



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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Chambres Extraordinaires au sein des Tribunaux Cambodgiens

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អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême

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TRANSCRIPT OF APPEAL PROCEEDINGS

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Case File N° 002/19-09-2007-ECCC/SC

6 July 2015

Before the Judges: KONG Srim, Presiding
Ya Narin
Agnieszka KLONOWIECKA-MILART
SOM Sereyvuth
Chandra Nihal JAYASINGHE
MONG Monichariya
Florence N. MWACHANDE-MUMBA

The Accused: NUON Chea
KHIEU Samphan

Lawyers for the Accused:
Victor KOPPE
LIV Sovanna
SON Arun
KONG Sam Onn
Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:
Volker NERLICH
SEA Mao
Sheila PAYLAN
Paolo LOBBA
PHAN Thoeun

Lawyers for the Civil Parties:
Marie GUIRAUD
HONG Kimsuon
SIN Soworn
TY Srinna
VEN Pov

For the Office of the Co-Prosecutors:
Nicholas KOUMJIAN
SONG Chorvoin

For Court Management Section:
UCH Arun

I N D E X

Mr. TOIT Thoeurn (SCW-5)

Questioning by The President KONG Srim	page 2
Questioning by Mr. KOPPE	page 6
Questioning by Mr. VERCKEN	page 70
Questioning by Mr. KONG Sam Onn	page 88
Questioning by Ms. GUIRAUD	page 93
Questioning by Ms. SONG Chorvoin	page 103
Questioning by Mr. KOUMJIAN.....	page 108
Questioning by Judge MWACHANDE-MUMBA	page 114
Questioning by Judge MONG Monichariya	page 115
Questioning by Judge SOM Sereyvuth.....	page 120
Questioning by Judge KLONOWIECKA-MILART.....	page 122
Questioning by Judge YA Narin	page 126
Questioning by Judge JAYASINGHE.....	page 129

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Ms. GUIRAUD	French
Judge JAYASINGHE	English
Ms. KLONOWIECKA-MILART	English
Mr. KONG Sam Onn	Khmer
The President (KONG Srim)	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge MONG Monichariya	Khmer
Judge MWACHANDE-MUMBA	English
Judge SOM Sereyvuth	Khmer
Mr. SON Arun	Khmer
Ms. SONG Chorvoin	Khmer
Mr. TOIT Thoeurn (SCW-5)	Khmer
Mr. VERCKEN	French
Judge YA Narin	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0913H)

3 MR. PRESIDENT:

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

5 Today the Supreme Court Chamber hears testimony of a witness

6 SCW-5 -- that is, Mr. Toit Thoeurn. And the Chamber apologises

7 for being a little bit late due to traffic congestion this

8 morning.

9 And greffier, please report the attendance of the Parties and

10 other individuals at today's proceedings.

11 [09.15.12]

12 THE GREFFIER:

13 Mr. President, for today's proceedings, all Parties to this case

14 are present, except the Accused Nuon Chea, who is not present in

15 the courtroom. The Accused, Khieu Samphan, is present. And

16 Co-Prosecutors and Lead Co-Lawyers for civil parties are present.

17 There are civil parties who are present today, and there are nine

18 of them, namely: Soeun Sovandy, Seng Sivutha, Huo Chantha, Sophan

19 Sovany, Yos Phal, Pech Srey Phal, Sar Sarin, Chau Ny, and Sou

20 Sotheavy. Thank you.

21 MR. PRESIDENT:

22 Counsels for the Accused Nuon Chea, please inform the Chamber of

23 your -- of the whereabouts of your client, or his status.

24 [09.16.32]

25 MR. SON ARUN:

2

1 Mr. President, we already have a document submitted to the
2 Chamber regarding the presence of my absent (sic). And I don't
3 know why the greffier doesn't hand over the document to you, Mr.
4 President.

5 MR. PRESIDENT:

6 And greffier, have you received a waiver from the Accused?

7 THE GREFFIER:

8 Yes, Mr. President. In fact, the Chamber -- the greffier received
9 a waiver since last week from the Accused and his counsel.

10 MR. PRESIDENT:

11 Very well. Since the Accused requested to waive his direct
12 presence in the courtroom, and in addition to the medical report
13 presented by the duty doctor for the Accused at the ECCC, who
14 recommends that Nuon Chea shall follow the proceedings from a
15 holding cell downstairs, the Chamber grants Nuon Chea his request
16 to follow the proceedings from the room downstairs.

17 And the AV personnel, please link the proceedings to the room, so
18 that he can follow it remotely.

19 And Court officer, please usher the witness SCW-5 -- that is,
20 Toit Thoeurn, into the courtroom.

21 (Witness enters courtroom)

22 [09.19.55]

23 QUESTIONING BY THE PRESIDENT:

24 Good morning, Mr. Witness. You are summoned by the Supreme Court
25 Chamber to testify before it and that is in relation to case --

1 to the Appeal proceedings in Case 002/01, where the Accused Nuon
2 Chea and Khieu Samphan are convicted by the Trial Chamber. And
3 first, allow me to ask some background information.

4 Q. First of all, what is your name?

5 MR. TOIT THOEURN:

6 A. My name is Toit Thoeurn.

7 Q. When and where were you born?

8 A. I cannot recall the date of birth; however, it was in January
9 1955.

10 [09.21.10]

11 Q. Do you have that document on your identification? You actually
12 received that letter, and on this document there is your date of
13 birth and your current address. Please refer to that document.

14 And you can actually read it.

15 A. Yes, actually, I thumb-printed that document.

16 Q. However, you need to state your date of birth and current
17 address so that it is on record. Please proceed.

18 A. I was born in January 1955 in Kanghat (phonetic) village,
19 Kantueu commune, Banan district, Battambang province.

20 Q. What is your nationality and your occupation?

21 A. I am Khmer, and I'm a member of the Royal Army of Cambodia.

22 Q. And what is your rank?

23 A. I am a brigadier general.

24 [09.23.00]

25 Q. What are the names of your parents and are they alive?

1 A. My father is Loek Toat, deceased; and my mother's name is Yang
2 Soeum. She is also deceased.

3 Q. What is your wife's name and how many children do you have?

4 A. I -- my ex-wife died, and I had -- we have five children from
5 that marriage. And my current wife is alive and we have two
6 children.

7 Q. What is the name of your current wife?

8 A. My ex-wife Yong Suo (phonetic) and my current wife is Thau
9 Chanthan.

10 Q. The two children from your current marriage, are they both
11 daughters or sons? And where is your current address?

12 [09.24.15]

13 A. The two children from my current marriage is one son and one
14 daughter. Currently, I live in Samraong Pir village, Sangkat
15 Chamkar Samraong, Battambang city, Battambang province.

16 Q. I'd like to inform you of your rights and obligations as a
17 witness before the Chamber.

18 You have the right not to respond to questions or to make
19 statements that lead to self-incrimination. And you must respond
20 to questions, except for question or statements that incriminate
21 you. And you must tell the truth based on what you know, heard,
22 saw, remember, experienced or observed first-hand the events
23 relating to the questions.

24 Did you ever provide answers before an investigator of the
25 Co-Investigating Judges?

1 A. Yes, I provided my answers in 2013 before an OCIJ
2 investigator.

3 Q. And had you ever provided answers before the Trial Chamber?

4 A. No, I have not.

5 MR. PRESIDENT:

6 The Chamber would like now to hand the floor to the co-counsel
7 for the Accused Nuon Chea to put questions to this witness. And
8 you can proceed, Counsel.

9 [09.26.45]

10 MR. KOPPE:

11 Thank you, Mr. President. Good morning, Your Honours. Good
12 morning, counsel. Good morning, Mr. Witness. My name is Victor
13 Koppe. I am the International Co-Lawyer for Nuon Chea.

14 BY THE PRESIDENT:

15 Counsel, please sit down. Actually, I need another question to be
16 put to the witness. My apology.

17 Q. Witness, I have another question to put to you -- that is,
18 your relationship to the two Accused or to any of the civil
19 parties in this case. Are you related by blood or by law to any
20 of the Accused or the civil parties in this case?

21 MR. TOIT THOEURN:

22 A. I am not related to any of the two Accused.

23 Q. What about the civil parties?

24 A. No, I don't have any.

25 [09.28.00]

6

1 Q. Mr. Witness, please respond again as I did not hear it.

2 A. Mr. President, I don't have any relationship with them.

3 MS. SONG CHORVOIN:

4 Mr. President, for a proper transcript, could you please direct
5 your question to the witness as to whether he has taken an oath.

6 BY THE PRESIDENT:

7 Actually, I was about to ask that question.

8 Q. And Mr. Witness, have you taken an oath before your appearance
9 this morning?

10 MR. TOIT THOEURN:

11 A. Yes, I have taken an oath before the Iron Club Statue.

12 MR. PRESIDENT:

13 If that is the case, then thank you. And yes, Defence Counsel,
14 you may resume your questioning.

15 [09.29.04]

16 QUESTIONING BY MR. KOPPE:

17 Thank you again, Mr. President, and good morning again, Mr.
18 Witness.

19 Q. You just stated your name to the President, Mr. Witness. What
20 was your birth name?

21 There might be something wrong with him hearing my question, Mr.
22 President.

23 Mr. Witness, I will repeat my question. Could you tell us what
24 your name of birth -- at birth was?

25 MR. TOIT THOEURN:

1 A. My birth name is Thoung Mang.

2 Q. Did you also have other names, or this was your name of birth,
3 and then you subsequently carried that name, or did you have
4 other names?

