent.

24 It's our submission, Judge Lavergne, having spent a lot of time
25 with our client, that beyond a five or 10-minute period, maximum,

17

1 he's unable to concentrate. He gets dizzy, he has double vision;
2 he's unable to really follow the proceedings. Now, I understand
3 what Dr. Campbell said. As I indicated, that is a remarkable
4 difference from the one that we've observed.

5 [09.44.48]

6 Yes, he's back here from the hospital. Why? The hospital said
7 well they can no longer treat him. They've done the best that
8 they can. Of course, we have to recognize that Dr. Campbell came
9 up with a very different analysis of the problem that's causing
10 Mr. Ieng Sary to be dizzy and unable to concentrate. But we
11 submit that the right to participate in one's trial, especially
12 to follow along with the proceedings and to give instructions, is
13 more than just being physically present down in the room.

14 If he's down in the holding cell or here in the courtroom and
15 he's half asleep or asleep, he wishes to participate but because
16 of his age, because of all his other medical conditions he's
17 unable to muster the strength to follow along on the proceedings.

18 If he's unable to then recall what he heard and to give
19 instructions, if he's unable to read portions of the documents
20 that we require him to read at times in order for him to give us
21 instructions, even though we do read documents to him but after a
22 certain point he's fatigued, he's exhausted.

23 [09.46.24]

24 It's not a matter of him able to control himself or the will; he
25 can will himself to these things. We submit that in his present

1 state, which was prior to -- which was quite different and
2 remains the same essentially from the time that he's gone to the
3 hospital, he does not, he cannot follow the proceedings. Now,
4 that may change at some point.

5 Let me give an example. If we were at the stage where we had run
6 out of witnesses that were -- or civil parties that were not
7 necessarily that -- I don't want to say relevant because all
8 witnesses are relevant to the trial -- but they didn't impact on
9 our case to the extent that some others, like say Philip Short,
10 to give an example. If we were at that stage, we would be making
11 submissions to sever him for the trial. That's where we are. So
12 it is our rightful submission, from our observations, from our
13 day to day contact with him, from our ability to work with him.

14 [09.47.46]

15 Now, you have Dr. Campbell's examination and his reports and his
16 testimony. We disagree. Based on that, we feel we need an
17 independent evaluation. Now, you can force him to be in that
18 room, although we would say we would want him in a courtroom so
19 everybody can see the state that he's in. When you have an
20 88-year old man who's most of the time in a fetal position, in
21 pain in one way or the other, needs somebody to turn him over,
22 can't stand up, is urinating on himself, without help, cannot
23 even take his own pills, is seeing double vision, and to say that
24 this person is actually meaningfully participating in the
25 proceedings is a rather ridiculous conclusion to reach, to put it

1 bluntly.

2 And so we are at the position -- we're saying -- we're submitting
3 that he is not capable of participating, but we are also
4 submitting that: because he has waived these witnesses that are
5 not that impactful on his case and because one never knows
6 whether his medical condition will improve, why not go forward
7 with the witnesses that we have at hand so we don't stop the
8 proceedings, see if his health improves? And if it doesn't
9 improve, then ultimately we will be faced with having to make
10 full blown submissions for his -- for him to be severed from the
11 proceedings.

12 [09.49.22]

13 And I understand, these are very, very important decisions. It
14 impacts the civil parties, it impacts the Prosecution; there is
15 the perception of the public. There's a host of reasons that are
16 quasi-political, might I say, as opposed to legal. And at this
17 stage, rather than confront them because we're going to have to
18 confront them at some point, what we are suggesting, and we are
19 submitting, is that we go forward.

20 But if the Trial Chamber is of the opinion that he is fit, then
21 he should be in Court, and then of course we will be making
22 immediate submissions for his severance from the case, and in
23 that -- those submissions we will be asking for independent -- an
24 independent evaluation.

25 [09.50.22]

20

1 And I hope I am very clear, Judge Lavergne. I was trying to be
2 very nuanced and diplomatic this morning, hoping that I would not
3 have to, in any way, attack anybody's testimony, or what have
4 you, but try to provide the Trial Chamber and the parties with a
5 reasonable position of us going forward, because it is necessary
6 for the trial to continue as best as it can, even under the
7 current circumstances.

8 And I recognize that some of my colleagues on the human rights
9 side will be faulting me for not pushing hard enough, but I'm
10 trying to be -- to take a very measured position so that there is
11 no -- so that there could be no complaint that somehow we were
12 engaged in a ruptured strategy. Thank you.

13 JUDGE LAVERGNE:

14 Another -- may I ask for some more clarification, Counsel
15 Karnavas?

16 Of course, we understand that you believe that your client is not
17 able to attend this hearing, but we would like to know if this
18 unfitness to stand trial goes as far as being an issue regarding
19 his ability to understand the extent of the rights that he is
20 waiving when he is waiving the right to be present when certain
21 witnesses are examined?

22 [09.52.14]

23 MR. KARNAVAS:

24 An excellent question. An excellent question, Judge Lavergne, and
25 thank you for asking that question.

21

1 As I indicated earlier, his ability to concentrate is five or 10
2 minutes at a time -- 15.

3 What we have done in the past we have gone through the witness
4 statements of the witnesses that you anticipated to call. I've
5 gone over them personally at least a couple of times. We then
6 have sat down with Mr. Ieng Sary in small timeframes so that he's
7 able to have discussions with us for those 10 or 15 minutes that
8 he's able to concentrate before he's exhausted.

9 During those periods, we've been able to discuss very briefly
10 what we believe is the essence of the witnesses' or the civil
11 parties' testimony. We have the summaries, of course, that were
12 provided by the parties. We also have looked at the paragraphs to
13 which they refer to. So we have some -- we put it into context.

14 [09.53.31]

15 And I can assure the Trial Chamber that, were we of the position
16 that Mr. Ieng Sary was not competent, mentally competent to issue
17 -- to give us that waiver, that would have been raised. In other
18 words, we -- and I -- this is something that I am especially
19 sensitive about -- don't want to put myself in the position of
20 the client in deciding what should be waived and not waived; it
21 is not my intention to act for the client. We give advice; the
22 client gives us instructions.

23 From the instructions that we've received, and based on our
24 observation, we are confident -- and let me underscore that -- we
25 are confident for the witnesses that he has waived thus far, and

22

1 I think the last time we submitted 14 names, that Mr. Ieng Sary
2 was -- provided a waiver that was knowing, was intelligently
3 made, and was willingly made, and so for those we have no
4 problem.

5 [09.54.45]

6 Now, that said, you cannot say because he's able to concentrate
7 for 10 or 15 minutes in providing a waiver that he can actually
8 participate in proceedings where you have testimonies, you have
9 objections, you have rulings, and he needs instructions. There is
10 a vast difference. And perhaps I was thinking ahead of your
11 follow-up question, that's why I'm supplementing my remarks.

12 MR. PRESIDENT:

13 Judge Cartwright, you may now proceed.

14 JUDGE CARTWRIGHT:

15 Sorry, Mr. Karnavas, another question. You have been clarifying
16 to the Chamber that you consider that Ieng Sary has the mental
17 competence to give a valid waiver. We just need to clarify one
18 more detail. Back on the 3rd of September, Dr. Campbell and
19 doctors Fazel and Lina Huot, did an examination which covered
20 Ieng Sary's mental health status, and found that there was
21 nothing to be concerned about in particular.

22 [09.56.15]

23 Now, do you accept that report? Because it was never mentioned
24 during the hearing with -- well, it was mentioned during the
25 hearing with Professor Campbell, but of course, as we know --

1 now, we well know Professor Bursztajn did not have a copy of
2 that.

3 So we just need to clarify that point. Thank you.

4 MR. KARNAVAS:

5 Again, thank you, Judge Cartwright, for giving me the opportunity
6 to address this point.

7 It sort of reminds me of when I go to bed at night; I'm feeling
8 great. I get up in the morning, and I got aches and pains. What
9 happened during the night, I don't know. But basically, on
10 September 3rd, there was an examination. We, of course, didn't go
11 into that examination because at that point in time, if you may
12 recall, Mr. Ieng Sary was in his holding cell, he was waiving his
13 presence in Court, but he was participating from the holding
14 cell.

15 [09.57.09]

16 Lo and behold, four days later, on September 7th, we visit Mr.
17 Ieng Sary in his holding cell, in his -- at the detention unit.
18 We had scheduled a one hour meeting and prior to our arriving
19 there he told us he could not get out of bed. So we went there
20 and we had this -- a meeting that lasted approximately half an
21 hour and we were trying to discuss -- and I say "trying" to
22 discuss -- the testimony of Philip Short, who interviewed Mr.
23 Ieng Sary on a couple of occasions.

24 After that meeting, approximately half-hour or so later, we were
25 informed by the detention facilities that he was being medevaced

1 -- he was being evacuated to the hospital where he stayed there
2 for three or four days before he was actually examined, hence we
3 had the hearing later on on the 21st.

4 So, what I'm saying is, what -- prior -- on the September 3
5 evaluation, we, at that stage, had no concern with respect to Mr.
6 Ieng Sary being able to assist us and for him to be able to
7 participate in the proceedings because he was participating. We
8 were seeing him during the recesses. We saw him in the morning.
9 We had some rather complicated witnesses, as you may recall, at
10 the end of -- during August, where he did in fact engage his
11 legal team and was participating, and because of that we saw no
12 reason to challenge the report or to go into the report.

13 [09.59.09]

14 Now, we understand that that report is part and parcel and that's
15 what Dr. Campbell is building on, but what we're saying is, as I
16 noted when I get -- I go to bed at night and I'm feeling good, in
17 the morning I'm not feeling so good, I got some problems, that's
18 what happens between three and seven, September 3 and September
19 7. Something happened.

20 Why Mr. Ieng Sary was fine on September 6 when I met him and I
21 was able to discuss the testimony of the witness, who had just
22 finished, and why the following day he could not get out of bed,
23 and why a half hour later he had to be "medivaced", and why when
24 I visit him the following week he's in a fetal position, he looks
25 like he's just about ready to pass away, he's emaciated, and he's

25

1 on oxygen. I think we're dealing with certain realities.

2 [10.00.04]

3 And so, while I don't want to take anything away from Dr.

4 Campbell and the examinations performed by the doctors Campbell,

5 Huot, and Fazel on September 3, I don't think that that

6 examination is the benchmark from where we start here today,

7 especially when we're dealing with someone of the age and

8 physical condition of Mr. Ieng Sary.

9 So, I don't know how else to put this, and I hope I've answered
10 your question.

11 May I be seated?

12 (Judges deliberate)

13 [10.00.58]

14 MR. PRESIDENT:

15 Thank you, Counsel.

16 We would like now to hand over to the Co Prosecutor to proceed

17 with their submission concerning this medical report hearing by

18 Dr. Campbell on Thursday last week. You may proceed.

19 [10.01.26]

20 MR. SMITH:

21 Good morning, Mr. President. Good morning, Your Honours. Good

22 morning, Counsel.

23 Your Honours, it's a -- perhaps a little bit difficult to know

24 where to start. That was quite a significant discussion that's

25 just been had, and, you know, in a way, positions have changed by

1 the Defence. Initially, I think, the submission put forward by
2 the Defence, that they didn't want to put forward a submission as
3 to whether he was fit to plead on not -- and certainly, on
4 questioning now, it's clear that the Defence's view is that Ieng
5 Sary is not fit to stand trial as of now.

6 I think perhaps the changing positions reflect the fragile
7 situation that we're in, which defence counsel have referred to.
8 I mean, it's clear from Dr. Campbell, Mr. Ieng Sary's health is
9 fragile; but it's also clear for him that there was no need for
10 him to stay at the hospital anymore; he didn't require that
11 medical assistance, and it's also clear that coming back to the
12 detention centre he required some more assistance than he would
13 otherwise get -- that type of assistance that counsel was
14 referring to in relation to going to the bathroom, eating,
15 showering, etc.

16 [10.02.54]

17 A lot of those conditions that Dr. Campbell referred to that
18 would require extra assistance to Ieng Sary really relate to
19 those matters that require him to move around, and it's quite
20 clear that, perhaps, between maybe the 3rd of September and then
21 when Mr. Campbell saw him early November -- that that condition
22 deteriorated a little bit, his ability to -- his mobility
23 deteriorated, and he needed more assistance, that's clear. And if
24 that's a reflection of a decline of Mr. Ieng Sary, it's clear
25 that, to that extent, that it has happened.

1 However, Mr. Campbell -- or Dr. Campbell said -- and we would
2 submit he would not have said that if Mr. Ieng Sary was in the
3 immediate need of care, of critical care -- he wouldn't have
4 requested that he be taken back to the detention facility. And so
5 Dr. Campbell's view was that -- is that Ieng Sary's condition is
6 stable, and with the right assistance, as with many people of an
7 elderly age, he would be able to participate in this trial. Left
8 to his own devices, which is what Mr. Karnavas referred to, we
9 would have a situation where his health condition would be
10 complicated if he couldn't get to the bathroom, if he couldn't
11 get to -- if he didn't have assistance with showering, and he
12 didn't have assistance with exercise, if possible within the
13 limits that he could.

14 [10.04.58]

15 So, we do have a situation where we have a very fragile accused,
16 but at the same time we have a situation where we have an accused
17 that Dr. Campbell has said is mentally fit to plea and physically
18 fit to stand trial.

19 The way in which, perhaps, we would all like to see Accused stand
20 trial in the courtroom so the public can see, that may not be the
21 best option at this point for Mr. Ieng Sary. We've heard the
22 professor say that, because of his back problems, it's better
23 that, perhaps, he lays in bed on an incline, and because -- and
24 also he's recommended some adjustments with the television, etc.
25 So, I think as of now Dr. Campbell has recommended, it seems, on

28

1 the basis of Mr. Ieng Sary's comfort level, that he watch the
2 proceedings -- participate in the proceedings from the holding
3 room. And so the suggestion that he be brought into the courtroom
4 by defence counsel, probably, at this stage, wouldn't be
5 appropriate because it doesn't really assist Mr. Ieng Sary with
6 his comfort level.

7 [10.06.31]

8 So, the delicate management of an old person with a number of
9 stable but present conditions requires a lot of delicate care and
10 when we were in the position of the 3rd of September, that was
11 less needed. However, the fact that delicate care or extra care
12 is required -- and perhaps the trial proceeds for the moment in a
13 different way, with Mr. Ieng Sary in the holding room with, if
14 necessary, a nurse assistant and everything that Mr. Campbell has
15 recommended, that's the way that we have to proceed.

16 But as far at the question of whether we proceed or not, on the
17 evidence you have before you that's not really a question.

18 Because we have evidence from Dr. Campbell, who is a professor of
19 geriatric medicine that has dealt with many, many people similar
20 to Mr. Ieng Sary, and is not a person that clearly would be
21 putting his health at risk by the recommendation that he comes
22 back to the detention centre. And I would submit from his
23 qualifications, and from his career, and from dealing with the
24 elderly community for such a period of time, he is unlikely to be
25 putting forward to you, Your Honours, a situation which is quite

1 different to what is put forward by defence counsel.

2 [10.08.36]

3 It may be the case the defence counsel have had times where Mr.
4 Ieng Sary could only communicate for 15 minutes. But that's not
5 the evidence that's before you, that's evidence from counsel. And
6 when we look at the assessment done by Dr. Campbell, it was done
7 over a two-day period. It was done a week ago and when he was
8 asked, what was the ability of Mr. Ieng Sary to concentrate? He
9 said, I spoke to him for an hour and a half and he was able to
10 engage in quite an interactive manner. And then he said he saw
11 him in the afternoon of the same day and he was able to engage
12 with him as well, and then he saw him the following day and he
13 said he was able to engage with him.

14 [10.09.33]

15 He undertook the mini-mental state examination test, the
16 diagnostic test that actually states whether or not someone can
17 concentrate, and he scored high on that test. And his conclusion
18 at the end was that his ability to participate in the trial was
19 the same as the conclusion that he had on the 3rd of September.
20 And Your Honours have no real evidence before you that, between
21 the 3rd of September and early November, that Mr. Ieng Sary's
22 mental capacity had in fact dropped. You heard some evidence in
23 testimony, earlier in September, where on one occasion the
24 interview could only go for -- or the diagnosis with the doctors
25 at the hospital could only proceed for 15 minutes. However, other

1 interviews in relation to his medical health, they all related to
2 15-minute time periods, which Dr. Campbell said was the normal
3 time period for gaining information from the patient.

