



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
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11 April 2013  
Trial Day 167

Before the Judges: NIL Nonn, Presiding  
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YA Sokhan  
Jean-Marc LAVERGNE  
YOU Ottara  
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I N D E X

MR. FRANÇOIS PONCHAUD (TCW-536)

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. ADDULHAK	English
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MR. KHIEU SAMPHAN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PONCHAUD (TCW-536)	French
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer
MR. VERCKEN	French

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

2 (Court opens at 0903H)

3 MR. PRESIDENT:

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

5 During today's sessions, the Chamber continues hearing the

6 testimony of Mr. François Ponchaud, questions continue to be put

7 by counsel for Mr. Khieu Samphan.

8 Before that, we would like the Greffier of the Trial Chamber to

9 report to the Chamber the current status of the parties to the  
10 proceedings.

11 [09.04.46]

12 THE GREFFIER:

13 Good morning, Mr. President.

14 Today, all the parties to the proceedings are present except Mr.

15 Nuon Chea, who is present in his holding cell due to his health

16 concerns.

17 The witness before us today is Mr. François Ponchaud, who is

18 right in the courtroom.

19 Thank you.

20 MR. PRESIDENT:

21 Thank you.

22 Now the Chamber would like to hand over to counsel for Mr. Khieu

23 Samphan to put questions to the witness.

24 MR. VERCKEN:

25 Thank you very much, Mr. President. Good morning to you. Good

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1 morning to Honourable Judges of the Bench...

2 [09.05.51]

3 MR. PRESIDENT:

4 Mr. François Ponchaud, you may proceed.

5 MR. PONCHAUD:

6 Yesterday, I noted that we had some misunderstanding in the  
7 interpreting. I perhaps wish to speak French today, and please  
8 don't accuse me of being -- of doing this in favour of the  
9 Defence. My position is clear. We had some problems with the  
10 interpretation so I may seek your permission to speak in French,  
11 now.

12 MR. PRESIDENT:

13 Thank you, Mr. Witness.

14 The Chamber already ruled yesterday that you would now be  
15 speaking in French and counsel for Mr. Khieu Samphan also  
16 mentioned about the misinterpretation. So you have already been  
17 allowed to do that in French since yesterday. So please be more  
18 concise. If you choose to speak French, then speak French alone  
19 so that the interpreters know for sure that you will be speaking  
20 in French, because the way you mix French with Khmer, doesn't  
21 help the interpreters or the Bench.

22 [09.07.28]

23 Because when you speak Khmer, I understand your Khmer, but then  
24 you switched to a few French words which could not be interpreted  
25 because switching the language when speaking Khmer is not

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1 beneficial. So again, in the interest of justice and also for the  
2 sake of the whole court proceeding, the Chamber would like you to  
3 proceed with speaking French. We already notified you at the  
4 beginning that they would -- this would be a problem if you  
5 switch languages during your testimony. And the Chamber wishes to  
6 inform you that when responding to the parties to the  
7 proceedings, please try to be concise, brief, and party who is  
8 putting questions should also make sure that their questions are  
9 brief and precise.

10 If the questions are broad, then the response would be broad too  
11 and it may lead to some misunderstanding in the rendition.

12 Counsel for Mr. Khieu Samphan, you may now proceed.

13 [09.08.59]

14 QUESTIONING BY MR. VERCKEN RESUMES:

15 Thank you, once again, Mr. President.

16 Q. In follow-up to what has just been said, and I'm craving your  
17 indulgence, Father Ponchaud, if this appears to you as somewhat  
18 repetitive, but I would like to return to the topic of the  
19 purported interview of Mr. Khieu Samphan that was given in 1976  
20 to Ms. Paola Brianti. She worked for a newspaper called "The  
21 Christian Family", and this reporter purportedly interviewed Mr.  
22 Khieu Samphan in Sri Lanka during a conference that was held in  
23 the city of Colombo.

24 [09.10.03]

25 I want to return to this topic because yesterday there were a few

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1 difficulties in understanding and Father Ponchaud, the  
2 Co-Prosecutor recently stated that this interview constituted a  
3 key document. In fact it was an essential and crucial document.  
4 We have sought out an issue of that newspaper, "The Christian  
5 Family". It is under E3/608; the ERN's in French are 00632566 to  
6 68; in Khmer 00419841 to 43 and ERN in English 0632566 to 78.

7 [09.11.16]

8 Based on the information that I have received and you're here to  
9 confirm as to whether or not it is true, it is that you  
10 challenged the veracity of that interview and I also gather that  
11 you, yourself were informed by a French journalist named Éric  
12 Laurent, who worked for a radio station called "France Inter" and  
13 who was in Sri Lanka and had accompanied Ms. Paola Brianti,  
14 during the Colombo conference when she allegedly met Mr. Khieu  
15 Samphan. And that French journalist told you that this  
16 information was entirely false and never did Ms. Paola Brianti  
17 meet Mr. Khieu Samphan. And for the benefit of the record, I  
18 would also state that there is another person called William  
19 Shawcross stated that neither of these individuals had met Mr.  
20 Khieu Samphan.

21 [09.12.40]

22 Can you please tell us about the circumstances during which you  
23 learned that the interview was false and never took place, but I  
24 will pause there because I see that the Co-Prosecutor is on his  
25 feet.

1 MR. PRESIDENT:

2 International Co-Prosecutor, you may now proceed.

3 MR. DE WILDE D'ESTMAEL:

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

5 Your Honours, good morning to all parties. I believe that there

6 is a problem with the method of this question. It is very long.

7 The President has just instructed parties to ask precise,

8 specific questions and he is -- my learned friend across the way

9 is providing information that may not be known by the witness and

10 that may or may not be on the case file. So I would ask my

11 learned friend to ask straightforward questions without providing

12 complimentary information in order to elicit a response and he

13 can verify subsequently. That is all that I ask, Mr. President.

14 [09.13.51]

15 MR. VERCKEN:

16 Mr. President, may I reply? My question is one of clarification.

17 My question was very specific. My question would enable Father

18 Ponchaud to either confirm or invalidate the information that I

19 laid out.

20 MR. PRESIDENT:

21 Mr. Ponchaud, you may respond to the question.

22 MR. PONCHAUD:

23 A. I confirm that Éric Laurent -- in fact I was thinking about it

24 last night. Éric Laurent told me that he was by the side of Paola

25 Brianti the entire time, and that the interview was false. There



6

1 are photos in the magazine "Paris Match", and I believe that it  
2 was Colonel Saint-Simon who had fabricated the photos in Thailand  
3 depicting false Khmer Rouge committing false murders.

4 [09.15.14]

5 The pictures were entirely doctored and that the dissemination  
6 was - of this information - was entirely to the detriment of the  
7 Cambodian people. I confirm that.

8 BY MR. VERCKEN:

9 Q. Very well. I can hereby confirm your answer.

10 Yesterday, we also talked about the former helicopter pilot who  
11 travelled from Democratic Kampuchea to Thailand and was  
12 transporting some refugees. That pilot who is called Lieutenant  
13 Pech Lim Kuon had met after his fleeing, many people and you  
14 talked about him.

15 [09.16.13]

16 Yesterday, you testified on this and what I heard from the  
17 interpretation of your answer was that you have the recollection  
18 of meeting the former military officer in Thailand and that it  
19 was the Lieutenant who talked to you about Khieu Samphan, but I  
20 didn't understand if he actually talked about Khieu Samphan, or  
21 if he referred to a Brother Hem as one of the leaders of  
22 Democratic Kampuchea. Now on that, can you please specify what  
23 you said and what you meant, so that I have a perfectly clear  
24 understanding?

25 MR. PONCHAUD:

7

1 A. I met Lieutenant Pech Lim Kuon in June or July 1976, in the  
2 refugee camp of Mairut. He was piloting – there was a white  
3 helicopter stationed next to the camp. He told me that he was  
4 transporting Khmer Rouge leaders and yesterday it was said that  
5 he was training, but it was not the case.

6 And I said: "Who is Angkar?"

7 And he said: "There was Comrade Pol, there's Comrade Hem, there's  
8 Comrade Van, there's Comrade Vet."

9 And I asked him: "Who are those people?"

10 And he said: "I don't know."

11 And in my book, I quote that conversation and I talk about  
12 Comrade Pol, and I say that Comrade Pol is perhaps Saloth Sar  
13 (sic), Saloth Sar, but for now, we just don't know.

14 [09.18.06]

15 Q. Thank you very much for that detail. I wish to indicate that  
16 we also have on the case file interviews that were given by that  
17 military officer who fled Democratic Kampuchea, namely, we have  
18 an interview that was given to the Ambassador of France in  
19 Thailand. And there's a note from the 6th of October 1976,  
20 written from the French Ambassador to the Ministry of Foreign  
21 Affairs. It's under E3/481. Allow me to quote from a passage; I  
22 think this document is rather relevant because it contains some  
23 details of that particular interview.

24 The military officer talks about the five leaders who were  
25 stationed in Cambodia at the time and among the main leaders, he

8

1 talks about Pol Pot, Ieng Sary, Nuon Chea, Son Sen. And then he  
2 talks about Khieu Samphan, and I quote what he wrote, in fact,  
3 what is written in the telegram:

4 "It is impossible to provide the same amount of information on  
5 Khieu Samphan whose real power seems to be much more limited than  
6 his official rank would suggest. Several tenuous yet converging  
7 indications make this a distinct possibility. Khieu Samphan with  
8 us belong to the most recent stratum of the Khmer Rouge movement  
9 since he, Hou Youn and Hou Nim only joined the resistance in  
10 1967."

11 [09.20.08]

12 One member of this trio with which his political destiny is  
13 generally associated, Hou Youn, who had vanished from the scene.  
14 He was probably killed in combat in 1975. Hou Nim, theoretically  
15 the minister of information, had not been mentioned by the radio  
16 in Phnom Penh since February 1977. In addition, Khieu Samphan  
17 holds the position of head of state, which is generally honorary  
18 in a socialist state. Furthermore, the only refugee with some  
19 knowledge of the ruling circles in Phnom Penh" - and here he  
20 refers to Pech Lim Kuon, the pilot of the helicopter, "mentioning  
21 him as not belonging to the first tier of leaders.

22 "Finally, Pol Pot in his 27 September address referred, in  
23 passing, to the comrade president of the State Presidium, Mr.  
24 Khieu Samphan, whom he politely characterized as -- quote,  
25 unquote: "An intellectual". Knowing how the Khmer Rouge treat the

1 category of the population, that particular category of the  
2 population and having read the rest of the address, which is  
3 largely dedicated to the glorification of the peasant class, the  
4 only true revolutionary force makes it easier to understand the  
5 importance of Khieu Samphan's peers placed on a position of head  
6 of state."

7 [09.21.35]

8 These are the words of the French Ambassador addressed to the  
9 Foreign Affairs Minister. These notes, these comments provided by  
10 the pilot are also lifted in a subsequent news article of the  
11 "Herald Tribune" under E31/190.1.409, ERN in French 000752469; in  
12 Khmer, 00470700 -- pardon me, I'll repeat the Khmer, 00753046;  
13 and in English, 00005745.

14 The article was published on the 11th of May 1976. I just wanted  
15 to convey this information to you, which differs from the  
16 interview that you may have collected from the lieutenant. Just  
17 to be entirely complete, I will also quote from a passage of the  
18 article of the "Herald Tribune":

19 "Lieutenant Kuon derided reports by 'Radio Phnom Penh' depicting  
20 Cambodia as a country of enthusiastic citizens led by a National  
21 Assembly and government presided over by Khieu Samphan. He said  
22 in an interview that the real power lay in the hands of Saloth  
23 Sar and four other hard line communists in a group called  
24 'Mocchim Pak', or 'Highest Organization'."

25 MR. PRESIDENT:

10

1 Mr. Witness, please hold on.

2 International Co-Prosecutor, you may now proceed.

3 MR. WILDE D'ESTMAEL:

4 Once again, Mr. President, I wish to call into question Counsel  
5 Vercken's method in asking his question. We have just been privy  
6 to a very long introduction provided by the defence counsel. He  
7 is providing information and is not asking any question to the  
8 witness. We did not hear the question, therefore I'm wondering  
9 why having provided all this information he is not asking a  
10 question.

11 [09.24.20]

12 On the other hand, I believe that the two documents that have  
13 been quoted reveal assumptions and theories. Obviously we can ask  
14 the witness what he heard, but I'm not entirely sure he is able  
15 to make exhaustive comments on the reports that would have been  
16 made by the French Ambassador in 1976 based on what he had heard,  
17 etc.

18 So if there's a question to be asked, it would be to ask what was  
19 exchanged between Father Ponchaud and the pilot. I don't see how  
20 the peripheral information is relevant and if there's no  
21 question, then I would ask counsel to cease providing information  
22 that lend themselves to a final closing pleading, and not a  
23 cross-examination.

24 MR. PRESIDENT:

25 Lead Co-Lawyer for the civil party, you may proceed first.

11

1 Counsel Vercken, please be seated.

2 [09.25.36]

3 MS. SIMONNEAU-FORT:

4 Thank you, Mr. President. I simply wanted to state exactly the  
5 same position as the Co-Prosecutor.

6 I'm rather bewildered to hear these long, so-called questions;  
7 these long pleadings. There is no question punctuating his  
8 comments. We are not here to listen to a pleading; we are here to  
9 pose questions to the witness. I subscribe, wholeheartedly to the  
10 position of the Co-Prosecutor.

11 MR. VERCKEN:

12 (No interpretation)

13 MR. PRESIDENT:

14 Thank you.

15 And, Counsel, please be reminded of how you put the question to  
16 the witness. Your line of questioning like you have just put, is  
17 rather - the question itself is too lengthy and we are afraid  
18 that the question and the responses would be straying out of the  
19 scope of the trial proceedings. And for that, the Chamber, time  
20 and again, would like to remind parties to the proceedings to  
21 change the way they put questions to a witness. We would like the  
22 way of putting questions to be precise for the sake of a good  
23 interpreting and also, we would like to ask counsel for Khieu  
24 Samphan, how much time would you need to put questions to this  
25 witness? And can you also advise the Chamber as to how you

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1 allocate or share the time with counsels for Mr. Nuon Chea?

2 [09.27.25]

3 By the end of the day, the Chamber would only wish to grant 30  
4 extra minutes only if need be and that you should also be aware  
5 of this. And we wish to make it clear that we do not want to make  
6 Nuon Chea's defence team be deprived of their time to put  
7 question because the time allocated to all counsels have already  
8 been used by counsel for Khieu Samphan, for example. So please be  
9 advised.

10 MR. VERCKEN:

11 I think there are several matters that I have to reply to.

12 First and foremost, Mr. President, yesterday I took the floor at  
13 1.45 p.m. Therefore, based on my arithmetic and based on the  
14 allocation of time for the defence team, I believe that I have 40  
15 minutes at my disposal. This morning I started at 9.10 a.m. I  
16 hope that's perfectly clear.

17 [09.28.46]

18 Next, with respect to the objections launched by the  
19 Co-Prosecutor, since I didn't have time to ask my question, I  
20 believe that the practice was first introduced by the  
21 Co-Prosecutor, himself - that is, to read verbatim documents and  
22 admit whole passages. It was the Co-Prosecutor who had started  
23 the method of presenting documents that put certain testimony  
24 under a certain light and now, we, the Defence, are being  
25 criticized prior to even given the opportunity to ask our

13

1 question. I hope, eventually, we can give the opportunity to  
2 Father Ponchaud to answer.

3 MR. PRESIDENT:

4 Counsel, please proceed to the questions.

5 BY MR. VERCKEN:

6 Q. Well, I believe that Father Ponchaud understood what I want to  
7 say.

8 MR. PONCHAUD:

9 A. I did not understand your question.

10 [09.30.12]

11 Q. Okay fine. Well, my question was: If in view of what I've just  
12 read to you, and in view of what this former serviceman from  
13 Democratic Kampuchea had said, if you have any comments to make  
14 on the interview you had with him, or not?

15 A. I don't remember exactly the discussion I had with Mr. Pech  
16 Lim Kuon. I just remember that he mentioned Comrade Hem, among  
17 the leaders of Democratic Kampuchea. He did not say what his role  
18 -- what his position was. Now regarding Saloth Sar, we learnt  
19 people interested in Democratic Kampuchea, we learnt that Saloth  
20 Sar was Pol Pot in September 1977. And the rest is only  
21 literature.

22 Q. Thank you. It's very clear. So now I will turn to another  
23 topic.

24 [09.31.20]

25 And this topic involves or regards to the evacuation of the



14

1 cities. And in this regard, in your book and before the Chamber  
2 also, you mentioned various reasons for this evacuation. You  
3 spoke about problems in food supply, security issues and also  
4 ideology. And you also said that you favoured the ideological  
5 aspect. You said that, "In my eyes, it was an ideological  
6 decision." That's what you said, I believe.

7 And you read - you were heard by Marcel Lemonde, the  
8 Co-Investigating Judge and this was filmed. Not only did you sign  
9 a record following your interview by the Investigating Judge, but  
10 we also have the video of this interview. And, in fact, we asked  
11 for a partial re-transcription of this video and there is one  
12 passage I'd like to mention regarding the evacuation and this is  
13 document D33.1; French ERN 00882127; Khmer, 00897587; English,  
14 00885116. And here -- the segment that I'm going to quote, which  
15 is very short -- in this segment you say to the Judge that, "It  
16 was a decision, a deliberate decision to empty all of the cities;  
17 and in my opinion, the reason for this was not the vengeance of  
18 the peasants against the city people. It was an ideological  
19 decision."

20 Do you confirm this? Do you stand by what you said to the  
21 Investigating Judge?

22 [09.33.40]

23 A. I stand by it and I absolutely stand by it. It was the Khmer  
24 Rouge practice since April 1970, but we did not imagine that they  
25 were going to do that in Phnom Penh. But above - the absolute

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1 reason above anything else is -- was that it was an ideological  
2 reason. And the more I think about it, the more I'm convinced of  
3 this.

4 Q. And you make a distinction in the sentence that I just quoted,  
5 between vengeance and ideology?

6 A. Yes, there was not really much vengeance. It was more  
7 ideological. It's possible, of course, that there was --  
8 vengeance was used somewhat and that they may be used vengeance  
9 at the service of their ideology, but I think that the core was  
10 ideological. The idea was to create a new society without cities,  
11 without compradors as Monsieur Khieu Samphan states in his  
12 dissertation.

13 Q. Fine. There is one point I would like to return to, concerning  
14 Phnom Penh in particular. And we all know that in April 1975,  
15 there were between 2 to 3 million people in Phnom Penh; living in  
16 Phnom Penh, and back then, Cambodia was -- the total population  
17 of Cambodia was about 7.3 million.

18 [09.35.14]

19 If -- maybe it's not an exact figure, but it's around that. So  
20 this means that when the Khmer Rouge arrived in Phnom Penh,  
21 practically half or maybe a third of the Cambodian population was  
22 living in the capital. And that's enormous. It's a third or even  
23 half of the country's population in the capital, and being forced  
24 to feed this population is enormous and that's what I want to ask  
25 you questions about. So it seems to me that in regard to the

16

1 necessity of having -- of feeding these people, well, this gave  
2 rise to quite a few issues.

3 A. The last statistics are the statistics from 1962 and you  
4 cannot rely on the Khmer statistics because they're wrong. Even  
5 after the new regime that was setup by Vietnam, immediately the  
6 statistics mentioned 10 million people or 13 million people. That  
7 is completely illogical, and based on the statistics given by  
8 Prince Sihanouk before, saying that there were 7 or 8 million  
9 people in Cambodia. It's true, however, that a great part of the  
10 population from the countryside came to Phnom Penh to seek  
11 refuge, but I don't know in which proportion. I have no specific  
12 information on that. We could say 2 to 3 million, but these are  
13 estimates. These are basic general estimates so if there was a  
14 problem in food supply, yes that's true, but that was not the  
15 fundamental reason.