5 A. Yes, I have another name later on.

6 [09.31.38]

7 Q. Could you please tell that other name?

8 A. Yes, I can tell you. My official name which I am using is Ham,
9 and I go by another name -- that is, Thoeurn, and I use it every
10 day.

11 Q. Mr. Witness, in your WRI, your Written Record of
12 Investigation, you have stated that at one point in time you
13 became the foster son of Moul Sambath, also known as Ros Nhim.
14 Could you tell us how that came about? Why did you become Ros
15 Nhim's foster son?

16 A. I have no reason why I was adopted by him, but I would like to
17 tell that I knew Ros Nhim in 1960. He went to stay in my house at
18 my farm. He would stay in my house two days a month, and I was
19 his -- he would stay in my house once in every two or three
20 months, and I was there to -- I was in my house and serve -- and
21 supported -- and give support -- assistance to him.

22 [09.34.08]

23 Q. Was the reason that Moul Sambath, also known as Ros Nhim,
24 coming to your house because he was hiding underground as a
25 member of the Communist Party of Kampuchea?

1 A. I -- at the time, I did not know that he was part of any
2 Party. I was young at that time and my house was located in
3 orange plantation. It was far away from other houses.

4 Q. Do you know whether Ros Nhim had any other children and/or
5 foster children, adopted children?

6 A. He had biological children and also foster children, as me.

7 Q. Let me ask you some questions about his biological children.
8 Is it correct that his eldest son is named Cheal alias Chhnang?

9 A. His eldest son's name was Cheal alias Chhnang.

10 Q. Does he have any other biological children?

11 A. Yes, another child names was Thy (phonetic). Kanh Chraeng
12 (phonetic), Kanh Chraeng (phonetic) was the youngest daughter.

13 [09.36.30]

14 Q. What about his adopted children? How many other adopted
15 children did he have and who were they? What were their names?

16 A. As far as I know, there is one adopted child named Loek Soeut
17 (phonetic) alias Vung, and Khuong (phonetic), Nam (phonetic),
18 Thoung (phonetic). They were all his adopted children.

19 Q. What about an adopted son called Hing (phonetic)?

20 A. Could you repeat the name again? It is not clear to me.

21 Q. Another foster son, possibly with the name Hing (phonetic).

22 A. Yes, Hing (phonetic). There is the name Hing (phonetic).

23 Q. Was Hing (phonetic) at one point in time between 1975 and '79
24 division commander, commander of one of Northwest Zone's
25 divisions?

1 A. I do not recall it well. It happened long ago -- a long time
2 ago, but there was an adopted child who was a commander.

3 [09.39.07]

4 Q. Do you remember what Vung alias Soeut's function was between
5 '75 and '79?

6 A. Could you repeat the question? I do not get it fully.

7 Q. You just confirmed that another foster son is called Vung
8 alias Soeut. Do you recall what his, if any, function was between
9 1975 and 1979?

10 A. Soeut alias Vung was a commander of Sector 4 in that period,
11 and later on he was the deputy of that Sector 4.

12 Q. You just spoke about the oldest son of Ros Nhim, Cheal alias
13 Chhnang. What was his function between 1975 and '79?

14 A. Cheal alias Chhnang was the deputy chief of Sector 5 -- or
15 perhaps he was the chief of Sector 5.

16 [09.41.27]

17 Q. Do you know to whom Cheal alias Chhnang marry? Who was his
18 wife?

19 A. I do not recall his name -- his wife's name, but I may recall
20 the father-in-law of Chhnang. He was So Phim, the chief of East
21 Zone.

22 Q. Do you recall when Cheal alias Chhnang got engaged to the
23 daughter of So Phim?

24 A. I do not recall when he got engagement with the daughter. I
25 knew about this fact after they became wife and husband.

1 Q. Do you recall when they became wife and husband?

2 A. I do not recall the exact date, but as far as I can tell you,
3 I realized that they became wife and husband in 1978. At that
4 time, the wife got pregnant.

5 Q. Would it be approximately correct if I were to tell you that
6 Cheal alias Chhnang got engaged to So Phim's daughter in August
7 '75 and got married to her in January 1976? Would that be about
8 right?

9 A. As I said, I am not sure.

10 Q. Do you have any recollection as to why Ros Nhim's son married
11 So Phim's daughter? What was the reason?

12 A. I do not know about that.

13 [09.44.17]

14 Q. Do you recall whether your foster father ever went to the East
15 Zone to visit his daughter-in-law in 1975 or 1976?

16 A. Yes.

17 Q. Do you remember how often your foster father went to visit his
18 daughter-in-law? How often did that happen and where did he go,
19 and how long did he stay? Do you remember?

20 A. What I know is that he visited that place first time during --
21 after the conference in Phnom Penh was completed. I did not know
22 whether he was there to visit his daughter-in-law or for any
23 other reason. He arrived and visited East Zone for one week,
24 after which he went back to his zone, North Zone.

25 [09.45.58]

1 Q. Are you referring to the conference in Phnom -- conference in
2 Phnom Penh in May '75, a month after the liberation of Phnom
3 Penh?

4 A. I do not recall whether it was one month after the liberation.
5 He came to join the conference, and at that time I was
6 accompanying him, providing his security. At that time, National
7 Road 5 had not been connected yet with Udong, and the -- some
8 parts of the roads were interrupted with bad condition, and we
9 had to take a cut road passing Romeas.

10 Q. Do you remember whether So Phim ever came to the Northwest
11 Zone to visit his daughter and his son-in-law?

12 A. Yes, he used to pay a visit in the Northwest Zone to visit his
13 child.

14 Q. And when he would come to the Northwest Zone to visit his
15 child, did he also use these occasions to speak to your foster
16 father Nhim?

17 A. He went to that place and shared the same house, and I did not
18 know what kind of discussion they had together.

19 [09.48.39]

20 Q. Do you recall if other high-ranking cadres or military
21 commanders would join the meetings that So Phim had with your
22 father, your foster father?

23 A. I could not recall it. Yes, perhaps there were, but as I said,
24 I could not recall it all.

25 Q. I might come back to that, Mr. Witness.

12

1 Do you recall So Phim well from that time? Did you speak to him
2 at occasions? What kind of person was he?

3 A. I may have forgotten all the detail of that information. If it
4 was -- if it had been asked shortly after that time, I would have
5 known, and I rarely talked to him, or chit-chatted with him.

6 Q. Now I presume, Mr. Witness, that you know, or you knew your
7 foster father Ros Nhim, much better. Can you describe him for us?
8 What kind of person was your foster father in terms of character,
9 in terms of anything that you might recall today?

10 A. He was called Ta Nhim because he had a smiling face all the
11 time. He never blamed any of his immediate subordinates.

12 [09.51.15]

13 Q. Anything else you recall from him?

14 A. Could you repeat the question? I do not get it.

15 Q. What do you recall of him in terms of his work, for instance?
16 Do you remember him making decisions, military decision, for
17 instance, in the war? What can you tell us about him? What do you
18 remember?

19 A. You want to ask me about the period during the wartime or the
20 period after the liberation?

21 Q. I suppose both, between 1970 and his death in June 1978.

22 A. During the wartime in 1970s, he was located in Thom (phonetic)
23 mountain, close to Kravanh mountain. His office name was Office
24 20.

25 Q. I will move on, but I will surely come back to him, Mr.

1 Witness. One last question on his -- on Ros Nhim in this sense;
2 it might be a peculiar question, but the defence team for Nuon
3 Chea has tried for, I think, two or three years already to
4 somehow get a photograph of your foster father, and until now, we
5 have been unable to find any. Do you, by any chance, have a photo
6 from Ros Nhim somewhere?

7 [09.53.48]

8 A. I do not have his photo, but in 1979 when I led the Vietnamese
9 troops to attack in an area close to Koh Kong border, I saw his
10 photo in Tuol Sleng in room number 3 at the north end of the
11 room. And the name -- his -- the photo was identified that the
12 person was Ros Nhim. And the photo size was 12 by 13. And as for
13 the photo of his wife, it was displayed in room 30-something. I
14 do not recall it well. And the two photos were displayed on the
15 wall of those rooms. The photos depicted Hu Nim, Hou Youn, and as
16 I stated, Ros Nhim. The photo was displayed on the wall of room
17 3. And later on, I went to search for the photo, and it was gone.

18 Q. And I believe it is still gone, Mr. Witness. One question
19 about somebody else from the Northwest Zone; do you remember Heng
20 Teav, also known as Ta Pet alias Ta Kantol (phonetic)?

21 A. Yes.

22 [09.55.51]

23 Q. What do you recall of him?

24 A. At that time, he was a member of Northwest Zone.

25 Q. Was he in fact the number two of the Northwest Zone?

14

1 A. He was number four within that Northwest Zone.

2 Q. Did he become a minister later in the government of Heng
3 Samrin after 1979?

4 A. He was released from Chbar Mon prison after 1979. It was
5 because the liberation of United Front of Cambodia. He was
6 released, as I said, and he -- he served state of Cambodia until
7 he retired and passed away in 1985 or '87.