4 [10.10.43]

5 Perhaps, Your Honours, I'll ask for your guidance here, but our
6 submission is that Your Honours must decide on this issue of
7 whether or not Mr. Ieng Sary is fit to plea. The issue is before
8 you now. You have the evidence before you, and if at a later time
9 Mr. Ieng Sary's mental state or condition declines, if there's a
10 significant difference between now and some time in the future,
11 of course the Prosecution would have no objections for a
12 re-examination; that would be appropriate. There's no point
13 having someone standing trial if they're not fit to stand trial.
14 That's a breach of an accused's rights. And so all that we would
15 ask is that, as of now -- that the position is ripe for you to
16 decide.

17 [10.11.45]

18 The Defence have put forward that he's not fit to plead,
19 Professor Campbell has put forward quite significantly, in his
20 expert report and in his testimony, that he is fit to plea. Dr.
21 Fazel and Dr. Huot, only two months ago, were of the exact same
22 opinion. Dr. Campbell has said only a week ago his condition
23 hasn't changed since when he saw him two months ago. But what
24 Counsel for the Defence appear to be referring to more, is his
25 physical condition and the fact that his care -- more care is

1 required for his physical condition.

2 [10.12.29]

3 But the ultimate test for Your Honours is not whether or not Ieng
4 Sary has five ailments, or 10 ailments, or 15 ailments, or if he
5 needs some extra care. That must be provided by the ECCC, that's
6 the ECCC's responsibility. However, the issue before Your Honours
7 is, is he mentally fit to plea? Can he understand the nature of
8 the charges, the course of the proceedings, the details of the
9 evidence? Can he instruct counsel, understand the consequence of
10 the proceedings? Can he testify? And you've had three experts
11 over a two-month period that have all said the same thing, he
12 can.

13 And I would submit, Your Honours, it may be dangerous to not
14 decide on this issue now, if at a later time this issue becomes a
15 point after a decision in this case, at the completion of this
16 case, a point on appeal.

17 [10.13.31]

18 Judges would probably like to know, in a higher Court, as of this
19 date, what was your view on whether Ieng Sary was fit to plea?
20 Because that will play into how they assess the proper process of
21 this trial. And we certainly appreciate and thank the Defence for
22 having a very accommodating approach to provide waivers when he
23 was at the hospital so that these other witnesses could be heard.
24 But we submit that that approach can still happen. But it is
25 important, Your Honours, that a decision is made on this issue

1 now for the record and for purposes further down the track.

2 [10.14.26]

3 As far as the type of expert, whether it be this Dr. Bursztajn or
4 someone else, if it was required later, I mean, we would submit
5 that, you know, the qualifications and the reasoning behind those
6 experts, or that expert, or other experts, could be put forward
7 by the Defence, and the Prosecution and civil parties could do
8 the same. But then, ultimately, as this is the civil law system,
9 it's important for you to decide, for you to decide if an extra
10 expert is required at a later time and who should that be. But I
11 think it's important not to be under the misapprehension that
12 this would be asking for a second opinion now.

13 [10.15.12]

14 In fact, Dr. Campbell, Dr. Fazel, and Dr. Huot are three doctors
15 -- three qualified doctors that have given three opinions as to
16 his mental state as of about now, in the last two months, with
17 the only difference being, in that time period -- is a weakness
18 in his physical health, which Dr. Campbell has said can be
19 managed appropriately with medication, with medical assistance
20 such as a brace and a proper bed, etc. But there's been no
21 statement by doctors during this two month period saying, Ieng
22 Sary is not mentally fit to plea, other than that one incident
23 where a doctor stated that they spoke to him in the hospital for
24 15 minutes and then he was tired, he couldn't concentrate. Other
25 than that one incident, there's been no evidence before you that

1 the mental state of Ieng Sary has changed since the 3rd of
2 September report to the 4th and 5th of November. And even if it
3 did, which we submit there's no evidence there, on the 4th and
4 5th of November it must have changed back. But, obviously, the
5 position was -- the position is that it's likely that there was
6 no change in the mental state of Mr. Ieng Sary.

7 [10.16.52]

8 Your Honours, I'll be brief now, but if I can just refer you to
9 the Strugar decision from the International Criminal Tribunal of
10 the Former Yugoslavia, and that decision is in -- was entitled
11 "Decision Re: The Defence Motion to Terminate Proceedings". There
12 was -- there's a few principles in there other than the method,
13 or the test, or the criteria, to determine whether an accused is
14 fit to plea.

15 [10.17.40]

16 As far as the seven capacities that need to be measured, you've
17 heard evidence about that. You've heard it from Dr. Campbell in
18 the 3rd of September report. Mr. Ieng Sary understood each and
19 every capacity and gave full answers to show that he had the
20 ability to plead and stand trial. That was absolutely clear from
21 the 3rd of September report, and I think from counsel there's a
22 concession today that certainly from their view, the 3rd of
23 September he was fit to plead and stand trial. And as you've
24 heard from Professor Campbell, when he spoke to him two months
25 later, his view did not change after an hour and a half

34

1 discussion with him on the Monday morning.

2 [10.18.34]

3 But the other principles I would just refer to, I won't quote
4 because of the time, and it's a core principle that comes through
5 the Strugar case and it states that, ultimately, the inquiry into
6 the medical condition of an accused, the causes of the
7 conditions, the causes of the symptoms is not your primary role.
8 Your primary role as a Trial Chamber is to determine whether or
9 not he's fit to plead and stand trial, and once you satisfy
10 yourself of that fact, whether some tingling, or some numbness,
11 or some dizziness is caused by that condition of VBI, or whether
12 it's caused by another condition, or another condition, it's not
13 really a relevant issue. The issue is: Are you satisfied that he
14 can meaningfully participate in his defence?

15 [10.19.39]

16 Of course, health is interrelated and there must be a discussion
17 about health to see whether that impact on Mr. Ieng Sary's
18 ability to meaningfully participate. But once that is satisfied
19 that the experts, the psychiatrist and the geriatrician are
20 satisfied that he can meaningfully participate and demonstrate
21 that fact, then the issue of causes and what's causing his
22 symptoms is not so much an issue that Your Honours need to
23 concern yourself with under the law. That said, from the ECCC's
24 perspective, his health and his medical care is of utmost
25 concern, but that's a different issue which is dealt with in

1 another way. I refer to paragraph 35 and paragraph 46 for that
2 principle.

3 [10.20.47]

4 The second principle I would ask Your Honours to take into
5 account in deciding this issue is that, Your Honours should only
6 be, of course, considering evidence that is before you. Dr.
7 Bursztajn's letter, the one that was done in 24 hours with no
8 consultation with the Accused, with not analysis of the medical
9 records, with no understanding of the prior history of Mr. Ieng
10 Sary. That is not evidence before you.

11 Your Honours allowed parties to seek some advice so we could
12 understand Professor Campbell's evidence more. But that's not
13 evidence before you. And similarly, remarks made by counsel as to
14 the condition of Mr. Ieng Sary when they speak to them -- speak
15 to him, that is not evidence before you.

16 [10.21.40]

17 Your Honours must make your decision on evidence rather than
18 purely a submission, and the reason for that of course, is that
19 counsel can't be cross-examined as to the facts that are being
20 put forward. It's untested and so, Your Honours, the evidence
21 before you has to be of such that you feel confident and you can
22 rely on. And if Your Honours feel as though that you need more,
23 you're not confident about his ability to stand trial, you're not
24 confident about Professor Campbell's testimony and his report,
25 and you're not confident about Dr. Fazel and Dr. Huot, of course

36

1 we would ask that Your Honours gain that confidence by asking for
2 another expert. However, we would submit, Your Honours, three
3 experts in two months with a unanimous view, after extensive and
4 detailed examination of the Accused should leave you in no doubt
5 as to his fitness right now.

6 [10.23.12]

7 Defence counsel has said his condition is precarious, and that's
8 true, and that's true. But if we get to that point where there's
9 a significant change from what Dr. Campbell has said, then, of
10 course, we would all in this courtroom support that another
11 expert or a -- Professor Campbell, or Dr. Fazel, Dr. Huot, and
12 perhaps some other expert be called as well. It's important, and
13 counsel can put forward their suggestions in that regard. But
14 ultimately -- it's not a common law system, it's a civil law
15 system, and ultimately Your Honours have to be satisfied with the
16 qualifications and the experience of the people that are put
17 forward.

18 [10.24.00]

19 Our submission, Your Honours, is that, if right now you called
20 for another expert, it would -- it is unnecessary because you
21 have three opinions. There needs to be a significant change,
22 because if there's no significant change and we still call
23 another expert, if that expert comes along and a party doesn't
24 like that expert then they would ask again, and again, and it
25 would never end.

1 And the Strugar decision at paragraph 25, at page 7 focuses on
2 this. They talk about, "there must be an adequate reason". And
3 certainly, Your Honours, we would submit, bearing in mind Mr.
4 Ieng Sary was examined extensively last week by a Professor that
5 knew him well, and was still of a view that he was fit to plea,
6 that would be unnecessary, a waste of Court time and resources.

7 [10.25.04]

8 Finally, in relation to the issue of fitness to plead and the
9 burden of proof, certainly the Yugoslavia Tribunal has a
10 presumption that an accused is fit to plea. However, to determine
11 on fitness, Your Honours, certainly in the international
12 tribunals, must find on the balance of probabilities that it is
13 more likely than not that the accused is not fit to plea. That's
14 the standard that's used at the other tribunals. And so we would
15 submit, Your Honours, we certainly, having heard Professor
16 Campbell's testimony the other day and the documentary support,
17 we're certainly not at that stage where we can say on the balance
18 of probabilities, Mr. Ieng Sary's not fit to plea. In fact, it's
19 clearly the other way around, we would submit.

20 [10.26.05]

21 Your Honours, to conclude, we -- firstly we would ask that you
22 not postpone a decision for the problems it will create in the
23 future -- it may create in the future. We ask that you give your
24 decision as soon as possible. We would submit that the trial
25 continue as normal either with his presence in the courtroom. But

38

1 if Mr. Ieng Sary doesn't feel comfortable in the courtroom, which
2 from the Professor at this point in time, that seems that may be
3 the case, form the holding cell with all of the appropriate
4 equipment and care, or if necessary, at any other place in a
5 future time. If he had to go back to the hospital and he was
6 still mentally fit, clearly we could set up audio-visual perhaps
7 from the hospital. But that's something that's in the future. But
8 we would ask the trial continue.

9 [10.27.11]

10 You've got no evidence -- no evidence before you that casts
11 significant doubt or any doubt in relation to Professor Campbell,
12 Dr. Fazel, and Dr. Huot's opinion. That letter provided by the
13 Defence the other day, from Dr. Bursztajn, that was -- that
14 opinion was not based on enough information, so its value is
15 very, very small. Further assessments are not currently required.
16 There's no adequate reason to get another one. At some point in
17 time there may be.

18 And just to make it clear, the ongoing medical care of Mr. Ieng
19 Sary, of course is of the utmost importance of this institution.
20 But the fact that he requires some extra personal care doesn't
21 take away from Dr. Campbell's view, and Dr. Huot's view, and Dr.
22 Fazel's view that Ieng Sary is fit to stand trial.

23 Thank you.

24 [10.28.32]

25 MR. PRESIDENT:

1 Thank you.

2 Next, we would like to hand over to the Lead Co-Lawyer for the
3 civil parties. You may now proceed.

4 MS. SIMONNEAU-FORT:

5 Good morning, Mr. President. Good morning, ladies and gentlemen.

6 Good morning, Your Honours. Good morning to all of you.

7 I believe that what our defence -- the Ieng Sary defence has told
8 us is something that the Chamber had already anticipated as well
9 as we and the prosecutor. You started to say that Ieng Sary's
10 defence has told us that we should wait and that for a few weeks
11 we could still hear people for whom he has waived his right to be
12 present, and it is clear that Mr. Ieng Sary is unfit and that
13 Ieng Sary will request a severance if that is necessary in the
14 future. And this is clear and this has an extremely important
15 impact, not only on Mr. Ieng Sary, but also on the civil parties.
16 In regards to this trial and the decision that your trial -- your
17 Chamber will take will also have an impact on the position of the
18 other accused persons, that is quite clear and this is something
19 that we have to think about already.

20 [10.29.51]

21 So we have accepted, of course, to have Mr. Ieng Sary be in
22 hospital given his health condition, we have accepted the
23 modifications to the schedule without a problem, and then we
24 looked at the conclusions of Professor Campbell. These are not
25 the first conclusions that he reached, because Professor Campbell

40

1 has examined Ieng Sary quite often in the past. These conclusions
2 are extremely clear and cannot -- and unquestioned. They were in
3 his report and they were even clearer at -- during last week's
4 hearing. Dr. Campbell tells us that it is not necessary and it
5 might even be harmful to keep Ieng Sary in hospital, and
6 Professor Campbell tells us that there is no unfitness, whether
7 it be physical or mental, for Mr. Ieng Sary to stand trial
8 currently.

9 [10.30.45]

10 And the Ieng Sary defence challenges the findings of Professor
11 Campbell and challenges his methodology as well as his
12 professionalism. I'd like to remind you that Professor Campbell,
13 a few weeks ago, did produce a report regarding Ieng Thirith,
14 which was considered here by the Defence -- by Ieng Thirith's
15 defence as well as by the Ieng Sary defence, as well as by the
16 prosecutors, and this document was considered sufficiently
17 serious and sufficiently well-grounded for the Chamber to rule
18 considering -- and finally stating that Ms. Ieng Thirith is unfit
19 today. The same -- the conclusions by Professor Campbell, again,
20 the last conclusions -- because the report of 3 September has not
21 been challenged, so I'm speaking about the last findings -- do
22 not seem to suit the Ieng Sary defence to fight the clarity and
23 the reasonableness of these conclusions.

24 [10.31.50]

25 I listened carefully to my colleague last week and I listened to

1 him again this morning, and I did not hear the slightest
2 argument, the slightest medical argument that is well founded,
3 that could challenge Professor Campbell's findings. And I would
4 say that it is not sufficient for a report not to suit a party,
5 for this party to consider that we should request further
6 expertise. I share and I support the comments of Marc -- of the
7 Prosecution when it says that the Chamber cannot base itself on
8 the comments of the Ieng Sary defence team. And I also support
9 the conclusions of the prosecutor when he tells us that we are
10 faced with extremely clear expert reports and that the letter of
11 Professor Burstajn, which are only criticisms in terms of form,
12 do not provide any kind of criticism in substance on Professor
13 Campbell's findings.

14 [10.32.55]

15 Therefore, I believe that today the civil party is requesting the
16 Chamber, just as the Prosecution, to not wait because the
17 reasonable position is not to wait -- we should wait until
18 January. The civil party is urging the Chamber to rule as soon as
19 possible and the civil party is asking the Chamber to reject the
20 request for further expertise because it is not at all founded,
21 and the civil party is asking, of course, the Chamber to rule
22 today, given the current situation, considering that Mr. Ieng
23 Sary is physically as well as mentally fit to participate in his
24 trial. And therefore, our position is perfectly in line with the
25 position of the Prosecution, so I will conclude simply by saying

42

1 that if the presence of Mr. Ieng Sary at these hearing is a right
2 for him, it is also a duty indeed, a duty in regard to the civil
3 parties as well as in regard to the public, if this presence of
4 course, is possible. So we consider today that the medical expert
5 reports point to this possibility, so we're asking the Chamber to
6 consider this. Thank you.

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 Counsel for Mr. Ieng Sary, would you wish to also reply to this?

10 [10.34.36]

11 MR. KARNAVAS:

12 Mr. President, Your Honours, I would indeed -- I would indeed.

13 Let me begin by touching upon first what the civil party lawyer

14 indicated that what does not suit the Ieng Sary defence, given

15 that Dr. Campbell's report on his wife, Ieng Thirith. Let me

16 remind the civil parties that we had nothing to do with Ieng

17 Thirith. She was not our client, the issues were wholly

18 different, and we should not be mixing apples and oranges.