16 [09.36.59]

17 The fundamental reason to evacuate the cities was ideological,  
18 and I repeat this.

19 Q. I would like to ask you if you also have any knowledge about a  
20 war debt that Democratic Kampuchea had to pay back to North  
21 Vietnam after the victory. Was there any kind of debt and can you  
22 speak about this if you are aware of this?

23 A. Often people say that there was famine in Democratic Kampuchea  
24 because the harvests were bad, but as far as I know, no. The  
25 harvests were excellent in the region where I live, in Chok

1 (phonetic) commune; the people congratulate the Khmer Rouge for  
2 the excellent harvests between 1975 and 1976. And one of them by  
3 the name of Niev Lim (phonetic) said to me, "I don't know how the  
4 Khmer Rouge managed, but we working with a lot of zeal and the  
5 harvests were great." And his wife had been killed by the Khmer  
6 Rouge, by the way.

7 [09.38.16]

8 So this idea of organized famine in Cambodia, well, those were  
9 rumours. I never saw anything in writing about this. Part of the  
10 Cambodian rice went to North Vietnam to reimburse the war debt,  
11 that's true. And I was also told part of the rice went to China  
12 for war debt, as well. And a third point that is often ignored,  
13 Pol Pot in his madness, would store rice in the peripheral  
14 regions of Cambodia, for example, in Preah Vihear. I saw with my  
15 own eyes, enormous warehouses where the Khmer Rouge were storing  
16 rice. This was in the year 2000 - and because this region was  
17 "liberated", or "truly liberated" in the year 2000, and we saw  
18 enormous warehouses where Cambodian rice was stored. Also it was  
19 at Phnom Khiev, in Battambang, where rice was stored in caves  
20 because Pol Pot said that the war with Vietnam cannot be avoided,  
21 we're going to attract - try to woo the Vietnamese troops into  
22 Cambodia and they will be cut from their back base and we will  
23 have rice and we'll be able to fight them more easily.

24 [09.39.47]

25 So these are the three main reasons for the famine in Cambodia,

18

1 but this famine was also a weapon of domination; a weapon to  
2 dominate and to subjugate the population.

3 Q. Now I'd like to turn to another topic because I don't have  
4 much time, regarding day-to-day life in Democratic Kampuchea. And  
5 for this, I'm going to quote an excerpt from your book which is  
6 referenced as follows: French ERN 00862187; Khmer, 0086241;  
7 English, 00862072. And this is a passage in which you speak about  
8 the power of the commune chief under the Khmer Rouge, and you say  
9 the following: "The 'kanak khum' - that is to say, the commune  
10 chief - has the right of life or death over the villagers under  
11 his domination, under his authority."

12 And a bit further, you say:

13 "In principle, in theory, he should consult his own superiors  
14 before executing anyone, but he often does so only after the  
15 sentence has already been carried out, and the atmosphere of  
16 tranquillity or terror reigning among the villagers depends to a  
17 large extent on him."

18 So can you tell us a bit about the authority of the commune chief  
19 such as you analysed it here?

20 [09.41.45]

21 A. My - well, as you know, I wrote my book in 1976, so I did not  
22 have a lot of information, of course or specific information. I  
23 had information about the area of Battambang. Michael Vickery  
24 wrote "Kampuchea 1975-1982" and he intelligently criticizes my  
25 thoughts and he says, "Beware, beware." It was not the same

1 situation everywhere. Indeed, I -- Khieu Sampan told me directly,  
2 and also from the film of Bruno Carette that Khieu Samphan  
3 acknowledges that one of the errors of his regime was to have  
4 given the power to unprepared or incompetent cadres. We did not  
5 have the time to train the cadres; we gave them responsibilities  
6 too rapidly. And, indeed, it is these low-ranking cadres who  
7 killed. Maybe because they were naïve, maybe with a Rousseauist  
8 idea which believes that society deforms man, who's good by  
9 nature, the Khmer Rouge gave responsibilities to people who were  
10 frustrated, often who were ignorant, who couldn't neither read  
11 nor write; people who had been modularized in the former regime.

12 [09.43.24]

13 So maybe the original idea was very good, but it was absolutely  
14 utopian and it is they who executed people essentially. The main  
15 person - now that I have more accurate information, I can tell  
16 you this - the main people, the people who essentially sent  
17 people to their death was the "protean sahakar", the cooperative  
18 chief. And I believe that it is the cooperative chief who sent  
19 the people to the commune chief or to the sector chief for them  
20 to be executed. So they are those who are the most responsible in  
21 certain ways, for these massacres. So the Khmer Rouge revolution  
22 in my eyes are general instructions that were applied, literally,  
23 even beyond what was asked for by low-ranking local cadres.

24 [09.44.22]

25 Q. And what you describe, can this also be applied to the pursuit

1 of the general objectives?

2 A. Yes, I believe. Angkar would ask such and such cooperative to  
3 provide 2 tonnes of rice. Well, then, they provided 3 tonnes of  
4 rice to show that, "We are the best cooperative in the sector,"  
5 and they would starve people. A cooperative chief I met a few  
6 years ago - he died now, but - Ta Dong (phonetic), his name,  
7 would tell me that - I asked him, in fact, a question, when - and  
8 he said: "How come you were not killed the Vietnamese army?"  
9 "Well," I said, "I was a good person. When Angkar came, I would  
10 give 'bobor', and when Angkar left, I would give rice. This is  
11 why the peasants that had been freed by the Vietnamese troops did  
12 not kill me."

13 So it is the little local cadres who often went beyond in  
14 production, as well as in the executions, the instructions given  
15 by Angkar. Of course, I'm not trying to excuse anyone, but it is  
16 and basically speaking, often the little cadres who went beyond  
17 what was asked for them.

18 [09.45.52]

19 Q. I have a last question regarding the evacuation of Phnom Penh,  
20 and in particular, this passage when you go looking for French  
21 people at Kilometre 13, and you spoke here before the Chamber and  
22 you said that it is as of Kilometre 13, as of that distance from  
23 the Centre, that you saw people waiting and many people. And  
24 during your interview with Judge Lemonde, you also spoke about  
25 this and this was, you could see it in a video, and it is at the

1 French ERN 00882127; Khmer, 00897586; and English, 00885116; and  
2 this is what you tell the Investigating Judge - [free  
3 translation]:  
4 "So the people left" - you're speaking about Phnom Penh - "but  
5 then, afterwards, it was total improvisation. For example, I went  
6 to Preaek Pnov maybe 10 days later and there were hundreds or  
7 thousands of people in the fields waiting. And we don't have the  
8 impression that everything was well organized, but we can say  
9 that it was one of the general instructions that was given for  
10 all cities, but I would say it was then Khmer style organized.  
11 That means everybody managing on his own."  
12 [09.47.43]  
13 So here, of course, you're quite frank as usual, and Judge  
14 Lemonde said: "Well, we can't note this in our record."  
15 And I'd like to hear your reaction - not on Judge Lemonde, but on  
16 this apparent chaos that you noticed then.  
17 A. Yesterday or the day before, people asked me if there was  
18 water or food that had been organized, and I answered: "No,  
19 nothing had been organized; absolutely nothing."  
20 And when the refugees would tell me, "Well, we would ask the  
21 Khmer Rouge soldiers: 'So who is going to give us rice?' And they  
22 would say: 'Go ask Angkar, go ask Angkar.'"  
23 And then they would say: "Who is Angkar?"  
24 And then they were answered: "You are Angkar and manage on your  
25 own."



1 And I absolutely stand by this.

2 MR. VERCKEN:

3 I am done, Mr. President.

4 Thank you very much, Father Ponchaud.

5 MR. PONCHAUD:

6 A. Now, regarding Mr. Khieu Samphan's guilt, I don't know if I  
7 may add a little bit of information here. It's not my role, but  
8 possibly can I add maybe something that might shed a bit of light  
9 and might help you develop ideas?

10 [09.49.08]

11 MR. PRESIDENT:

12 Mr. Francois Ponchaud, you may not be allowed to do that. As a  
13 witness, you are to respond only to questions put by parties to  
14 the proceedings based on your experiences and what you bear  
15 witness to. Your testimony will be assessed and decided by the  
16 Trial Chamber accordingly. Indeed, the evidence and the testimony  
17 before the Chamber will be very well examined at the end or  
18 decided.

19 We would like now to cede over to counsels for Mr. Nuon Chea, to  
20 proceed with their questions to Mr. Ponchaud.

21 And, Mr. Ponchaud, could you please be reminded that your message  
22 will be rendered through interpreting and for this reason, you  
23 can see that your red light on your mic would be on only when it  
24 is the right moment you could speak. Otherwise, if you  
25 immediately respond to questions that are put to you without

1 having seen the red light on, your message would not be properly  
2 conveyed.

3 [09.50.54]

4 And please, do your best to help us during this difficult time,  
5 technically, and with that we would like to hand over to counsel  
6 for Mr. Nuon Chea.

7 QUESTIONING BY MR. KOPPE:

8 Thank you, Mr. President. Good morning, Your Honours. Good  
9 morning Counsel. "Bonjour, Monsieur Ponchaud".

10 Q. I have mostly follow-up questions because most topics have  
11 been covered yesterday and the day before. I would like to start  
12 asking questions to you about the things that you have said  
13 mainly two days ago on questions from the President about the  
14 bombings, the U.S. bombings in the periods between 1970 and '73.  
15 Have you been able to establish the effects of the U.S. bombing  
16 on the economy of Cambodia at that time, for instance the effects  
17 on the rubber plantations or the effects on the cultivations of  
18 rice paddies? Could you please elaborate on that?

19 [09.52.19]

20 MR. PONCHAUD:

21 A. Your question is twofold. Yesterday or the day before  
22 yesterday, I did not speak about the 1970 bombings. So since  
23 you're asking this question, okay, there were bombings in '68,  
24 '69; especially in 1970 along the Ho Chi Minh trail which would  
25 reach the north of Cambodia through Mondulkiri and Ratanakiri

1 provinces all the way down to Memot. And then it wasn't 239,000  
2 tonnes of bombs that were dropped, but probably 1 million tonnes  
3 or maybe even more; 1 million tonnes of bombs that were dropped  
4 on the east of Cambodia and the rubber plantations, for example,  
5 were completely destroyed by Agent Orange. That still has effect  
6 today by those American killers. For example, in my sector, there  
7 are many, many babies who are born without legs or arms. That is  
8 the direct consequence of the Agent Orange on the plantations  
9 around Memot – Memot and Snuol. And the rubber plantation in Chup  
10 was completely destroyed because there were French interest  
11 there; so the American Air force – or, the South Vietnamese Air  
12 force, [corrects the interpreter], destroyed all of the factories  
13 and then -- but I don't think that they dropped Agent Orange at  
14 Chup. So that is a first part of the American bombings that were  
15 disastrous for the entire area and for the Cambodian economy at  
16 large.

17 [09.54.21]

18 I also even heard that Kissinger had advised Nixon to send an  
19 atomic bomb to destroy the Ho Chi Minh trail. This is in the  
20 unclassified archives that appeared last year. Now regarding now  
21 the 1973 bombings, it's a bit different. The bombing in 1973  
22 started on the 6th of February and ended on the 15th of August  
23 1973 at midnight. So these bombings were not intended to stop the  
24 Vietnamese revolutionaries coming in by the Ho Chi Minh trail,  
25 but it was to allow the American army to leave Cambodia, which

1 was right next door. And you know that on the 21st of January  
2 1973, in Paris, the La Celle-Saint-Cloud Agreement was signed, in  
3 which North Vietnamese and Americans agreed to put an end to the  
4 Vietnam war, and the Americans would leave Vietnam, and the North  
5 Vietnamese promised to not invade South Vietnam. And Kissinger  
6 and the Le Duc Tho received the shameful Noble Peace Prize for  
7 this. This is a true shame.

8 [09.55.54]

9 And you remember that maybe in -- that in December 1972, the  
10 American fleet bombarded North Vietnam because the Americans  
11 wanted to oblige the North Vietnamese to put pressure on the  
12 Khmer Rouge for them also to sign the La Celle-Saint-Cloud  
13 Agreement. And the Khmer Rouge - I don't know who was in charge,  
14 then, of the Khmer Rouge, but the Khmer Rouge systematically  
15 refused saying that, "We are not fighting against the Americans,"  
16 contrary to what was stated in propaganda, "we're not - but we're  
17 fighting Lon Nol, the fascist." So, therefore, they refused to  
18 sign these agreements. And in order to "thank" them, the American  
19 Air Force dropped 239,000 tonnes on little Cambodia that had done  
20 nothing to them, and where there was no American military  
21 presence.

22 [09.56.53]

23 So, if there are people who should be condemned, I think Mr.  
24 Kissinger should be among them. So it is these 1973 bombings that  
25 led to -- in great part -- not only because Khmer Rouge also have

1 shared part of the responsibility, but that calls the exodus of  
2 the peasants to the cities and this is also one of the reasons  
3 why the Khmer Rouge became furious. And it's perfectly  
4 understandable when your country is completely being destroyed  
5 while there's good reason to become furious. I read accounts from  
6 communist Vietnamese soldiers who said that it was absolutely  
7 incredible. And as I said yesterday, there was -- we couldn't  
8 control ourselves; we would relieve ourselves everywhere. And the  
9 foreigners were ashamed that they said: "Don't be afraid we also  
10 - things are so incredible that we cannot control ourselves." So  
11 there are two things that you should not confuse here.

12 [09.58.15]

13 I would like to correct something here, as well. The day before  
14 yesterday, or maybe I was wrong with the numbers, but I said the  
15 day before yesterday that these bombings led to 40,000 deaths and  
16 in the "Cambodia Daily" yesterday, it was said that I said  
17 400,000. No, that's wrong; 40,000 deaths; that's a lot already so  
18 generally people said that there were a hundred thousand deaths,  
19 but you know, that's our only statistic as Stalin said, although  
20 it's very sad. 40,000 is a lot; often enough people said 100,000  
21 and explaining the fury of the Khmer Rouge with these bombings is  
22 one of the elements, but not the only one.

23 Q. Thank you, Mr. Ponchaud. Are you able to tell us where the  
24 majority of the casualties, be it 40,000 be it 100,000 were  
25 falling in that period? Where did the people die as an effect of

1 the U.S. bombings?

2 A. I don't have information on that question. Like I stated  
3 yesterday, I was located in Phnom Penh and during the night you  
4 could see the entire horizon alight and then we would hear the  
5 assaults and then the whistling; and sometimes you would feel the  
6 earth shake, but in terms of specialized expert information, I do  
7 not know.

8 [10.00.05]

9 Q. And I have asked you earlier about the economic consequences.  
10 And are you able to tell maybe from accounts of refugees who were  
11 living in Phnom Penh in 1973, '74, '75, what the effects were  
12 from the U.S. bombing on the cultivation of rice paddies or  
13 rubber plantations? So the economic consequences, are you able to  
14 say something about that?

15 A. You are confusing things, you are confusing two things.  
16 Firstly, there was the bombing on the Ho Chi Minh trail and the  
17 presence of North Vietnamese forces in Cambodia -- that in -- of  
18 itself was catastrophic for the rubber plantations. I had a  
19 friend who worked in Chamkar Doung - Chamkar Doung, in Memot, in  
20 Chup. They stayed with the Khmer Rouge for approximately one  
21 year, and they were simply unable to continue working because the  
22 plantations were destroyed. The Khmer Rouge had tolerated a  
23 certain amount or a certain degree of French presence in order to  
24 keep their plantations operating.

25 [10.01.26]

1 Following the '73 bombings, already there was no economy in  
2 Cambodia. You can well imagine that from 1970 to 1975, the  
3 country was ruined by bombs, but as of 1970, nobody was doing any  
4 farming. Either the Lon Nol government or either the South  
5 Vietnamese or either the Khmer Rouge were establishing the laws  
6 in the countryside, but there was no economy. People were simply  
7 trying to survive.

8 And as of 1973, with the bombings, what remained was completely  
9 obliterated, and that, in and of itself, was catastrophic. The  
10 people arrived in Phnom Penh; they were bereft, they had nothing.  
11 They could only receive meagre assistance.

12 And I would also add that in the province Battambang, well, that  
13 province was spared, curiously enough, by both the Khmer Rouge  
14 and the American bombing. It was spared by the Khmer Rouge, and  
15 that's quite understandable because Mr. Sek Sam Iet had sent -  
16 had sold rice to the Khmer Rouge which allowed the forces to  
17 survive.

18 And in 1973, there was a government intervention in the Kampong  
19 Thom region and they liberated some 40,000 people, and you can  
20 understand the connotation of liberation in the western sense.  
21 And so they were somewhat able to do some rice farming, but  
22 otherwise there was absolutely no economy.

23 [10.03.28]

24 Q. And Mr. Ponchaud, on Wednesday you have testified that,  
25 generally speaking, life was miserable and that people did not

1 have enough food to eat. Could you expand on that a little bit?  
2 Was that the case for the majority of the refugees? Was it also  
3 the case for the original population of Phnom Penh? What were  
4 your observations in those years?

5 A. The situation became increasingly miserable. People were  
6 hungry, that's absolutely accurate. Indeed, the United States  
7 bought rice from South Vietnam and transported it by boat up  
8 until 1975. So in general, there was enough to survive, but to  
9 live abundantly, no, there was only enough to survive.

10 But the Americans had the gall to request the Government of  
11 Cambodia to pay back the debt that was incurred then. This is a  
12 source of utter shame for the United States because they had  
13 forced the population to flee the countryside.

14 [10.05.07]

15 Up until 1975, things were more or less tolerable but the Khmer  
16 Rouge had cut through the Mekong and as of then things became  
17 increasingly worse, and the Americans built -- opened an air path  
18 to transport rice from Thailand. It was only during the last  
19 days, near the start of April 1975 or end of March, that  
20 Pochentong was under attack and the Khmer Rouge were attacking  
21 it, and so the Americans had dropped supplies for the population  
22 of Phnom Penh. So up until 1975, people managed, but things  
23 deteriorated progressively, but they were able to survive on  
24 whatever supplies that they could amass up until January 1975.  
25 One thing that Westerners are ignorant of are -- is the Khmer



30

1 capacity to survive. This is something that has always impressed  
2 me or surprised me, either those who were on the frontlines or  
3 those who are refugees or those who are living in the  
4 countryside. The Khmers have an incredible capacity to survive,  
5 which is almost unfathomable for we Westerners.

6 [10.07.45]

7 Q. Thank you, Mr. Ponchaud, for that addition.

8 You've been speaking about the food situation pre April '75. Are  
9 you also able to tell the Chamber the effects of the food  
10 shortages on the general health situation of the refugees in that  
11 period?

12 A. I won't talk about only the refugees. For the refugees at  
13 least there was some hospitals, so it wasn't so bad. Obviously,  
14 their health was not good; however, for the Khmer people who were  
15 living across Cambodia, things were even worse.

16 In 1975, when the Khmer Rouge took power, there were no  
17 healthcare services in the country. In fact, it was even worse in  
18 Phnom Penh. The situation clearly was not good. However, there  
19 were many non governmental organizations, and so despite that,  
20 all the Khmer Rouge managed to survive the sanitary conditions.  
21 When the Cambodian people were -- quote, unquote, "liberated" by  
22 the Vietnamese army, well, then things became catastrophic, both  
23 in Phnom Penh and the countryside. Contrary to some of the  
24 statements made by Democratic Kampuchea, there were total and  
25 utter shortages across the board. I wrote this in "Cambodia Year

1 Zero", I won't disclose the name, but he told me that Year Zero  
2 was actually 1979 when there was absolutely nothing left.