8 Q. Did you ever work for him? Were you ever his courier, for
9 instance?

10 A. I was a messenger at that time, and I used to work for these
11 people. After I became a messenger for one grandfather, or Ta, I
12 then was moved to work for another -- other Tas: Ta Say, Ta Pet,
13 Ta Pho (phonetic). I was a messenger carrying messages for all of
14 these Tas.

15 [09.58.24]

16 Q. Mr. Witness, if Ta Pet, Ta Kantol (phonetic), also known as
17 Heng Teav, was the number four in the Northwest Zone, and your
18 foster father the number one, who were respectively the numbers
19 two and three?

20 A. Number two was Ta Keu, Ta Phoeng (phonetic) alias Ta Keu. And
21 number three -- as for number three, it was Ta Tom (phonetic).

22 Q. Thank you, Mr. Witness. Mr. Witness, I would like to read a
23 small excerpt from a statement of a former Northwest Zone cadre
24 to you, and then once I've read it to you, I would like to ask a
25 reaction. Mr. President, I'm intending to refer to question and

1 answer 16 of document E319/13.3.58; English, ERN 00970468;

2 French, 00974762; and Khmer, 00947282.

3 [10.00.05]

4 So Mr. Witness, the question that was posed to this cadre was the
5 following:

6 "Did you know Ta Heng Teav's position? What happened to him?"

7 And this cadre answers as follows: "Ta Heng Teav was deputy chief
8 of the Northwest Zone. He was also in charge of Sector 1, but Ta
9 Say was chief of Sector 1. The two most powerful persons in the
10 Zone were Ta Nhim alias Kao, and Ta Heng Teav alias Ta Pet. Ta
11 Nhim was an aggressive person, while Ta Heng Teav was gentle.
12 Around 1956, Ta Kao and Ta Pet were called out because there was
13 an announcement to arrest both of them at the time. The
14 announcement confirmed that, if anybody could arrest Ta Nhim,
15 that person would be given 90,000 riel, while anyone who could
16 arrest Ta Heng Teav would be given 80,000 riel. Ta Heng Teav was
17 still alive after '79, and he became the union minister during
18 the regime of Hun Sen, Heng Samrin, and Chea Sim, but he has
19 passed away since."

20 Mr. Witness, what this North West Zone cadre is describing, is
21 that accurate or is that not accurate?

22 MR. KOUMJIAN:

23 Excuse me, Your Honour, I believe this witness said he was born
24 in 1955, and this statement seems to refer to 1956, so he would
25 be one year old. I'm wondering if counsel wants to specify a time

1 period.

2 [10.02.25]

3 BY MR. KOPPE:

4 Q. You might have heard this in a later stage. I'm not asking
5 specifically about this period in '56 or '50 -- or later. I'm
6 just asking, more specifically, if I pinpoint, Mr. President, to
7 the passage that Ta Nhim was an aggressive person, while Ta Heng
8 Teav was gentle. Let me focus -- let me concentrate on that.
9 Was it correct, Mr. Witness, as this cadre seems to indicate,
10 that Ta Nhim was an aggressive person, while Ta Heng Teav was
11 gentle?

12 MR. TOIT THOEURN:

13 A. Ta Pet alias Kantol and Heng Teav, was a person whose
14 appearance seems gentle and moral, like a monk or an artist. On
15 the opposite, Ta Nhim, when he was angry or when he did not feel
16 well, he seemed aggressive. There was one time that I observed he
17 was aggressive when he had infection in his mouth.

18 [10.04.06]

19 Q. Mr. Witness, does the name Sieu Heng mean anything to you?

20 A. I cannot recall that name.

21 Q. Maybe I'm not pronouncing it well. Sieu Heng, one of the
22 founders of the Communist Party of Kampuchea. Does that ring a
23 bell?

24 A. I only heard from my foster father about this man.

25 Q. Mr. Witness, it might be the case that this founder of the

1 Communist Party in Kampuchea was murdered shortly after '75. Do
2 you know whether your foster father had any involvement in his
3 murder?

4 A. No, I don't.

5 Q. Sieu Heng was not biologically, but related to Nuon Chea, our
6 client. Do you recall Nuon Chea?

7 A. I only heard of his name at the time. I did not meet him face
8 to face.

9 [10.06.10]

10 Q. Before I move on now to my questions, Mr. Witness, in relation
11 to the period '70-'79, let me first ask you a few brief questions
12 in relation to your career after 1979. Is it correct that you
13 went to study in the Soviet Union in the '80s?

14 A. I did, after the country liberation, and I was actually in the
15 army at the time. I was sent for study in the Soviet Union.

16 Q. How long did you study in the Soviet Union?

17 A. The course lasted for 18 months, and actually, the courses
18 were divided into subjects, and they only counted hours of
19 studies per each subject line.

20 Q. Was it a military academy at which you studied?

21 A. Yes, it was a military school for senior officers, and was
22 called Moscow (inaudible).

23 [10.08.18]

24 Q. And do you recall between when and when, in which period
25 exactly you studied at this military academy?

1 A. It was in 19 -- in late 1980 if my recollection is correct. It
2 was, I think, from middle or to late 1980 and it lasted till
3 early 1983.

4 Q. So you were still there when Soviet Union's leader, Leonid
5 Brezhnev, died; is that correct?

6 A. I cannot recall that. Maybe that was the time we stayed, as he
7 was the president at the time.

8 Q. So -- and then upon your return from the Soviet Union, you
9 stayed in the military. Could you briefly describe your military
10 career after you returned from the Soviet Union?

11 A. In fact, the course was supplementary to what I have gained,
12 and the ultimate strategy of the army at the time -- at the time
13 was to make sure that the Khmer Rouge would not recapture any
14 part of the Kampuchean -- Cambodian territory, in particular in
15 Battambang, Siem Reap and Banteay Meanchey provinces.

16 [10.10.50]

17 Q. When did you subsequently become brigadier general?

18 A. It was 2001 that I was promoted to that rank.

19 Q. And between 1979 and 2001, did you at one point in time
20 commanded a security centre called B-2, B-2, also known as T-6?

21 A. No, I was not.

22 Q. Have you heard of it?

23 A. Yes.

24 Q. I'll move on, Mr. Witness, to the period between 1970 and '79.
25 For reasons of time, I would like to summarize your military

1 positions, and if I make a mistake, please correct me.
2 You joined the military forces after the coup d'état in March
3 1970. You subsequently became a combatant in the Khmer Rouge
4 army. You worked as a courier, and at one point in time became
5 chief of couriers. Subsequently, you became deputy chief of the
6 general staff of the North West Zone, and at one point in time,
7 you were sent to China to start -- to learn how to become a
8 pilot, sometime, if I am correct, in January '76. Mr. Witness,
9 did I summarize the period up until your departure to China
10 correctly?

11 [10.13.46]

12 A. Yes.

13 Q. Did you at one point in time also become a member, or even a
14 full rights member, of the Communist Party of Kampuchea, and if
15 yes, when?

16 A. No, I did not become a full rights member of the Party.

17 Q. Let me now ask you some specific questions in respect of your
18 military functions. You said you confirmed that you had been a
19 combatant between '70-'75; have you ever been engaged in active
20 combat with military from Lon Nol's army?

21 A. Yes.

22 Q. Can you briefly describe your roles in these active combat
23 situations with Lon Nol forces?

24 A. In -- during those fights, I acted as a main messenger for the
25 command headquarters, and I was in charge of communication from

1 the end of the front battlefield to the headquarter -- that is,
2 from the main line to the headquarter. And whether an advancement
3 or a retreat had to be made, I relayed that information from the
4 commanding officer - or from the commander at the headquarter to
5 the front battlefield.

6 [10.16.16]

7 Q. Does that mean that you at the time had good, insightful
8 knowledge of what was happening at the battlefield between '70
9 and '75?

10 A. At the battlefield, I knew only the events that I was involved
11 in. When I worked in the office, I did not know about what
12 happened at the front battlefield. However, when I was required
13 at the front battlefield, then I knew what happened while I was
14 there. For instance, about the battlefield at the Leach district,
15 at the Kravanh district, or at the Damnok - Damraeng (phonetic)
16 district, I was there so I knew what was happening.

17 Q. Did you report directly to your foster father, Nhim? Or did
18 you report to others within the military?

19 A. When I returned from the battlefield to my office, I reported
20 to him. But just to make sure -- actually, before I reported to
21 him, the commanding officer at the front battlefield had actually
22 reported to him before I made my report.

23 [10.18.20]

24 Q. I'll get back to that shortly, Mr. Witness. When did you
25 become the chief of the couriers?

1 A. Please repeat your question.

2 Q. Do you recall when you became the chief of all couriers?

3 A. That was around 1973, but I cannot recall the exact month.

4 Q. Do you -- sorry, please go ahead, Mr. Witness. Let me move on
5 with my next question.

6 Do you recall how many messengers or couriers were under your
7 command? How many couriers reported to you? How many couriers or
8 messengers were you the chief of?

9 A. Due to the long travelling distance from the Zone to various
10 sectors, three messengers were appointed to work. And I was chief
11 amongst them.

12 Q. And during the final attack on Pursat, Battambang, Sisophon,
13 Pailin, in early '75, were you chief of couriers during these
14 attacks?