19 I was just looking at the word, "precipitate". I don't know why,

20 but it came to mind, "to hasten the occurrence of". And I think

21 that that's what we're about to embark upon should you go ahead

22 and decide at this stage that based on what you've heard that Mr.

23 Ieng Sary is indeed competent to plead as the Prosecution states.

24 Now, let's -- let me remind the Trial Chamber that we don't have

25 any video recordings or tape recordings or anything to see

1 exactly how Mr. Ieng Sary was during the examination of Dr.
2 Campbell. We have to take his word as face value. Now, normally
3 one would not want to be in the middle of an examination, a
4 lawyer, that is, because they do tend to be disruptive, but
5 nothing prevents a videotaping of the presentation, especially
6 when we're talking about something that's rather subjective.

7 [10.36.37]

8 Back in 21 December 2009, in fact, we had asked whether the first
9 evaluation, psychiatric examination of our client was recorded
10 and we received an answer that it had not been, and I'm referring
11 to document number B38/6 and B38/5. These are dated 21 December
12 2009, and based on a 16 December 2009 document received by the --
13 based on our letter to the OCIJ.

14 On 16 March 2011, we requested that the examination be taken --
15 the examination of Mr. Ieng Sary be taken place in the presence
16 of one of the defence members, just as a passive observer. We
17 would, however, for all future purposes ask that any examinations
18 be video recorded, especially when we're dealing with the
19 observations of our client. And I take to heart what the
20 Prosecution said, even though I come from a legal tradition where
21 I am viewed as an officer of the Court, and what I say in Court
22 is as if it's under oath, that in it and of itself is not
23 evidence and should not be taken as evidence. So I take that.

24 [10.38.27]

25 The Prosecution says it is dangerous to not make a decision at

1 this point in time because of what may happen on appeal. Well, I
2 think we need not worry about that because we have the waivers,
3 unless, unless there is some concern by the Trial Chamber that
4 the waivers themselves were provided under circumstances when Mr.
5 Ieng Sary was not competent, but based on the submissions made,
6 based on the waivers, based on the language in the waivers, and
7 based on the fact that the waivers had been accepted, especially
8 by the Prosecution and they have never called into question the
9 waivers, it would seem that there is no need to worry about
10 somehow the Defence, in a rather clever way, trying to set the
11 stage up for the appeal process by creating error into the
12 process. Something that is commonly done at times by defence
13 lawyers, and so I'm fully familiar with the tactic but I can
14 assure Your Honours that this is not one of those cases.

15 [10.39.45]

16 Now, it is up to you whether you wish to decide to find on the
17 basis of what you have before you that Mr. Ieng Sary is indeed
18 competent, but as I indicated, that would be somewhat -- that
19 would might -- that might precipitate the Defence into employing
20 a range of other options, as I've articulated earlier today, such
21 as, if, indeed, there is this finding, which, we submit, would be
22 in error, then perhaps because we would be waiving a point for
23 appeal or we would be looking to be less than diligent, we
24 certainly would need to revisit the issue of the waivers, and it
25 would be my advice to the client so that there is no

45

1 misunderstanding for appeal purposes that he withdraw those
2 waivers and that he proceed with his full presence, and we would
3 submit his presence in Court -- and I'll explain why. But, of
4 course, if the alternative within the detention centre, we would
5 ask that the video be on him so he can be monitored at all times.
6 I do not want to be engaged in a charade where the client is
7 asleep, he can't be seen, and we all pretend that he is
8 participating.

9 [10.41.16]

10 And what I find objectionable, and Mr. Ang Udom finds
11 objectionable, is the fact that we're saying that since we're
12 dealing with an 88 year old gentleman who's got all host of
13 problems, that somehow the standard of pleading should be less
14 than if someone is a more robust individual; that we can tolerate
15 somebody dozing in and out and then kid ourselves that these are
16 international standards.

17 So I would caution against making any findings at this point in
18 time because there is no need to make any findings at this point
19 in time, but should the Trial Chamber make findings, then we
20 would need to revisit certain issues with our client, and that's
21 what we have attempted not to do. We don't try -- we're trying
22 not to precipitate a situation where we would have to go down the
23 road of severance.

24 [10.42.22]

25 Now, the Prosecution likes to quote from the ICTY, a place that

1 is perhaps -- has given us, the world over, that is, lots of
2 jurisprudence in the last few years in this field, and a place
3 that I hold -- is dear to my heart, at least, having spent 10
4 years there. But if we look at the Strugar Case, if we look at
5 the Strugar Case, and if we look at the judgement of 17 July
6 2008, this is the -- the number is 01 42 A, that is the case
7 number, but if we look at this particular decision, judgement. On
8 paragraph 55 they have a conclusion. It can be found on--

9 MR. PRESIDENT:

10 Counsel Karnavas, please repeat the Strugar Case and reference
11 number, as the interpreter may find it difficult to follow.

12 MR. KARNAVAS:

13 The case number is IT 01 42 A; that's the case number. This is
14 the case I suspect that the Prosecution was referring to. This is
15 a judgement dated 17 July 2008, and on a -- it is--

16 [10.44.17]

17 MR. PRESIDENT:

18 International Co Prosecutor, you may now proceed.

19 MR. SMITH:

20 Sorry, I don't want to interrupt, but we were referring to the
21 trial decision, and that went on appeal, and so, yes, it was a
22 different decision.

23 MR. KARNAVAS:

24 It's the same person.

25 The Trial Chamber made certain -- laid out certain criteria, we

1 all accept that, the matter went on appeal, this issue was
2 appealed, and of course, what is controlling in many ways is what
3 the Appeal Chamber says, and they qualified some parts of the
4 Trial Chamber's findings.

5 [10.45.04]

6 And on paragraph 55 it says, and I'm reading in the middle of it:

7 "As noted above, the applicable standard is that of meaningful
8 participation which allows the accused to exercise his fair trial
9 rights to such a degree that he is able to participate
10 effectively in his trial and has an understanding of the
11 essentials of the proceedings."

12 It then goes on:

13 "In this respect, the Trial Chamber applied the standard
14 correctly, as evidenced by its conclusion that an accused fitness
15 to stand trial should turn on whether his capacities 'viewed
16 overall in a reasonable and common sense manner at such a level
17 that it is possible for him or her to participate in the
18 proceedings and in some cases with assistance and sufficiently
19 exercise the identified rights'." And that's close of quote from
20 the Trial Chamber.

21 Now, what I want to focus on and what I would like Your Honours
22 to focus on is the word where it says here "common sense". You
23 don't need to be a medical doctor to know that if somebody is
24 dozing in and out, common sense tells us they're not following
25 the proceedings; they're present, but not mentally.

1 [10.47.02]

2 And how does one follow the proceedings and how will we be able
3 to track that he's following the proceedings unless we view Mr.
4 Ieng Sary at all times to see whether he's dozing in and out? And
5 during those periods when he is too fatigued or when he is seeing
6 double vision or when he is experiencing dizziness or when he's
7 in pain and is unable to follow, do we take a recess, five
8 minutes, 10 minutes, do we interrupt the proceedings? That's what
9 we're talking about.

10 And so, when applying the Strugar elements, we have to use our
11 common sense. I wasn't there at the -- when Mr. Ieng Sary was
12 being examined, neither was the Prosecution, neither were you,
13 Your Honours. We are left with Dr. Campbell's observations. And
14 on that particular day maybe Ieng Sary was having a good day, but
15 not every day is necessarily a good day.

16 So we leave it to your discretion. We think it is not necessary
17 at this point in time because it may precipitate a cause of
18 action from our point of view. And this not a threat; this is
19 because of due diligence because we take our obligations quite
20 seriously. It may require us then, so that we don't -- we're not
21 perceived as having waived any particular rights or acquiesced
22 that at this point in time, irrespective of our submissions, Mr.
23 Ieng Sary is competent, it may require us to file for additional
24 submissions and of course we would be asking for an independent
25 expert to examine Mr. Ieng Sary. We don't think it is necessary

49

1 at this time because we have the waivers. It hasn't been
2 necessary for the last month and a half.

3 [10.49.09]

4 And so our rightful submissions are that we proceed as we have
5 been proceeding and let's see what happens at some point. Of
6 course, I understand the Trial Chamber's concern and I understand
7 the Prosecution's concern, as the civil parties, they want
8 certainty at this time. And if that is the course of action that
9 you decide to take then so be it. We will understand that, but we
10 then have to reconsider because one of my obligations, and I say
11 our obligations is to ensure that we are providing meaningful
12 representation at all times and that we are diligent and we take
13 our responsibilities quite seriously. It may not appear that way
14 at times but we do, and we try, and we certainly are trying to
15 find creative approaches so that we can proceed as best we can,
16 until some circumstance decides otherwise, without any
17 interruptions.

18 [10.50.16]

19 And again, Your Honours, let me thank you -- let me thank you. On
20 behalf of Mr. Ang Udom and I and on behalf of Mr. Ieng Sary, let
21 me thank the Trial Chamber for allowing us these submissions.
22 They're terribly important submissions, and we are glad that you
23 have had them in the public, because I think these are very
24 important issues that need to be discussed publicly. Thank you.

25 MR. PRESIDENT:

50

1 Judge Cartwright, you may now proceed.

2 JUDGE CARTWRIGHT:

3 Mr. Karnavas, one last question. It appears to me that you are of
4 the view that your client, Ieng Sary, is currently unfit.

5 However, you do not want the Trial Chamber to make such a
6 decision. You would prefer it if the Trial Chamber continued and
7 muddled through with witnesses, experts, and the like that he has
8 no concern with.

9 [10.51.29]

10 My problem is that if we do that and that is the basis on which
11 the Trial Chamber proceeds, then it seems at least possible that
12 we are continuing a trial of Ieng Sary when he is not fit. I'm
13 not quite sure how we get ourselves out of this dilemma. I
14 clearly understand you don't want a decision at the moment. I
15 don't quite see how we're going to proceed without clarifying the
16 current situation.

17 So are you able to help me with that? And no one's suggesting, I
18 might say, no one's suggesting that the Ieng Sary team is not
19 diligent, not at all. The question is how do we proceed from here
20 and how do we resolve this matter without this conundrum that
21 we're currently faced with. Thank you.

22 MR. KARNAVAS:

23 Thank you, Judge Cartwright.

24 Well, let me begin by saying that Mr. Ieng Sary's fitness is
25 limited to the extent of being able to participate for very

51

1 limited periods of time, such as ten or fifteen minutes off and
2 on, long enough for us to give him some instructions. That, in
3 our rightful submission, is not sufficient to meet the test for
4 the fair trial rights that he is entitled to under the Cambodian
5 Constitution and the laws applied to this particular institution.

6 [10.53.17]

7 We are hopeful -- and I guess hope springs eternal -- that his
8 condition will improve, and that's why we have taken the position
9 that as long as we have these waivers of these witnesses and no
10 more the business of the trial can go on. Part of our concern was
11 not to be disruptive, but we're not -- while we don't think that
12 it is necessary at this point in time because of these waivers
13 for the Trial Chamber to make a decision, were it to make the
14 decision as I've indicated, then it puts us in a different
15 posture, in a different position where we may have to take
16 certain measures, which obviously we're trying to avoid at this
17 point in time, but we leave it to your sound discretion.

18 I'm not trying to have it both ways. I certainly don't want to
19 box the Trial Chamber into any particular position. If the Trial
20 Chamber wishes to make a finding at this point in time then so be
21 it, then we will proceed accordingly. But I'm trying -- we're
22 trying to be measured, reasonable, and creative at the same time
23 respecting our client's rights, but at no time are we saying that
24 he is fit to participate in the proceedings as they are ongoing
25 right now; and even if you reduce them to half a day, he is not

1 going to be fit.

2 [10.54.56]

3 But if you make that decision, then we certainly would have to
4 have a conversation with our client, asking to withdraw his
5 waivers, and then, of course, we would want full view of Mr. Ieng
6 Sary in the state that he is in at all times so that, yes, he can
7 be in a -- he can be comfortable, but also we need to be sure
8 exactly what it is that we're saying is competence to participate
9 and follow the proceedings.

10 And I should end by saying this: I think, when we are to answer
11 that question, we should be asking ourselves: If we were in the
12 position of somebody that we care was in the same position and
13 circumstance as Mr. Ieng Sary, would we be saying that that
14 person was following -- was competent in following the
15 proceedings of this nature? And I dare say no one -- none of us
16 in this courtroom would say yes.

17 Thank you.

18 MR. PRESIDENT:

19 We may observe a brief break so that the DVD is changed -- not
20 yet adjournment, but just a brief pause because the DVD is full.
21 Counsel for Mr. Nuon Chea, only after this first session is fully
22 concluded that the floor will be given to you.

23 (Short pause)

24 [10.57.00]

25 We would like to thank you very much indeed, counsels and parties

1 to the proceedings, for today's session. And on behalf of the
2 Bench, I value these sessions very much.

3 And the Chamber will take the opinions and comments or remarks
4 made concerning the health condition of Mr. Ieng Sary during this
5 session for our deliberation, and the decision will be issued in
6 due course.

7 Again, I thank you, Co Prosecutors, Lead Co Lawyers for the civil
8 parties, and Defence Counsel, and also the relevant supporting
9 staff, including the security personnel and also the
10 interpreters, for their best effort in making this session a
11 great success.

12 I would like to pronounce that the session on Ieng Sary's medical
13 condition closed.

14 And the following proceedings will be on the testimonies of TC
15 507. The session will be convened as scheduled.

16 Next, we would like to hand over to counsel for Mr. Nuon Chea,
17 since he's on his feet.

18 MR. PAUW:

19 Thank you, Mr. President. And good morning to everyone in and
20 around the courtroom. I'll be very brief. I look at the clock,
21 and especially the translators must be exhausted, but I'm trying
22 to just be time efficient here.

23 [10.59.00]

24 We were informed before the hearing started that -- by an officer
25 of the Trial Chamber that our client, Nuon Chea, is not well, and

54

1 that he has seen a doctor. That is all we know at this stage, and
2 our submission would be that before we proceed with the next
3 witness we would need to know what the findings of this doctor
4 have been and whether or not this doctor has examined Nuon Chea
5 for the purpose of assessing whether or not he can effectively
6 participate in the proceedings.

7 If the doctor has not examined Nuon Chea with this purpose, we
8 request him to do so before we hear the next witness. This is why
9 I was on my feet at the start of the hearing because the past two
10 hours would have been a perfect opportunity for the doctor to do
11 so.

12 So our request is twofold.

13 If the doctor has examined Nuon Chea for the purpose of assessing
14 whether or not he can effectively participate in the proceedings,
15 we would request a copy of such a report.

16 If the doctor has not examined him for that purpose we request
17 your Trial Chamber to do so now or to order doctor to do so now
18 so that we can take a position as to whether or not Nuon Chea
19 will participate and whether or not he will do so from the
20 holding cell or whether we would request for him to be returned
21 to the detention centre.

22 Those are our submissions, and I think they should be resolved
23 before the next witness is called in to testify.

24 (Judges deliberate)

25 [11.03.39]

1 MR. PRESIDENT:

2 The Chamber has received a report from treating doctor, Dr. Em
3 Savoeun, concerning his examination on Mr. Nuon Chea this
4 morning, and noted that he has been fatigued. However, the
5 situation has not been very serious. The doctor indicated that
6 according to his recommendation -- that the accused person be
7 allowed to observe the proceedings from his holding cell. This is
8 the information we received before we convened the day's session.

9 MR. PAUW:

10 Mr. President, if I may very briefly, we were not familiar with
11 that medical conclusion and we would request to be provided with
12 a copy of that report before the next witness comes in to testify
13 so that we can position ourselves on this issue, and this can be
14 provided to us during the break period.