3 [10.08.50]

4 A. Thank you, Mr. Ponchaud.

5 Earlier, I think the day before yesterday, you were speaking  
6 about an incident involving American and Vietnamese troops, which  
7 you called very brutal, and in one of the incidents you referred  
8 to the death of 19 civilians. How do you know this?

9 A. Did I ever talk about 19 civilians? Very well, I assume you  
10 are talking about the 39 civilians who were killed. They were  
11 foreigners and they died in 1970 following the fall of Samdech  
12 Sihanouk. Lon Nol, in his eternal wisdom, gave the orders to  
13 North Vietnamese soldiers and who were lurking about the border.  
14 Lon Nol knew that they were going to leave for Vietnam but the  
15 Vietnamese invaded Cambodia. They corralled all of these young  
16 people and offered them national liberation.

17 [10.10.15]

18 Once again, Lon Nol, in his enlightened wisdom or rather in his  
19 sheer madness, in order to unite the Khmer people, he called upon  
20 the ancestral hatred of the Cambodians against the Vietnamese,  
21 which goes back to the capture of Kampuchea Krom during the 19th  
22 century. So, at the time, the Lon Nol Army killed many  
23 Vietnamese, Vietnamese. And the Khmer Rouge told me that perhaps  
24 it wasn't so bad, that there were innocent Khmers, perhaps some  
25 2000 Vietnamese from Cambodia in a large village north of Chrouy

1 Changva.

2 The North Vietnamese and the Viet Cong invaded Cambodia. They  
3 chased out the Lon Nol Army. I, myself, was a prisoner of the  
4 Viet Cong and in the month of March, mostly in April or  
5 April/May, and perhaps it happened a little bit later, Cambodia  
6 was on the brink of destruction. The North Vietnamese would have  
7 been in a position to take over Phnom Penh, and it was at that  
8 time that Lon Nol had to turn to the South Vietnamese for  
9 assistance in order to fight the North Vietnamese.

10 [10.12.05]

11 And it was only then that Nixon and Kissinger, in their genius  
12 thinking, decided to send American forces to South Vietnam via  
13 Cambodia, 40 kilometres within Cambodian territory, in order to  
14 take over the headquarters of the North Vietnamese troops, which  
15 was supposedly near Memot, but in fact it was on the Vietnamese  
16 side. They announced this well in advance.

17 And then a fleet of helicopters entered Cambodia, followed by  
18 South Vietnamese troops, and it was only then that the South  
19 Vietnamese had exercised their vengeance for the death two months  
20 prior. Lon Nol massacred the Vietnamese at the start of April  
21 1975, and in May-June 1975, the South Vietnamese army was totally  
22 detestable. They had killed, raped, violated within 40 kilometres  
23 of the Cambodian border. And even I told you before yesterday,  
24 they reached Srayang, which is the birthplace of His Excellency  
25 Sar Kheng. And you can today find peasants who will tell you

1 about the invasion of that army. They were odious, so much so  
2 that villagers living near the border, within 40 kilometres of  
3 the border, had no choice, and they had to fall to the side of  
4 the Khmer Rouge. The Americans are responsible for the swelling  
5 of the Khmer Rouge army during the time, particularly during  
6 May/June 1975. The Khmer Rouge, at the time, were well behaved.

7 [10.14.39]

8 MR. PRESIDENT:

9 Judge Lavergne, you may now proceed.

10 JUDGE LAVERGNE:

11 For the sake of clarity, and for the record, Father Ponchaud, you  
12 keep on referring to 1975, and I do believe you are talking about  
13 the Year 1970, because if we don't make this clarification  
14 everybody is going to be confused.

15 MR. PONCHAUD:

16 Yes, I beg your pardon. Yes, I am talking about the year of 1970.  
17 That mistake is entirely mine.

18 [10.15.15]

19 BY MR. KOPPE:

20 Q. Another question, Mr. Ponchaud, about this era between 1970  
21 and 1975.

22 On - two days ago you called the execution of 2,000 Vietnamese by  
23 the Lon Nol soldiers - you used the word "genocide" when you were  
24 describing this incident. Why did you two days ago use the word  
25 "genocide"? Of course, I'm aware it's also a legal term, but did

1 you have specific reasons the day before yesterday to call this  
2 incident genocide?

3 MR. PONCHAUD:

4 A. Yes, I will certainly characterize the death of 2000 massacred  
5 persons as "genocide". We're not talking about a pithy figure.  
6 They were attacked because they were Vietnamese.

7 [10.16.14]

8 During the time of the Khmer Rouge things were different, and  
9 that's exactly why I am opposed to the word - the use of the word  
10 of "genocide". It's for you to decide. In 1975, and I'm referring  
11 here to 1975, the Khmer Rouge had authorized the Vietnamese to  
12 return to their countries, and in fact, they had even assisted  
13 the Vietnamese in returning to their home country. And it was  
14 only as of 1978, during the war between Cambodia and Vietnam, the  
15 Khmer Rouge were not very delicate or moderate in their  
16 proceedings and their actions, and so they killed the Vietnamese  
17 who were still residing in Cambodia.

18 And I think that can be qualified as a reaction, not necessarily  
19 genocide. I think it was an attack. Perhaps it was a genocide;  
20 it's for you to judge. I would say that it was a reaction. It's  
21 almost akin to the United States following the Pearl Harbour  
22 attack had decided to assemble Japanese residents in the United  
23 States and place them in concentration camps. They weren't  
24 killed, because in America -- or for the Americans they had a  
25 sense of humanity, but it was the same logic. It was a sort of

1 colony that they needed to neutralize. For the Khmer Rouge, they  
2 just simply sent them to their death camps.

3 [10.18.03]

4 Q. Mr. Ponchaud, I was asking you this specific question why you  
5 have called this massacre of Vietnamese in 1970 genocide because  
6 in a statement that you gave to the OCIJ, you were asked the  
7 question, and I'm referring to E3/370, page 7; that's English  
8 ERN, 00333955; Khmer, 00286615; and French, 00282830. I quote:  
9 On the question, "What can you tell us about religious  
10 persecutions in Democratic Kampuchea?", you answered: "There were  
11 none. I am certain of this in the case of Christians, the same  
12 goes for the Buddhists. Those who were killed, and some were,  
13 were not killed because of their religion but because they were  
14 perceived as political enemies and they refused to apply the  
15 orders of Angkar. It is true that the regime was anti-religious,  
16 but I would not describe this as genocide or persecution or  
17 persecutions, because once again it was not because they were  
18 religious figures that the people concerned were executed but  
19 because they were enemies. I would say that the same applied to  
20 the Chams. The Khmer Rouge ideology was stupid and bad, you had  
21 to be part of it. If you failed to join you were eliminated."  
22 So in your statement to the OCIJ, you deliberately chose not to  
23 use the word "genocide"; is that correct?

24 [10.19.55]

25 A. I used the word "genocide" to talk about the assassination of

1 Vietnamese in 1970 when Lon Nol had incited racial hatred,  
2 because at the time the Vietnamese were being killed for the fact  
3 that they were Yuon. But as for the Christians, there was no  
4 religious persecution against the Christians in Cambodia, even  
5 though the majority, I would say almost 90 per cent of the  
6 Catholics were killed. But for the most part they were people  
7 from Phnom Penh and Battambang. They were the enemy. They were  
8 April 17 People. They were New People, prisoners of wars - a  
9 prisoner of war.

10 And my deep conviction is that, as of 1978, there was a will to  
11 eliminate all of the New People, all of the liberated people.  
12 This is my belief. I don't have specific or scientific proof, but  
13 this is my inward conviction that Angkar sought to destroy the  
14 liberated people and the New People of April 17th; I don't see  
15 any other reason.

16 [10.21.36]

17 In the final analysis, there was no persecution against the  
18 Christians. I have very precise examples. There were women who  
19 were Christians. She was -- there was one woman in Sisophon who  
20 was reading the Bible and she was told, "Hide your Bible, or else  
21 you're going to have to assume the consequences of that." It was  
22 a form of pressure, if you will, but it wasn't outright  
23 persecution.

24 There was another Christian woman who was praying near Lvea Aem,  
25 and she was told, "You're an enemy because you are on the side of

1 So Phim." So Phim was in charge of Eastern Cambodia and opposed  
2 to Pol Pot. And then she was accused of being Vietnamese and then  
3 she started reciting prayers and talking about her ancestors and  
4 she managed to survive. So I do not believe that there was any  
5 persecution against the Christians, even though I would say 99 or  
6 90 per cent of the Christians ultimately died.

7 [10.22.53]

8 As for the Cham, the same applies to them. They were not  
9 persecuted, in any case, not until 1978 and for different  
10 reasons. They simply had to fall into the same moulds and ideal  
11 of the Khmer Rouge of their vision of man and they couldn't  
12 transgress from this. This went for the way of living, a way of  
13 dressing; those who did not adhere to the traditions of Angkar  
14 were simply killed, smashed.

15 As of 1978, things changed. I have new information, according to  
16 which the Khmer Rouge as of 1978 had sought out the Cham people  
17 because they were Cham. Not because the Cham were disobeying  
18 Angkar law, but because specifically they were Cham. So the Khmer  
19 Rouge went into the villages, unearthed the Cham, and they were  
20 taken away and undoubtedly killed. But that was only as of 1978.

21 I would call that political religious persecution, and there I  
22 would start talking about genocide, but only as of 1978. And once  
23 again, it was in a very restricted, limited manner. I have heard  
24 some recordings and I have heard some testimonies not entirely  
25 clear. I heard a woman saying, yes, the Khmer Rouge asked me if I



1 was Cham and I replied no, and I was spared. And then another  
2 woman says yes and she didn't die. And so some of the testimony  
3 isn't sufficiently clear to corroborate as to whether or not  
4 there was genocide against Cham; nevertheless, that's what I  
5 gathered.

6 [10.25.46]

7 Q. Thank you, Mr. Ponchaud, I would move on to having one more  
8 question when it comes to the refugees pre 1975.

9 Now, today and also earlier, a number of -- the number of the  
10 total amount of refugees has been mentioned. You were referring  
11 to 1.5 million, 2 million, 3 million - the figures vary. Have you  
12 any idea on what basis organizations, maybe such as your own  
13 organization, came to reach that number?

14 A. I have no idea. Rumours were flying about. There were many  
15 refugees. So there were just rumours that were being bandied  
16 about and so easy figures to give. There were simply no  
17 statistics.

18 [10.25.57]

19 Q. Thank you.

20 I would like to move on now to the actual evacuation on 17 of  
21 April.

22 You have been describing the behaviour of Khmer Rouge soldiers  
23 that you have encountered. You have been describing various  
24 groups; some in green clothes, other in black clothes, others who  
25 were carrying various rifles. Is it -- was it your testimony that

1 there was a difference in behaviour and acting between the  
2 various groups that you have seen in April 75?

3 A. Yes, indeed, there were different groups. Some, for example,  
4 told us to leave, some told us to stay. Some told us go, go  
5 immediately, and others told us no, you foreigners can stay where  
6 you are. Some were quite likeable and sympathetic. Those who were  
7 dressed in black were quite friendly and others were ready to eat  
8 us alive, they were very hard. So there was a huge difference.  
9 And from our point of view, there were many different groups. In  
10 terms of their treatment towards the Khmer people, I cannot  
11 comment.

12 Q. Would you be in a position - please go ahead.

13 [10.27.29]

14 A. In addition, they didn't all speak the same language because  
15 there was a Khmer Rouge language and vocabulary. Some used the  
16 word "master" to address their peer, others used ordinary regular  
17 language. So I was wondering how is it possible that there are so  
18 many - Khmer Rouge are so divided in terms of the way they're  
19 dressed, the way they conduct themselves, the way they speak?

20 Q. Are you in a position to say which specific groups were acting  
21 in such a way coming from particular areas in Phnom Penh or from  
22 particular directions? For instance, were the troops moving in  
23 from the North different in their behaviour as opposed to groups  
24 moving in from the South and the Southwest?

25 A. They didn't tell me where they came from. It was only

40

1 afterwards that we understood that there were some six armies,  
2 based on the region in Cambodia, and they were all heading  
3 towards the train station on the order of the Communist Party.  
4 [10.28.59]

5 Q. I understand what you're saying, yet two days ago, you were  
6 giving one small example of a Khmer Rouge soldier trying to drive  
7 a car and then the car would hit a tree and then the Khmer Rouge  
8 soldier would blame the car for this and not himself. And then  
9 you added to this the Khmer Rouge were, generally - in general  
10 terms, dumb. So it seems that you were generalizing. Was that  
11 actually what you meant or was it just an example of this  
12 particular Khmer Rouge soldier?

13 A. Generally speaking, the Khmer Rouge were quite ignorant, they  
14 didn't know anything about life. They knew nothing about city  
15 life. I don't have any specific examples that involved me  
16 directly, but many other people who describe the capture of Phnom  
17 Penh have some very nice details regarding this. But personally  
18 speaking, I don't have any specific details, but they were  
19 ignoramuses; that's true.

20 Q. So when you--

21 MR. PRESIDENT:

22 Counsel, could you please hold on?

23 It is now appropriate moment for the adjournment. The Chamber  
24 will adjourn for 20 minutes. The next session will be resumed by  
25 10 to 11.00.

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1 Court officer is now directed to assist Mr. Witness during the  
2 adjournment and have him returned to the courtroom by 10 to  
3 11.00.

4 (Court recesses from 1031H until 1054H)

5 MR. PRESIDENT:

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

7 We would like to now hand over to counsel for Mr. Nuon Chea to  
8 put questions to the witness.

9 BY MR. KOPPE:

10 Thank you, Mr. President.

11 Q. Mr. Ponchaud, I will do my very best to wrap up my questions  
12 before the end of this session so that we -- that you can enjoy  
13 your lunch soon. My first question to you is, again, about the  
14 situation in April '75. You have testified about the hospitals  
15 being evacuated. Are you aware that there are also refugees who  
16 have stated that they were kept in Phnom Penh to work in  
17 hospitals even after April '75, after the evacuation?

18 [10.55.37]

19 MR. PONCHAUD:

20 A. No. I'm not aware of people who returned to Phnom Penh to work  
21 in the hospitals. I'm not saying that there were none, but I'm  
22 not aware of this.

23 Q. Thank you. Yesterday and the day before yesterday, you've also  
24 testified about people who were present at the French Embassy and  
25 one of the people that you mentioned was a person whom you called

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1 leader of the CIA. Now, could you tell again on what basis you  
2 were saying that this particular person was the CIA leader, or  
3 CIA chief?

4 A. Well, that's what everyone was saying. I don't have any  
5 evidence of this, but everybody was saying that, as here, people  
6 say that you are a lawyer representing Nuon Chea.

7 [10.56.49]

8 Q. That is correct. But did you get a name from this particular  
9 gentleman in those days?

10 A. No, I don't know who it was. He was rather a nice person,  
11 friendly, and he was always helpful. We had the impression that  
12 he wanted to earn merits before dying as is the Buddhist  
13 tradition.

14 Q. Does the name Frank Snapp ring a bell with you?

15 A. I didn't know his name, no.

16 Q. Pre-17 April '75, have you ever heard of CIA networks  
17 operating in Cambodia?

18 A. I didn't hear about a CIA network in Cambodia, but I do  
19 believe that there were CIA agents in Cambodia. It's obvious. For  
20 example, we in the Catholic Church, we were offered assistance  
21 from the American government that we refused because it was 37  
22 times more than the budget of the Cambodian Social Services and  
23 that probably was money from the CIA. But of course, this is just  
24 hypothesis. But -- however, it seems obvious to me that there  
25 were CIA agents operating in Cambodia. Yes, it's obvious.

1 [10.58.45]

2 Q. But do you have actual knowledge of this?

3 A. No, of course not. But it was obvious that - well, the CIA is  
4 everywhere. Americans, as you know, had agents in Vietnam, and  
5 Laos, and Cambodia, even in France. It's obvious. But they were  
6 not going to wave the flag and say, I'm working for the CIA. It's  
7 obvious that they had agents everywhere. How many? I don't know,  
8 and it's clear that the U.S. Embassy was an intelligence agency.  
9 You don't have to be a graduate from Oxford to understand this.

10 Q. Indeed, Mr. Witness.

11 Another question for you. Today, but also two days ago, you have  
12 mentioned Michael Vickery and two days ago you said to the  
13 Chamber that, "Michael Vickery who wrote a book, 'Cambodia 1975  
14 to 1982' criticized me on several points and I, indeed, accept  
15 his critics. I thought that people would receive the same  
16 treatment all across the country but I learned that people were  
17 treated differently from one place to another. The plan was  
18 common."

19 This morning, you were referring to Michael Vickery as somebody  
20 who intelligently criticised you. Would you be able to expand on  
21 the specifics of his criticism?

22 A. For example, I met him. I said "you criticised me", and I told  
23 him, "It's very kind of you, because I respect your work." We are  
24 friends, but we had disagreements on the ideological front. We  
25 are not on the same side. He's a communist, I am not. But, in

1 terms of intellectual work, we do get along. Take as an example  
2 -- and this doesn't appear in my book, "Cambodia: Year Zero" -  
3 but I had realized that, even in the region of Battambang,  
4 treatment varied between even neighbouring sectors. So perhaps I  
5 had a tendency to generalize information for all of Cambodia;  
6 information that I had on Battambang.

7 [11.01.28]

8 I wrote my book in 1976, one year after the Revolution. So you  
9 have to understand; I didn't have information pertaining to the  
10 entire country. Mr. Vickery wrote after 1969 - or '79, [says the  
11 speaker] and he was able to be much more specific than I. He  
12 talked about what happened in such-and-such a region, and how  
13 things happened differently in another region, and was able to  
14 draw the distinctions between the various sectors. Take, for  
15 example, So Phim. He was the chief of the Bophea region. I had  
16 heard about it, but only in the vaguest terms. And it was only  
17 after 1979 that we learned that So Phim was more of a  
18 humanitarian - humanist communist. In Leuk Dek (phonetic), for  
19 example, with Ta Mok - Ta Mok had well-trained his cadres - but  
20 this was known after 1979. And it was impossible to know such  
21 information beforehand.

22 [11.02.45]

23 Because we didn't know who the people were, quite simply.

24 Q. In your same testimony, two days ago, you referred to Michael  
25 Vickery as him stating -- or him arguing that the discipline was

1 harsher in -- was different from one location from another. You  
2 actually used those words; "the harsher discipline". Would you be  
3 able to expand on those words?

4 A. For example, in my book, I write that it must have been, as of  
5 January 1976 -- but I'm not entirely sure. There was a slogan or  
6 a directive that emanated directly from the supreme organization,  
7 "Angkar Leu"; "komtech vanna", "smash the social class". So, in  
8 some sectors, this was interpreted as an order to kill people who  
9 were not from the class of poor and middle peasants.

10 To understand exactly what that is -- I do believe I had a good  
11 understanding. But I'm not totally certain. However, in other  
12 sectors, it was simply an obligation to force higher social  
13 classes to live like peasants from lower classes. So you can see  
14 that several treatments were meted out based on a single  
15 directive. In one sense, it was to force people into a certain  
16 social class. You must also understand that, under Democratic  
17 Kampuchea, there were very few written decrees. Take, for  
18 example, the interpretation and translation here at the ECCC.

19 [11.04.57]

20 I speak in French and it's interpreted simultaneously or through  
21 relays into Khmer and English, and so obviously there can be some  
22 distortion or loss of meaning. The same goes for written  
23 directives. Obviously, there was some common directives, but at  
24 the district level - and certainly, at the "khum" level, that was  
25 the reality.