15 A. I was a messenger for communication between the front
16 battlefield to Office M-20 at the rear.

17 [10.21.07]

18 Q. So you were active also in relation to the attack on Pursat?

19 You were chief of couriers when Pursat was attacked in April '75?

20 A. Yes.

21 Q. I will get back to the final attack on Pursat, Battambang and
22 other cities shortly, Mr. Witness. But I would like to briefly
23 discuss the rest of your military career. You confirmed just now
24 that you had become deputy chief of the zone general staff. I've
25 read in your statement that in this position, you were in charge

1 of the warehouses, you were in charge of logistics, and you were
2 in charge of rice farming in the military. Is that a correct
3 summary of your work as deputy chief of the zone general staff?

4 A. Yes, that is correct.

5 [10.22.43]

6 Q. And do you recall when you became the deputy chief of the zone
7 general staff? When was this? I presume somewhere in 1975?

8 A. I cannot recall the exact period, but it happened around 1975,
9 after an aerial bombardment from Thailand in Siem Reap. So, two
10 days after the aerial bombardment, I was appointed as the deputy
11 chief of the zone general staff, in charge of ammunition
12 transportation from Chamkar Chek (phonetic) to hide in the
13 forest.

14 Q. If I am correct, Mr. Witness, the attack by fighter planes on
15 Siem Reap was in February '76. However, you might have confirmed
16 that you had gone to China in January '76. So, could you please
17 try to remember when exactly it was that you became deputy chief
18 of the zone general staff?

19 A. Allow me to elaborate a bit further on this point. When there
20 was an aerial bombardment in Oulak (phonetic) from Thailand --
21 actually, the fighter jets dropped bombs, and fired shots at us
22 in Oulak (phonetic), and not in Siem Reap -- my apologies -- and
23 also at Chat (phonetic) mountain. So the aerial bombardment was
24 carried out by Thailand along the Thai-Cambodian border at the
25 time.

1 [10.25.05]

2 Q. But you don't recall an exact month when you became the deputy
3 chief of the general staff?

4 A. I cannot recall the exact month, however, that happened after
5 I returned from the conference in Phnom Penh, and after Ta Nhim
6 returned from the East Zone. I was subsequently appointed as the
7 deputy chief, and my main role was to gather weaponry, and
8 ammunition, and any war spoils, and maintain them in a warehouse,
9 and the location would be far away from the town.

10 Q. I will most certainly get back to the storage of these
11 weapons, Mr. Witness. But before I go there, one question on your
12 position as deputy chief of the general staff: There's one
13 witness who testified before investigators and said that you, Ta
14 Ham became Ta Khheng's deputy. Is that correct? Were you the
15 deputy of Khheng, the overall military commander?

16 A. Please repeat your question.

17 [10.27.17]

18 Q. When you became deputy, were you reporting to Khheng, the
19 overall military commander? Were you the number two after Khheng?

20 A. On the reporting of the storage of ammunition, I only reported
21 to Ta Nhim.

22 Q. And why was that the case? Why only report to Nhim in relation
23 to the storage of weapons, and not to your superior, Khheng?

24 A. Because he was the one who assigned me to take responsibility
25 in dealing with this issue.

1 Q. Now that you mention it, let me ask you a few questions about
2 this subject. You said in your statement to the investigators
3 that at one point in time you collected about 20,000 weapons
4 coming from Lon Nol's soldiers, and that at one point in time,
5 you stored these weapons. You've just acknowledged that you were
6 a weapon collector. Where did you store these weapons? And why
7 were these -- why was it necessary that these weapons were
8 stored?

9 A. The weapons were the weapons that we seized from the Lon Nol
10 army, meaning these are war spoils. And we polished them
11 properly, and we stored them properly in a warehouse.

12 [10.29.48]

13 Q. In your statement to the investigators, you said that you
14 stored these weapons in a warehouse in a bamboo forest in Thma
15 Prus village, near Veay Chab (phonetic) mountain. Is that
16 correct?

17 A. We stored them near Veay Chab (phonetic) mountain, however,
18 the warehouse was not made of bamboo. We stored those weapons in
19 a bamboo forest. However, the warehouse itself was not made from
20 bamboo.

21 Q. That's what I said. Maybe something went wrong in the
22 translation, Mr. Witness.
23 When do you recall -- did you start storing these Lon Nol
24 weapons? When exactly, I suppose, Ta Nhim or Nhim gave the order
25 to start storing these weapons?

1 A. I cannot recall the timeline clearly as it happened many, many
2 years ago. But I am certain that the event took place after his
3 return from the conference in Phnom Penh.

4 [10.31.35]

5 Q. And what was the reason that he asked you, or ordered you, to
6 collect these 20,000 weapons from the former Lon Nol army? What
7 did he tell you? What was his instruction?

8 A. It is because the reason -- it is because of the fact that the
9 weapons were not clean, and it was scattered in banana farms. For
10 this reason, I was told by him to arrange a warehouse so that I
11 could keep the weaponry safe from the Lon Nol armed forces. And
12 as for the remaining ammunition from war, I was told to keep in a
13 different location.

14 Q. But can you tell us why these weapons were stored in a
15 warehouse in a bamboo forest? Why all the way there? Was there a
16 reason to hide them?

17 A. It is because we had experience in the storing of food
18 supplies and ammunition. It is -- it was very difficult for
19 others to discover our food supplies and our weaponry, when we
20 kept in the bamboo forest. After the rainy season, the bamboo
21 would fully cover the area. And no one could go to search our
22 weaponry if they had no map.

23 [10.34.30]

24 Q. Was the reason to hide these weapons to keep it out of sight
25 of the central army? To keep it out of sight of the military in

1 the Centre?

2 A. I have no idea.

3 Q. I will get back to that, Mr. Witness. Can you briefly describe
4 the type of weapons? Were these M16 rifles, AK-47s for instance?
5 What kind of weapons were they?

6 A. Mostly, the weapons consisted of AR-16 and AR-15.

7 Q. What made you say, or what made you remember, that the total
8 number of these weapons were 20,000?

9 A. The number of weapons could be higher than that. And the
10 weapons did not consist of AR-16 and AR-15. There were other
11 types of weapons, such as 72, 79 and "Kamrong M1" (phonetic)
12 called Renat (phonetic). And there were (unintelligible) with a
13 "Y" magazine.

14 [10.36.45]

15 Q. Who had knowledge, Mr. Witness, of this storage of these
16 20,000 weapons besides yourself and Ros Nhim?

17 MR. KOUMJIAN:

18 Object. Your Honours, I think that would call for speculation.

19 How can someone know what other people have knowledge of? He can
20 say who he told, but he can't say who had knowledge of it. Who,
21 for example, Ros Nhim told.

22 JUDGE KLONOWIECKA-MILART:

23 We allow the question. The witness may specify on what facts he
24 bases his knowledge about other persons' knowledge.

25 BY MR. KOPPE:

1 Q. Mr. Witness, do you have any knowledge of who was aware of
2 this storage, other than you and Nhim?

3 MR. TOIT THOEURN:

4 A. Beside Ros Nhim and I, no one knew about the storing of
5 weaponry. Only three grandfathers, or Ta, who built the
6 warehouse, knew the place where we kept the weaponry.

7 [10.38.08]

8 Q. And who was the third one, besides you and Nhim?

9 A. Ta, who were part of the transportation unit during wartime
10 knew about the place where we kept the weapons. It happened a
11 long time ago, so I cannot recall their names. Let me try. Ta
12 Rorn (phonetic), Ta Chhoeum (phonetic). They were old at the
13 time, in their late 60s. And Ta Chao (phonetic).

14 Q. Mr. Witness, did Son Sen have any knowledge about the storage
15 of these weapons?

16 A. I do not know.

17 Q. Let me move on now, Mr. Witness, to the attack on Pursat,
18 Battambang, and other cities. Before I go there, let me briefly
19 summarize your testimony as to the military structure.

20 Is it correct that you have stated to the investigators that
21 there were two divisions in the Northwest Zone? The commander, as
22 we just established, was Khmeng. Khmeng reported to Nhim. Each
23 division consisted of about roughly 5,000 combatants. The
24 division in itself consisted of a brigade -- three brigades,
25 excuse me. One brigade would consist of three regiments, and one

1 regiment would then consist of three battalions of around 380
2 combatants. When you were replaced as deputy chief commander, you
3 were replaced by Ren (phonetic), who became the chief of
4 warehouses. And your function as courier chief -- chief of
5 couriers, was done subsequently by Doung (phonetic). Did I
6 summarize that correctly, Mr. Witness?

7 [10.41.32]

8 A. The person by the name Ren (phonetic) came to replace my
9 position. He was not in charge of the weaponry. He was in charge
10 of food supplies, after I had stored all the weaponry.

11 Q. We -- In the beginning of my question --

12 MR. PRESIDENT:

13 Counsel, please be seated for a few minutes so that we can change
14 the DVD.

15 (Short pause)

16 [10.42.39]

17 MR. PRESIDENT:

18 You may now resume your line of questioning, Counsel.

19 BY JUDGE KLONOWIECKA-MILART:

20 Excuse me, Counsel. Because we are so pressed for time, if I may
21 cut in just with two small questions, I believe it will save the
22 time, rather than rewinding in our minds, because it pertains to
23 the spirit.