15 [11.05.35]

16 MR. PRESIDENT:

17 Due to medical concern of Mr. Nuon Chea and according to the
18 report by the treating doctor, the Chamber just indicated to the
19 public and the parties to the proceeding just now Mr. Nuon Chea
20 is now allowed to observe the proceedings from his holding cell
21 through audio-visual link from now until the end of the day.
22 And Mr. Ieng - rather, Mr. Nuon Chea has waived his right to be
23 present during the proceedings.
24 AV booth officers are now instructed to ensure that the AV
25 equipment is well connected to his holding cell so that Mr. Nuon

1 Chea can observe the proceedings for the remainder of the day.

2 With regard to the medical report of Mr. Nuon Chea conducted by
3 the doctor this morning, this document will be included into the
4 case file by the greffier so that the parties can access to it as
5 usual.

6 And momentarily the security personnel will be asked to bring Mr.
7 Khieu Samphan into the courtroom so that he can participate in
8 the proceedings after the adjournment.

9 Counsel, you may proceed.

10 [11.07.30]

11 MR. PAUW:

12 Mr. President, to be clear, Nuon Chea did not waive his right to
13 attend the proceedings in the courtroom -- certainly not through
14 his counsel; whether or not this has been discussed with a doctor
15 is another matter.

16 But, still, our position would be that this medical report
17 provided by a doctor would give us, as his lawyers, the relevant
18 information to assess whether or not Nuon Chea should waive his
19 right to attend the hearing and, possibly, attend the hearing
20 from his holding cell. So we maintain our request for that
21 particular medical report.

22 [11.08.12]

23 Also, I have been informed by a Khmer speaker that in your
24 initial reaction to my request, you may have stated that there
25 was a medical report relating to Ieng Sary rather than Nuon Chea.

57

1 So I just want to make absolutely sure that the medical report
2 the Trial Chamber was received was indeed relation to Nuon Chea
3 -- I see Judge Cartwright nodding -- and if that report indeed
4 exists, I assume there's no objection to providing us with a copy
5 during the break so that we can decide whether or not Nuon Chea
6 will waive his right to attend.

7 JUDGE CARTWRIGHT:

8 Yes, thank you, President.

9 Just to be completely clear, yes, the report was concerning Nuon
10 Chea. And, yes, you will be provided with a copy during the
11 break.

12 Thank you.

13 MR. PAUW:

14 Crystal clear. And I thank you.

15 (Judges deliberate)

16 [11.12.20]

17 MR. PRESIDENT:

18 Since it is now appropriate moment for the adjournment, the
19 Chamber will adjourn for 20 minutes. The next session will be
20 resumed by half past 11.00. When next session resume, we will be
21 hearing testimony of TCW-507.

22 (Court recesses from 1112H to 1131H)

23 MR. PRESIDENT:

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

25 As the Chamber advised before we broke, according to the

58

1 schedule, this session is the hearing of testimony of TCW-507.
2 And before we bring in the witness, the Chamber wishes to ask the
3 defence for Mr. Nuon Chea concerning the waiver of Mr. Nuon Chea
4 you raised before we broke. The Chamber wishes to know the
5 position - concrete position by the defence team for Mr. Nuon
6 Chea so that the Chamber has the basis to decide if there is any
7 development in relation to this issue. You may proceed.

8 [11.32.58]

9 MR. PAUW:

10 Thank you, Mr. President. We have indeed looked at the report and
11 we have discussed the issue with our client, and Nuon Chea will
12 waive his right to be present in the courtroom here today. He
13 would like to follow the proceedings from his holding cell. As
14 the doctor indicated in his report he is fatigued and not feeling
15 well in general.

16 But he does not want to delay the proceedings and, therefore,
17 waives his right to be present in the courtroom. And his waiver
18 will be submitted to your Court in due course today.

19 MR. PRESIDENT:

20 Thank you. So there is no change to the proposition.

21 Court officer is now instructed to usher in the witness TCW-507
22 in the courtroom.

23 (Witness enters courtroom)

24 [11.35.25]

25 The Chamber wishes to advise parties and members of the public

1 that the Chamber has seized of the request by Mr. Ieng Sary
2 through his defence team requesting that he be excused from the
3 courtroom as well as the testimony of some witnesses and TCC –
4 certain other civil parties, including the present civil party –
5 the present witness, TCW-507. And Mr. Ieng Sary has expressed his
6 limited waiver of his presence in the courtroom. But the Chamber
7 wishes to note that the testimony of this witness, TCW-507, Mr.
8 Ieng Sary has waived his right not to be present directly in the
9 courtroom during his testimony, according – pursuant through Rule
10 81.5 of the Internal Rules.

11 QUESTIONING BY THE PRESIDENT:

12 A. Mr. Witness, what is your name?

13 [11.36.45]

14 MR. PE CHUY CHIP SE:

15 A. With due respect, Mr. President. My name is – I am a witness;
16 my name is Pe Chuy Chip Se.

17 Q. Pe Chuy Chip Se; is that correct?

18 A. That is correct, Mr. President, my name is Pe Chuy Chip Se.

19 Q. How old are you now, Mr. Pe Chuy Chip Se?

20 A. I am 58 years old now.

21 Q. Where are you currently residing?

22 A. Currently, I am residing in Thmei, Kouk Thlok Kraom commune,
23 Chi Kraeng district, Siem Reap province.

24 Q. Mr. Chip Se, what is your current occupation?

25 [11.37.56]

60

1 A. Currently, I am a teacher in a primary school, Kilou ta Chhuem
2 Primary School in Siem Reap province.

3 Q. What is your father's name?

4 A. My father's name is Chheng Chuy, but he is deceased.

5 Q. How about your mother, what is her name?

6 A. My mother's name is Te Heak, she is deceased.

7 Q. How about the name of your wife and your children. What is
8 your wife's name and how many children do you have?

9 [11.38.43]

10 A. I got married to Kao Meng Y and we have three children -- two
11 girls and one boy.

12 Q. Thank you.

13 Mr. Chip Se, according to the report by the greffier, to the best
14 of your knowledge you have no relationship whether by marriage or
15 by biological relation with the civil parties or the accused;
16 namely, Mr. Nuon Chea, Mr. Khieu Samphan, and Mr. Ieng Sary; is
17 that correct?

18 A. That is correct, Mr. President, I have no relation with either
19 the co-accused or the civil parties.

20 Q. And, according to the same report, you have already taken an
21 oath before the (inaudible); is that correct?

22 A. Yes, I have already taken an oath.

23 [11.40.10]

24 Q. Thank you. In your capacity as the witness before the Chamber
25 you may reject to respond to any questions or any statement you

61

1 are requested to make which might self-incriminate you. In other
2 words, if you are of the view that your testimony might
3 incriminate you in any way that may lead to the prosecution
4 against you, you may reject to respond to that question. However,
5 the Chamber wishes to remind you that your capacity as the
6 witness you are supposed to respond to the question posed by
7 parties or by Judges of the Bench. Except that any questions or
8 statements that you are of the opinion that they may incriminate
9 you. And you have to tell the Court the truth, nothing but the
10 truth, based on your personal experience or observation of the
11 occurrences at the time in response to the question put by
12 parties and the Chamber.

13 Mr. Chip Se, have you ever provided any interview to the
14 investigators or any official from the Extraordinary Chambers in
15 the Courts of Cambodia before?

16 A. Yes. I have given interview with the reporters and -- or
17 investigators who went to conduct interview with me.

18 [11.42.13]

19 Q. How many times did you provide those interviews and where did
20 the interviews take place?

21 A. First, I was interviewed in Wat Thmei Pagoda premise in Kouk
22 Thlok Kraom village. And then the other time I was interviewed in
23 primary school compound where I teach.

24 Q. So do I understand you correctly that you were interviewed by
25 the investigators of the OCIJ for two times so far; is that

1 correct?

2 A. Yes, that is correct, I was interviewed twice.

3 Q. When was the first interview conducted? And when was the
4 second one conducted?

5 A. I do not recall that, Mr. President. But I recall that in the
6 first interview it was in Wat Thmei compound and the second
7 interview was held at the primary school where I teach.

8 Q. Do you recall the date when the interview was conducted?

9 A. Mr. President, I apologize I only recall the year but I do not
10 recall the exact date. It was conducted in 2008.

11 [11.44.11]

12 Q. Thank you. Before you come to testify before the Chamber, have
13 you examined statements you provided to the Office of
14 Co-Investigating Judge in order to refresh your memory?

15 A. Yes, I have reviewed the questions and answers I provided to
16 the investigators and I think I have done that fairly thoroughly.

17 Q. So to your recollection, the written records of interview, do
18 you think that it corroborates with the statements or answer you
19 provided to the investigators of the OCIJ?

20 A. All the questions are correct; there was no ambiguity in the
21 answers I gave. And there was no --any change either.

22 MR. PRESIDENT:

23 Thank you.

24 And, Mr. Witness, you are advised that you are provided with duty
25 counsel so you may seek consultation with him as the - you deem

1 appropriate.

2 And, Mr. Duty Counsel, what is your name? And can you tell the ID
3 number at the Bar?

4 MR. MOEURN SOVAN:

5 Mr. President, my name is Moeurn Sovan. I am a member of the Bar
6 Association of the Kingdom of Cambodia, with the ID number of
7 561.

8 [11.46.17]

9 MR. PRESIDENT:

10 The Chamber advises the party that in the conduct of the
11 testimony of this witness, we are going to hand over the floor to
12 the Prosecution first to put the questions to the witness in
13 question.

14 And the Chamber wishes to remind the Prosecution as well as
15 parties that we have to stay within the confine of the evacuation
16 of people as well as the communication of the period. So the
17 question should not go beyond the confine of the facts alleged in
18 the first trial segment of Case 002/01.

19 I now hand over to the Prosecution.

20 MR. SENG BUNKHEANG:

21 Thank you, Mr. President. My respect to Mr. President, Your
22 Honours, members of the Bench, parties, and members of the
23 public, and witness. Good morning, Mr. Chip Se. I have a few
24 questions I would like to seek clarification from you,
25 particularly in relation to your statement with the Office of

64

1 Co-Investigating Judges, document D125/1.27; ERN in Khmer
2 00224051; and English, 00225211; and French, 00239976.

3 [11.48.35]

4 MR. PRESIDENT:

5 You may proceed.

6 Court officer is instructed to obtain the document from the
7 Prosecution and hand it over to the witness.

8 QUESTIONING BY MR. SENG BUNKHEANG:

9 Thank you, Mr. President.

10 Q. If you look at ERN in Khmer 00224051, you told the office of
11 investigators - Office of Co-Investigating Judges that you joined
12 the Liberation Forces, which was the Khmer Rouge Forces, in 1961,
13 and then, later on, you were attached to the security office by
14 the name of Pongro Security Office. So I would like to ask you to
15 tell the Court what you did between 1971 up until you were
16 deployed to work at the security - Pongro Security Office.

17 [11.50.07]

18 MR. PECHUY CHIPSE:

19 A. Mr. Prosecutor, I would like to ask you for a simplification
20 of the question because I do not quite catch your question.

21 Q. From 1971, you joined the Revolutionary Movement of the Khmer
22 Rouge, and then you started working at the Pongro Security
23 Office, according to your statement with the OCIJ. I would like
24 to know the time period between when you first joined the
25 movement and up until you were deployed to work with the Pongro

65

1 Security Office. What did you do during that period?

2 A. I now understand your question.

3 In -- about 1971, I joined the Khmer Rouge Forces. I worked with
4 other Khmer Rouge soldiers, and in 1972 there were fighting going
5 on in the battlefields, and at that time I was also involved in
6 the battlefields and, at that time, the Khmer Rouge soldier
7 launched the - launched the Chenla II campaign so I went back to
8 my home village. It was in Chi Kraeng district, Siem Reap
9 province. So, when I left the Khmer Rouge, I went back to live in
10 my home village for a short period of time.

11 But if I do not answer your question, Mr. Prosecutor, please ask
12 for clarification.

13 [11.52.48]

14 Q. In the same document -- document D125/127; ERN in Khmer,
15 00224051; English, 00225210; and French, 00239976 -- you said:

16 "In 1974, there were a lot of killings and those people who were
17 killed were accused of being bandits. And amongst those who were
18 killed were women and children as well."

19 My question to you is: Who named them as bandit at that time?

20 A. People who accused them of being bandit were the district
21 committee who accused those people of being the bandits. So they
22 order us as the security forces at that time to search and arrest
23 them and imprison them. So we had to comply with the order once
24 we were required to arrest those people and once arrested we sent
25 them all to the security office.

1 [11.54.36]

2 Q. Thank you. Can you clarify a bit further in relation to the
3 status given to them as the bandits? What were the charges
4 against them at that time?

5 A. The superiors of that location - at my location at that time,
6 they were concerned of the rebellions by people and then they
7 told us that those people rebel against the Khmer Rouge and they
8 took refuge in the forest in order to join with the Lon Nol
9 forces. And they also told us that there were helicopters who
10 came to pick up those people from our location and move them to
11 Siem Reap Area. And then they were - they - then took them back
12 to the forest and then those people who went along with the
13 allegedly official or people belonging to the Lon Nol soldiers
14 were eventually arrested and they were charged with being the
15 bandits.

16 Q. On the same document there was a case of evacuation on the
17 17th of April 1975, and also the management of the officials of
18 the former Khmer Republic.

19 My question to you is: On the 17th of April 1975, where did you
20 live?

21 [11.56.59]

22 A. On the 17th of April 1975, I lived at the security office of
23 Pongro. I had not left the Khmer Rouge yet; I was still attached
24 to my tasks at security centre at Pongro.

25 Q. Were you aware at what time the population of Siem Reap was

1 being evacuated?

2 MR. PRESIDENT:

3 Witness, please hold on.

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

5 MR. PAUW:

6 Thank you, Mr. President. I object to that question.

7 The evacuation of Siem Reap was not part of Case 002/001. If this
8 witness has any information as to the evacuation of Phnom Penh,
9 he, of course, can be asked about that, but not about the
10 evacuation of Siem Reap. That would be the topic of a - of
11 another trial that might be held in the future.

12 [11.58.17]

13 MR. LYSAK:

14 Mr. President, if I may briefly respond to that, there are two
15 reasons why the reason - the evacuation of Siem Reap is an issue
16 on which the Trial Chamber can hear evidence.

17 First, it is evidence of the practice and policy of evacuation
18 that was carried out by the Khmer Rouge. The Court has previously
19 heard evidence regarding - from witnesses regarding the
20 evacuation of Kampot, Takeo and other cities.

21 The second reason is that the part of the burden of the
22 Co-Prosecutors is to prove that this was a widespread and
23 systematic practice in order to prove the crimes against humanity
24 charge. As part of that evidence, we will prove and the evidence
25 will show that cities and urban areas across Cambodia were

68

1 evacuated. We will not of course be hearing numerous witnesses on
2 this issue, but where we have witnesses who have evidence
3 relating to the evacuation of other urban areas such as Siem
4 Reap, that is certainly relevant to this case.

5 (Judges deliberate)

6 [12.00.15]

7 MR. PRESIDENT:

8 The objection by Counsel for Mr. Nuon Chea is not sustained.

9 The Chamber has already indicated that the witness's knowledge is
10 more about the general policy of the Khmer Rouge concerning the
11 evacuations. And for that reason, the witness is called to appear
12 before the Chamber today.

13 Witness is now instructed to respond to the question if you still
14 remember the question. If not, you may ask the prosecutor to
15 repeat it.

16 MR. PE CHUY CHIP SE:

17 A. I am afraid I do not quite catch what the President was
18 saying.

19 MR. PRESIDENT:

20 What I was saying was that, you were instructed to respond to the
21 question put by the prosecutor. And if you did not remember the
22 question you may ask him to repeat for - repeat it for you.

23 [12.01.38]

24 BY MR. SENG BUNKHEANG:

25 Q. Mr. President, perhaps I would like now to repeat the question

1 for him.

2 When did the population – or when was the population of Siem Reap
3 city evacuated?

4 MR. PE CHUY CHIP SE:

5 A. So far as I remember, the people of Siem Reap were evacuated
6 after the 17th of April 1975, like the people in Phnom Penh were.

7 Q. Were you aware of where these people would be sent to?

8 A. I know for sure that the people of Siem Reap had to be
9 evacuated to the rural areas. Civilians were sent there but
10 former officials and soldiers were kept at Kampong Kdei location
11 awaiting to be executed.