1 Q. Are you aware that Michael Vickery has not only criticized you  
2 on the differences in the execution of policy in the various  
3 areas of the country, but also in your selection of refugees,  
4 which accounts you have used for your book?

5 [11.06.11]

6 A. Of course I know. I repeat that I wrote my book - (part of  
7 intervention not interpreted). I had general information in the  
8 overall region of Battambang, and that included a good number of  
9 testimonies. But there was some that also came from Phnom Penh.  
10 And I write in my book that a person had left Phnom Penh in a  
11 Mercedes, and they arrived at the border in a Mercedes. At the  
12 start, I simply could not believe their testimony, and then last  
13 year - or two years ago, I met the same people at Amiens, in  
14 France, and once again they explained to me how that had  
15 occurred. So, obviously, I wasn't collecting testimonies from  
16 Battambang - or exclusively from the poor, from the rich. But I  
17 received testimonies that were honest and that were provided in a  
18 very serious manner.

19 Q. But if we go more specifically into his criticism; he's  
20 saying, for instance, that, of the 94 refugees whose written  
21 account form the basis for your book, you list 63 by occupation -  
22 of those, 52 are apparently town-dwellers. And so he's - so he  
23 claims 42 of "elite status". Have you thought about this while  
24 selecting the background of the refugees?

25 [11.08.18]

1 A. Yes, of course I thought about that - of course.  
2 Yesterday -- I'm not sure which one of you it was -- you talked  
3 about Ou Reang Ov and the refugee who had most impressed people  
4 was the refugee from the north of Cambodia - an illiterate  
5 refugee, because it was he who had the most probative  
6 information, or the most justifications to hate Angkar. So, of  
7 course I thought about this, and I was very careful to be  
8 discerning. Firstly, refugees were people who were generally  
9 recruited from the higher classes of society. So they did have an  
10 inclination to criticize their home country in order to justify  
11 their departure. You have to understand that, but it doesn't take  
12 away any of the truth -- the veracity -- of what they have to  
13 say. They do -- it's up to me to decipher what they're saying.  
14 [11.09.36]  
15 And I told you before, yesterday, and I'm not sure if it was  
16 well-translated, but when I started listening to the refugees, as  
17 of 1979 -- or a part in me -- I mean, September 1975 -- and I had  
18 a very hard time, or didn't believe what they were telling me.  
19 And yet a very honest man told something that I took note of. And  
20 then, when everything was becoming consistent and while all of  
21 this information was converging, it seemed very true. And that's  
22 what led to forging my inner conviction. And this is exactly why  
23 I continue listening to Khmer Rouge radio, because some of this  
24 wasn't always sufficient. But I sought to understand the  
25 ideology. The radio provided me information on ideology, the

1 refugees provided me information on the experiences of the  
2 Cambodian people, based on the fact of whether they were from the  
3 countryside or the city, and the convergence and the consistency  
4 of all of these accounts led to a form of scientific evidence.  
5 So don't accuse me of being discriminate in choosing only the  
6 elite. That's not true. There were some Khmer Rouge -- in fact,  
7 there were two refugees who said they were Khmer Rouge, and so I  
8 asked them a few indiscrete questions. And then I realized that  
9 they were not Khmer Rouge officers at all.

10 [11.11.17]

11 Because you have to know that one applies a certain intuition  
12 when speaking with refugees. The fact that I spoke Khmer was of  
13 huge assistance, because refugees, either rightly or wrongly,  
14 sometimes took me for being one of them. And one could sense,  
15 after a while, if the refugee was speaking the truth or if they  
16 were being misleading.

17 Q. Mr. Ponchaud, let it be clear. I'm not accusing you of  
18 anything. I'm merely sharing the criticism of Michael Vickery, of  
19 whom you just - of whom you said earlier that he was  
20 intelligently criticising you. Allow me to read a little excerpt  
21 from his book. This is document D222/1.17. That is English page  
22 49, and the ERN number in Khmer would be 00780180.

23 [11.12.30]

24 I quote Michael Vickery:

25 "The elite nature of this information is even more apparent among

1 the 20 informants whom he" - that is, you - "names and who  
2 provided the most important evidence. Four of them were teachers  
3 or students, three doctors or pharmacists, four technicians, two  
4 businessmen, one court clerk, four military, and the remaining  
5 two unidentified by occupation."

6 And on that same page, Vickery write: "Naturally, almost the  
7 entire body of their testimony concerns the fate of the urban  
8 evacuees, not the peasants in whom Ponchaud claims special  
9 interest."

10 Could you react on this specific criticism of Michael Vickery?

11 A. Yes, indeed. The first wave of refugees were city-dwellers,  
12 and among the city-dwellers, the first to reach the border were  
13 military officers from Battambang, with Sek Sam Iet leading them.  
14 There was a second wave of refugees, and they were the Chinese.  
15 They were the ones who had the most to lose in the Revolution.  
16 After that, as of January 1976 -- that was the start of the  
17 second phase of the Khmer Rouge Revolution. And teachers were  
18 being killed. And as of January 1976, we began seeing the arrival  
19 of teachers. I recall one called Chou Try, who was sitting right  
20 before me. And there were teachers as well as monks.

21 [11.14.33]

22 And then, after that, well after that, we saw peasants. So, as  
23 you understand, there were several waves and increments of  
24 refugees over the course of the Revolution -- a Revolution that  
25 was to defend peasants and to support peasants -- a class to

1 which I belonged. And they were chasing peasants. So, obviously,  
2 the questions emerged. But when I was writing my book, the  
3 majority of the peasants had not left. Most of the refugees were  
4 mainly from the cities – that, I grant you.

5 Q. Thank you, Mr. Ponchaud. Now there's somebody else who has  
6 been criticising you as well, when it comes to the selection of  
7 the refugees. That's a person called Gareth Porter. And he is  
8 saying that these refugees that you spoke to were the ones that  
9 were deliberately trying to blacken the regime they just had  
10 fled. Would you agree with this particular criticism?

11 [11.15.48]

12 A. Very well. I can somewhat agree with the criticism being  
13 launched by Gareth Porter, but it's not a very admissible  
14 criticism, if you will. A refugee doesn't necessarily tell lies,  
15 and I was sufficiently attentive, and I was very cautious in  
16 deciphering their account and listening to the radio broadcasts  
17 in order to come up with a scientific form of finding. There were  
18 some who had great problems with Angkar, and it's not in this  
19 book, but it's elsewhere, that I state that I selected the most  
20 acceptable accounts for Westerners. I didn't take the most  
21 horrific ones, because I knew that they would not be given  
22 credence or taken. And I wanted to give testimonies for which --  
23 which stood on their own as quite solid.

24 Q. Two days ago, Mr. Ponchaud, you, yourself, testified that when  
25 it comes to refugees we have to be careful, because we would like

1 to seek the truth, and refugees - I quote you - "would exaggerate  
2 information because they had suffered". Would you be able to  
3 explain how you were able to ascertain whether refugees were  
4 giving accurate information or exaggerated information?

5 [11.17.47]

6 A. Well, firstly, there was the manner in which they were  
7 speaking. And at the time, as I understood Cambodia quite well, I  
8 would ask them first, "Where are you from?"

9 And they would respond, for example, "I come from near Poipet."

10 "Who did you see?"

11 "And I saw so-and-so and such-and-such."

12 And then, "In the neighbouring village, Koytoch (phonetic), what  
13 did you see there?"

14 And then, by connecting the places, I was able to extract very  
15 specific information and judge whether or not they were telling  
16 me the truth.

17 I don't have the training of a journalist. I seek the meaning of  
18 words that are found in the Bible. So it's by taking -  
19 configuring words and confronting them with each other and  
20 placing them in a sort of historical and cultural context that we  
21 can arrive at the truth. I don't claim to hold the truth on  
22 Democratic Kampuchea, and even so I must confess - yes, I'm not  
23 sure if I should say this before this Chamber, but when I took my  
24 book to the publishers on the 24th of October 1976, I did ask  
25 myself; was I mistaken? Was I wrong?

1 [11.19.15]

2 I, who wanted to help the Cambodian people, am I doing a  
3 disservice to the Cambodian people by taking this book to the  
4 publishers? Can you understand the feeling that I had? I had  
5 reservations up until the 11th hour, and I was telling myself --  
6 do I hold in my hand the truth? And then afterwards, I answered  
7 the question, as I have the truth. I am nothing compared to the  
8 drama of the Cambodians, in light of their suffering. I was  
9 seeking information on Cambodia. Even to this day, I cannot  
10 fathom the cultural context - the context of terror in which  
11 millions of Cambodians lived during the odious, ghastly, horrific  
12 regime of Democratic Kampuchea, but in 1976, I asked myself; am I  
13 wrong? Did I get it wrong? But, alas, I would have preferred to  
14 be wrong.

15 Q. Mr. Ponchaud, as you are well aware, one of the frequent human  
16 traits is that people tell stories which they have heard from  
17 others, and present the story which they tell as if they had  
18 lived through it themselves. Have you been able to establish that  
19 the people that you spoke to in these refugee camps actually saw  
20 the things themselves, or they had heard stories from others?  
21 And could you tell us if you had established that, how have you  
22 done that?

23 [11.21.28]

24 A. When somebody appears before you because he received a gunshot  
25 in his neck; is that true or is that false? When you meet

1 somebody in a refugee camp with burnished shoulders, because they  
2 have been pulling oxcarts for months and months because they have  
3 survived terror, when you meet refugees who still have scars from  
4 being whipped or from being - from being struck with an axe; how  
5 is that a lie? In Sandan, there was a poor fellow who told me I  
6 fell into a pit, and I was killed by the Khmer Rouge. I fell into  
7 the mass pit of corpses, and then, a few hours later, there was  
8 some more dead bodies that fell upon me, and then, a few hours  
9 later, I woke up. And this is a young man called Ta Pen  
10 (phonetic).

11 One cannot possibly tell that he is telling you - that he is  
12 taking you for a ride. They were able to go into the most minute  
13 details. He talked about getting the order from Sihanouk to enter  
14 the underground -- the maquis - and he didn't understand that. He  
15 was completely illiterate. He was trying to serve Democratic  
16 Kampuchea for a few weeks. But when his cousin, who was a Lon Nol  
17 soldier, was revealed, the Khmer Rouge tried to kill him. And  
18 then he tried to move over to the Khmer Rouge, and then he was  
19 captured by the Americans, who interrogated him. And then there  
20 was Neak Loeang, the village that the Americans had completely  
21 sacked in 1975. And he was only one of the few survivors. He  
22 could not possibly invent such an anecdote. And then, in Siem  
23 Reap was where he ultimately escaped, and he took refuge there.  
24 Angkar was asking him, "What are you doing?"  
25 And he replied, "I am a peasant. I am a peasant from the most --



1 the lowest classes."

2 And Angkar had determined that Mr. Teng (phonetic) was a good  
3 revolutionary and that he was going to be along the border and  
4 that he was going to stand guard there.

5 And they were stationed 50 metres from one another. And then one  
6 day -- one day he decided to flee to Thailand because he was told  
7 something by his friend.

8 [11.24.37]

9 Such details cannot be invented. We cannot possibly say that they  
10 fabricated these stories. Obviously, some can exaggerate, and  
11 there is some confabulation among certain refugees.

12 Q. Of course, Mr. Ponchaud. I'm not saying that it is -- it can  
13 be obvious that certain accounts of detailed events are credible  
14 or are not credible. I mean, you can sometimes easily see that.  
15 But in your book, you also draw conclusions from these specific  
16 incidents or tragedies or horrors that refugees have been  
17 speaking about. Would it be possible that these refugees have  
18 been speaking to each other about their -- about the things that  
19 have happened to them, and then drawn their conclusions as it  
20 comes to Khmer Rouge policy or Khmer Rouge behaviour of soldiers?  
21 How did you try to prevent that from happening?

22 A. A refugee provides his own personal account, and he provides  
23 as many details as he can about places, about times, about dates,  
24 who he was with, etc. I don't ask him anything about political  
25 consideration. Sometimes they provide it to me voluntarily, but I

1 don't take it into consideration myself. The political statements  
2 I make in my book come from what I heard on the radio broadcast  
3 during Democratic Kampuchea. They do not come from the refugees.  
4 Refugees were only providing me what they experienced as the  
5 so-called utopia -- the abhorrent utopia of Democratic Kampuchea.

6 Q. I understand your question -- your answer, Mr. Ponchaud -- but  
7 this morning, for instance, you have been testifying about the  
8 behaviour of lower-level cadres, which could be completely  
9 different as to what senior leaders might possibly see as policy.  
10 So, how did you establish that the various refugees that you have  
11 spoken to were not the victim of -- going crazy lower cadre as  
12 opposed to the victim of a certain policy?

13 A. That goes to the very heart of this Tribunal's problem. Are  
14 you trying individuals, or are you trying a policy or an  
15 ideology?

16 [11.27.58]

17 For me, from the very start, that was the essential question that  
18 I was asking myself. You have people, including Mr. Khieu  
19 Samphan, who is present here, who attempted -- who had good  
20 intentions in the beginning. And then they became lost in their  
21 ideology, which was totally utopian -- an ideology that was  
22 yearning for a better world. Obviously, there were some  
23 directives that were coming from the top. They were, perhaps,  
24 good directives, but they were entirely naïve directive, based on  
25 the assumption that people were good. And I think that is the

1 fundamental line of Khmer Rouge thinking, which is consistent  
2 with the writings of French philosopher Jean-Jacques Rousseau.  
3 That is, man is good -- is fundamentally good. It is society that  
4 corrupts him. There were directives being given that were thought  
5 to be good. But, as I stated, there were no written directives,  
6 and so human nature, as it is -- when subordinates felt inhabited  
7 by power, they did not hesitate to exercise it.

8 [11.29.36]

9 I, myself, was a military officer. I was a very low-ranking  
10 officer, but when I had a gun in my hand, I always had to be  
11 careful not to use my power vis-à-vis the weaker. And so I'm sure  
12 that the lower-ranking cadres didn't have that sort of wisdom or  
13 hindsight to exercise, like I previously was able to.

14 Q. I'll move on Mr. Ponchaud. While you were in the refugee  
15 camps, and at one point speaking to the refugees, could you tell  
16 us what happened before you spoke with them? Did you yourself  
17 approach the refugees, or did the refugees come to you to offer  
18 their story?

19 A. Well, both cases. In France from September 1975 to March or  
20 April 1976, it is the refugees who came looking for me, and also,  
21 each week I would go to the shelters, the temporary shelters  
22 where the refugees would stay for three weeks before being sent  
23 elsewhere, and I would talk to them. It was not the authorities  
24 in the Thai camps who would choose refugees for me. In France, I  
25 would go to the shelters and then when they were reintegrated

1 into society after six months in France, I would go see them as  
2 well.

3 [11.31.38]

4 So the refugees weren't chosen for me, and when I went to  
5 Thailand, this was in June or July 1976, I checked many accounts  
6 that I had, and again, it was not the camp authorities nor the  
7 French Embassy in Thailand telling me what to do. I am old enough  
8 to manage on my own and indeed, for example, the - after 1979  
9 when the Khmer people fled to Thailand, the only camp where I had  
10 trouble interviewing people was Site B that was managed by  
11 Rannariddh, from the FUNCINPEC. And in the Khmer Rouge camps it  
12 was very, very difficult to question people, but however the  
13 people were taken aside and they would speak, and as soon as  
14 somebody arrived, then things changed. But we managed, even in  
15 the Khmer Rouge camps, to get information.

16 But let's get back to my book.

17 [11.32.50]

18 It's in 1976, and there the camp authorities had nothing to say,  
19 absolutely nothing to say. I was not confronting them, but I  
20 would choose refugees on my own, by chance I must confess, by  
21 chance. By the people I met by chance.

22 Q. Are you able - I realize it's a long time ago, but are you  
23 able to say from the 94 accounts of refugees which amount - which  
24 number of these 94 came directly to you wanting to tell their  
25 story, and the ones that you approached?

1 A. Well, I can't tell you. I really can't tell you. I met the  
2 refugees like that and I had other things to think about that one  
3 day I would be asked about the origin of the refugees. So I can't  
4 answer that question.

5 [11.34.03]

6 Q. Yesterday, Mr. Ponchaud, you were speaking about the camps in  
7 Thailand and you said -- you testified yesterday that from 1975  
8 to 1976 there were around 20 refugee camps along the border, and  
9 later you have testified that from 1975 until 1978 there were  
10 about 50,000 refugees in Thailand. Are you able to make a  
11 differentiation in that number? More specifically, are you able  
12 to say how many refugees there were in the camps when you spoke  
13 to them and when you wrote down their accounts? So do you know  
14 how many refugees there were in the camps before you published  
15 your book?

16 A. The number of refugees did not change a lot from 1976 to 1978  
17 because yesterday we were, of course, interrupted because of the  
18 translation issues. But I would like to tell you again the Thai  
19 policy with General Chau Valeth (phonetic), who should be tried,  
20 in fact. Well, Chau Valeth's (phonetic) policy would change from  
21 month to month, and he had many refugees executed who crossed the  
22 border.

23 [11.35.46]

24 I have a list, unfortunately I have this list in Paris, where  
25 there are a certain number of places listed where the Khmer

1 refugees were slaughtered by the Thai army under the orders of  
2 General Chau Valeth (phonetic). So there were about 20 or 25  
3 camps along the border. It started in Mairut, Watchman  
4 (phonetic), Ban Line (phonetic), Kamput, etc., all the way to  
5 Ubon. And then they were camps, Wachtman (phonetic) for example,  
6 which is close to Chanthaburi, where there were only soldiers,  
7 and automatically, of course, when there are soldiers people will  
8 pay attention. But the soldiers give you information on their  
9 comrades who were killed and in Kamput you only had civilians.  
10 Well, there you saw civilians coming from different regions.  
11 In Ubon, at the eastern side of Cambodia, I met a young man who  
12 became my secretary and he had walked for 27 days. He came from  
13 Kampong Cham. He walked 27 days to the Thai border and he was  
14 still imagining that his wife was still alive as well as his  
15 seven children, and in 1979 he learned that his wife had been  
16 killed the day he left, as well as his seven children. That he  
17 was a traitor.

18 [11.37.15]

19 So this is chance, basically, chance that put me in contact with  
20 such people. This was not calculated ahead of time. So the  
21 refugees, about 50,000, came in different phases, especially at  
22 the beginning and then the number of refugees was pretty much  
23 stable.

24 Q. So to make sure that I understand correctly, the maximum  
25 amount of refugees between 1975 and '79 was 50,000, and at other

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1 times it was less?

2 A. Yes, that's so. At the beginning when I crossed the border, as  
3 I said to you yesterday and I'm repeating today, that there were  
4 a few thousand refugees and I was in contact with them but I  
5 didn't question them because they had just stepped out of  
6 Cambodia, like me. And then during the first weeks, several other  
7 thousands of refugees arrived and, as I said to you the first  
8 phase, was made up of servicemen and then officials, and then  
9 people of Chinese origin; and then as of '76 a new phase,  
10 intellectuals and school teachers.

11 [11.38.53]

12 And many, many school teachers I met had fled in January 1976.  
13 It's quite surprising. And then afterwards, the peasants started  
14 fleeing.

15 Q. I have seen numbers of the total number of refugees who were  
16 in refugee camps in Thailand after the Vietnamese invaded  
17 Cambodia, and I have seen numbers rising to a million. Have you  
18 seen that yourself; is that correct?

19 A. Of course, of course, and here I say we cannot speak about  
20 refugees. You could say that these were people who were  
21 displaced.