24 Q. Mr. Witness, could you clarify for the Bench when did you
25 become the deputy chief of staff? Was it specifically -- yes,

1 yes. Do you remember the year?

2 MR. TOIT THOEURN:

3 A. I cannot recall the exact year. It happened a long time ago.

4 What I know is that it was after the conference held in Phnom

5 Penh. That is what I know. Perhaps it was in late that year. It

6 was late that year, in late 1975. It was between mid and late

7 1975, from my recollection.

8 [10.44.02]

9 Q. Would this be, then, after the liberation of Phnom Penh? Or
10 before?

11 A. It was after the liberation of Phnom Penh in 1975.

12 Q. One more question on this part of your testimony. You
13 mentioned three persons who were aware of the weapons warehouse.
14 Who physically amassed and placed the weapons there?

15 A. I was the one who transported the weapons to that warehouse,
16 and I was also the one who selected those who built the
17 warehouse. I was referring to three Tas, or grandfathers, who
18 were in charge of building that warehouse.

19 Q. Is this then correct to understand that weapons were
20 physically carried by other people, in addition to you?

21 A. The weapons had been used by Lon Nol forces.

22 Q. Who moved the weapons to the warehouse?

23 A. I was transporting the weapons. I was the driver of the
24 vehicle transporting all those weapons.

25 [10.46.36]

1 Q. Alone?

2 A. The weapons were uploaded onto the vehicle by people at
3 Chamkar Chek (phonetic) farms, and as I stated, I was the only
4 driver to the warehouse. And when I arrived at the warehouse, the
5 three Tas, or grandfathers, transported these weapons into the
6 warehouse. And they were the ones who cleaned the weapons with
7 oil.

8 JUDGE KLONOWIECKA-MILART:

9 Thank you.

10 BY MR. KOPPE:

11 Thank you, Judge Milart. For the sake of clarity, I'll move a
12 whole chapter now, and come back to that later because of time
13 reasons. The attack on Pursat and what happened at Tuol Po Chrey.
14 So, I will come back to that.

15 Q. Mr. Witness, I'm asking you now questions -- I'm going to ask
16 you now questions as to the reasons behind the storage of these
17 weapons. What was the rationale for storage in a hidden way of
18 these weapons? What were you, Nhim, and others supposed to do
19 with these weapons?

20 [10.48.07]

21 A. No one else could be able to use these weapons. But for Ros
22 Nhim, he also used some of these weapons. As I stated, these
23 weapons were remaining from the war time. They were war spoils,
24 used by the enemy. And I also used the weapons to fight against
25 Pol Pot later on.

1 Q. Was that the original intention? To hide these weapons so that
2 Nhim, you and others could start an armed rebellion against Pol
3 Pot?

4 A. There was no such rationale behind. I am not sure, but I was
5 tasked to keep and maintain weapons in the warehouse. I was
6 arrested by mistake two times in 1978. And because of this, I
7 made a decision that I could not stay and work for Pol Pot and
8 Ros Nhim. So I mobilized the remaining forces, who were removed
9 to work in the farm and in the plantation together, so that we
10 could make -- we could protest. At the outset, some of these
11 people were accused of stealing rice, so I could mobilize them
12 and give weapons to them, so that we can protest.

13 [10.50.35]

14 Q. Mr. Witness, I'll move on a little bit. You have given
15 testimony to the investigators of the Investigating Judge that
16 you, at one point in time, between '75 and '79, took with you
17 thousands of Northwest Zone troops, and started an armed
18 rebellion against the Centre. Is that correct?

19 MS. GUIRAUD:

20 One comment if I may, Mr. President. Our colleague appears to be
21 referring to events that took place in 1978, but the 002/01 scope
22 concerns the period '75 to December 1977, and the policies of the
23 joint enterprise that the Chamber decided upon ended in November
24 1977. Joint criminal enterprise in its composition ends in 1977.
25 So, if now we're going to be asking questions about what happened

1 after 1977, then we have to be clear that we're completely
2 outside the scope of trial 002/01. We have a trial, 002/02, that
3 is devoted exclusively to those matters. But if at this juncture,
4 we go beyond the scope of the first trial, then I do not believe
5 it will serve any purpose for the Supreme Court in adjudicating
6 on these appeals. Therefore, I really don't believe that it is
7 useful to go into issues concerning a period that is prior to
8 trial 002/01.

9 [10.52.24]

10 MR. VERCKEN:

11 The Court should listen very carefully to what was said by the
12 Civil Party Co-Lawyer. Firstly, the date of 1977, December, was
13 an arbitrary date that was set for the end of the movement of
14 populations. But the debate that's coming out now in the
15 courtroom is at the very centre of issues connected with problems
16 to do with the Severance. Now everybody in this room may not
17 agree. The Prosecution, for example. Let me simply say at this
18 stage that we have a genuine problem. We've set all this out in
19 our appeal brief, but here we can see a very practical instance
20 of the problems that have been caused.

21 MS. GUIRAUD:

22 If I may answer, Mr. President. This is indeed important. I'm
23 merely referring to the Judgement, the Judgement that is being
24 appealed, And in more than 15 paragraphs in the Judgement, it
25 does say that the facts end in 1977, and any conclusions about

1 joint criminal enterprise end in 1977. And it is absolutely
2 clear, when you read the Judgement, that December 1977 is the
3 date concerned.

4 [10.53.55]

5 JUDGE KLONOWIECKA-MILART:

6 The question seeks to explore the relationship of -- between the
7 commanding structures of the Khmer Rouge, and we want to hear the
8 answer. Please, this dispute doesn't help us manage the time.

9 BY MR. KOPPE:

10 Thank you, Judge Milart.

11 Q. The question, Mr. Witness, was: were these arms used by you
12 and 2,000 plus armed forces that you took into the mountains,
13 sometime between '75 and '79, to fight Pol Pot and the Centre, if
14 you want to call it like this?

15 [10.54.46]

16 MR. KOUMJIAN:

17 Your Honour, I object to the question. Counsel knows that the
18 witness returned from China in 1977, and he, I believe, just
19 stated it was 1978, after he was arrested twice, that he decided
20 to go to the forest. So stating 1975 to 1979, it's quite clear
21 what the testimony is. It was 1978 and later.

22 BY MR. KOPPE:

23 Well, I don't think so. That is one of our core arguments. So
24 that's why I formulated it neutrally, Mr. President, between 1975
25 and 1979, the jurisdictional period. So I think I'm entitled to

1 ask the questions relating to these two years, '75-'79.

2 Q. So, Mr. Witness, did you and the troops that you took with you
3 into the forest to start an open rebellion, did you use these
4 weapons that you had earlier stored, these 20,000 weapons from
5 former Lon Nol army?

6 [10.56.01]

7 MR. TOIT THOEURN:

8 A. The weapons were not stored secretly to start a rebellion
9 against Pol Pot at the outset. We were told to keep these
10 properly. After I was arrested twice by mistake, I went to search
11 for who made the arrest. Actually, the chief of the children's
12 unit was arrested, and he was hit until his head was broken. Two
13 days later, I could find a motorbike to go and ask my foster
14 father, Ros Nhim, in 1978. And I asked him why he told others to
15 arrest me. He replied that he did not know about the arrest. And
16 I told him that if you were my foster father, and you were the
17 superior, and you did not know about the arrest, that is why
18 people in the Southwest Zone, some of them disappeared. And if
19 you wanted others to arrest me, you could shoot me dead now. And
20 I have other ways to do the work. And after that time, I left the
21 area.

22 [10.57.47]

23 One week later, I was arrested again. Actually, an adolescent was
24 arrested by mistake, because they considered that adolescent was
25 me. After this charge, water -- pumping the water into the

1 fields. I went to ask my foster father again about the arrest,
2 and he refused that he ordered someone to arrest me.
3 At that time, I took out a gun, and I took all the bullets, and
4 kept only one. And I handed over the pistol to him so that he
5 could kill me. And I told him that if he could not kill me with a
6 bullet, that bullet, I would kill him back. At that time, my
7 foster father told me that he was not the one who wanted to
8 arrest his own adopted son. He said that it was the people from
9 the Centre who wanted to arrest me. I replied and said to him
10 that from now on, we no longer were foster father and adopted
11 son. And I decided to defect the Angkar. At that time, Pol Pot
12 was not used -- the term 'Pol Pot' was not used. And I told him
13 that who followed and searched for me, would be shot by me. My
14 foster father explained me that I should not do anything in a
15 rush, and he told me to be patient. I replied to him that I could
16 not bear the situation, because people were called into study
17 sessions in Phnom Penh, and they disappeared. Because of this
18 incident, I started to think of taking 2,000 weapons to start the
19 rebellion.

20 [11.00.28]

21 Q. Mr. Witness, leaving aside for a moment the conflict, the
22 apparent conflict with your foster father, leaving aside the use
23 of the weapons, leaving aside your arrest for a moment, do you
24 know when plans were made for the first time to rebel? And who
25 was behind these plans?