12 [12.03.10]

13 Q. Mr. Witness, do you know whether there were any instructions
14 from the cadres in your area with regard to how the evacuees
15 would be managed?

16 A. With regard to the evacuation of the soldiers and former
17 officials of the Khmer Republic to Kampong Kdei location, the
18 security forces of Pongro had no authority on this. But we
19 learned that there were a lot of people being evacuated to the
20 location and the Khmer Rouge soldiers were on guard. And
21 interrogations were carried out but not by the security forces at
22 that location. We saw people being transported in the whole
23 family by trucks, in particular those former officials to be
24 executed. And people were sent in from other location to execute
25 those detained officials.

70

1 Q. You said officials were executed, and you also mentioned about
2 soldiers. Can you please be more precise as to which regime these
3 people belong to?

4 A. When I was saying about the officials and soldiers, they were
5 the former Lon Nol officials and soldiers who had been detained
6 and executed by the Khmer Rouge. And we heard that they referred
7 - the Khmer Rouge referred to them as the former Lon Nol soldiers
8 and officials. And when soldiers came they came along with their
9 spouses and children. And they were kept at the old buildings at
10 Kampong Kdei location. I saw that children were running, playing
11 there before they had been sent out to be executed.

12 [12.06.22]

13 Q. Looking at your written record of interview before the
14 investigators of the Court, you indicated that after the 17th of
15 April 1975, you saw the evacuation of soldiers and former Khmer
16 Republic officials to be kept at the old buildings at the Chi
17 Kraeng location and they were guarded days and nights. And this
18 document is D125/127; document in English is 00225210; French,
19 00239976.

20 Can you please clarify for us where Phsar Chi Kraeng is located?
21 And how far is it from the security centre?

22 A. Kampong Kdei Market is in Chi Kraeng location. And the market
23 is about 7 kilometres away from the security centre. I guess it's
24 about 7 kilometres for sure.

25 [12.08.08]

71

1 MR. PRESIDENT:

2 Counsel and Witness, since it is now appropriate time for lunch
3 adjournment, the Chamber will adjourn now, and the next session
4 will be resumed by half past 1.00.

5 Court officer is now instructed to assist Mr. Witness and his
6 duty counsel during the adjournment, and that he shall be
7 returned to the courtroom when the next session resumes.

8 Security Personnel are now instructed to bring Mr. Khieu Samphan
9 to his holding cell and have him returned to the courtroom when
10 the next session resumes, by 1.30 pm.

11 The Court is adjourned.

12 THE GREFFIER:

13 (No interpretation)

14 (Court recesses from 1209H to 1333H)

15 MR. PRESIDENT:

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

17 Without further ado, we would like to now hand over to the
18 Co-Prosecutors to continue putting questions.

19 BY MR. SENG BUNKHEANG:

20 Thank you, Mr. President.

21 Q. Mr. Witness, before we broke you indicated that Kampong Kdei
22 Market is 7 kilometres away from Pongro Security Centre.

23 Could you tell the Chamber please, how often did you go to this
24 market?

25 MR. PE CHUY CHIP SE:

1 A. I only came to the Kampong Kdei Market as ordered -- or
2 instructed by the head of the security. I did not go there on my
3 own accord.

4 Q. What was it that you were sent to Kampong Kdei Market -- what
5 was the assignment?

6 [13.35.06]

7 A. I was sent to Kampong Kdei Market to search for people who had
8 to be brought to the detention centre. We were supposed to bring
9 those who had committed some offences to go there, to the
10 detention facility. I did not come alone. I would come with other
11 colleagues of mine at the security centre.

12 Q. What kind of people were being detained at the Kampong Kdei
13 Centre?

14 A. People who had to be detained at Pongro Security Office were
15 those who committed some moral misconduct with young women. These
16 people were evacuees and people who were former Lon Nol officials
17 or soldiers were not brought to that security centre. Only
18 civilians would be brought there. Civilians who committed such
19 crimes as indicated.

20 Q. Where exactly were these former officials or soldiers
21 detained?

22 [13.37.19]

23 A. The former officials or soldiers of the Lon Nol regime who had
24 been evacuated to Kampong Kdei had not been detained. They were
25 brought in and interrogated. It was not part of the security

1 force to put questions or to question them. They were just
2 summarily questioned, interrogated, and sent out to be executed.

3 Q. Can you confirm or can you clarify how you knew that those
4 people were former soldiers or officials of Lon Nol regime?

5 A. It is not difficult to say so because these people who came
6 talked to us or told us about this. So people could be heard
7 saying about the identification of those people, they told us
8 about senior officials and soldiers of the former regime who had
9 been brought in to the location, and I also heard when I was at
10 Kampong Kdei and I did not go directly to that location, but I
11 could see these people were heavily guarded by the Khmer Rouge
12 soldiers and every now and then the soldiers would fire some
13 gunshots to scare the people not to escape.

14 [13.39.29]

15 Q. I have read your written record of interview and you stated in
16 that interview that the former officials and soldiers of Lon Nol
17 were detained at Chi Kraeng Market location and they were heavily
18 guarded days and nights. Can you tell the Chamber, please, who
19 were assigned to stand guard at that location?

20 A. People who were guarded -- who guarded the location were not
21 known to me because I have no idea from which unit they were and
22 I just heard from the people, the villagers who told me about
23 this.

24 Q. According to your interview, the same interview before the
25 Investigating Judges, you indicated that these people were senior

1 soldiers and former officials and families of the Lon Nol regime
2 who had been evacuated from Siem Reap. These people were taken
3 out to be executed with the pretext that they would be sent for
4 education or study sessions.

5 [13.41.14]

6 There were several hundred of them who had been transported out
7 to be executed and they were killed by security personnel of
8 Pongro and they taught -- rather, they executed them at Mkak
9 location. For record, I would like to cite this document:

10 D125/127; English ERN 00225210 through 11, French ERN is
11 00239976.

12 Do you still remember, how long would it take for all the people
13 to be taken out for execution?

14 A. I am afraid I cannot be precise as to how many days or how
15 long that would take before all those people had been carried
16 away or sent out and executed.

17 Q. When it comes to execution, were all the people related to
18 these people executed, including their children and spouses?

19 A. To put it simply, everyone was killed. None was spared.
20 Everyone who was brought in was sent out to be executed, all
21 together.

22 [13.43.18]

23 Q. You also mentioned that the people who executed them were
24 security guards at Pongro and the execution was carried out at
25 Mkak. How did you know that the security forces or people killed

75

1 those former officials and soldiers at that location?

2 A. I learned about this because these people who carried out the
3 execution told me upon returning from the place where these
4 people had been killed.

5 Q. Were only security personnel at Pongro involved in the
6 execution, or other people were also engaged in such acts?

7 A. These executions were carried out by not only the security
8 personnel of that detention centre, but that they were also
9 carried out by other Khmer Rouge soldiers from -- who -- which
10 unit I don't remember.

11 [13.45.08]

12 Q. Were you aware of who was -- or were in charge of the
13 execution, the arrangements for executions, for example?

14 A. When it comes to who, I don't think I remember who they were.
15 But my recollection serves me very well that these people were
16 from the sector and there were about a few security personnel --
17 about four of them -- who were engaged in the executions.
18 Nonetheless, I don't know for sure who was in charge of such
19 arrangements.

20 Q. When you refer to "sector", which sector are you referring to?

21 A. I am referring to the Siem Reap and Oddar Meanchey Sector. But
22 I don't know exactly as to how the sector was organized.

23 Q. You talked about Mkak. Where is it? Is it located far from the
24 Pongro Security Centre?

25 [13.46.57]

76

1 A. Mkak is located far from Pongro Security Centre. It is now
2 known as Mkak Dam. However, I don't know exactly how far it takes
3 precisely. It perhaps is 10 kilometres away from this centre.
4 It's my pure estimation.

5 Q. Can you also say to which direction Mkak is as opposed to the
6 Pongro centre, or security centre?

7 A. The Mkak execution site is to the northwest of Pongro Security
8 Centre.

9 Q. Personally, had you ever seen any of the executions carried
10 out on these people, any of these people?

11 A. No, I hadn't. I personally never saw this. I only learned
12 about this from people who were engaged in the executions and who
13 came from the site and told me about what happened.

14 MR. SENG BUNKHEANG:

15 Thank you, Mr. President and Mr. Witness. I have no further
16 question to put to the witness, and I thank him very much indeed
17 for his responses.

18 [13.49.35]

19 MR. PRESIDENT:

20 Thank you.

21 Now, International Co-Prosecutor, you may now proceed.

22 MR. LYSAK:

23 Thank you, Mr. President. Good afternoon, Mr. Witness. My name is
24 Dale Lysak, and I have a few more questions for you this
25 afternoon.

77

1 Mr. President, I'd like to start by showing the witness another
2 document, which is document D83, Annex 00012. It is a report that
3 contains an interview attributed to the witness that was
4 conducted in July of 1991. The specific pages that I would like
5 to ask the witness about -- the -- it is a long document,
6 however, the interview that I would like to ask him about begins
7 at Khmer ERN 00812860; and the English ERN for the start of the
8 interview is 00164153; French ERN 00779381.

9 [13.51.10]

10 I have a copy that we can provide to the witness, and we'd also
11 request permission to show excerpts on the screen as we proceed.

12 MR. PRESIDENT:

13 You may proceed.

14 Court officer is now instructed to bring the document to the
15 witness for examination and that document is allowed to be put up
16 on the screens.

17 QUESTIONING BY MR. LYSAK:

18 Q. Mr. Witness, as you look at that document, my first question
19 for you is whether you recall being interviewed by a French man
20 named Henri Locard way back in July of 1991, at the Siem Reap
21 Grand Hotel? Do you recall meeting with that person?

22 MR. PRESIDENT:

23 Witness, please hold on.

24 Counsel for Mr. Nuon Chea, you're on your feet. You may now
25 proceed.

1 [13.52.31]

2 MR. PAUW:

3 Thank you, Mr. President. An objection -- just a technicality,
4 one might say.

5 But I believe it is still your practice that the witness needs to
6 be asked whether or not he has seen the document. If he has not
7 seen the document it would need to be removed and possibly also
8 removed from the screen. It's not necessarily a rule that we
9 agree with, but I think it's been applied throughout the board
10 and I would request you to proceed along these lines.

11 MR. LYSAK:

12 Mr. President, that is an incorrect statement of the practices.

13 There have been many circumstances where it is appropriate, where
14 a witness has been allowed to look at a document that they have
15 not seen before. Certainly one situation where this has occurred
16 before is a document that contains an interview attributed to the
17 witness.

18 So, I think the first thing is for me to ask a few questions to
19 the witness to establish that there is a proper foundation, and
20 if so, this is something that has occurred in the past.

21 [13.53.39]

22 MR. PRESIDENT:

23 Counsel Karnavas, you may now proceed.

24 MR. KARNAVAS:

25 Thank you, Mr. President.

79

1 I also am of the understanding that this gentleman is slated to
2 come and give evidence as a witness. If that is indeed the case,
3 then are we not back into the situation that we saw ourselves
4 before with authors such as Philip Short? So, I believe we are
5 back to using documents of a witness who's about to come -- who
6 is yet to come and we're using it with a witness.

7 We need clear guidance whether this is permissible, whether it
8 falls into one of the previous objections that you've ruled upon.

9 [13.54.36]

10 MR. LYSAK:

11 Mr. President, just to be clear, I am not going to be asking this
12 witness about any comments or observations of Henri Locard. What
13 I am going to be asking the witness about is statements that are
14 attributed to the witness.

15 That is a situation on which we have been able to proceed before;
16 for example, when we were questioning Mr. Phy Phuon, he had been
17 interviewed by Philip Short and there were statements attributed
18 to him in Philip Short's book. In that situation, it is clearly
19 appropriate to be able to ask the witness about that. It's a far
20 different matter if I started to ask him questions about comments
21 or conclusions of Henri Locard, in which case, I would agree with
22 Mr. Karnavas.

23 (Judges deliberate)

24 [13.58.38]

25 MR. PRESIDENT:

80

1 The Chamber wishes to rule on the objection by counsel concerning
2 the line of questioning by the prosecutor to the witness with
3 regard to the use of this document.

4 The objection is somehow not sustained. The Chamber once ruled on
5 the same case, and that this document was citing or alluded to --
6 attributed directly to this witness. For that reason, parties are
7 allowed to use such document during the examination of the
8 relevant witness.

9 BY MR. LYSAK:

10 Thank you, Mr. President.

11 Q. Mr. Witness, my first question is: Do you recall being
12 interviewed by Mr. Henri Locard back in July 1991 at the Siem
13 Reap Grand Hotel?

14 [13.59.50]

15 MR. PE CHUY CHIP SE:

16 A. Yes, I do. I met with Mr. Henri Locard and the interview was
17 conducted at the Grand Hotel. I was pleased with the -- with him
18 and interview, and I have had some rapport with the -- with Mr.
19 Henri Locard, and for that I do confirm that I did give such
20 interview on that date.

21 Q. Thank you.

22 I'd like you to refer first to a statement that is attributed to
23 you on Khmer page 00812860, which is English 00164153, and French
24 ERN 00779382, and that statement reads as follows -- quote:

25 "The Viet Cong, followed by a few KR," -- that refers to the

1 Khmer Rouge - "first occupied his home village in May 1970. The
2 Viet Cong were on the first line and the KR followed in black
3 clothes, with the Viet Cong. He heard Sihanouk's announcement on
4 Peking Radio campaigning for the National Reconciliation Front,
5 asking people to join him in the forest maquis. Because Sihanouk
6 declared from Peking that he was the President of the Front to
7 fight against the American colonialists and imperialists, the
8 inhabitants welcomed the revolutionaries. They gave their
9 children: he was the fifth of a family of 9 children and two
10 joined the revolutionaries. His small, younger brother who was
11 then only 8, and himself who was 16, were enrolled." End of
12 quote.

13 First, is this an accurate statement of information that you
14 provided to Monsieur Locard back in July of 1991?

15 [14.02.37]

16 A. I did provide information to Monsieur Henri Locard and, of
17 course, it is -- it is correct that I did have an interview with
18 him at that time.

19 Q. It states in this document that your younger brother joined
20 the Revolution at the age of eight years old. Can you tell us
21 what your younger brother was assigned to do when he joined the
22 Revolution at the age of eight years?

23 A. The place where my younger brother, at the age of eight at
24 that time, was not correct. Actually, I think that that could
25 have been a misrepresentation of what I said because my younger

1 brother, when he was eight, he did not join the Revolution, but
2 I, myself, did join the Revolution back then. I would like to ask
3 you to rectify this portion of the statement because my younger
4 brother did not join the Revolution then.

5 [14.04.03]

6 Q. Did he join the Revolution later?

7 A. Well, later on, my brother also joined the Khmer Rouge forces,
8 but it was not before 1975; it was actually post-1975. It could
9 have been sometime in 1976 or so - or, rather, he could have
10 joined it sometime in 1976. Of course, 1976, he joined the Khmer
11 Rouge forces in that year. That is -- that is the truth. Of
12 course, he joined the Revolution, but the statement that he
13 joined the Revolution when he was eight was -- was wrong. He
14 actually joined the Revolution in 1976.

15 Q. Thank you for correcting that.

16 My next question concerns whether you recall any leaders of the
17 Khmer Rouge coming to visit or speak in your district in 1971,
18 1972, or 1973?

19 A. Yes, there were leaders who came to that place, and that
20 portion of the record is correct.

21 [14.06.27]

22 Q. There is a reference in your interview with Henri Locard to
23 one of these incidents that I would like to ask you about. It
24 appears at Khmer ERN 00812861; English, 00164153; and French,
25 00779382. And this part of the interview states as follows --

1 quote:

2 "Towards 1973, Hou Youn came to deliver a speech in the forest,
3 at Phum Prey Thom, Kouk Thlok Leu commune. PCCS -- [Mr. Locard
4 refers to you in this interview by your initials] -- PCCS did not
5 attend the meeting. But many 'mulethan' were present. Hou Youn
6 encouraged the people to make their contribution to the military
7 struggle in order to overthrow Lon Nol. According to Hou Youn's
8 words, the KR wanted to sever links with the Viet Cong." (End of
9 quote).