22 [11.39.46]

23 Yesterday -- again, I was interrupted and rightfully so. There  
24 was a first wave of refugees from 7 January 1979 to 17 or 18 June  
25 1979. There were about 80,000 refugees who left Cambodia to

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1 Thailand and these refugees belonged to the upper classes that  
2 had not been decimated by the Khmer Rouge and, therefore,  
3 teachers, doctors, people who were rather from the upper middle  
4 classes who had lost their families. And then there was a  
5 terrible famine in Cambodia that followed the "liberation" or the  
6 occupation of Cambodia according to your ideological belief.  
7 Especially as of 7 September 1979, and then it wasn't hundreds of  
8 thousands, but millions - millions of Cambodians who fled to  
9 Thailand. And the international community was very - they  
10 organized the land bridge and the intentions can be very much  
11 commented, and it was north of Aranyaprathet. The UNICEF and the  
12 Red Cross would distribute food supplies and seeds to the  
13 Cambodian people, and then there was some kind of windfall of  
14 carts coming, thousands and thousands of oxcarts that were coming  
15 to pick up supplies and seedlings.

16 [11.41.41]

17 It was -- so this was more population being displaced than  
18 refugees, and there were millions and millions. I'll repeat the  
19 figure again, millions and millions, and the Vietnamese army  
20 would allow this, or would turn a blind eye. It depended on the  
21 period, and then at the end of 1979, the Thai government,  
22 probably advised by China, opened the camps inside Thailand. For  
23 example, there's a famous camp which is the Khao-I-Dang camp and  
24 which is about 30 kilometres inside Thailand, opened the camps to  
25 attract these people looking for food and among these people --



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1 and there were about 150,000 refugees in Khao-I-Dang -- and there  
2 the Thai army would recruit soldiers to go chase the Vietnamese  
3 out of Cambodia.

4 [11.42.52]

5 All of this is part of world geopolitics. China opposed to the  
6 Soviet Union, which was present in Cambodia through the  
7 Vietnamese. And then again, as of 1984 the Vietnamese army  
8 supported by the Cambodian army, by Mr. Hun Sen, cleansed the  
9 border. And there, there were about 400,000 refugees - which were  
10 not legally termed as "refugees", but as "displaced people" - who  
11 sought refuge inside Thailand. We did not call these camps  
12 "refugee camps", but we called them "sites".

13 For example, there was the site of -- site number 2, where there  
14 were about 200,000 people, which was larger than Phnom Penh.  
15 There was site 8, which was a Khmer Rouge site, and a bit further  
16 there was a site called Sok San (phonetic), maybe, where there  
17 were also Khmer Rouge. And there was another site at Ou Trav  
18 which was also a Khmer Rouge camp; and then there was site B  
19 where there were about 80,000 people, run by the FUNCINPEC, and  
20 all of these sites were used as back bases for the different  
21 troops to go attack the troops of the People's Republic of  
22 Kampuchea, where Mr. Hun Sen was prime minister.

23 [11.44.43]

24 So, of course, we can talk -- we can comment on the international  
25 aid to the displaced people, which obviously was not neutral. So

1 this issue of refugees and displaced people in Thailand is a  
2 touchy issue, depending on the periods.

3 Q. Thank you, Mr. Ponchaud.

4 Something completely different: Today, and yesterday, and the day  
5 before yesterday you spoke extensively about Mr. Khieu Samphan.  
6 Yesterday, only once, you mentioned Nuon Chea. My question to you  
7 is -- and it is a very precise question -- would you be able to  
8 tell the Chamber when the first time was you actually heard the  
9 name of Nuon Chea?

10 [11.45.45]

11 A. I don't know exactly when. Probably -- I probably heard his  
12 name over the radio, but since I did not know this gentleman I  
13 didn't pay much attention. I did not remember his name and even  
14 regarding the Vietnamese army trial in August 1979, Mr. Nuon Chea  
15 is not mentioned. Only -- it's only the Pol Pot, Ieng Sary gang  
16 that is being prosecuted. Mr. Khieu Samphan is also not  
17 mentioned, and curiously, and I insist upon this -- curiously,  
18 because Nuon Chea, based on the last book by Locard, was the  
19 person who had been trained by the Vietnamese to interrogate  
20 people.

21 The -- we know that the Communist Vietnamese would train people  
22 to interrogate and in 1979 the Vietnamese thought that Nuon Chea  
23 was probably their man in Cambodia. But they were wrong and this  
24 is why he is not mentioned in the August 1979 trials, only Ieng  
25 Sary, Pol Pot, and the Pol Pot, Ieng Sary gang is being

1 prosecuted.

2 [11.47.15]

3 MR. PRESIDENT:

4 Mr. Witness, you appear to be straying away from the scope of the  
5 question being asked. Could you confine to responding only to the  
6 question being put to you, please?

7 BY MR. KOPPE:

8 Q. Just one small additional question on Nuon Chea, and because  
9 you brought it up, let's call it the show trial in '79 against  
10 the Pol Pot-Ieng Sary clique, as it is called.

11 Have you been following that trial? And if yes, have you ever  
12 heard the name of Nuon Chea being mentioned in the framework of  
13 that trial?

14 [11.48.12]

15 MR. PONCHAUD:

16 A. No. Nuon Chea was never mentioned, nor was Khieu Samphan. It  
17 was the Pol Pot-Ieng Sary clique only. Maybe because Khieu  
18 Samphan was not known, and Nuon Chea, because he was the man in  
19 Cambodia for the Vietnamese. Just look at Locard's book, Henri  
20 Locard's book.

21 Q. Thank you, Mr. Ponchaud.

22 Mr. President, I'm almost done. I have one small, not very  
23 important question, but it goes to the translation of Khmer into  
24 English.

25 The day before yesterday you were speaking about Henry Kissinger

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1 and Richard Nixon, and according to my Khmer colleagues, you used  
2 a specific literal word in Khmer to describe both of them, and  
3 that hasn't come through in our English translation. As I  
4 understand it – and maybe I'm wrong, but if I understand it, you  
5 have said, "a Kissinger, a Nixon" meaning contemptible Kissinger  
6 and contemptible Nixon; is that correct? Has that been lost in  
7 translation?

8 [11.49.48]

9 A. No, that was correct. Because these are people I profoundly  
10 despise.

11 Q. Maybe for the record you said, when the microphone was off,  
12 you said a few times, yes. This means that you have actually used  
13 that Khmer word which apparently has not been translated  
14 properly; is that correct?

15 MR. PRESIDENT:

16 Mr. Witness, you should not respond to this because it is not  
17 relevant to the fact at issue.

18 MR. KOPPE:

19 Mr. President, I agree entirely that from the content perspective  
20 it's not relevant. But I'm just finding out what the exact rules  
21 are when it comes to interpretation. Although, on many occasions  
22 the witness has argued, or stated, or testified what he thinks  
23 about Kissinger and Nixon, so it is abundantly clear. But somehow  
24 – I don't know how that goes in reality. It is not being  
25 translated and I've been pointed out that particular fact by my

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1 Cambodian colleagues and that's why I wanted to have  
2 clarification. Not so much when it comes to the content.

3 [11.51.07]

4 MR. PONCHAUD:

5 I would like to ask, Mr. President, yesterday I read the  
6 statement I also mentioned yesterday. I noted that some of the  
7 words used do not correspond to my thought. Perhaps it's due to  
8 the interpretation.

9 MR. PRESIDENT:

10 The Court is aware of this and we will resort to the language you  
11 used in the Court. If you speak in Khmer, then we will have to  
12 verify your expression in Khmer as the original source of  
13 information. So it is the practice here that we will check the  
14 three languages used in the Court equally. So we will do our best  
15 to make sure we get the most of it.

16 MR. PONCHAUD:

17 Thank you, Mr. President.

18 [11.52.31]

19 MR. KOPPE:

20 Mr. Ponchaud, I finished my examination. I would like to thank  
21 you very much for your answers. Thank you.

22 MR. SON ARUN:

23 Good morning, Mr. President and Your Honours, and good morning,  
24 Mr. François Ponchaud. I am legal counsel for Mr. Nuon Chea. I  
25 have no questions to put to you. Nonetheless, I would like to

1 thank you very much indeed, for being here and I wish you all the  
2 best.

3 And thank you, Mr. President.

4 MR. PRESIDENT:

5 Thank you, Mr. François Ponchaud.

6 Your testimony has now come to an end and you are now excused.

7 You may return to your residence or where you would like to go,  
8 and the Chamber would like to thank you very much for your time  
9 giving the testimonies during these two and a half days.

10 [11.53.53]

11 We note that you have been very patient and you have done your  
12 best to provide the Court with your accounts, and the Chamber  
13 will take this into account and we wish you all the best.

14 Court officer is now instructed to assist Mr. Witness to be  
15 returned home safe and sound. You can work with the WESU unit to  
16 coordinate this trip.

17 And it is now appropriate moment already for lunch adjournment.

18 But before that the Chamber wishes to inform that the hearing for  
19 today is adjourned. The next sessions would only be resumed by  
20 Monday at 9.00 am, Monday the 22nd of April 2013, when we will be  
21 hearing TC-110, questions to be put by the Prosecution.

22 [11.55.22]

23 And the Chamber wishes to inform the parties to the proceedings  
24 that from 1.30 pm, the Chamber will conduct also a public hearing  
25 concerning the request by counsels for Mr. Khieu Samphan for

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1 release; and counsels for Mr. Khieu Samphan, Mr. Khieu Samphan,  
2 and the Co-Prosecutors will be part of these proceedings during  
3 this afternoon. And during this afternoon session, the Chamber  
4 also will allow counsels for Mr. Nuon Chea and Lead Co-Lawyers  
5 for the civil parties, and the civil parties to be present in the  
6 courtroom as the observers.

7 (Judges deliberate)

8 [11.56.38]

9 MR. PRESIDENT:

10 Security personnel are now instructed to bring Mr. Nuon Chea and  
11 Khieu Samphan to the detention facility and have them returned to  
12 the courtroom on Monday, the 22nd of April 2013.

13 And the Chamber will adjourn from now until 1.30. But by 1.30,  
14 security personnel are instructed to bring Mr. Khieu Samphan back  
15 to the courtroom.

16 (Court recesses from 1157H to 1334H)

17 MR. PRESIDENT:

18 Please be seated.

19 The Chamber has already informed the parties to the proceedings  
20 that during today - this afternoon's session the Chamber will be  
21 hearing the submissions by parties concerned regarding

22 Application for Mr. Khieu Samphan's Immediate Release on Bail.

23 As the President of the Trial Chamber and on behalf of my fellow  
24 Judges, I would like to welcome the Co-Prosecutors and counsels  
25 for Mr. Khieu Samphan.

1 The purpose of this hearing is to hear the submissions and  
2 arguments - oral arguments regarding the Application for Mr.  
3 Khieu Samphan's Immediate Release on Bail and also the responses  
4 by the Co-Prosecutors in relation to document E275, filed on the  
5 29th of March. And this application is for Mr. Khieu Samphan's  
6 immediate release on bail.

7 [13.37.13]

8 And I would like to pronounce the hearing open now.

9 The Trial Chamber wishes to remind parties to the proceedings  
10 that after it has been seized of the written application for Mr.  
11 Khieu Samphan's immediate release on bail, the Chamber would like  
12 to conduct hearings - a hearing on the 5th of April 2013.

13 However, counsel for Mr. Khieu Samphan was not available. That is  
14 why the Chamber rescheduled the hearing to today's afternoon so  
15 that we can hear submissions by parties concerned.

16 The Chamber wishes to also inform the Co-Prosecutors - or the  
17 Trial Chamber has informed the Co-Prosecutors through Senior  
18 Legal Officer that the Co-Prosecutors would not need to make a  
19 written submission, but they would do so in oral in the courtroom  
20 today.

21 And the Chamber now conducts this hearing to hear the submission  
22 by counsels for Mr. Khieu Samphan regarding the Application for  
23 Mr. Khieu Samphan's Immediate Release on Bail.

24 Counsels for Mr. Khieu Samphan will have 30 minutes for this.

25 Then the Chamber would like to hand over to the Co-Prosecutors to



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1 be able to also make a response orally, and the Co-Prosecutors  
2 will be allocated – rather, 30 minutes for this, as well. And at  
3 the end, defence counsels will be allowed some time to reply. And  
4 counsel – and Mr. Khieu Samphan will have 10 minutes for this,  
5 finally.

6 [13.39.38]

7 Next, we would like to hand over to counsels for Mr. Khieu  
8 Samphan to proceed with their arguments in support of their  
9 Application for Mr. Khieu Samphan's Immediate Release on Bail.  
10 International Co-Prosecutor, you're on your feet; you may now  
11 proceed.

12 MR. ABDULHAK:

13 Thank you, Mr. President. And I apologize for intervening so  
14 early. Good afternoon, Your Honours and Counsel.

15 The reason I'm on my feet is that we have just received a rather  
16 belated application from the Khieu Samphan team, under Rule 87.4,  
17 and that applications concerns this hearing. We understand it was  
18 filed in the afternoon yesterday. A courtesy copy was forwarded  
19 to us approximately one hour before this hearing, and I gather it  
20 has just been notified also formally. It is document E280 – E280.

21 [13.40.58]

22 To the extent that it relates to – that it is an application to  
23 admit additional evidence before Your Honours in the course of  
24 this hearing, in our respectful submission it may need to be  
25 dealt with before we proceed to the substantive matters. And if

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1 Your Honours incline to hear submissions on this application,  
2 then we would make those submissions.

3 But for now I just wish to raise the issue and perhaps have some  
4 directions from Your – from Your Honours.

5 MR. VERCKEN:

6 Mr. President, maybe you would like a bit of clarification.

7 I believe that what the prosecutor is referring to is a  
8 submission that we filed today, indeed, yes. And for – we weren't  
9 able to do so before because it had to be translated. And this is  
10 document E280 and it is called "First Request Aiming at Putting  
11 on the Case File Excerpts of the Book by Marcel Lemonde" – [free  
12 translation].

13 [13.42.00]

14 And as your Chamber is already aware, the former Co-Investigating  
15 Judge, Mr. Marcel Lemonde, published in France a book where he  
16 describes his experience and his work at the ECCC. And, of  
17 course, we intend to use certain excerpts that we quote in this  
18 submission – there are not many of them – submission that the  
19 Co-Prosecutor is aware of.

20 And in order to answer him, I'd like to say that this submission  
21 is eight pages long, whereas, on the Prosecution side, we were  
22 given at the same time five scientific and medical studies,  
23 representing about 200 pages in total, that I had to examine, in  
24 order to be able to address the issues, during the lunch break.  
25 So, you see, Prosecutor, we should be playing on a level playing

1 field. We are both in the same situation. You are giving me even  
2 more, 200 of pages of documents in English, whereas I have just  
3 finished this morning's hearing examining François Ponchaud, and  
4 you received from us only eight pages that have already been  
5 translated into English, from a rather simple submission that is  
6 easy to understand.

7 So I think, Mr. President, this request having been filed, I  
8 would like to ask your permission to refer to it during today's  
9 hearing.

10 [13.43.58]

11 MR. ABDULHAK:

12 Thank you, Mr. President. I'll be brief in my response.

13 There is indeed a sea of difference between the documents that we  
14 shared with the parties and this application made by Mr. Khieu  
15 Samphan, and I think it's important to consider the procedural  
16 history here.

17 This is a book that, according to the request itself, has been  
18 publicly available since January 2013. And on the 15th of March  
19 2013, the counsel for Nuon Chea sought to admit excerpts from  
20 this book in an appeal before the Supreme Court Chamber, and that  
21 was in document E189/3/1/7. So, at the very latest by the 15th of  
22 March 2013, all the parties in this courtroom were aware of this  
23 book, of this material which appears to be of interest to the  
24 Defence.

25 The present request, the Application for Mr. Khieu Samphan's

1 Release, was filed on the 29th of March 2013, so two weeks after  
2 a point in time at which all parties must have been on notice of  
3 the existence of the book.

4 [13.45.38]

5 The request, in fact, makes reference to interviews that former  
6 Co-Investigating Judge Lemonde gave in connexion with this book.  
7 And you can see that at paragraph 6 of the Request for Mr. Khieu  
8 Samphan's Release, which is document E275.

9 Most recently, yesterday, Your Honours have clarified – and this  
10 is in memo E276/2 – that parties are required to make their Rule  
11 87.4 applications at least two weeks before the hearing to which  
12 they relate. This application clearly fails to meet that  
13 requirement. It is much more than simply putting forward matters  
14 that are in the public domain and that relate to a hearing; this  
15 is, in effect, an amendment to the application. It actually  
16 raises new grounds which were not cited in the original  
17 application, and those grounds start from the paragraph – from  
18 paragraph 18 of this new Rule 87.4 request.

19 In our respectful submission, it would be contrary to justice and  
20 it would be entirely unfair to allow the Defence to make these  
21 sorts of applications virtually an hour before the hearing.

22 [13.47.10]

23 What we have done, in the context of the Chamber's directive that  
24 we not file a written response – what we have done is forwarded  
25 copies of studies which relate to the prevalence of

1 post-traumatic stress disorder in Cambodia and attitudes towards  
2 the former Khmer Rouge leaders. These materials contain only a  
3 very few pages of relevance, and that can be clearly seen upon a  
4 basic review of the table of contents of any of these documents.

5 One can see that the portions in which they relate to these  
6 proceedings are extremely brief.

7 What's more, these documents – two of these documents are in fact  
8 simply new versions – or updated versions of surveys that have  
9 previously being filed on the case file. There is no element of  
10 surprise. We're working within a very short time frame with  
11 competing priorities, and we simply sought to give us as much  
12 notice as we could, that we might refer to very limited sections  
13 of these – of these documents.

14 There is a sea of difference between doing that, when we haven't  
15 been permitted to file a written submission, and counsel, who  
16 were on notice of this supposed new evidence at the time of their  
17 request, failed to make a request that it be admitted, and then  
18 make that request one hour before the hearing.

19 [13.48.58]

20 So, in our respectful submission, this Rule 87.4 application must  
21 fail.

22 If my learned friend wishes to have this evidence considered  
23 before he proceeds with his application, then the proper thing to  
24 do is to make an application to adjourn this hearing to allow us  
25 to respond on the Rule 87.4 application, and to then deal with

1 the substantive matter. But to present us with these new  
2 substantive claims at the last minute is completely unfair and  
3 improper.

4 So, our respectful submissions are that there are two options  
5 available: counsel can either make a request for an adjournment  
6 of this hearing and for the Rule 87.4 application to be  
7 considered; or Your Honours should reject his application and  
8 simply proceed with the hearing without these additional  
9 materials.

10 Thank you.

11 [13.49.43]

12 MR. VERCKEN:

13 Thank you, President.

14 I must say that I do not at all appreciate what has just been  
15 said by the Co-Prosecutor, especially when he accuses us of  
16 having deliberately gone in violation of the rules that apply to  
17 us all.

18 And Your Honours are the first to know we were informed on the  
19 2nd of April that the hearing on my Application for Immediate  
20 Release would be scheduled for either the 5th or today. In any  
21 event, our request E280, which concerns Mr. Lemonde's book, has  
22 been sent for translation, and - was sent for translation before  
23 the date, and we cannot be accused of having exceeded the  
24 deadlines. Once we sent the document for translation, the  
25 scheduling of this particular hearing was already set. It seemed

1 the most judicious decision taken by Your Honourable Chamber.