1 A. The rebellion plan was not behind anyone else. We had this
2 kind of idea because we were thinking that we could no longer
3 live in that regime. Many of our comrades disappeared. They were
4 called into a study session in Phnom Penh and disappeared. And
5 after I learnt that they wanted to arrest me, and with God's
6 help, I was not arrested. I started to think that I had to use
7 that 2,000 weapons to start the rebellion. I implored Ta Pet, Ta
8 Nhim and other Tas to start the rebellion against Angkar at that
9 time. I implored Ta Pet at his house, that he should be my
10 superior in the forest so that we could start the rebellion
11 together. He replied that he was old, he could not do that. I
12 went to implore Ta Keu and explained him that Angkar wanted to
13 eat their own children, and I told him I could not stay in the
14 regime with Angkar. I had to protest, and start the rebellion.
15 And I asked him to -- I asked him to go into the forest, and he
16 told me that he had to consult with others, because he could not
17 go. He could not go alone.

18 [11.03.04]

19 Q. Mr. Witness, it's all very interesting, what you are saying.
20 But isn't it true, and I put that to you, that sometime in the
21 summer of '75, August '75, your foster father, Nhim, together
22 with So Phim, Vorn Vet, possibly Koy Thuon, and others, started
23 talking -- started having plans to openly rebel against the
24 government, or the soon-to-be government? Is that correct?

25 A. I cannot say whether it was correct or not. However, after

1 1975, we met at the conference held in Phnom Penh -- that is, at
2 the Borei Keila location, and they were discussing the matter. In
3 fact, there was no plan to rebel. We were planning to demand the
4 Centre for the people to return to their respective homes and
5 villages, and that the money that had already been printed, shall
6 be put into circulation. That was the idea that we intended to
7 bring forward to the Centre. And that was what I learned from
8 their discussion during a meal time.

9 Q. That was, according to you, the goal of the ultimate
10 rebellion? Is it correct that the means to --

11 JUDGE KLONOWIECKA-MILART:

12 The witness did not confirm that the rebellion was discussed at
13 the time.

14 MR. KOUMJIAN:

15 Absolutely misstating the testimony.

16 JUDGE KLONOWIECKA-MILART:

17 If we could correct it.

18 [11.05.30]

19 BY MR. KOPPE:

20 I will rephrase, Your Honours.

21 Q. Were plans -- do you know if plans, at one point in time, to
22 assassinate Pol Pot, to sabotage the Revolution by spreading
23 chaos, both internally and externally -- for instance, like
24 conducting a phony war with Thailand -- ultimately to stage a
25 coup d'état, do you know anything about such plans? Whether they

1 existed in the second half of 1975?

2 MR. TOIT THOEURN:

3 A. No, I was not aware of that.

4 Q. Have you ever heard of plans to combine forces from the East
5 Zone and the former North Zone, to attack Pochentong Airport, to
6 attack the radio station, Radio Phnom Penh, at some time in early
7 '77?

8 A. No, I didn't know that.

9 [11.07.00]

10 Q. Do you have any recollection as to the role of neighbouring
11 country, Vietnam -- the role that Vietnam was to play in relation
12 to an armed uprising?

13 A. No, I did not know about the matter with Vietnam, as I myself
14 was based along the Thai border.

15 Q. Have you ever heard of a man, a Vietnamese communist cadre
16 called Hay Soe (phonetic)?

17 A. No, the name does not ring a bell. And if you speak about Sou
18 (phonetic), I heard of that name, but not Soe (phonetic).

19 Q. I apologize for my pronunciation, Mr. Witness. Hay Sou
20 (phonetic). Does this name ring a bell to you?

21 A. You pronounce the name "Hai Sou" (phonetic). I'm not familiar
22 with that name.

23 Q. This Hai Sou (phonetic) -- I'm trying to refresh your memory
24 -- was a Vietnamese expert in guerrilla warfare; later member of
25 the Standing Committee of the Communist Party of Kampuchea -- of

1 Vietnam, excuse me. Does that ring a bell? A friend of your
2 father?

3 [11.09.18]

4 MR. KOUMJIAN:

5 That's a leading question. It's suggesting an answer, and it has
6 no basis.

7 BY MR. KOPPE:

8 I'm first asking, and I'm now trying to refresh his memory.

9 Q. Does that ring a bell, Mr. Witness? What I'm telling you?

10 MR. PRESIDENT:

11 Defence Counsel, regarding the form of a leading question, please
12 try to avoid it if you can.

13 BY MR. KOPPE:

14 I will, Mr. President, but I first asked it in an open way, and
15 he said he didn't remember the name. And now I'm trying to,
16 indeed, lead him a bit in the hope that it will somehow jog his
17 memory.

18 Q. Mr. Witness, Hay Sou (phonetic), old friend of your father,
19 Vietnamese expert in guerrilla warfare, him meeting with your
20 father between '75 and '79; does it ring a bell?

21 MR. TOIT THOEURN:

22 A. Between the period of 1975 to 1979, no, since he had returned
23 to his country since 1973.

24 [11.10.56]

25 Q. Your father didn't meet him in May '77?

1 A. No.

2 Q. Mr. Witness, let me read you an excerpt from the statement of
3 a witness, who used to be your foster father's bodyguard.

4 Mr. Witness -- Mr. President, excuse me, I'm referring to
5 E319/19.3.107; English, ERN 00970079; French, 01044643; and
6 Khmer, 00960676. The question, Mr. Witness, put to this person,
7 who was somebody who was very close -- it seems -- to your foster
8 father, is the following:

9 "On 17 April '75, where were you living, and what were you
10 doing?"

11 And he answers, A3: "On 17 April '75, I moved to live in Kanhath
12 until '76, when Ta Nhim invited me to be his body guard. I was
13 his bodyguard until he was arrested. I escorted and secured his
14 [safety] everywhere he went. He had three bodyguards including
15 me, but I was not the one who got in the car with him. I used to
16 escort Ta Nhim to Phnum Den mountain, which is bordered by
17 Vietnam."

18 [11.12.53]

19 Question: "Why did you escort Ta Nhim to Phnum Den mountain?"

20 And then he answers: "He needed me to secure him while he was
21 transporting military uniforms from Phnum Den mountain to Ampil
22 Prahong and Sisophon in 1977. Sisophon was also Ta Nhim's
23 military base."

24 Question: "What place was Ampil Prahong?"

25 Answer: "Ampil Prahong was Ta Nhim's house and office. Ampil

1 Prahaong was 1 kilometre west of Phsar Leu market."

2 Question: "What were those military uniforms transported for?"

3 Answer: "I did not know for whom those uniforms were transported,
4 but Ta Nhim told me those uniforms had come from Vietnam."

5 "When you were fetching the uniforms from Phnum Den mountain, was
6 there fighting along the Vietnam border yet?"

7 "There had not been any fighting yet."

8 [11.13.57]

9 Now, Mr. Witness, a little further down he is being questioned by
10 security people as to the reasons why your father, your foster
11 father, was receiving uniforms, military uniforms, from Vietnam.
12 Do you know anything about that?

13 A. No, I neither knew nor saw anything regarding this matter, and
14 the uniforms. In fact, the clothes were produced from a textile
15 factory in Battambang. And we dyed it with the natural tree
16 resource in Cambodia. We used different tree barks to dye the
17 clothes, but I never heard about those imported from overseas.

18 Q. Mr. Witness, did you know at the time, or maybe later when you
19 were studying in the Soviet Union, or later when you were working
20 closely with the Vietnamese military troops, that in February
21 1978, the full plenum of the Central Committee of the Vietnamese
22 Communist Party decided to start an internal uprising, led by So
23 Phim, and if that wouldn't work, ultimately to invade Kampuchea?
24 Have you heard at the time anything about that? Or have you
25 heard, while you were in the Soviet Union, anything about that?

1 [11.15.55]

2 MS. GUIRAUD:

3 Mr. President, I just have a comment here. Can we understand
4 where our colleague got that information from? That he already
5 tried to use in Case 002/02, and he was unable to cite the
6 source. Can we now know where this information comes from, so
7 that we may possibly consider this information, challenge it, and
8 maybe put questions to the witness with regard to this
9 information? So we do not know at all where this piece of
10 information comes from.

11 MR. KOUMJIAN:

12 Your Honour, my objection is different. It is absolutely
13 irrelevant to the Appeal of 002/01. Now we're getting into
14 whether Vietnam had plans in 1978 to invade Cambodia, and it's
15 clearly beyond the scope of the issues in Case 002/01, which as
16 my colleague previously pointed out, the temporal scope ends in
17 1977.

18 [11.16.57]

19 MR. KOPPE:

20 Mr. President, if I may reply. The two objections are, I suppose,
21 both troubling on various levels. Troubling is that Civil Party
22 Lawyer still does not seem to know -- which by now is common
23 knowledge -- that this decision was made in February '78. It is
24 documented extensively by the Court's expert, Nayan Chanda. He
25 wrote about it in '78-'79 in the Far Eastern Economic Review. He

1 wrote about it in his book, which was extensively discussed in
2 the first trial. Other scholars have confirmed this. I don't
3 think there's any doubt whatsoever that this Fourth Plenum did
4 indeed come together in February '78.