10 Is this a correct statement of information that you provided to
11 Mr. Locard regarding Hou Youn's speech?

12 [14.08.18]

13 MR. PRESIDENT:

14 Witness, please hold on. The international defence counsel for
15 Mr. Nuon Chea is on his feet.

16 You may proceed, Counsel.

17 MR. PAUW:

18 Thank you, Mr. President. I object to this line of questioning.

19 We have been over this last week as well. The prosecutor is
20 clearly free to explore this issue, but the way he asks the
21 questions should not be leading and he should not be feeding the
22 witness with information that he may not, now today, remember.

23 [14.08.50]

24 The proper way to ask this question was -- would have been, did
25 he remember Hou Youn's visit to wherever he was at that time and

84

1 does he remember what Hou Youn spoke about. If the witness s fed
2 this information in this way, it taints the evidence of this
3 particular witness. If the witness indicates he does not remember
4 which, I would submit, is not unlikely, then, the prosecutor can
5 reach for this earlier statement and try to refresh the memory of
6 the witness.

7 I understand we are trying to be expedient here, but we should
8 try to establish what the witness remembers today. So I would
9 submit that the prosecutor asks open-ended questions and then to
10 follow up with earlier statements if he wants to refresh the
11 memory of the witness.

12 [14.09.48]

13 MR. LYSAK:

14 Mr. President, I'm -- I am happy to proceed in -- in whatever
15 manner the Court wishes. My understanding was, where we have
16 prior statements of a witness, we can put them to the witness and
17 ask questions. I am happy to proceed in the manner that he has
18 suggested. It will take longer, but that -- that is your
19 discretion. But the practice that we have been following since we
20 received a -- a memorandum from the Trial Chamber, in order to
21 expedite questions, is to put prior statements to witnesses and
22 to ask them follow-up questions.

23 (Judges deliberate)

24 [14.11.28]

25 MR. PRESIDENT:

1 We note the objection by the defence team for Mr. Nuon Chea and
2 the Chamber wishes to advise the prosecutor that you rephrase
3 your question and your question has to be open in nature.

4 BY MR. LYSAK:

5 Thank you, Mr. President.

6 Q. A few moments ago, Mr. Witness, you told us that you
7 remembered a number of leaders coming to visit or speak in Chi
8 Kraeng district prior to 1975. Can you tell us which leaders you
9 remember coming to your district?

10 MR. PE CHUY CHIP SE:

11 A. To my recollection, Mr. Hou Youn came to Prey Thom, and this
12 was also recorded by Monsieur Henri Locard and that is the
13 correct record, and it also reflected my statement to him as
14 well. So he came to propagandize in that area, but I, myself, did
15 not join the propaganda; only the Base People were allowed to
16 take part in the propaganda. They all assembled at Prey Thom
17 village. And I learned the information about what was announced
18 at that propaganda campaign through the people who represented
19 each district who attended this propaganda.

20 [14.13.32]

21 And as far as I remember, at that time, the message was to chase
22 away the Viet Cong, and that was also the information I shared
23 with Henri Locard at that time.

24 Q. Did you ever see Nuon Chea, Ieng Sary, or Mr. Khieu Samphan
25 come to Chi Kraeng district at any time?

1 A. As for Nuon Chea, Ieng Sary, and Khieu Samphan, they never
2 came to Chi Kraeng district. I never saw them in the district.
3 They never attended any rally or propaganda in Chi Kraeng
4 district.

5 Q. Thank you. Can you tell us when Chi Kraeng district was
6 liberated by Khmer Rouge forces? What year did that take place?

7 A. The Khmer Rouge liberated Chi Kraeng district and the whole
8 country on the 17 of April 1975. They liberated the country from
9 the administration of Lon Nol and it was on the 17 of April 1975.

10 Q. My question, specifically, concerns Chi Kraeng district. What
11 year was it that Khmer Rouge forces controlled that district,
12 that part of the country?

13 A. For Chi Kraeng district, the Khmer Rouge took control of this
14 area in 1970. Following the coup d'état, the Khmer Rouge took
15 control of that area of the province. It was soon after the coup
16 d'état that territory was under the control of the Khmer Rouge
17 since then.

18 [14.16.28]

19 Q. And do you recall when it was that cooperatives were first
20 established in your district?

21 A. The cooperative which were established by the Khmer Rouge in
22 my district was in 1972. It was the cooperative of the -- of the
23 commune and village. I only knew the establishment date of
24 cooperative in my own locality. I did not know the date of
25 establishment of other cooperatives across the country.

1 Q. On that subject, I'd like to refer you to another excerpt from
2 your interview with Henri Locard, and again, this is document
3 D83, Annex 00012. The reference is at Khmer, 00812861; English,
4 00164153; and French ERN 00779382. And there's a short statement
5 that's attributed to you that says -- quote: "From 1970 to 1974,
6 inhabitants still lived in their families." (End of quote).

7 [14.18.18]

8 And what I wanted to have you clarify about that statement is
9 what happened after 1974?

10 A. I am afraid I do not understand this question, so I cannot
11 answer it. I do not understand the question. Could you please
12 repeat your question?

13 Q. Was there a period of time, in your district, where families
14 were no longer allowed to live together?

15 A. In 1970, people and residents lived together in their
16 families, and then the Khmer Rouge encouraged people to resist
17 against Lon Nol administration. So the sons and daughters of
18 villagers rallied the Khmer Rouge, so they separated some of
19 their children, went to the forest in order to take refuge over
20 there or to join with the resistance forces. And as for the
21 parents, they may stay back at home and join the cooperatives for
22 the village. And the Khmer Rouge also encouraged the younger
23 people, at that time, to join their forces.

24 Q. Your statement -- your interview that you gave to the
25 Co-Investigating Judges indicates that you began working at the

1 Pongro Security Office around 1972. Can you tell us what your
2 position or what your function was at the security office when
3 you first started working there in 1972?

4 [14.21.19]

5 A. I assumed my work at the security office and my role, at that
6 time, was a clerk and I was tasked to prepare documents and keep
7 records of prisoners, the dossier of each prisoner. So in other
8 words, I am the documentary custodian in the security centre or
9 to put it simply, at that time, I was a clerk in charge of
10 keeping the record.

11 Q. And the Pongro Security Office, was this a district, a sector,
12 or a zone security office?

13 A. Pongro Security Office was the district security office of the
14 Khmer Rouge organization. It did not belong to the sector or zone
15 committee and that security office was attached to Pongro
16 district.

17 Q. And when you first started at the security office, did the
18 Khmer Rouge have a district secretary or a district committee in
19 place, at that time, whose responsibilities included the security
20 office?

21 [14.23.16]

22 A. When I was working there, the Khmer Rouge established the
23 organizational structure of the security office. The first
24 secretary was Ta Voan and then, later on, Ta Voan was arrested;
25 then another one, Ta Kun, was assigned to take his place. And

1 then, later on, Ta Kun was accused of betraying the organization,
2 then, he was also arrested. So they established the organization
3 structure. They also established the underground organization,
4 and the Youth League as well as the Party members were part of
5 this underground organization. So, normally, they have two party
6 members as the members, and as for the head of this underground
7 organization -- were the representative from the Youth League of
8 the Khmer Rouge. So in this underground organization was a very
9 secretive organization and I was not aware of how this
10 underground movement worked; I did not know, but the only thing I
11 knew was that the members of this underground organization were
12 the Party members and the Youth League. But as for me, I was not
13 part of this underground organization. That is the truth of what
14 was going on at the time.

15 Q. Thank you. Did your superiors at the security office give you
16 any explanation as to what the purpose of that office was back in
17 1972 or 1973?

18 [14.25.24]

19 A. At the time, they explained us back and forth about the
20 security office. They told us that it was the place for
21 prisoners' re-education, so they could refashion the prisoner
22 before they were sent back to their respective locality, but
23 during the imprisonment or the so-called re-education, some of
24 them were killed. Of course, they said of good things; they
25 wanted to re-educate them, but the deeper purpose of it was to

1 execute them, so they did not live up to what they told them.

2 Q. I'd like to refer you now to another statement in your
3 interview with Henri Locard. This one appears at Khmer page
4 00812862, English ERN 00164154, and French ERN 00779383. And the
5 quote that I would like to ask you about is as follows -- quote:
6 "It was a security centre. It was meant for the entire population
7 to fear the 'power of Angkar'. Angkar had told PCCS" -- referring
8 to you - "that all the inmates were imperialists and capitalists.
9 The power of Angkar would terrorize them." End of quote.

10 [14.27.19]

11 Who was it that had told you that all the inmates were
12 imperialists and capitalists?

13 A. The person who told me that the inmates were the imperialists
14 or capitalists were the chief of security officers and their
15 associates. They considered the inmates as imperialists and
16 capitalists. That's what they propagandized in order to convince
17 people. Most of the times, they were the security officers and
18 leaders of that security office.

19 Q. My colleague has asked you questions about officials and
20 soldiers of the Lon Nol regime who were evacuated from Siem Reap
21 on or shortly after the 17th of April 1975. I would like to ask
22 you whether any captured Lon Nol soldiers were ever brought to
23 the Pongro Security Office prior to 17 April 1975.

24 A. As for Lon Nol soldiers who were evacuated in 1975, they were
25 not captured and sent to Pongro Security Office. They were all

1 executed instantly upon capture.

2 [14.29.30]

3 Before 1975, there were some soldiers who surrendered, then the
4 Khmer Rouge captured them and they were placed in the security
5 office, so -- but that was before 1975. Those soldiers who
6 surrendered and gave up and they joined the -- they came to the
7 territory controlled by the Khmer Rouge and they were arrested
8 and sent to the security office, but other soldiers who were --
9 who were around in 1975, they were captured and killed instantly.

10 Q. What happened to the Lon Nol soldiers who were taken to the
11 Pongro Security Office?

12 A. The soldiers, whom I saw detained at that vicinity, were later
13 on executed. There were about four people in total in charge of
14 security. No, rather, there were four people detained and some of
15 whom managed to run away. The rest had been executed.

16 Q. I'd like to refer you to another excerpt from your interview
17 with Henri Locard. This excerpt is at Khmer, 00812863; English,
18 00164155; and French ERN 00779384. And on that page, there is a
19 statement attributed to you that states as follows -- quote:

20 "When Lon Nol soldiers were captured, they were immediately
21 killed." End of quote.

22 [14.32.24]

23 Can you tell me, who were the Lon Nol soldiers that you were
24 referring to when you told Henri Locard this?

25 A. With regard to the point I mentioned to Henri Locard, the Lon

1 Nol soldiers, who had been evacuated from Siem Reap on 17th of
2 April 1975, they were arriving Kampong Kdei, and after some
3 interrogation, they had been loaded onto the trucks and executed.
4 And I believe that Henri Locard is consistent in his account when
5 he quoted what I talked to him, back then, on this.

6 Q. Thank you.

7 I'm going to turn now to the issue of the evacuation. My
8 colleague has asked you most of the questions that we would like
9 to on that. There's one issue that I would like to clarify.
10 You indicated in your OCIJ statement that the Lon Nol officials
11 and soldiers who were brought to the Chi Kraeng Market were
12 transported away in trucks. Did you -- did you see any of these
13 people being transported in trucks?

14 [14.34.27]

15 A. No, I did not see this personally. I heard about it through
16 the people who had transported the former Lon Nol soldiers and
17 who were executed at Mkak location. He -- I remember having heard
18 them say that these people were blindfolded. All of them,
19 including their young children, were executed, and I heard all
20 about his from them.

21 Q. And when you say "them", how many people told you about this
22 event?

23 A. Three people told me about this and these people used to live
24 in the same village as mine, so because we were close, he -- or
25 they had nothing to hide.

1 Q. And you indicated that in addition to the Lon Nol officials
2 and soldiers who were taken to the Chi Kraeng Market and then
3 taken away for execution, that there were other civilians who
4 were evacuated from Siem Reap to your district. Can you -- do you
5 recall, approximately, how many civilians were evacuated from
6 Siem Reap to Chi Kraeng district after -- or on or after the 17th
7 of April 1975?

8 [14.36.56]

9 A. As to how many evacuees were brought to Chi Kraeng, I'm afraid
10 I don't know. However, people who were evacuated to Chi Kraeng
11 were not necessarily those who were from Siem Reap alone. There
12 were also people evacuated from elsewhere.

13 For the senior Khmer Rouge -- rather, for the senior soldiers of
14 the former regime, they all were executed by the Khmer Rouge.

15 Q. Where were the other locations from which -- from where
16 evacuees were sent to your district?

17 A. The evacuees were sent to remote rural area or far-flung
18 country and they treated these people as the 17th of April and
19 they were brought to the -- the very hard place to live and work.
20 I don't remember exactly to which villages they would be sent to,
21 but for sure, I know that these people had been sent to the very
22 far rural areas.

23 [14.38.56]

24 Q. And do you know whether these civilian evacuees, 17 April
25 People, do you know whether they were required to provide

94

1 biographies when they arrived in Chi Kraeng district?

2 A. I have learned about this from the Base -- from the local
3 people. For example, upon arriving, the chief of village would be
4 informed about where the evacuees could have been brought from so
5 that village chiefs were at the ready to receive them
6 temporarily. Indeed, village chiefs would be informed of where
7 the evacuees would be taken from.

8 Q. Do you know whether there was any effort made to try to
9 identify people within the civilian evacuees who might have
10 connections to the Lon Nol regime?

11 [14.40.45]

12 A. During the Khmer Rouge regime, the Khmer Rouge did not like
13 the 17 of April People. They did their best to hunt for every
14 detail concerning the background of each individual evacuee or
15 the 17 of April person and if they learned about this, the person
16 would end up being executed. So to put it simply, the Khmer Rouge
17 were not pleased with the 17 of April People.

18 MR. PRESIDENT:

19 Thank you, Mr. Co-Prosecutor, and thank you, Witness.

20 The Chamber would like to adjourn briefly, and the next session
21 will be resumed by 3 o'clock.

22 Court officer is now instructed to assist Mr. Witness and his
23 duty counsel during the adjournment and have them returned to the
24 courtroom accordingly.

25 (Court recesses from 1441H to 1505H)

1 MR. PRESIDENT:

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

3 And we continue giving the floor to the Co-Prosecutor to continue
4 putting questions to the witness. The Chamber also wishes to be
5 advised as to how much time Co-Prosecutor would need to put
6 questions to this witness, please.

7 [15.06.42]

8 MR. LYSAK:

9 Thank you, Mr. President. I spoke to the civil party lawyers at
10 the break; they indicated that they would require about half an
11 hour, so I will endeavour to finish by 3.30, and then turn it
12 over to the civil parties so that they can finish their
13 questioning today.

14 MR. PICH ANG:

15 Thank you, Mr. President. Civil party lawyers may need lesser
16 time than that, and Counsel Ven Pov and my other colleague will
17 be putting questions to the witness.

18 MR. PRESIDENT:

19 Thank you.

20 Mr. Co-Prosecutor, you may proceed.

21 BY MR. LYSAK:

22 Thank you, Mr. President.

23 Q. The last general subject area that I'd like to ask you some
24 questions about, today, Mr. Witness, concerns the administrative
25 structure, lines of authority and communications in Chi Kraeng

1 district, during the Democratic Kampuchea regime. You told us,
2 identified in your OCIJ interview, and mentioned earlier this
3 afternoon, that the chief of the -- original chief of the Pongro
4 Security Office was a Ta Voan, who was later arrested and
5 replaced by Ta Kun; can you tell us, to whom did Ta Voan and Ta
6 Kun report; who was their superior?

7 MR. PE CHUY CHIP SE:

8 A. Ta Voan and Ta Kun were inferior than people at the district
9 level. So, these two people received orders, instructions from
10 the head of the district committee and they were in charge of the
11 security centre, indeed.

12 [15.09.27]

13 Q. And who was the head of the district committee to whom they
14 reported?

15 A. Ta San was the chief of the district during the time when Ta
16 Voan was also at work, and later on Sok, was the successor. When
17 Ta Sok was the head of the district, he accused Ta Voan and Ta
18 Voan associates of being betrayal.