2 I believe that the prosecutor should withdraw his criticism in  
3 our regard.

4 [13.50.30]

5 As for the rest, I think it's rather rich for the Co-Prosecutor  
6 to say that only 200 pages of these medical reports and  
7 scientific studies given by the Co-Prosecutor very well could be  
8 cited. As far as you know, the Co-Prosecutor did not make any  
9 written applications. We received documents in their rawest form.  
10 They're complicated documents. In fact, they are in very small  
11 font, and I can hardly read them; they are full of tables and  
12 charts, statistics, findings, so on and so forth. All of this was  
13 work that I had to undertake during the lunch hour. And the  
14 Chamber is asking us to respond to these 40 documents. I've done  
15 the best that I could, given the time given to me, thanks to the  
16 contribution of my team, to review all of these documents, and I  
17 am very much ready and willing to respond to the Co-Prosecutor.  
18 So why is it that he is unable, with all of the means at his  
19 disposal, to, during the same period, be just as prepared to  
20 respond to a request that consists of no more than eight pages?

21 [13.52.47]

22 MR. PRESIDENT:

23 Counsel, we would like to also hear your response concerning the  
24 request to differ the hearing concerning the Application for Mr.  
25 Khieu Samphan's Immediate Release on Bail and also the request

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1 that document E80 is rejected. These are the two requests made by  
2 the Co-Prosecutors concerning this matter. We would like to hear  
3 from you whether the Chamber should conduct the hearing today or  
4 should it be differed to another date. And it is really important  
5 that we know from the parties, as it affects our decision, and  
6 that - the Chamber shall issue a decision on this Application for  
7 Mr. Khieu Samphan's Immediate Release on Bail, as it is pursuant  
8 to Internal Rules, Rule 82, of the ECCC. And we would like to  
9 hear from you immediately.

10 And, whatever points you raise, please make sure that they're  
11 clearly distinguished so that parties to the proceedings and the  
12 Chamber itself is well informed.

13 And you may now proceed.

14 MR. VERCKEN:

15 Very well. As far as our request E280 is concerned with respect  
16 to the admission into the proceedings of certain passages from  
17 the book written by Judge Marcel Lemonde, our position is as  
18 follows: We hereby request the Chamber to accept the references  
19 to be made to a few passages from Mr. Lemonde's book that can be  
20 found in this present application.

21 The Co-Prosecutor has had largely sufficient time to examine  
22 these very few excerpts that are quite easy to understand.

23 With respect to a possible postponement or deferral of this  
24 hearing on the (recording malfunction) of my client, immediate  
25 release on bail for a postponement, if, unfortunately, the



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1 decision of Your Honourable Chamber is to not allow me to expound  
2 on the grounds of my request, then I will therefore be asking for  
3 immediate release today.

4 I hope that I have been sufficiently clear.

5 (Judges deliberate)

6 [14.06.40]

7 MR. PRESIDENT:

8 I now hand over the floor to Judge Silvia Cartwright to put a few  
9 questions to the defence team for Mr. Khieu Samphan and/or other  
10 parties concerned.

11 Judge, you have the floor now, please.

12 JUDGE CARTWRIGHT:

13 Yes, thank you, President.

14 The issue that is before the Chamber is whether to grant leave to  
15 the Defence to file an additional request for the admission – to  
16 file a request for the admission of a new document, pursuant to  
17 Rule 87.4.

18 The Defence argues that it is only fair that we should allow this  
19 document to be considered because the prosecutors themselves  
20 filed voluminous material in support of their opposition to the  
21 application for immediate release.

22 [14.07.56]

23 The primary issue today is that an application for immediate  
24 release must be determined as quickly as possible, which is why  
25 the Chamber gave a very early date last week, which the Defence

1 was unable to take advantage of.

2 The application for the admission of a new document has come as a  
3 complete surprise to the Trial Chamber. We were not aware of its  
4 existence until the prosecutors raised this matter at the  
5 beginning of this afternoon's hearing. We do not consider we have  
6 time to give proper consideration to that application, and  
7 therefore the Chamber will not determine the application for  
8 admission of the extracts from the former Co-Investigating  
9 Judge's book filed today about an hour or so ago. That will  
10 follow the normal course for such applications, and the parties  
11 will have the opportunity to comment. The Chamber will advise in  
12 due course whether those comments should be in writing or made  
13 orally.

14 The same criteria must be applied to the application by the  
15 prosecutors to admit additional material which it wishes to use  
16 as part of its argument in opposition to the application for  
17 release from detention.

18 [14.10.07]

19 The application for release from - for immediate release from  
20 detention will proceed now, and both parties' applications for  
21 the admission of documents will be treated in the same way. And  
22 it hardly needs to be said that should Khieu Samphan wish to make  
23 a further application in relation to release should he not be  
24 successful in the present one, then, he is free to do so at any  
25 relevant time. But the major problem is that we simply cannot

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1 deal with both applications and still give full consideration to  
2 Khieu Samphan's application for immediate release from detention.  
3 So the President has asked me to indicate that we will proceed  
4 with that application now.

5 Thank you. Does that cover it, President?

6 MR. VERCKEN:

7 Fine, fine, thank you very much, Your Honour. At least what you  
8 have said is very clear.

9 So, today we are before you with a request which, I believe, is  
10 rather special. It's special because it requires that you, court  
11 officers, take a bit of distance from what you're doing  
12 regularly, and sometimes this might require that you take into  
13 consideration a certain amount of criticism that might be  
14 addressed to you - and of course you might be divided about this,  
15 and of course we're very much aware of this.

16 [14.12.24]

17 I have announced that we were going to file our request for  
18 immediate release during the hearings relative to the Supreme  
19 Court's - the consequences of the Supreme Court's decision to  
20 annul your first Severance Order, and I announced this, then, to  
21 follow a certain amount of criticism that had been addressed to  
22 me by the Supreme Court on the way your Chamber proceeded and  
23 because we consider, in our team, the Khieu Samphan defence, that  
24 there is a bit of harm resulting from the criticism expressed by  
25 the Supreme Court and that the main harm there consists in the

1 difficulty of knowing when Khieu Samphan will be actually tried  
2 on the basis of the totality of the Closing Order.

3 I must say that during the proceedings in February, but also in  
4 the decision of the Supreme Court, there was, in my opinion,  
5 confusion, as I said – an amalgamation, I said; I don't know if I  
6 was understood – confusion between the situation of Ieng Sary,  
7 the situation of Mr. Nuon Chea, in terms of his health condition,  
8 and the condition – and the consequences that this could have on  
9 the rest of the trial, and Khieu Samphan's situation.

10 [14.14.32]

11 As you know, Mr. Khieu Samphan takes pride in attending all of  
12 the hearings – in the morning, in the afternoon – without trying  
13 to argue or without trying to take advantage of eventual problems  
14 that he may have to not come. And you also know that he has no  
15 specific health issues that prevent him or that may lead to a  
16 pessimistic vision on his – on the near future. And, however, he  
17 is detained still. It's been five years and four months already,  
18 and such a duration is – cannot be ignored. It's – five years is  
19 a very long time. Five years, for a man who is close to – who was  
20 close to 80 when he was detained and who today is 82 years old,  
21 in cells that, you might have seen, are only a few square metres,  
22 right close to this court – that is something that is not  
23 insignificant.

24 And I wish – and I feel like saying that in most of – most cases,  
25 the reasons delaying the proceedings here, whether it be problems

1 of finance or whether it be procedural problems that were  
2 sanctioned in a certain way by the Supreme Court, are not – have  
3 not been caused by Mr. Khieu Samphan. And as of today, we have no  
4 visibility on when Khieu Samphan will be tried on the basis of  
5 the Closing Order in its totality.

6 [14.16.40]

7 I know that in its decision, the Supreme Court stated – and  
8 that's where I believe there was confusion – that your first  
9 Severance Decision in September 2011 was the same as burying –  
10 and that was the word that was used – as burying the continuation  
11 of the trial. So, such reasoning is maybe appropriate to Ieng  
12 Sary, but I don't see on what the Supreme Court is basing itself  
13 to argue the same for Mr. Khieu Samphan.

14 But Your Chamber does not have the power to cancel parts of what  
15 it's been seized for. You are seized by the Closing Order in its  
16 totality. You have decided to adjudicate a first part of it – and  
17 this was confirmed recently – but you don't have the power to  
18 cancel all charges, which means that the difficulties that were  
19 described by the Supreme Court remain the same and explain that  
20 the forcibility of a final judgement for Khieu Samphan is very,  
21 very, very, very removed.

22 [14.18.22]

23 And this is what I'm here today asking you to notice. I'm not  
24 asking you to come up with a prejudgement. I'm not asking you to  
25 say that there's not enough evidence against Khieu Samphan. I'm

1 simply asking you to say that the difficulties that you're  
2 encountering today and that we are encountering are such that it  
3 is not unfair - or even it is fair to consider that provisional  
4 detention is no longer valid and that the guaranties of that - of  
5 justice that present to you Khieu Samphan allow you to understand  
6 that today, five years and four months after he was placed in  
7 detention - to consider that, yes, indeed, you can release him  
8 under bail, with the guaranty that this will not cause any  
9 problems to public order in Cambodia - and I'll get back to this  
10 - with a guaranty that Mr. Khieu Samphan will present himself, as  
11 he has always done, to this Chamber. He promised to do so in  
12 writing and he will continue doing so. He will be before you  
13 during the hearings.

14 But given his age, of course, and given the life expectancy in  
15 Cambodia, it is normal, given the lack of visibility on the dates  
16 when the definite judgement will be said, that the continuation  
17 of this trial might happen for Khieu Samphan as he's released  
18 under bail. That is the basic thrust of our request today.

19 [14.20.36]

20 And the analysis that we are conducting of the difficulties of  
21 this trial goes way back to before you were seized, in fact, and  
22 it consists in saying that - and this is public information, so -  
23 that the history here of the ECCC is rather special, as you all  
24 know, and we all know that, at the start, Mr. Duch, who had  
25 already been detained, and his case, as well as the case for the

1 four other accused persons, was common at the start. And then  
2 there was this severance decided by the Co-Investigating Judges.  
3 But we know that it was necessary for the Co-Investigating Judges  
4 then to give priority to one case, and that was the Duch Case.  
5 And then, as Khieu Samphan had been detained since November 2007,  
6 the Co-Investigating Judges focused essentially on the Duch Case  
7 in order for this case to be adjudicated. And we know that the  
8 decision to postpone the case in - for the four other accused  
9 persons was issued a few days before the legal Detention Order  
10 expired.

11 [14.22.30]

12 I'm saying this because - to underline the fact that in the  
13 history of this trial, as you can see, we're not trying to  
14 challenge your Chamber. That might be a bit to simpleminded.  
15 There is just a history, a complex history, with different  
16 priorities, and this is also important to remind because for  
17 months and months, the Co-Investigating Judges worked on the Duch  
18 Case, and not on the case that we are involved in right now. This  
19 should be taken into account because the jurisprudence that you  
20 base yourself - or that you based yourselves on in your prior  
21 decisions, such as in the case of Ieng Thirith - that is to say,  
22 the jurisprudence of the European Court of Human Rights - clearly  
23 states that in terms of estimates for a reasonable time span for  
24 a trial, it is necessary to take into account not only  
25 provisional detention during the period of the investigation, but

1 also as of the day when the people are presented before the  
2 Chamber.

3 Five years and four months that Khieu Samphan has been detained,  
4 whereas Khieu Samphan has never attempted to go underground, even  
5 when the statutes of Your Court were being discussed. He was  
6 living in Phnom Penh, and it happens to be that he was one of the  
7 candidates to be prosecuted. He did not leave. He did not move.  
8 He answered the media when questioned. He remained in Phnom Penh  
9 and he confronted the prosecution.

10 [14.24.35]

11 And finally - and this is an argument that may be used even if  
12 today I don't really see the cause for this, but this is the  
13 argument of age, and which seems - there is of course the issue  
14 of Mr. Khieu Samphan's health. But please explain to me why the  
15 health issues that he may encounter would be more serious or more  
16 difficult to treat since he would be with his family in Phnom  
17 Penh, under bail, rather than if he was detained in the detention  
18 cell right next to this court, knowing that any person acting in  
19 criminal code justice knows - is aware of the consequences of  
20 prolonged incarceration on human beings, whether physically or  
21 psychologically.

22 I know that the Prosecution is also going to raise the point of  
23 troubling public order. This was the case previously, during the  
24 requests for release that were already pleaded before you. And  
25 they're going to say that Mr. Khieu Samphan - that if he's



1 released under bail – and we're not saying that he is innocent;  
2 we're just saying that he should be released under bail, with  
3 very strict conditions – well, that this would have an influence  
4 on Cambodian public order. And I would like to look at the  
5 arguments quickly here that were presented, that were already  
6 raised in the past by the Prosecution.

7 [14.26.37]

8 And they said to us – they used a few reactions of victims or  
9 they based themselves on polls, and they also based themselves on  
10 the estimates – on the belief that part of the Cambodian  
11 population is suffering from post-traumatic stress. And you also  
12 underscored the fragile context of Cambodian society and the  
13 immense attention that this Court is receiving from the public.  
14 And now, regarding the troubling of public order, I think we can  
15 base ourselves on – a rather clear illustration is the release of  
16 Ms. Ieng Thirith. Ms. Ieng Thirith, as far as I know, has not  
17 been the object of violence or any attempts of violence on the  
18 part of whoever since she has been released.

19 It's not – I'm not challenging your Court by noticing – to notice  
20 that this case does not necessarily interest a great majority of  
21 the Cambodian people. Of course people might have a good opinion  
22 of this Court or a poor opinion of the Court, but the studies  
23 that I quote – you see that in 2008 only 3 per cent of Cambodians  
24 were able to name the accused persons, and in 2010, after a whole  
25 campaign of sensitization, only 11 per cent were able to do so.

1 So that's very - that's very little. And in the documents that  
2 the prosecutor wanted to use - and we'll speak about this more in  
3 detail later, but there were documents tending to prove that  
4 these figures were even higher. So I believe it's interesting,  
5 and we'll speak about this again.

6 [14.28.55]

7 But I think we should look at who is being questioned to end up  
8 with the figures used by the Prosecution. And who were being  
9 questioned? Civil parties and civil party representatives. And  
10 what's absolutely flabbergasting was that among the figures that  
11 were given to us, we could see that among the civil parties, only  
12 60 per cent of them were able to name the Accused, and even among  
13 the representatives of the civil parties, only 90 per cent were  
14 able to name the Accused. This shows that even if we play around  
15 with the numbers, even if we play around with the statistics, for  
16 reasons that might be cultural, or for reasons that might be  
17 economic, or for various reasons, the Cambodian population does  
18 not seem to be interested in an aggressive way, I should say, or  
19 in a general way in this trial. It does not seem to be a  
20 priority.

21 So, reasons of security were also raised. I personally find this  
22 a bit exaggerated. The Prosecution, on the one hand, claims that  
23 this Accused must be accused and, therefore, kept in detention.  
24 And then they turn around. What could justify such a concern on  
25 the part of the Prosecution? An assault on Mr. Khieu Samphan that

1 dates back to 1991?

2 [14.30.49]

3 We all agree and we all know that many historians, commentators,  
4 observers, journalists, politicians who were quite focused on  
5 that assault - and that it had occurred in a very particular  
6 context, and that the majority concluded that it was political  
7 manipulation carried out in 1991 in order to cast the impression  
8 that Mr. Khieu Samphan was persona non grata in Phnom Penh and  
9 that unless he was kept under complete surveillance, he should  
10 leave. Not only is this theory quite old, all evidence points to  
11 the fact that this is pure political manoeuvring and  
12 manipulation, and for those reasons, you cannot take that into  
13 consideration.

14 In the past, during previous requests for release on bail, there  
15 was reference to threats to former Khmer Rouge, particularly  
16 against Duch, and I believe that since he has been tried and  
17 judged definitively, we can discard those arguments.

18 And there was an even - aggressive discussion that may have been  
19 held between Mr. Khieu Samphan's lawyer and a civil party when  
20 there seemed to be an altercation between the two before the  
21 cameras. And not only has Mr. Khieu Samphan changed lawyers since  
22 then, but I also believe that such a - the dispute that was  
23 concerning the lawyer and the civil party didn't entail any  
24 significant consequences, in fact, to the extent that one could  
25 justify that Mr. Khieu Samphan's security would be threatened if

1 he were to be released on bail.

2 [14.33.03]

3 Today – and this brings me to the conclusion of my pleading,  
4 since you have only accorded me 30 minutes – today Your Honours  
5 have the possibility to prevent all risks, if you believe such  
6 risks to be real.

7 We, the defence for Mr. Khieu Samphan, propose that Mr. Khieu  
8 Samphan released to a known residence and that it not be changed  
9 without the authorization of this Court.

10 We have also conveyed all information regarding the residence  
11 where Mr. Khieu Samphan could settle, where it is situated, and  
12 we have also communicated to you his personal commitment to abide  
13 by the Chamber's orders. He's undertaking to hand over his  
14 passport and any identification papers.

15 And as you will recall, Mr. Khieu Samphan has never sought to  
16 abscond or flee justice. In contrary to what the Prosecution  
17 says, he has never tried to draw a financial benefit in talking  
18 about his role during Democratic Kampuchea, he's never sought to  
19 amass wealth or riches based on that. This is an individual who's  
20 always carried out a rather simple and humble life up until the  
21 day that he was arrested. He simply has no means to leave or  
22 flee. Given his age, he technically and financially simply does  
23 not have the means.

24 [14.35.04]

25 Lastly, Mr. Khieu Samphan has also taken the undertaking, if you

1 do decide to ultimately place him under bail, to not contact the  
2 media, to not be in communication with journalists, and to not be  
3 in a communication with anyone other than his lawyers, nor will  
4 he be drafting any articles or writing any books. He will be  
5 focused entirely on this trial.

6 Quite obviously, there will be absolutely no contact with the  
7 civil parties. He has been in contact during this trial and on  
8 previous occasions, and obviously he will obey all of the strict  
9 conditions that Your Chamber would impose with respect to his  
10 residence.

11 At his age, Mr. Khieu Samphan has absolutely no intention of  
12 leaving his home to live the life of a young man. He is an  
13 82-year-old man. He will stay at home and he will be cared for by  
14 his relatives and his family, and that is all he asks for. He  
15 will be - abide, with assistance if the Chamber so decides, to do  
16 his utmost and participate in his defence before this trial and  
17 before this Chamber.

18 [14.36.42]

19 I believe our application is rather clear and straightforward.  
20 You, yourself, Mr. President, have on many an occasion indicated,  
21 including as early as this week, the financial difficulties that  
22 this tribunal faces, as well as some of the procedural  
23 difficulties we are mired in.

24 All I ask is that you take into consideration that Mr. Khieu  
25 Samphan has absolutely no foreseeability as to whether or not

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1 this trial, this ongoing trial that concerns him - and I believe  
2 that it was during the Duch trial that Judge Cartwright may have  
3 said that it would take approximately eight months to come to a  
4 definitive judgement. I don't recall the exact timeframes, but  
5 for such a trial, it could take double the amount of time. And as  
6 I have recalled, there may still be subsequent trials following  
7 this one. Therefore, a definitive judgement is still very remote,  
8 at least on the first segment of this trial, much less the  
9 totality of this case, and that is what I wish to impress you -  
10 impress upon you today - that is, to release Mr. Khieu Samphan  
11 under immediate release on bail on the strictest conditions.

12 Thank you.

13 (Judges deliberate)

14 [14.38.54]

15 MR. PRESIDENT:

16 Counsel for Mr. Khieu Samphan, please rise. I have a question.

17 Your request is for Mr. Khieu Samphan to be released on bail, and

18 you already expressed the measures you would like to be imposed

19 on Mr. Khieu Samphan. However, the Chamber has not yet heard, if

20 he were to be released, how would he come to the Chamber - I

21 mean, how would he appear before the Chamber?