5 [11.17.50]

6 In relation to the objection of the Prosecution, I have no idea
7 how to put that in any perspective. I think the decision of
8 Vietnam is crucial, and the role of Vietnam is crucial to
9 understanding anything as to what happened in DK between '75 and
10 '79. It's certainly not outside the scope of this trial. I would
11 just like to remind you that, although the Severance decision is
12 an incomprehensible one, there's no doubt about that. If you go
13 -- and that is the reality to the actual Judgement -- the last
14 document -- I actually did some research this weekend -- the last
15 document in time that was used by the Trial Chamber dates from
16 January '79, which is a communication to the United Nations.
17 There are many documents, S-21 documents, which date all the way
18 to August '78. So now, to stand up and pretend like this is a
19 Severance issue, or outside of the scope issue, is ridiculous.
20 I'm sorry to use that word again.

21 MS. GUIRAUD:

22 Mr. President.

23 [11.19.03]

24 MR. PRESIDENT:

25 It is the Chamber's observation that the ground raised by the

1 defence counsel, that you have a reference to refer to. However,
2 the fact mentioned in your question is not related to the facts
3 in this Appeal proceedings, although it has something to do with
4 the Vietnamese. Please move on with other questions that you may
5 have, but make sure that your questions fall within the scope of
6 today's Appeal proceedings. Thank you. And if you have a document
7 number, please so state it.

8 MR. KOPPE:

9 To answer that first question, of course, Mr. President, we put
10 on record E3/2376; English, ERN 00192401; French, 00237080; and
11 in Khmer, 00191550; that's an excerpt from Nayan Chanda's book,
12 called "Brother Enemy". So we did document this decision
13 beforehand, Mr. President.

14 In relation to the question in itself, I have noticed that you
15 have given a decision without consultation of the Bench. This is
16 such a principle matter for us. I would like you to confer with
17 your fellow Judges, and to reason and argue about this question
18 that is very crucial to us. And if you forbid me, then so be it.
19 But I would like you to have a debate within the Chamber.

20 [11.21.40]

21 MR. PRESIDENT:

22 Regarding the matter that you raised, in fact the Chamber does
23 not object to your question. But make sure you rephrase your
24 questions, and that your questions should not focus on the facts
25 that are outside the temporal jurisdiction of these Appeal

1 proceedings. That is all what the Chamber wants.

2 BY MR. KOPPE:

3 Then I apologize for not understanding well your decision, Mr.
4 President. Let me rephrase, or try to rephrase, my question.

5 Q. Mr. Witness, were you at the time, or later while you were in
6 the Soviet Union, aware of a February 1978 decision of the Fourth
7 Plenum of the Central Committee of the Vietnamese Communist Party
8 to start an internal rebellion led by So Phim, and if that would
9 not work, to invade Democratic Kampuchea? Do you know anything
10 about that?

11 MR. TOIT THOEURN:

12 A. No, I don't.

13 [11.23.03]

14 Q. When you were in the Soviet Union studying at the military
15 academy, were you ever being taught about the Soviet invasion of
16 Czechoslovakia in 1968?

17 A. Yes, I went to attend that study course. However, it was not
18 about the invasion. It was focused mainly about the military
19 strategies, mostly about the administrative work at the general
20 staff, and how to manage soldiers. We did not touch on the issue
21 of the incursion or invasion at all.

22 Q. Mr. Witness, let me read to you minutes of a meeting of all
23 commanders of the central armies, minutes of the meetings of
24 October '76, led by Son Sen.

25 Mr. President, E3/13; English, ERN 00940343; Khmer, 00052406; and

1 French, 00334976; now, Son Sen is addressing all commanders of
2 the Centre's divisions, and he says the following -- and I quote:
3 "The enemy to the East: the key plan of the enemy of the East,
4 the Vietnamese with the Soviets behind them, was to attack from
5 the inside through the traitorous forces of Ya, Keo Meas, Chhouk
6 and Chakrey. What they would have liked in terms of an attack
7 from the outside was to attack in the Czechoslovakian and Angolan
8 style, but this was merely a morale boost because given our
9 situation, this was not something the enemy could do."

10 Have you ever heard something to that effect in '76? Vietnam
11 suggesting -- maybe to your father or others -- that Vietnam
12 would do a '68 kind of Czechoslovakia-style attack?

13 A. No, I never heard about that.

14 [11.25.45]

15 Q. The same expert of this Court, Nayan Chanda, wrote in his book
16 that he had talked to a Vietnamese general in '78, who told him
17 that in fact this had been the advice of the Soviet Union to
18 Vietnam in early '78. Do you know anything about this? Were you
19 ever told this while you were at the military academy in the
20 Soviet Union?

21 A. I have already stated, my course involved the strategies that
22 we would use for our army to defend our territory, and how to use
23 the weapons effectively. Besides that, the course did not focus
24 on anything else.

25 [11.26.51]

1 Q. Mr. Witness, let me read to you an excerpt from another
2 Northwest Zone cadre.

3 Mr. President, that would be E319/13.3.58; English, ERN 00970467;
4 French, 00974761; Khmer, 00947282:

5 Question: "Did you know" -- Question 13, by the way: Did you know
6 why the Southwest cadres came to replace the Northwest cadres?"

7 Answer of this Northwest Zone cadre: "They had been accused of
8 being affiliated with the Viet Minh Khmer Rouge, and the East
9 Zone committee chief So Phim. These two zones had turned against
10 Pol Pot. According to my observations, the Khmer Rouge was
11 apparently composed of three or four groups. The first group was
12 the Viet Minh. The second group was the nationalistic Khmer
13 Rouge. The third was the Sihanouk Khmer Rouge, and the fourth
14 group was the Khmer Rouge from China, including Pol Pot."

15 Now, Mr. Witness, this fellow Northwest Zone cadre is speaking
16 about various factions within the CPK. Is that your recollection
17 as well?

18 [11.28.46]

19 A. It might have happened due to the number. However, as for the
20 replacement of the Southwest group to the Northwest group, I did
21 not know because the people had been arrested and sent away, and
22 I did not know the details.

23 Q. Were you in fact yourself a member of one of those four
24 factions backed by Vietnam, which was trying to rebel and start
25 an armed conflict with the group led by Pol Pot?

1 A. You can say I was in one of the four factions. However, as I
2 said earlier, if I had not been arrested and no attempt was made
3 on my life, I would not involve in the activity of what I did
4 after. I saw children who were parentless, and I fostered them.
5 And I myself was alleged of being a slave to the Vietnamese. In
6 fact, I did not have anything at all to do with the Vietnamese
7 during the period, as I myself was based along the Thai border. I
8 dealt with the Vietnamese during the 1970, but by late 1972 and
9 1973, the Vietnamese had left, and I no longer had any contact
10 with them. And I'd like to make this clear to the Chamber.

11 [11.30.47]

12 Q. But did So Phim or Ros Nhim, your foster father, or Chakrey or
13 Koy Thuon, or Tiv Ol have any contacts with the Vietnamese in
14 this rebellion?

15 A. I was not aware of that.

16 Q. Mr. Witness, I would like now to turn to your arrests, that
17 you've just briefly described already.

18 Mr. President, as you have noticed, I'm already busy for two
19 hours, but I need some substantial more time, which this time I
20 don't think can be solved with giving the Defence 10 minutes
21 extra. So, I would kindly ask your permission to continue
22 questioning this witness after the lunch break for another hour.

23 [11.32.02]

24 MR. KOUMJIAN:

25 Your Honours, we would ask the Court not to grant that, for a

1 simple reason. This is not a re-trial. Counsel's raising issues
2 that are completely irrelevant. He's wasted his time talking
3 about Czechoslovakia in 1968, and what this witness studied in
4 the 1980s, and hasn't gone to any issues that are really on
5 appeal. So, if there's a problem with time, it's because the
6 Defence has not focused on the Appeal issues.

7 (Judges deliberate)

8 [11.34.14]

9 MR. PRESIDENT:

10 Based on our discussion and deliberation, you may now continue
11 for 10 minutes.

12 (Judges deliberate)

13 [11.35.13]

14 MR. PRESIDENT:

15 You may now resume your line of questioning, Counsel.

16 MR. KOPPE:

17 Ten minutes? That's what I get? Very generous. Thank you, Mr.
18 President.

19 BY MR. KOPPE:

20 Q. Mr. Witness, you said earlier that you had been arrested at
21 one point in time. What happened after your arrest? Where were
22 you detained?

23 MR. TOIT THOEURN:

24 A. The attempt to arrest me the first time failed. They arrested
25 another one by mistake. At that time, I was riding the bicycle

1 and the chief of the children's unit was behind me. They arrested
2 that chief. He was taken away and tortured. And it was a mistake
3 that the person was not me. And for the second time, the chief of
4 the pumping water unit was arrested by mistake.

5 [11.36.46]

6 Q. Where were you detained after your arrest, Mr. Witness?

7 A. I told you already that the attempts to arrest me failed, and
8 they in fact arrested my deputy. And he was not taken anywhere.
9 He was hit and tortured, and when they realized that it was the
10 mistake to arrest that person, he was released. And after he was
11 released, he sustained blood on his head, and I tore a krama to
12 wrap around the wound. At that time, the arrest failed.

13 Q. Let me interrupt you, Mr. Witness. Let me read to you a
14 passage from this Northwest Zone cadre, who I referred to
15 earlier.