19 [15.10.26]

20 And then at a later date, Ta Sok installed Ta Kun as the head of
21 security, so these people were closely related in issuing orders,
22 or making any decision.

23 Q. And you indicate in your OCIJ interview that Ta Sok came from
24 the Southwest Zone. Can you tell us what year it was that Ta Sok
25 came from the Southwest Zone, and arrested and replaced the

1 previous district leaders?

2 A. I don't remember the date. Ta Sok was in the Southwest, but
3 not at Takeo; he was in Kampot because Kampot and Takeo were part
4 of the Southwest Zone, and the - I don't remember which year it
5 was when the people from Takeo were accused of being traitors.

6 Q. And just before the break, we talked about the civilian
7 evacuees, the 17 April People who had been sent to Chi Kraeng
8 district; can you tell the Court what happened to the 17 April
9 People in your district after Ta Sok, and the Southwest Zone
10 cadres arrived?

11 [15.12.39]

12 A. After Ta Sok later on became the head of the district, the 17
13 of April People still were under surveillance and they were still
14 badly treated, they were accused of being affiliated with the
15 imperialists, the American imperialists; they were still made to
16 do hard labour, and they did not enjoy comfortable life or
17 happiness at all, because they were still regarded as people from
18 different class.

19 Q. I'd like to refresh your collection, and refer you to another
20 statement from your 1991 interview with Henri Locard, this is,
21 again, document D83-Annex-00012; the reference is at Khmer,
22 00812868; English, 00164159; and French, 00779387. And at this
23 part of the document, the following statement is attributed to
24 you -- quote:

25 "After the execution of the X leaders, the 'Niredey' continued to

98

1 arrest and massacre the '17th April'. PCCS does not know the
2 place of execution but saw a lorry covered by palm leaves that
3 every day transported inhabitants to execute them [or take them
4 to another prison?]. The 'Niredey' established another district
5 prison in Kampong Kdei pagoda." End of quote.

6 [15.15.08]

7 Can you tell us where it was that you saw a lorry or truck taking
8 away 17 April People?

9 A. The detainees were transported to be executed at Kampong Kdei.
10 It happened because the Khmer Rouge said that the 17 of April
11 People revolved -- revolted against the Khmer Rouge and it was
12 part of the policy to arrest any of them who were -- who were
13 seen carrying a machete or an axe or a club.

14 At first, there was an excuse. The Khmer Rouge tricked those
15 people who had killed some Khmer Rouge soldiers to come forward
16 with machete, axe, or club for a meeting and later on, they were
17 arrested. They were rounded up and people would be tied -- the
18 people would be then loaded on the truck when their hands were
19 bound behind their back.

20 [15.17.10]

21 Q. Thank you. My colleague asked you -- and you previously
22 indicated that Chi Kraeng district was part of the Siem Reap
23 sector. Do you know to whom the Chi Kraeng District Secretary
24 reported?

25 A. The Secretary of Chi Kraeng had to report to the sector whose

1 leader I don't know, but Chi Kraeng was under the sector -- the
2 sector that includes both Siem Reap and Oddar Meanchey provinces.

3 Q. In your interview with Henri Locard back in 1991, you referred
4 to a person named Ta Sot who was the head of the Dong Bong. Do
5 you remember a person named Ta Sot? And who was he?

6 A. I don't recollect every detail regarding the interview I gave
7 to Henri Locard, but I now remember that the person whose name
8 you mentioned was the chief or the secretary of sector -- of Siem
9 Reap and Oddar Meanchey. It was Ta Sot, indeed.

10 Q. Do you recall whether there was a period of time during which
11 the Siem Reap sector was not part of a zone, but instead was an
12 autonomous sector that reported directly to the Centre?

13 A. I don't know. I am not able to respond to this question, I'm
14 afraid.

15 [15.19.53]

16 Q. I'd like to turn to a few questions about communications and
17 authority issues.

18 In your OCIJ interview, you indicate that confessions from the
19 district security office were delivered to the Chi Kraeng
20 District Committee. Can you describe for the Court how these
21 documents were prepared and what information was contained in the
22 documents that were sent to the district committee?

23 A. With regard to the reporting regime for prisoners who had been
24 brought in from other locations to that security centre, it was
25 the commune chief who had to file the report and who arranged for

100

1 someone to bring them in. When people came in, they would be
2 shackled and their names and some personal details would then be
3 kept and the record would be submitted to the district who made
4 the final decision to see whether these individuals had to be
5 freed or further detained or executed. So Ta Kun did not make any
6 decision all on his own accord. He had to go through the district
7 for final decision. This is what I knew for sure.

8 [15.21.56]

9 Q. As the clerk of the district security office, was it part of
10 your job to record interrogations or confessions which were then
11 delivered to the district committee?

12 A. As to the confessions, I was the one who took the notes, but
13 it was not I who was the decision maker. I was made to take
14 records of the confessions and these confessions would then be
15 submitted to the chief of security who would make the final --
16 the decisions.

17 Q. I'd like to refer you to another statement from your 1991
18 interview with Henri Locard -- this is at Khmer, page 00812865;
19 English, 00164156; and French ERN 00779385 -- where you made the
20 following reference -- quote: "Reports were first made on
21 separate sheets; then, PCCS copied them into a big ledger book
22 that was deposited with the head 'kamaphibal' people."
23 Continuing later, "Prisoners did not sign the reports, but they
24 stamped it with the fingerprint of their thumb."

25 [15.23.56]

101

1 My question concerns the ledger book that's referenced here. Can
2 you tell us what information was included in that ledger book and
3 who that information was provided to?

4 A. As stated, with regard to the log book, this book had to go
5 through the district level to have a final say as to whether each
6 individual had light or serious or heavy offences and that the
7 district level -- the district chief would make the decision on
8 how these people would be treated -- indeed, whether they shall
9 -- should be executed or released or how long these people
10 continued to be detained.

11 And as for the thumbprints or how the paper were thumbprint --
12 were given thumbprint or not, I don't recollect this very well.
13 [15.25.31]

14 Q. Did -- did the district secretaries ever come to the security
15 office?

16 A. Ta San -- yes, before Ta San was accused of being a traitor,
17 he came to the security centre to converse with the security
18 personnel and the detainees. He would then call all detainees --
19 both men and women -- to come and meet him, and it was on that
20 occasion that I saw him coming to the place.

21 Q. On the issue of authority -- the authority of the district
22 level, you state in your OCIJ interview -- this is document
23 D125/127, at Khmer, page 00224053; English, page 00225212; and
24 French, page 00239979; you make the following statement -- quote:
25 "The Pongro Security Office was under the command of the

102

1 district. Only when there were orders from the district were
2 there any interrogations, releases, or killings." End of quote.

3 My question for you is: Do you know whether the district
4 secretary or the district -- district committee had authority to
5 make decisions on executions themselves or whether they also had
6 to receive orders from the Higher Echelon to which they reported?

7 [15.28.01]

8 A. I do not know whether orders or decisions were made higher up
9 as well because when Kun brought the cases to the district, I
10 have no idea how decisions were made. Nonetheless, when people
11 had to be sent out for executions, I could note that some of the
12 prisoner details were crossed out in red and these people could
13 be executed. That's my observation. So, whether the district
14 received from any higher up, it's beyond my knowledge. I only
15 learned that when the document returned to the security centre,
16 then I would be knowledgeable of the detail of which -- but not
17 further than that.

18 Q. And can you tell us -- you make reference to this in your OCIJ
19 interview, as well, that there were documents that came from the
20 district that had either cross outs in red or notations. Can you
21 describe to us what these documents were that came from the
22 district?

23 [15.29.51]

24 A. I wish to also emphasize that there was no writing from the
25 district. It only -- there were some cross outs on the name to be

103

1 sent out. For example, if a person by the name of A had to be
2 released, then there would be a red marks or cross out on the
3 name and if the person had to be released, then there would not
4 be any remarkable annotations or marks on that. So I observed no
5 other writing other than the cross out. Indeed, as indicated,
6 people who had to be executed would have their names crossed out
7 in red and those who had to be released would never have their
8 names crossed out or marked.

9 MR. LYSAK:

10 I thank you for your time today, Mr. Witness, in responding to
11 our questions.

12 Mr. President, that is all the questions we have at this time.

13 [15.31.15]

14 MR. PRESIDENT:

15 Thank you.

16 Now I hand over to the Lead Co-Lawyer for the civil parties and
17 the delegated lawyers for the civil party to put the question to
18 the witness in question. You may proceed.

19 QUESTIONING BY MR. VEN POV:

20 Thank you, Mr. President, and good afternoon, Your Honours. Good
21 afternoon, everyone in and out of the courtroom. Good afternoon,
22 Mr. Witness. I have only a few questions to put to you. I simply
23 want to seek clarification in addition to what the Prosecution
24 has already asked you.

25 Q. I would like to bring up the written record of interview dated

104

1 the 10th of -- 10th of September 2008, document D125/127, ERN in
2 Khmer, 00224051; English, 00225210; and French, 00239976.
3 In this written record, you said the following: 1975, you also
4 saw people evacuate -- people as well as Lon Nol soldiers and
5 they were evacuated to old houses in Chi Kraeng district and you
6 said you saw the evacuation of Lon Nol soldiers and officers of
7 the Lon Nol regime. And you also witnessed the evacuation of
8 ordinary people from Siem Reap downtown centre to Chi Kraeng
9 district. And you also further testified that not only did you
10 see the evacuation of people from Siem Reap, but you also learned
11 that there were evacuation of people across the country;
12 particularly, people were evacuated from Siem Reap province to
13 other provinces and countrysides.

14 [15.33.27]

15 So my question to you: Based on this evacuation of - or mass
16 evacuation of people, did you witness the presence of the
17 Buddhist monk in the -- among the population who were being
18 evacuated at that time?

19 MR. PE CHUY CHIP SE:

20 A. If I understand your question correctly, is that whether or
21 not I saw any Buddhist monk among the mass population who were
22 being evacuated.

23 Actually, I did not pay much attention at the time to the
24 different category of people because I, actually, at that time,
25 worked as the -- in the security office in Pongro, so the

105

1 information that I learned, at that time, was the Lon Nol
2 soldiers and former official of the Lon Nol administration who
3 were evacuated out of Siem Reap city.

4 [15.34.51]

5 Q. Did you hear or see it with your own eyes of the people or
6 evacuees who were evacuated from Siem Reap province? Did you see
7 or hear whether there were the elderly people, the sick or
8 children being evacuated among the mass population?

9 A. I knew the evacuation of people following the 17 April 1975
10 out of Siem Reap and Phnom Penh and all people were evacuated:
11 the handicapped, the elderly people, the young and old, and
12 everyone, virtually everyone, were evacuated, but I did not pay
13 attention to the issue of Buddhist monk.

14 I did not whether or not there were Buddhist monk among the
15 population who were moved, and as I said, I did not really know
16 it very well because I was attached to the security office at
17 that time. But as far as I knew from others -- was that all
18 population, all people were evacuated. So they told me about this
19 but I, myself, did not witness it by my own eyes.

20 Q. Concerning the evacuation of people out of Siem Reap city, did
21 you see or hear or were you told about the means by which the
22 population used in order to move out of the city into the
23 countryside?

24 [15.36.56]

25 A. The evacuation was on foot. There was no -- any vehicles or

1 any means to get out of the city.

2 The situation was terrible and miserable. There were dead people
3 along the streets, some families lost their loved ones.

4 And as for the distance, you may also be aware that some were
5 evacuated out of Phnom Penh City, and then they had to go all the
6 way to -- deep in the countryside. And if the evacuee were from
7 Siem Reap city, it was not that far, compared to those who were
8 evacuated out of Phnom Penh City because they went to the
9 countryside just outside the city.

10 Q. Did you observe the food were distributed to the evacuees at
11 the time or did you hear about the distribution of food to the
12 evacuees while being evacuated out of the city at the time?

13 [15.38.14]

14 A. I met one of the evacuees himself, and he told me that he was
15 provided with no food at all and he had to be all on his own and
16 the situation was miserable. And if the difficulty and suffering
17 he endured was indescribable, particularly they were starving and
18 they did not have access to medicine or health care and they had
19 to endure through constant fear of being accused of betraying the
20 organization.

21 So this is the fact and I cannot describe them all, it's the
22 misery they have endured in life.

23 Q. You told the Court in response to the questions by the
24 Prosecution, you said that Chi Kraeng was under the control of
25 the Khmer Rouge in 1972.

107

1 So my question to you is that: Before 1975, did the Khmer Rouge
2 organize any meetings or any gathering in order to receive the
3 New People or 17 April People in your locality?

4 A. We -- they did not organize any event or anything at all to
5 receive the New People. The New People, actually, at that time,
6 ran the risk of being accused as traitors, so they had constant
7 fear. And people, particularly the Khmer Rouge, did not have the
8 sentiment for the evacuee, particularly the New People. There was
9 a clear segregation between the New People and Old People.

10 [15.40.57]

11 Q. Thank you.

12 I move on to my next question concerning the overall wellbeing
13 and situation of the New People who were evacuated, and those
14 people were later named the 17 April People.

15 I would like to ask you for clarification. When the New People
16 were evacuated and they settled down in a remote place or they
17 were incorporated into cooperatives and they had to live along
18 with the Old People, or Base People, did you observe the food
19 ration -- did you observe any difference between the food ration
20 distributed to the Old People and New People?

21 A. The 17 April People were evacuated to the countryside and
22 before they got there, the cooperatives had already been
23 established, so, at that time, in those cooperatives, they ate
24 collectively. So when they were evacuated into those localities,
25 they had to eat in a communal hall collectively with the Old

108

1 People, but people did not really get along well with each other.

2 [15.42.36]

3 The Khmer Rouge asked the Old People to consider the 17 April
4 People as those who had lived with the Lon Nol administration, so
5 the Old People allowed the New People to work with them with
6 hatred and they mistreated the New People as well. That's what I
7 know about the situation of the New People.

8 Q. I would like to expand further on this in relation to the
9 freedom of the 17 April People and the Base People. Do you
10 observe any difference in terms of freedom of movement or so
11 between the two categories of people?

12 A. There was a world of difference because, as for hard labour
13 work was destined - or destined for the New People. And as for
14 the position, the New People held no position at all, they had to
15 be under the supervision and control of the Base People and they
16 had to go without many things in life. They had to go hungry most
17 of the time. That was the situation of the New People.

18 [15.44.07]

19 When they were sick, they had no access to medicines, so as a
20 consequence, a big number of 17 April People died during that
21 period.

22 Q. Mr. President, I would like to seek your leave to read a
23 document -- the same document, D125/127; Khmer, 00224052;
24 English, 00225211; and French, 00239977.

25 I would like to touch upon the moral misconduct. I would like to

109

1 read it out: "Some prisoners who were killed were accused of
2 connecting with the Vietnams or they had committed immoral
3 misconduct."

4 So I would like to ask you, at your locality, was there any
5 session convened in order to adjudicate on the issue of immoral
6 misconduct of people?

7 A. The mere term "misconduct" to the Khmer Rouge was that the --
8 means that the -- they had affairs or pre-nuptial affairs, and in
9 the re-education sessions, sometimes they took both of them to be
10 re-educated and at other times they took only one side of the
11 pair for re-education.

12 [15.46.25]

13 As for the Base People, they were also subject to similar
14 punishment if they were found having affairs or extra-marital
15 affairs with other people, but Base People were treated with a
16 more lenient punishment than the Old People - than the New
17 People.

18 Q. In relation to the same topic concerning the moral misconduct,
19 did you observe whether there was any cases of punishment because
20 of the moral misconduct between the Old People, or Base People,
21 with the New People?

22 [15.47.19]

23 A. Well, as far as the moral misconduct was concerned, there was
24 no distinction whether or not this misconduct was committed by
25 the Old People, the Base People, or the New People.

110

1 So long as there was immoral misconduct this was subject to
2 punishment, but most of the time those who were arrested were the
3 young ladies. There were cases of the affairs between the Base
4 People and the 17 April People.