22 MR. VERCKEN:

23 I believe that there are two options: the first would be to allow

24 him to come on his own means and arrive by taxi, as many of us do

25 during the morning and the evening; and the second option, as

1 outlined in the application before you, would be, if the finances  
2 of this tribunal permit and if there's a car available, if you,  
3 Your Honours, decide that this would only reinforce some of the  
4 restrictions you place - or place eventually - would be to  
5 provide a car and have him transported then. I think those are  
6 the only two options before us.

7 [14.40.39]

8 Mr. Khieu Samphan and his relatives propose to assume the full  
9 cost of transportation if the Court is unable to ensure that.  
10 There is absolutely no issue on that front. But if you consider  
11 that providing Court transportation is a reinforced measure, then  
12 that is also an option.

13 MR. PRESIDENT:

14 Do Judges of the Bench wish to put any questions to counsel on  
15 this before we can finally rule upon the application?

16 Judge Silvia Cartwright, you may now proceed.

17 JUDGE CARTWRIGHT:

18 Yes. Maître Vercken, I certainly do not question the truthfulness  
19 of the offers you make in the point - in your application for  
20 release of Mr. Khieu Samphan going to conditions that the Court  
21 might impose, but it is usual, I would have thought, to have  
22 something more than just various offers of possible conditions  
23 which seem to reflect very closely those that were put forward in  
24 relation to Ieng Thirith.

25 So I would like to ask you just a couple of specific questions,

1 please.

2 [14.42.34]

3 First, we have absolutely no indication, so far as I am aware, of  
4 where Mr. Khieu Samphan would reside should the Chamber be  
5 prepared to release him on bail.

6 Secondly, you say he's indigent. Do I have any material before me  
7 to support that contention? It may well be correct because he has  
8 been assigned counsel, but simply to accept it from the Bar is a  
9 little unusual for me. And so I'd like just a little bit more  
10 information, please, before being able to consider seriously such  
11 a serious request. So, perhaps you could expand.

12 Thank you.

13 MR. VERCKEN:

14 Your Honour, these documents are in - are annexed to the  
15 Application for Mr. Khieu Samphan's Immediate Release on Bail.

16 All of the relevant documents have been attached. There is a land  
17 title, there are written undertakings, there's the identification  
18 of those who would surround Mr. Khieu Samphan, as well as the  
19 address. All these pieces can be found in the annex of our  
20 application E275.

21 [14.44.16]

22 JUDGE CARTWRIGHT:

23 You may well be right about that, Maître Vercken. I do now recall  
24 that when I looked at this application, I couldn't find the  
25 annexes, hence my questions now.



1 But could you just reassure me, please, that we have full  
2 information, including whether he has a current passport or not?

3 MR. VERCKEN:

4 He does not have a passport.

5 Mr. Khieu Samphan, do you have a passport?

6 But I'm sure Your Honours may ask the Cambodian authorities.

7 Can you not hear me? He does not have a passport, Your Honour.

8 I believe that all of the documents have been conveyed. They were  
9 notified at the same time as the application. There's information  
10 on his address, the type of property, as well as the names and  
11 identification of all those who would be residing with him.

12 They're all in the case file.

13 [14.45.27]

14 And as far as the matter of indigence is concerned, perhaps there  
15 was a misunderstanding in the translation, but I never uttered  
16 that; I never talked about his status as an indigent person. Mr.  
17 Khieu Samphan has a family. And if Your Chamber does not seek to  
18 ensure his transportation to the tribunal from his residence or  
19 if you do not intend to ask the Cambodian authorities to  
20 undertake that duty, perhaps the Cambodian police could fulfil  
21 that duty. Well, then, the family of Mr. Khieu Samphan would  
22 assume the cost of taxi transportation. But there was never an  
23 issue of indigence.

24 JUDGE CARTWRIGHT:

25 Well, the translation I received was "he has no means", with the

1 appropriate gestures, so I took that as "indigent". Is that a  
2 different meaning?

3 [14.46.47]

4 MR. VERCKEN:

5 I'm not entirely sure. I'm not entirely sure, but based on Mr. -  
6 Judge Lavergne's reaction, I don't believe that it was ever  
7 brought up. Perhaps it was just a misunderstanding caused by the  
8 lag in interpretation.

9 MR. PRESIDENT:

10 Judge Lavergne, you may now proceed.

11 JUDGE LAVERGNE:

12 For the sake of clarity, are we to understand that Mr. Khieu  
13 Samphan does have sufficient means to live with his family?

14 MR. VERCKEN:

15 Absolutely, and that's exactly the substance and meaning of some  
16 of his undertakings and written statements. I didn't want to  
17 enter into detail during these proceedings, but that is exactly  
18 the case. His family has decided to undertake all of the costs  
19 involved in his living if he were to be released on bail.

20 MR. PRESIDENT:

21 Since it is now appropriate moment for the adjournment, the  
22 Chamber will adjourn until 3 o'clock.

23 (Court recesses from 1448H to 1504H)

24 MR. PRESIDENT:

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

1 I note the defence counsel is on his feet. You may proceed,  
2 Counsel for Mr. Khieu Samphan.

3 MR. VERCKEN:

4 Yes, thank you, Mr. President. Very briefly speaking, I would  
5 like apologize to Judge Cartwright.

6 I did not understand the meaning of your question relative to  
7 indigence, and then I understood afterwards, when I spoke with my  
8 team. I believe that the misunderstanding happened when I said  
9 that there was no risk that he would go underground or that Khieu  
10 Samphan would flee. And what I wanted to say at that moment was  
11 that he did not suddenly become rich, he didn't have the means to  
12 escape, and that he's not sitting on a pile of gold. That's what  
13 I meant.

14 But what I wanted to really say - and this is maybe what led to  
15 this misunderstanding - his family is committed to finance his  
16 day-to-day living expenses, which would be rather modest.

17 And I would also like to tell you that, if you so desire, Mr.  
18 Khieu Samphan would like to say a few words supporting his  
19 request.

20 [15.06.30]

21 MR. PRESIDENT:

22 Yes, Mr. Khieu Samphan, you may proceed.

23 MR. KHIEU SAMPHAN:

24 Thank you very much, Mr. President. My respect to Judges of the  
25 Bench, all parties, and members of the public.

1 First and foremost, I would like to confirm that I have - I do  
2 not have any passport. I haven't - I haven't had passport for a  
3 long time. When I left the forest to reside in Pailin, I only had  
4 my identification card and the electoral card. That is the first  
5 thing I would like to make it clear.

6 Secondly, I would like to inform that Court that all my children  
7 in the present day are working. They are earning their living,  
8 but - not much, but just sufficient for their living. We live in  
9 one flat together, we share the bills, we share the cost of food,  
10 we share the living costs. One of my children has sent - has a  
11 child who is working in Phnom Penh, and they also send the money  
12 back home to help share the costs of family. And I hope that once  
13 I am released on bail from the Court, I am going to live with  
14 them, and I am sure that they will be able to feed me on the  
15 daily life.

16 [15.08.30]

17 Thirdly, I would like to inform the Court as well that my wife,  
18 when she comes to visit me in the detention centre, she travels  
19 by motorbike. And if it is necessary that I participate in the  
20 proceedings when the Court summons me to participate in the  
21 proceedings, I will be able to take the moto with her to come to  
22 this Court. This is what I would like to inform the Chamber.

23 And I will comply with all the conditions imposed by the Chamber  
24 on me when I am released on bail.

25 And especially, I would like to reassure the Chamber that I will

1 be present in all the proceedings upon call - summons by the  
2 Chamber until the Court is concluded.

3 Thank you very much, Your Honour.

4 MR. PRESIDENT:

5 Next, I would like to hand over the floor to the prosecutor to  
6 make a statement or present arguments in response to the  
7 application and submission by the defence team for Mr. Khieu  
8 Samphan, together with the statement made by Mr. Khieu Samphan.  
9 You may proceed.

10 [15.10.10]

11 MR. ABDULHAK:

12 Thank you, Mr. President. And good afternoon again, Your Honours  
13 and Counsel. I hope the Chamber may be willing to be somewhat  
14 flexible with the time allotted to us. We're at a - at a double  
15 disadvantage: we haven't filed a written submission, unlike the  
16 defence for Mr. Khieu Samphan, and also the Chamber has granted  
17 them more time than half an hour. But with that, I will proceed.  
18 Your Honours, the Co-Prosecutors oppose this application because  
19 it is our view and our respectful submission to Your Honours that  
20 the conditions in Internal Rule 63.3(b) continue to exist for a  
21 continuation of Mr. Khieu Samphan's detention, and we  
22 respectfully submit, Your Honours should exercise your discretion  
23 in this matter carefully and look into these elements in Rule  
24 63.3(b), apply them against the evidence and elements which I  
25 will put before you, and order Mr. Khieu Samphan's continued

1 detention.

2 There are several matters which require addressing, and I will  
3 start with this issue of alleged uncertainty or lack of  
4 foreseeability in the current proceedings and the completion of  
5 the current proceedings, which my friends on the other side  
6 submitted together with an argument about delays.

7 [15.11.56]

8 If I can make very brief legal submissions – and this is  
9 necessarily because, again, we haven't filed a written brief –  
10 the cases relied upon by our learned friends in relation to this  
11 issue of foreseeability originate or are judgements of the  
12 European Court of Human Rights. And a review of the cases relied  
13 upon illustrates that they're not relevant for present purposes.  
14 First, on the issue of certainty, of legal certainty, our learned  
15 friends rely on a number of cases; among them, Velichko, in  
16 Russia, a judgement of the 15th of January 2013; Tsitsiriggos, in  
17 Greece, a judgement of the 17th of January 2012; and Tsarkov, in  
18 Russia, a decision of the 16th of July 2009.

19 What is common to these decisions, Your Honours, is that they  
20 concern the legal certainty arising from provisions of  
21 legislation – that is, these are cases in which the European  
22 Court of Human Rights stated that domestic legislation must  
23 provide sufficient legal certainty as to conditions of detention.  
24 So they're not relevant for present purposes in that part.

25 [15.13.27]

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1 The cases do deal with the issue of indefinite detention, and of  
2 course we all agree that indefinite detention is contrary to law  
3 and, of course, contrary to justice. And each of these cases turn  
4 on specific facts, where there had been a lack of diligence and  
5 there had been undue delays in the prosecution of crimes before  
6 domestic courts.

7 I should also state that these cases are equally not applicable  
8 or of extremely limited relevance because they largely deal with  
9 pre-trial detention matters. And if you look at them, you will  
10 note that the majority of the cases cited by learned friends deal  
11 with cases of pre-trial detention during investigative  
12 proceedings, and so they're not relevant for present purposes as  
13 a matter of law.

14 The same applies to cases referred to in paragraph 23 of our  
15 learned friends' submissions, cases of: Letellier, in France;  
16 Labita, in Italy; Valderamma, in France. These cases, again, deal  
17 with pre-trial detention and facts very different from those  
18 before Your Honours.

19 Needless to say, all of the ECHR cases deal with allegations of  
20 crime that could not be compared to the case before Your Honours.

21 These cases are far less complex and simply turn on their own  
22 facts.

23 [15.15.07]

24 Additional cases cited in that section - again, all pre-trial  
25 decisions: Pyatkov, in Russia; Dogan, in Turkey; Leontiuc, in

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1 Romania; and I referred earlier, I believe, to the case of  
2 Velichko, in Russia – so all of those cases referred to in  
3 paragraph 23, again, largely deal with issues of pre-trial  
4 detention and turn on matters of domestic law and domestic  
5 criminal procedure. They're not relevant for present purposes,  
6 insofar as allegation of lack of certainty or delay are  
7 concerned.

8 Turning to this issue of alleged lack of certainty and delay, we  
9 submit that Your Honours should adopt the approach adopted by the  
10 Pre-Trial Chamber in relation to this matter, and that approach  
11 focuses on the length of detention and whether that length of  
12 detention is proportionate to the circumstances of the case,  
13 including its complexity and including the conduct of the entire  
14 procedure. The Pre-Trial Chamber dealt with these matters in its  
15 decision on Mr. Khieu Samphan's detention appeal of the 3rd of  
16 July 2009. The document reference is C26/5/26, and the paragraphs  
17 that relate for present purposes are from 68 to 70.

18 Again, the Pre-Trial Chamber revisits that matter in their  
19 decision of the 30th of April 2010, again on an appeal by Khieu  
20 Samphan; this document is number C26/9/12, and the relevant  
21 paragraph is paragraph 44.

22 So it is our respectful submission that the view of length of-  
23 [15.17.10]

24 MR. PRESIDENT:

25 Could you please identify the document numbers as well as the



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1 relevant ERN page for the record, please?

2 MR. ABDULHAK:

3 Yes, Mr. President. The second decision was a decision of the  
4 30th of April 2010, and the document number is C26/9/12. The  
5 relevant paragraph is paragraph 44. I apologize; I don't have the  
6 ERNs handy, simply because the paragraph number is an even more  
7 precise reference, but I can provide ERNs, if Your Honours  
8 prefer, immediately following the hearing.

9 Now, turning to this issue of certainty and length of time, it is  
10 our respectful submission that the arguments put forward by our  
11 learned friend with respect to the lack of foreseeability simply  
12 do not stand scrutiny, just as any argument about delay does not  
13 withstand scrutiny.

14 [15.18.30]

15 This trial commenced on the 21st of November 2011. That is in  
16 relation to evidentiary proceedings. And of course, on the 21st  
17 of November 2011, Your Honours heard the opening statements.  
18 Today is the 167th day of hearings, and in the - and in the  
19 intervening period, Your Honours have heard more than 50  
20 witnesses, and that is not including experts who testified in  
21 relation to fitness of Accused, it does not include the testimony  
22 of DC-Cam witnesses on authenticity of documents. The Proceedings  
23 have indeed taken place in an - in an orderly fashion. Of course,  
24 we have experienced challenges arising from delays caused by  
25 illness of the Accused, but there can be absolutely no credible

1 suggestion that at any stage of this case there has been undue  
2 delay or a lack of diligence on the part of the authorities.  
3 This case should be viewed, of course, on its own facts – and it  
4 is often remarked that this is one of the most complex criminal  
5 cases ever prosecuted – but if one were to engage in a  
6 comparative analysis, then, in our respectful submission, the  
7 more appropriate cases to look at are cases tried before the  
8 other internationalised or international tribunals dealing with  
9 cases of mass crime, and not domestic cases dealing with a charge  
10 of single murder, or robbery, or fraud.

11 [15.20.30]

12 This information is publicly available, so it can be reviewed by  
13 all parties and, of course, by Your Honours, but our own review  
14 of cases tried at the ICY indicates that more than – in more  
15 than 50 cases – in more than 50 cases, accused were detained for  
16 periods of five years or longer, while at the ICTR more than –  
17 that period of detention of five years or longer occurred in at  
18 least 31 cases. In fact, that average lengths of time for trial  
19 at this tribunal are significantly longer than what is projected  
20 by Your Honours in relation to completing the current trial.

21 Again, there can be no credible suggestion of uncertainty or  
22 "unforeseeability" in light of the recent hearings and in light  
23 of the decision Your Honours have rendered on the severance of  
24 the case. We have received guidance from the Supreme Court  
25 Chamber in relation to two options for proceeding to an

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1 expeditious completion of the trials before the ECCC, and Your  
2 Honours have taken that guidance. You have held extensive  
3 hearings with the parties and you have issued a fresh severance  
4 decision. And I'm sure, in due course, the reasons for that  
5 decision will present a plan for the completion of proceedings.

6 [15.22.20]

7 Turning on to another aspect of the length-

8 I apologize; we seem to have a problem with the audio system, but  
9 I will - I will proceed. I think we may be online now. I hear the  
10 French channel in my headphones; that's why I'm - my apologies,  
11 Your Honours, for that delay.

12 Looking at reasons that these trials take so long - of course,  
13 cases of mass crime are inevitably complex, they involve  
14 thousands of documents, they involve large numbers of witnesses  
15 and extensive legal arguments. And the record of this case shows  
16 that Mr. Khieu Samphan, through his defence, has vigorously  
17 defended the charges - against the charges, has filed numerous  
18 appeals, procedural requests, challenges to the admission of  
19 evidence, etc., all of which, of course, is within his rights.

20 But in our submission, against that background of the complexity  
21 of the case and of the diligence with which all parties have  
22 proceeded, it is simply unconvincing to argue that there have  
23 been undue delays and that we face a situation of uncertainty.

24 [15.24.32]

25 Just in recent months, the submissions from Mr. Khieu Samphan

1 have included appeals to the Supreme Court, challenges to the  
2 admission of new evidence, submissions on the applicability of  
3 witness statements, objections to other materials, etc., all of  
4 which, of course, are legitimate - are examples of a legitimate  
5 exercise of his rights to a fair trial, but all of which, of  
6 course, have an impact on the overall conduct of the procedure  
7 and have to be taken into account when the Chamber considers  
8 whether or not there has been undue delays in proceeding.

9 My learned friend also made reference to an early decision to  
10 sever the proceedings against Kaing Guek Eav, alias Duch, and to  
11 suggest that that led to a delay in the investigation of this  
12 case - this is actually a new argument that was made as part of  
13 the 87.4 application, so we've had limited time to consider it.

14 But if one looks at the written records filed by the  
15 Co-Investigating Judges during the investigation of Duch, one  
16 finds that close to 300 written records were put on the case file  
17 by the time the Closing Order against Duch was issued. Many of  
18 those documents, if not most of them, relate to broader issues in  
19 this case. So there was, in fact, no delay to the other Accused  
20 from the decision to forward the proceedings against Duch to  
21 trial separately.

22 [15.26.26]

23 In short, it is our submission that when one considers the  
24 complexity of this case, which is one of the most complex  
25 criminal cases ever prosecuted, when one considers the passage of

1 time since the alleged crimes, the volume of evidence that is  
2 required to be considered to arrive at the truth, the complexity  
3 of legal submissions such as submissions on the applicability of  
4 crimes in the 1975 period, and all the various objections that  
5 are put forward by the Defence and various legal arguments that  
6 are put forward by the Prosecution, one cannot credibly argue  
7 that there has been undue delay in the conduct of these  
8 proceedings. Contrary to the outcomes of cases put forward by our  
9 friends, from the European Court of Human Rights jurisprudence,  
10 there has been absolutely no undue delay or lack of diligence in  
11 the present proceedings.

12 Now, turning to the five grounds, which of course are disjunctive  
13 in Rule 63.3(b)(1), and taking as our starting point the Supreme  
14 Court Chamber Decision of the 6th of June 2011, we note that what  
15 is required upon a fresh application for release is a meaningful  
16 review - a full and meaningful review of whether the conditions  
17 in Rule 63.3 continue to be satisfied. This can be found in  
18 paragraph 49 of the Supreme Court Chamber's Decision, and this is  
19 the decision, of course, on the immediate appeal by Khieu Samphan  
20 on a prior application for his release; the document number is  
21 E50/3/1/4.

22 [15.28.59]

23 Our time is limited, and I do note that in their application, the  
24 defence for Khieu Samphan had not alleged that the condition in  
25 Rule 63.3(a) is no longer satisfied - that is, the condition that

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1 there are well-founded reasons to believe that the Accused may  
2 have committed the crime or crimes alleged against him. Given  
3 that that rule is not raised by the Defence, there's no  
4 allegation that that provision is not satisfied, but that their  
5 application, rather, deals with the conditions in 63.3(b), I will  
6 deal with those five conditions which, as I indicated, are  
7 disjunctive.

8 I will start by looking at 63.3(b)(1) and (2), and I will deal  
9 with these at the same time. Of course, these provisions deal  
10 with the need to prevent the charged person from exerting  
11 pressure on any witnesses or victims, to prevent any collusion  
12 between the charged person and accomplices of crimes falling  
13 within the jurisdiction, and also to preserve evidence or to  
14 prevent its destruction.

15 We submit that there elements now on the case file which indicate  
16 that a release of Mr. Khieu Samphan would create a-

17 [15.30.44]

18 MR. PRESIDENT:

19 I don't know why English channel is now coming through my ears.

20 There is no Khmer at all now.

21 (Short pause, technical problem)

22 [15.31.15]

23 Co-Prosecutor, you may now proceed. I don't whether other people  
24 in the courtroom had experienced the same thing, but perhaps  
25 (inaudible) now go back on track.

1 You may re-state what you just indicated, please.

2 MR. ABDULHAK:

3 Thank you, Mr. President. So I will re-state the last couple of  
4 sentences.

5 I will deal first with the conditions in Internal Rule 63.3(b)(1)  
6 and 63.3(b)(2). The first condition deals with - or requires a  
7 consideration of whether detention is necessary to prevent the  
8 Accused from exerting pressure on witnesses, to prevent any  
9 collusion between him and any accomplices, whereas 63.3(b)(2)  
10 deals with the need to preserve evidence or to prevent its  
11 destruction.

12 And I submitted, Your Honours, that there are now elements on the  
13 case file which indicate that a release of Mr. Khieu Samphan at  
14 this stage in the proceedings would create a material risk that  
15 pressure on witnesses or victims may occur, that there may be  
16 collusion with accomplices or alleged accomplices, and that  
17 evidence may be endangered.

18 [15.32.58]

19 Your Honours will recall that on the 15th of August and the days  
20 following, we heard testimony of witness Sa Siek. In the course  
21 of her testimony, Madam Sa Siek confirmed the contents of a  
22 report issued by the Office of the Co-Investigating Judges, which  
23 indicated that this witness and her husband - now deceased but  
24 also a witness in this case - had been approached by Mr. Khieu  
25 Samphan's wife and asked questions about matters at issue in

1 these proceedings.

2 This incident should be viewed in context.

3 I'll give first the reference for that OCIJ report that I refer  
4 to. This is A110/II – correction, Your Honours; the correct  
5 document number for that report is D369/40 – D369/40. And that  
6 document indicates a visit by Khieu Samphan's wife to Madam Sa  
7 Siek and her husband. That information is contained at Khmer ERN  
8 00498437, French ERN 00498434, and English, 00492720.

9 [15.35.10]

10 And as I said, this incident should be viewed in context. On the  
11 10th of January 2008, the Co-Investigating Judges sent a  
12 memorandum to all the parties in this case – and this document  
13 A110/II – in which they informed the parties that they are  
14 prohibited from conducting their own investigations during the  
15 conduct of a judicial inquiry. That instruction is contained at  
16 Khmer ERN 00157736; French, 00157743; and English, 00157740. And  
17 the instruction is clear – I quote – this is addressed Nuon Chea  
18 – Nuon Chea's defence, but a copy is sent to all of the parties –  
19 quote: "You have informed us of your intention to 'conduct [your]  
20 own investigation' and indicate that you 'reserve the right to  
21 interview any individual...'" End of quote.

22 A little bit further down – quote: "Again, it appears necessary  
23 to distinguish this legal system from that of other international  
24 and common law systems. Before this Court, the power to conduct  
25 judicial investigation is assigned solely to the two independent



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1 Co-Investigating Judges and not to the parties. There is no  
2 provision which authorises the parties to accomplish  
3 investigative action in place of the Co-Investigating Judges..."  
4 [15.36.55]

5 This memo is dated 10th of January 2008.

6 In the period that followed, both Sa Siek and her husband - now  
7 deceased - Mr. Tha Sot, were interviewed by OCIJ. Their records  
8 of OCIJ interviews can be found in: D200/6 for Sa Siek; and  
9 E3/464 for Tha Sot.

10 In December 2009, we filed an investigative request for these  
11 witnesses to be re-interviewed. This document is D256.

12 And now returning to the OCIJ report that I made mention of  
13 earlier, it indicates that by March - by early March 2010, Khieu  
14 Samphan's wife had made the trip all the way to Battambang to  
15 speak to these individuals about events that were described in  
16 their OCIJ statements. She confirmed - that is, Madam Sa Siek  
17 confirmed this incident in her testimony, and that can be found  
18 in the transcripts of the 16th and the 20th of August. The 16th  
19 of August transcript, document number E1/109.1, and the relevant  
20 section of my questioning of this witness on this issue starts at  
21 Khmer ERN 00837158, French ERN 00836969, and English, 00836845.  
22 The 20th of August transcript number, E1/1100.1; the relevant  
23 portion begins at Khmer ERN 00837047; French, 00838672; and  
24 English, 00838548.

25 In those-

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1 [15.39.31]

2 MR. PRESIDENT:

3 Co-Prosecutor, you may read the ERN numbers again. And when it  
4 comes to ERN numbers and document identification, please slow  
5 down a little bit.

6 MR. ABDULHAK:

7 I do apologize, Mr. President. So those ERNs for the transcript  
8 of the 20th of August were: Khmer, 00837047; French, 00838672;  
9 and English, 00838548.

10 In summary, Your Honours, this is an instance where one of the  
11 individuals that Mr. Khieu Samphan now proposes to reside with  
12 upon his release has made contact with witnesses who had been  
13 interviewed by OCIJ, witnesses who were of interest to OCP, and -  
14 and in circumstances where the Co-Investigating Judges had given  
15 clear instruction that parties are not to engage in their own  
16 investigation.

17 [15.40.53]

18 Time is limited, so I can't read all of the relevant passages,  
19 but if Your Honours examine them, you will note that the purpose  
20 of that visit was to clarify certain events that, allegedly, Mr.  
21 Khieu Samphan could not recall. One can reasonably infer that  
22 this visit, in fact, was at the behest of Mr. Khieu Samphan,  
23 because it was apparently designed to clarify certain facts on  
24 his behalf.

25 In our submission, this gives rise to a clear basis to conclude

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1 that, if released, Mr. Khieu Samphan, living in his family home  
2 together with his family members or on his own, may seek to  
3 contact witnesses or accomplices and may seek to interfere with  
4 evidence. His propensity to do this is illustrated by the  
5 incident I described.

6 Turning to 63.3(b)(4) and the risk to Khieu Samphan if released,  
7 we respectfully submit that this risk continues to exist. It was  
8 found to exist by the Pre-Trial Chamber in 2009 and in 2010.

9 To state the obvious, allowing Mr. Khieu Samphan to live at his  
10 family home and to travel to and from the ECCC creates an  
11 unacceptable risk. It makes him an easy target to anyone who  
12 would wish to harm him. And it would be a very simple matter to  
13 predict the times at which he is travelling to and from the court  
14 for anyone who wished to cause him harm and, thereby, prevent  
15 these proceedings from coming to an orderly conclusion.

16 [15.42.54]

17 The attitudes towards this Accused and other alleged leaders of  
18 the Khmer Rouge continue to be coloured by strong feelings of  
19 revenge on the part of victims. Contrary to what my learned  
20 friend submitted, the surveys that are before Your Honours – and  
21 here I refer to surveys that we have filed previously, so not the  
22 new evidence that I put forward today – confirm that not just the  
23 civil parties, but the public at large, the Cambodian people at  
24 large, continue to harbour strong feelings of revenge towards the  
25 Accused.

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1 Document E50/3/1/1.1.4, which is a December 2010 study based on  
2 interviews with over 1,000 respondents, only a fifth of whom were  
3 civil parties, found that approximately 40 per cent of people in  
4 the general population continue to harbour feelings of revenge  
5 towards the former Khmer Rouge and the Khmer Rouge leadership.  
6 And that document contains additional statistics that confirm  
7 these findings and the basis - and provide a basis to define that  
8 an unacceptable risk does exist and that if Mr. Khieu Samphan  
9 were to be released, the proposed arrangement would simply not  
10 provide sufficient security for him.

11 [15.44.33]

12 On this, one has to keep in mind earlier incidents to which my  
13 learned friend did refer: the attack on him, on Mr. Khieu  
14 Samphan, which occurred in 1991; this is described in  
15 D29-Attachment 96. Contrary to what my friend says, the  
16 contemporaneous media report shows that while there was some  
17 suggestion of a politically motivated initiation of unrest - that  
18 very quickly, a mob swelled to 10,000 people who smashed windows  
19 and attacked Mr. Khieu Samphan, who found himself, according to  
20 this report, "beaten, whimpering", and "cowering half inside a  
21 bedroom closet".

22 By the year 2000, when Mr. Khieu Samphan contemplated addressing  
23 the public in relation to alleged Khmer Rouge crimes, he made -  
24 he made it a condition that either the international community or  
25 an independent organization guarantees his safety. You will find

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1 this in D29-Attachment 95, another document that is on the case  
2 file.

3 It is our submission that at this stage of the proceedings, with  
4 all of the information that is now publicly available about the  
5 crimes and about Mr. Khieu Samphan's role therein, and this close  
6 to the completion of the trial, it would simply be an  
7 unacceptable risk to release him, to expose him to these risks,  
8 and potentially jeopardize the completion - an orderly  
9 completion, of this trial.

10 [15.46.36]

11 I would note that the Supreme Court Chamber, in their  
12 consideration of this - of a different condition, of a condition  
13 of risk of flight, found all of these matters to be relevant. And  
14 Your Honours will find that at paragraph 54 of the Supreme Court  
15 Chamber's Decision. And we agree with the Supreme Court Chamber.  
16 In our submission, all of these factors go towards establishing  
17 both an unacceptable risk to Mr. Khieu Samphan's own safety and,  
18 by extension, under Rule 63.3(b)(3), which relates to ensuring  
19 his presence, they create an unacceptable risk that his presence  
20 cannot be or may not be secured if he is released.

21 I'm mindful of the time and I will bring my submissions to a  
22 close very briefly.

23 Further on the issue of risk of flight, my learned friends have  
24 submitted that Mr. Khieu Samphan has happily and willingly  
25 submitted himself to the jurisdiction of this Court and that

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1 there is no reason to doubt that he would continue to do so if he  
2 is released.

3 We, respectfully, disagree. There are a number of prior  
4 statements by Mr. Khieu Samphan which indicate that he is not  
5 willing to participate in these proceedings and that he, in fact,  
6 challenges the very legitimacy of these proceedings.

7 [15.48.17]

8 There are two statements of relevance in particular.

9 Document E3/583, an October 2007 interview of Mr. Khieu Samphan –  
10 the relevant references are: Khmer, 00424179; French, 00643364;  
11 and English, 00680014 – where, in October 2007, Mr. Khieu  
12 Samphan, commenting on Nuon Chea's arrest, says the following –  
13 quote:

14 "Being old he is seemingly disrespected by such an arrest and  
15 detention. My feelings are slightly affected by this. I am  
16 referring to the legitimacy of the Tribunal. Firstly I refer to  
17 our Khmer tradition in which we pay respect to our elders. At his  
18 age, he should not be prosecuted."

19 A little bit further down: "Secondly, I don't mean to argue right  
20 or wrong, but I have taken some law classes and although I have  
21 not put them in practice, I am questioning the legitimacy of this  
22 Tribunal."

23 [15.49.36]

24 A second statement made in November 2006, E3/108 – Khmer ERN  
25 00347038; French ERN 00613205; and English, 00000929 – quote:

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1 "What do you think about the upcoming [trial]?"

2 Mr. Khieu Samphan's response: "I think we should learn from our  
3 history. We should put our national interest ahead. We should do  
4 everything for the interest of our nation. We should not listen  
5 to foreigners. We should follow Khmer traditional way of  
6 thinking. We have to ask questions like, is this tribunal the  
7 right thing to do? People who fought against foreigners will be  
8 charged for killings (sic) people and brought to justice. For  
9 example, myself. What will happen to me and what did I do. They  
10 can prosecute me because they are now in power. Yet, I want to  
11 them think as Khmer not as foreigner. I want them to think about  
12 the interests of Khmer. Do not follow the United States. Do not  
13 listen to them."

14 [15.51.07]

15 And, finally, in another interview, D313.11.1 – Khmer ERN  
16 00807474; French ERN 00826496; and English, 00815896 – again  
17 asked about the creation of the tribunal, Mr. Khieu Samphan  
18 comments:

19 "I have never supported the creation of this Tribunal, but if  
20 they have already done so, I cannot say anything. I will not say  
21 anything because I will gain nothing. I do not talk about this.  
22 Let them do it because they have power. However, I still believe  
23 that only my people, the Cambodian people, can truly judge me,  
24 not these judges. These judges abuse their power and do whatever  
25 they want to, but Cambodian citizens still respect and love me..."

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1 Your Honours, in our respectful submission, these statements –  
2 again, taken in context and looked at together with the other  
3 evidence I referred to about attempted influence on witnesses –  
4 do create an unacceptable risk that, if released, Mr. Khieu  
5 Samphan may not be available for a – for a continuation of the  
6 trial or that he may interfere with witnesses or evidence, and  
7 further, that his release may lead to a disruption – an  
8 unacceptable disruption of public order. In our respectful  
9 submission, to release him now, at this stage of the trial, only  
10 months before its conclusion, and shortly before judgement is to  
11 be rendered by your judgement – by Your Honours, would create,  
12 clearly, an unacceptable risk, a risk that should not be taken.  
13 And Your Honours should therefore exercise your discretion to  
14 keep Mr. Khieu Samphan detained, while of course assuring him  
15 that we will, all together, endeavour to bring this trial to an  
16 expeditious conclusion.  
17 I apologize for having taken extra time and I thank Your Honours.

18 [15.53.41]

19 MR. PRESIDENT:

20 Thank you.

21 Next, we would like to hand over to counsel for Mr. Khieu Samphan  
22 to reply to the submission made by the Prosecution.

23 MR. VERCKEN:

24 Thank you, Mr. President. Well, to respond to the different  
25 arguments that were raised by the Prosecution, I will start with



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1 jurisprudence from the ECHR, that I referred to earlier.

2 In order to support the fact that when the ECHR examines the  
3 length of provisional detention, it examines not only this in  
4 view of the investigation, but also takes into account the  
5 judgement as well. And now we are in the judgement phase.

6 [15.54.52]

7 This is the meaning behind the Soria Valderrama case decision by  
8 the ECHR of 26 January 2012. That was also what I meant when  
9 referring to this, which is to say that this Court takes into  
10 account not only the investigation phase, but also the judgement  
11 phase, in ruling on provisional detention. And the ECHR also said  
12 in that regard that whether there's delay or not, risks  
13 associated with provisional detention diminish over time.  
14 So, prosecutor - the prosecutor asked that our request be  
15 rejected, saying that this is a very complex case involving mass  
16 crimes, it is normal that the case is long, and in fact, all  
17 cases of this nature before international courts are always very  
18 long. He even added that the Defence had the audacity of  
19 defending itself, which - I don't even believe the prosecutor can  
20 believe that kind of argument.

21 But now, getting back to this idea of a complex case of mass  
22 crimes and that trials are also very long before other  
23 international courts, I would like to remind all of you that Your  
24 Chamber is the only one to prosecute facts so long after these  
25 facts were committed. We are 35 years after the events that

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1 you're going to have to assess, and there is no other  
2 international court that has been in a similar situation, which  
3 somehow makes all of these comparisons a little bit - not  
4 well-grounded. Thirty-five years after the facts - I mean, that's  
5 a long time. And there's also the fact that you are prosecuting  
6 people who are also very old.

7 [15.57.20]

8 So I don't believe that there are other examples, in other  
9 international courts, of similar situations. For example, Khieu  
10 Samphan is 82 years old, and this you should also take into  
11 account when you are going to hand down your decision.

12 And without trying to frustrate you, there's also the context of  
13 uncertainty that we have to take into account. And I believe that  
14 there is also no other example of international court that has  
15 faced this many difficulties as we have faced here, whether it be  
16 financial difficulties, whether it be political difficulties, or  
17 even the interpreters' strike. All of these difficulties, you  
18 cannot just cast them away as if they had never existed and  
19 continually saying that everything is moving along smoothly.  
20 There are difficulties, and you are assessing facts that are  
21 ancient and people who are quite aged. Khieu Samphan has been  
22 detained for the past five months and - five years and four  
23 months, and there are sufficient guaranties for you to release  
24 him on bail.

25 [15.58.41]

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1 The prosecutor also said that Mr. Khieu Samphan has challenged  
2 the legitimacy of the Court - supposedly. And did you see this  
3 yourselves, up until now? I don't think that this was the case  
4 before this Chamber, and his defence was here all the time to see  
5 this.

6 And there is a document that was mentioned. This is another  
7 interview that - of Khieu Samphan a few days later after the  
8 interview mentioned by the Co-Prosecutor, E3/588. It's an  
9 interview conducted by the Voice of America by phone, and Khieu  
10 Samphan says the - well, "let the tribunal summon me; no matter  
11 when, they just have to summon me, and I will go." So it's clear  
12 - it's perfectly clear. And things, of course, didn't happen that  
13 way, but had it been that way, he would have come then.

14 So, I also believe that in order to decide on this issue with a  
15 clear mind, you should keep in mind that we are facing a  
16 double-sided trial: adversarial as well as accusatorial. In  
17 France - the judgement phase is much shorter in France because  
18 the tribunal relies more on the investigation. And the people who  
19 criticize - or not - this kind of trial often say that the trial  
20 is almost a re-reading of the investigation. Here, we are in a  
21 mixed situation. You take time, and of course it led to quite a  
22 few misunderstandings, especially from - on the part of my  
23 colleagues, who have experience in the Anglo-Saxon system. It  
24 created difficulties. As you know, for example, you had to listen  
25 to witnesses. So, all of this had consequences on the length of

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1 the trial, and the two-headed aspect of this trial also explains  
2 - also should be taken into account.

3 [16.01.32]

4 And, finally speaking, the prosecutor tells us - or gives us an  
5 example that - showing that Khieu Samphan could exert pressure on  
6 witnesses, and he refers to this lady who came to testify - and  
7 you probably remember - Ms. Siek, yes.

8 She was very clear. She said - and I quote here the segment when  
9 she answers Anta Guissé, at E1/109.1, French ERN 00836971, and  
10 this is Anta Guissé putting the question to her: "If I understood  
11 your answer properly, she encouraged you to say all of the truth  
12 on what you knew about Mr. Khieu Samphan?"

13 And Siek's answer: "Yes, that's so."

14 That's what she said. She said that "if the investigators put  
15 questions on Khieu Samphan, we have to say the entire truth". So  
16 this is exactly how the newspapers relayed this information.

17 [16.03.09]

18 And I have here an article from "The Cambodia Daily" from - and  
19 it says clearly that "Khieu Samphan was said to cooperate with  
20 the tribunal". So I think that in terms of putting pressure on  
21 witnesses, here - this is a complete fantasy on the part of the  
22 Prosecution.

23 These are the observations I wish to make to respond to the  
24 Prosecution. Thank you.

25 MR. PRESIDENT:

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1 Thank you.

2 The hearing to hear the submissions by parties to the proceeding  
3 concerning the application for Mr. Khieu Samphan's release on  
4 bail has come to an end. The Chamber wishes to thank you, all the  
5 parties to the proceedings.

6 The Chamber will examine this and the decision on this will be  
7 rendered in due course, in accordance with Rule 82, subparagraph  
8 3, of the Internal Rules.

9 [16.04.30]

10 The Chamber wishes to also thank you, all people concerned,  
11 including staff of the Trial Chamber and the interpreters, for  
12 doing their best to support the smooth conduct of the trial  
13 proceedings.

14 I may now pronounce that the Court is adjourned and that security  
15 personnel are instructed to bring Mr. Khieu Samphan back to the  
16 detention facility and have him returned to the courtroom by  
17 Monday, the 22nd of April, at 9 a.m.

18 (Court adjourns at 1605H)

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