5 Q. This is going to be my last question. You worked in the
6 administration of the Khmer Rouge even though it was in the lower
7 rank, did you ever listen to the statement made -- or broadcast
8 on radio by senior leaders of the Khmer Rouge?

9 A. If you ask me whether or not I know the development, whether
10 it be political or social development of the country through
11 radio broadcasts, I did not know.

12 I had little access to radio, but I learned information about the
13 meeting. Meeting convene in my internal office, but if you ask me
14 whether or not I ever listened to the radio broadcast of the
15 speeches or statements by the leaders, I did not. I only attended
16 meeting to discuss security matters in my security office and
17 work procedures in my place.

18 [15.49.14]

19 And when the situation was looming, they convened more open
20 meeting where more members were invited to attend the meeting of
21 this kind.

22 Q. Just a bit of clarification. Did you know or were you ever
23 told the position of the current co-accused before this
24 Extraordinary Chambers during the Democratic Kampuchea period?
25 Were you ever told the roles of the senior leaders at that time?

111

1 A. They told us -- the senior leaders -- they told the roles of
2 those leaders. For example, Mr. Khieu Samphan was then the
3 President of the State Presidium and Pol Pot was the Secretary of
4 the Communist Party of Kampuchea; so on and so forth.

5 But most of the time they told us about the roles of either Pol
6 Pot or Khieu Samphan. Rarely did we hear about the role of Ieng
7 Sary and, to my recollection, they did tell us about the role of
8 Pol Pot and Khieu Samphan.

9 [15.51.05]

10 MR. VEN POV:

11 Thank you, Mr. President. I have no further questions for now for
12 the witness, and I would like to hand over to my International
13 colleague.

14 MR. PRESIDENT:

15 You may proceed.

16 QUESTIONING BY MS. SARKARATI:

17 Thank you, Mr. President. And good afternoon, Your Honours, and
18 good afternoon, Mr. Witness.

19 Q. Now, I'd like to talk more about the evacuation of civilians
20 from Siem Reap.

21 Do you know if any of the civilians refused to leave the city at
22 that time?

23 MR. PE CHUY CHIP SE:

24 A. I'm afraid I cannot answer this question because it is beyond
25 my duty. I do not know whether or not there were people who

112

1 protested against the evacuation out of Siem Reap city, so I'm
2 afraid it's beyond my knowledge.

3 [15.52.12]

4 Q. Thank you. Were you aware of any incidents where the Khmer
5 Rouge used force to get civilians to evacuate the city?

6 A. As for this question, I am going to respond to it based on my
7 knowledge I learned from the people.

8 When they were evacuating people out of Siem Reap city, they
9 coerced them to leave the city. They even coerced them at
10 gunpoint as well. They shoot into the air, threatening people to
11 leave the city as quickly as possible, otherwise they would be
12 punished or they would be killed, so on and so forth. So those
13 who were supposed to evacuate the city dare not resist or protest
14 against the order.

15 [15.53.21]

16 Q. Now, you mentioned earlier that there were dead bodies on the
17 roads during the evacuation of the city. Do you know how those
18 people died?

19 A. As for those who died along the roads, they die of: one,
20 starvation; two, because of diseases and they did not have
21 medicines or they did not have anyone to look up to.
22 For example, children, young children, had no breast milk to feed
23 so they starved to death, and that was the misery. I cannot
24 describe them all; there were many other miserable situations at
25 the time.

113

1 Q. Thank you, Mr. Witness.

2 And did you receive any orders regarding how to treat the 17
3 April People that were brought to your district?

4 A. As for the treatment of the 17 April People, it was up to the
5 Base People. The Base People were the hosts of the New People.
6 Of course, it was under the supervision of the security side, but
7 if, for example, there was any report of tardiness or laziness of
8 the 17 April People, then the security guards would seek to
9 arrest them and put them in security centre.

10 [15.55.43]

11 That was what I know, but as for the other situation of the 17
12 April People, we did not know much.

13 Q. And were any of 17 April People brought to Pongro Security
14 Office while you were there?

15 A. I do not recall the exact number of the 17 April People who
16 were imprisoned at the security office, but of course there were.
17 There were 17 April People who were reported by the Base People
18 and they were arrested and sent to security office.

19 And those 17 April People were charged of moral misconduct, as I
20 mentioned earlier, or they were accused of stealing something or
21 the property of the cooperatives. And -- or sometimes they were
22 arrested and -- on the charge of laziness or so, so those people
23 were arrested and sent for re-education at the security centre.
24 So these were the cases of the arrest of the 17 April People.

25 [15.57.16]

114

1 Q. Thank you. So, in your position as clerk of the prison, were
2 you instructed to specify whether the prisoners were 17 April
3 People when you kept records of their entry?

4 A. There was a clear division between Old and New People. In that
5 regime, they did not like the 17 April People. Actually, they
6 simply wanted to get rid of the 17 April People. Those 17 April
7 People who understand this motive, they pretend not to know
8 anything and they had to disguise themselves from time to time.
9 For example, they were either the officials or teaching staff of
10 the previous regime. They had to try to hide their identity and
11 those people have to be subjected to hard labour as well. And
12 there was a clear segregation in that regime.

13 Q. My question was more specific to the security office in
14 Pongro, the one where you worked.

15 I was asking if you were instructed to record whether or not the
16 prisoners were 17 April People.

17 [15.59.17]

18 A. Yes, there was. I received such an order. They asked me to
19 make it clear whether or not the prisoners were from the Base
20 People or from the 17 April People, so there was an order from
21 the top that I separated the list of prisoners.

22 Q. And were these prisoners treated any differently in your
23 security office?

24 A. Yes, they were. The treatment was different to these people.
25 The 17 April People would be put in other place, or if they were

115

1 in the same place then they would enjoy less superior position or
2 they were merely treated as subordinates, and that the other
3 people would treat themselves as the boss, looking at the 17
4 April People who were their subordinates doing -- or performing
5 their labour.

6 Q. Thank you. And did you see any prisoners get hurt during your
7 tenure at the office?

8 [16.01.17]

9 A. I used to see how badly people were treated. When people were
10 taken for interrogations they would then be tortured if they
11 failed to respond, to confess, to what they wanted, or if they
12 contested such questions they would be whipped or beaten with
13 sticks or clubs. And some serious offence prisoners who were
14 being interrogated sometime were tortured until they died.

15 Q. And were any of the prisoners forced to write out a
16 confession?

17 A. Prisoners were not made to write anything, but I forget
18 whether this was the case that prisoner would be asked to give
19 their thumbprint on a confession, but at no time were they
20 allowed to write their confession on their own accord. They could
21 make their -- give their confession and security personnel would
22 then be there to record the confession. The confession, by the
23 end of the day, these confessions would then be put to the
24 detainees to give thumbprint as I remember.

25 Q. And what would you do with these confessions? Who did your --

116

1 who did you send these confessions to?

2 [16.03.32]

3 A. The head of the security -- the people who were in charge of
4 confessions were there who kept the confessions' log book, and
5 after confessions were extracted then the book would then be
6 passed to the district chief who then made the final decision on
7 this.

8 Q. And can you clarify what you mean by "final decision"? What
9 decisions would the security chief make in regards to the
10 confessions?

11 A. What I was saying is that the final decision was made at the
12 level of the chief of the district because I saw the village
13 chief - sorry, the final decision would be made by the district
14 head, indeed, and I would see the village chief coming on his
15 bicycle to the centre with the decision. And that's what I
16 learned from that time. That's all I know.

17 Q. I guess my question was actually about what was the decision
18 regarding -- was it regarding how to treat that specific
19 prisoner?

20 [16.05.43]

21 A. I would like to say that the decisions were made in accordance
22 with the severity of the offences each prisoner or detainee
23 committed. And you were asking about who made the decision on the
24 charges or the severity of the offences.

25 I think -- and no other people would be entitled to do this other

117

1 than the chief of the district. He would be the only person who
2 could make this decision because, to me, the head of security had
3 no authority to have a final word on any of the offences or
4 severity of such offences.

5 Q. Okay. Thank you very much.

6 Now, do you know if any of the prisoners died while in prison?

7 A. I saw several detainees die at the detention facility. Many
8 died when remained shackled. I did not see them being executed,
9 but I saw them dying in the detention centre.

10 And they had been detained under harsh conditions where they
11 would be given only thin gruel and during the cool season a lot
12 of people died in the detention centre and mostly male detainees.
13 For the women detainees, they would be allowed to go out of the
14 detention facility to work. Male detainees would never be allowed
15 to go out at all.

16 [16.08.18]

17 Q. And how did the prison dispose of their bodies?

18 A. The bodies were buried, and for those who had been executed
19 they would be buried far from the detention facility because the
20 execution sites were from -- far away from that.

21 But those who died at the detention facility would be buried very
22 close to the complex. Sometimes we could see shallow pits or
23 graves where the scarf that once used by the detainees there.

24 MR. PRESIDENT:

25 Counsel, time passed by so quickly already and your questions

118

1 appear to be falling out of the matters -- or the scope of the
2 general implementation of the policy during the first phase of
3 the evacuation and also the local administration.

4 [16.09.51]

5 If you frame your question to these confined areas, then you
6 would get a lot from this witness, but when it comes to security
7 centre, I'm afraid it doesn't fall within the ambit of the
8 segment of this Closing Order being debated now.

9 MS. SARKARATI:

10 Okay. I apologize, Your Honour.

11 May I continue with a few more questions, or is the time finished
12 for the day?

13 MR. PRESIDENT:

14 You may ask a few more questions, indeed. However, please make
15 sure that your questions are in the scope of the implementation
16 of the policy concerning the first phase evacuation and also
17 information that's relevant to the local administrative
18 structure, otherwise you would not be allowed to proceed with
19 these.

20 The Chamber would like to allow you to ask three more questions.

21 [16.11.15]

22 BY MS. SARKARATI:

23 Thank you, Your Honour.

24 Q. I'd like to go back to the information on the evacuation that
25 you were discussing earlier.

119

1 While the civilians were being evacuated, was there any effort to
2 keep families together during the evacuation?

3 MR. PRESIDENT:

4 International Co-Counsel for Mr. Nuon Chea, you may now proceed
5 first.

6 MR. PAUW:

7 Thank you, Mr. President, I'll be very brief in my objection
8 because I understand time is short, but I would like counsel for
9 the civil parties to ask the witness specifically as to what he
10 himself witnessed, what he saw, because the witness has so far
11 been testifying a lot about things he has heard regarding the
12 evacuation of Siem Reap.

13 [16.12.13]

14 So I would request counsel for the civil parties to stress
15 specifically what he himself saw.

16 BY MS. SARKARATI:

17 I can reframe my questions. Sorry about that.

18 Q. Now, in the civilians that were brought to your district, was
19 there any effort to keep families together within the district?

20 MR. PE CHUY CHIP SE:

21 A. I do not know about this in person, but looking at the
22 situation of the 17 April People, when people were evacuated from
23 Siem Reap to the local area, these people had not been together
24 before they were - or, rather -- these people could never be
25 together. They were separated because the head of the

120

1 cooperatives would disperse the forces by dividing the people by
2 assigning them with different tasks at different locations. So
3 that happened to the 17 April People.

4 [16.13.55]

5 Now, another example is that, immediately upon arriving during
6 the evacuation, people could meet but only very briefly. But,
7 later on, according to the instructions by the cooperative
8 chiefs, then the children would go to one direction and parents
9 would then be asked to work elsewhere; they would no longer meet.

10 MS. SARKARATI:

11 Okay, thank you. And I actually have no more questions.

12 (Judges deliberate)

13 [16.15.20]

14 MR. PRESIDENT:

15 We thank you, Mr. Witness, for your patience and efforts in
16 giving testimonies.

17 Counsel Jasper Pauw, you are on your feet. You may proceed first.

18 MR. PAUW:

19 Thank you, Mr. President. Again, I'll be very brief, but it would
20 be our request to take the statements that the witness has given
21 to Mr. Henri Locard for the moment so that the witness does not
22 read this statement in the coming days. I would assume he comes
23 back on Wednesday to testify.

24 [16.16.03]

25 It does not only include his statements, the things that he told

121

1 Mr. Henri Locard but also certain observations and conclusions by
2 Mr. Henri Locard.

3 So, to avoid contaminating the knowledge and testimony of this
4 witness, we would request to, for the moment, take that document
5 back so that the witness can testify as to what he remembers
6 today - or, rather, on Wednesday.

7 MR. PRESIDENT:

8 Counsel Karnavas, you may now proceed.

9 MR. KARNAVAS:

10 Thank you, Mr. President. Just very briefly.

11 I didn't want to interrupt the proceedings earlier nor cause
12 embarrassment to anyone, but I notice that Mr. Henri Locard was
13 in the audience, taking notes, which sort of begs the questions:
14 How is it - perhaps it is by serendipity that he decided to grace
15 us with his presence in the audience, here, today -- but how is
16 it that he was here on the occasion when he's being mentioned if,
17 for instance, no one knew exactly who the gentleman was going to
18 be today, testifying, because he had a pseudonym? Thank you.

19 Well, perhaps the Trial Chamber should look into this to see
20 whether such information is being funnelled out, and if so, by
21 whom, or perhaps issue an edict that this sort of conduct should
22 cease and desist. Thank you.

23 MR. PRESIDENT:

24 International Co-Prosecutor, you may now proceed.

25 Court officer is now instructed to report to the Transportation

122

1 Unit of General Service to make sure that the buses had to be
2 rescheduled so that staff member can also catch the bus home,
3 because the proceedings may be delayed a few minutes than
4 previously expected.

5 [16.18.21]

6 MR. LYSAK:

7 Very quickly, Mr. President, just so the record is clear, I want
8 to make it absolutely clear that our offices had no
9 communications with Mr. Henri Locard. I can also tell you that it
10 is not only probably by serendipity that he's here today; it was
11 by fortune that I discovered this document that contained the
12 witness's interview. I was unaware of that until sometime
13 Thursday afternoon, when I was doing some research on his
14 district and happened to notice that in this report there was an
15 interview of the witness.

16 So, I think it is extremely highly unlikely that this is anything
17 other than serendipity, and I want to make sure the record is
18 clear that our offices has had no communications whatsoever with
19 anyone regarding this witness.

20 (Judges deliberate)

21 [16.19.33]

22 MR. PRESIDENT:

23 Does any other counsel wish to have any comments on this? And
24 please don't be afraid that you will miss the bus because the bus
25 has already been asked to wait for us.

123

1 Without further comments on this, the Chamber feels that it is
2 now the close of the day's session. The next session will be
3 resumed by the day after tomorrow, which is Wednesday, and we
4 continue to hear the testimonies of Mr. Pe Chuy Chip Se and also
5 TCCP-82 for Wednesday's session.

6 Mr. Chip Se, your testimony has not yet been concluded. The
7 Chamber wishes to hear you again on Wednesday and you are invited
8 to return to the courtroom on that day.

9 [16.21.02]

10 Court officer is now instructed to assist with the WESU unit to
11 ensure that the witness is properly accommodated or assisted
12 during this break and have him returned to the courtroom on
13 Wednesday, the day after tomorrow, at 9 a.m. Duty counsel is also
14 invited to assist the witness. And civil party needs to be
15 escorted back to the home and that -- the civil party is
16 instructed to be returned to the courtroom on Wednesday as well.
17 Counsel, you may proceed.

18 [16.21.55]

19 MR. PAUW:

20 Now that the buses are waiting, Mr. President, I would be sure
21 that I may have missed it because it is late, but I don't think
22 you've ruled on our request to take away the document from the
23 witness at least until he testifies on Wednesday.

24 MR. PRESIDENT:

25 The Chamber will rule on this on the morning of 14 of November

124

1 before we proceed to counsels - because the document has already
2 been placed and examined.

3 And as to how we can resolve this to suit your need, the Chamber
4 will rule on this on that date, as indicated.

5 Security personnel are now instructed to bring Mr. Nuon Chea,
6 Khieu Samphan to the detention facility and have them returned to
7 the courtroom by 9 a.m. on the 14 of November.

8 The Court is adjourned.

9 THE GREFFIER:

10 (No interpretation)

11 (Court adjourns at 1623H)

12

13

14

15

16

17

18

19

20

21

22

23

24

25