16 Mr. President, that is document E319/13.3.17; English, ERN
17 00978422; French, 01004436; Khmer, 00951906:

18 Question: "Now, you talked about Ta Ham. What was Ta Ham's
19 position during the Khmer Rouge regime?"

20 Answer: "Ta Ham was deputy of the Zone military general staff. He
21 was Ta Khmeng's deputy."

22 [11.38.41]

23 Question: "Do you know what happened to Ta Ham?"

24 Answer: "Ta Ham was also arrested; they were arrested together. I
25 obtained information that both divisions of the Northwest Zone

1 had planned to fight back against Pol Pot, but this plan had been
2 leaked through some agents of the Centre. That was why the
3 military people were arrested. Ta Ham was accused of having
4 transported military equipment to Phnum Veay Chab mountain. I
5 learned about this after '79 from a driver who had transported
6 the equipment in question. Another soldier told me overhearing
7 their leaders say in a meeting that if nothing was done about the
8 Northwest group, the Zone would revolt like the East Zone."

9 Mr. Witness, were you arrested together with Khmeng, and were you
10 accused of having transported military equipment? The equipment
11 that we just discussed?

12 [11.39.53]

13 A. The attempt to arrest me failed. And as for the weapons, the
14 weapons, as I said, were not stored to start the rebellion
15 against Pol Pot. And the attempt to arrest me, once again,
16 failed. And for this reason, I decided to use the weapons to
17 start the rebellion against them.

18 Q. Mr. Witness, after your arrest, how many men did you lead into
19 the forest to start openly an armed conflict with the Centre's
20 troops? When exactly was that?

21 A. At first, nine of us went to the cooperative. We considered
22 ourselves thieves, to steal rice to eat. After I hit those people
23 from 108, after I attacked them -- and at that time, mobile units
24 and other unit chiefs were going with me. It was like the
25 encouragement for me and for my group. Mobile unit people and

1 other unit chiefs said that they would die if they did not
2 revolt. That is why we together went to the warehouse to collect
3 the weapons.

4 [11.42.15]

5 Q. Mr. Witness, let me interrupt you. Let me summarize your own
6 testimony to the investigators, and then tell me if I summarized
7 it adequately.

8 Did you at one point in time flee into the forest with 2,000 men,
9 and that all sectors of the Northwest Zone came under your
10 control, except Sector 7? That you started open fighting against
11 Southwest Zone troops, and that at one point in time, you liaised
12 with troops from the East Zone led by Heng Samrin?

13 A. This struggle did not have a proper structure. As I told you
14 already, there were only nine of us at the beginning. But later
15 on, other people joined us, and it was convened that we could
16 have a strong force to fight against them. And I went to
17 encourage the old soldiers who were assigned to cut trees, and
18 work at different places, so that we could be together to rebel.
19 And I could be able to mobilize 2,000 people to join with me.

20 [11.44.05]

21 Q. And at one point in time, did you contact the East Zone forces
22 led by Heng Samrin? And that you, together with his forces,
23 attacked former Southwest Zone forces? Is that correct?

24 A. Regarding the contact with Lauk Ta Heng Samrin, who was a part
25 of the United Front of Cambodia, it happened after the troops of

1 the United Front arrived in Battambang. At the outset, I thought
2 it was only my troops who would revolt, but actually there were
3 others who wanted to revolt as well. We were thinking that we
4 would fight along the way with what we had. And later on, after
5 we were fighting with the regime, many people joined our force,
6 and many other troops rebelled against the regime as well. And
7 there were forces from Phnom Penh. There were Pen Sovann force;
8 Chea Sim, Heng Samrin forces. And by that time, all the other
9 forces of the United Front of Cambodia had arrived in Battambang
10 already. I contacted these forces in Battambang, not in the East
11 Zone.

12 Q. I have many more questions to you about this open armed
13 conflict, Mr. Witness, but my last question will be about the
14 arrest of your foster father, Ros Nhim. There is a witness who
15 testified before the investigators that your foster father
16 learned about his pending arrest, escaped to Sisophon, and was
17 arrested in Sisophon by armed units using a helicopter. Is that
18 correct?

19 [11.46.39]

20 A. I do not know about that. At that time, there was no
21 helicopter, none of them. And parts of helicopters were used to
22 make tools. And I do not know about that.

23 MR. KOPPE:

24 Thank you, Mr. Witness. Mr. President, for the record I have not
25 asked any questions to the witness yet about the attack in '75 on

1 Pursat provincial town, what happened with the soldiers at Tuol
2 Po Chrey. So, maybe if I make my request very specific, and ask
3 for permission for about 20-25 minutes, to only ask questions in
4 relation to the attack on Pursat provincial town, and what
5 happened subsequently to the soldiers working for, or fighting
6 for the Lon Nol regime.

7 [11.47.48]

8 MR. PRESIDENT:

9 Counsel, let me clarify once again. You first wanted an
10 additional 10 minutes, and then you requested to have one more
11 hour in addition to that, and now you are requesting for another
12 20-25 minutes. So, your 20-25 minutes as requested can give you
13 time to complete your overall questions? So, how many time you
14 wanted exactly now?

15 MR. KOPPE:

16 Maybe something went wrong in the translation, Mr. President. I
17 asked for an hour, and then you decided to give me 10 minutes. So
18 maybe that wasn't clear. What I'm asking now is another 20-25
19 minutes, and I will -- I promise -- limit myself to questions in
20 relation to Pursat and the attack on Pursat, and what happened at
21 Tuol Po Chrey.

22 MR. PRESIDENT:

23 Now you are asking for another 20-25 minutes. So this can
24 conclude all your questions, by giving you 20-25 minutes?

25 [11.49.28]

1 BY MR. KOPPE:

2 Yes, Mr. President, thank you very much.

3 Q. Mr. Witness, let me take you back now to March-April '75. What
4 do you remember of the attack --

5 MR. PRESIDENT:

6 Counsel, I think we should take a lunch break first. And your
7 request to have another 20-25 minutes in addition to the time
8 that we have just given, will be discussed and decided during the
9 lunch break. Now, the Chamber would like to take a lunch break
10 first.

11 JUDGE KLONOWIECKA-MILART:

12 To both counsel of the Defence, considering the course of the
13 interviewing of the witness so far, and the interest of the
14 clients, would you be capable of agreeing as to the use of time
15 after the break for the Defence?

16 [11.50.58]

17 MR. VERCKEN:

18 I didn't entirely understand, Madam. If there is time available
19 at the end of my questioning, I will be happy to pass it to my
20 colleague, but I have many questions to ask on a subject that I'm
21 very interested in, so it's difficult to foresee, but we do not
22 -- I shall not -- I'll do my best not to overlap with questions
23 already put.

24 JUDGE KLONOWIECKA-MILART:

25 We were asking because we know that we are behind the schedule.

1 We started later, and also we remember that there was a request
2 from the Prosecution and the civil parties for the additional
3 time, so -- which we turned down. But in light of the -- how the
4 questioning goes, we would need to consider this as well. We just
5 wanted to have all this data before we go to break, to decide on
6 the timing issue.

7 [11.52.17]

8 MR. KOPPE:

9 Thank you, Judge. I will limit myself to 20-25 minutes, and then
10 will hand the floor to the Khieu Samphan defence team, and they
11 can round up their time totally allotted to the Defence.

12 MR. PRESIDENT:

13 Thank you. Now the Court will take a lunch break, and security
14 personnel are instructed to bring the two Accused to the waiting
15 room, and please bring him back at 1.20.

16 The Court is now adjourned.

17 (Court recesses from 1153H to 1323H)

18 MR. PRESIDENT:

19 Please be seated. The Supreme Court Chamber is back in session.

20 After discussion and deliberation during lunch time, the Supreme
21 Court Chamber grants 25 minutes for the Defence team for Mr. Nuon
22 Chea. You may now proceed with your line of questioning, Counsel.

23 BY MR. KOPPE:

24 Thank you very much, Mr. President. Good afternoon. Your Honours,
25 good afternoon, Counsel and good afternoon, Mr. Witness. I would

1 like to take you back to the first months of 1975. The attack,
2 the final attack on Pursat, Battambang, Sisophon and other cities
3 in the northwest, do you know who was militarily leading the
4 final attack, who was in charge of the attack -- the final attack
5 on these cities?

6 MR. TOIT THOEURN:

7 A. Good afternoon, Your Honours, and everyone. Ros Nhim was the
8 one who led the final attack.

9 Q. My apologies, something went wrong, Mr. President. You said, I
10 believe, that Nhim was in charge of the final attack, what about
11 Khmeng did he have a role in the preparation of the final attack?

12 [13.26.24]

13 A. He was the general staff; he was part of the general staff.

14 Q. And was he involved in the planning of the attacks?

15 A. Yes he was.

16 Q. What exactly was your role?

17 A. I was a messenger, merely a messenger, carrying messages from
18 the front battlefield to the rear battlefield.

19 Q. Was it indeed a joint attack from the two divisions belonging
20 to the Northwest Zone, joint attack on all these cities at the
21 same time somewhere in April '75?

22 A. The areas were divided during the attacks. Division 1007 was
23 in charge of the attack from the south to the north and Division
24 1006 which was noted down in the letter was responsible in
25 attacking from the north to the south.

1 Q. Mr. Witness, you call these divisions 1006 and 1007
2 respectively. At the time would they also be known under a
3 different number?

4 A. At -- the numbers were not used on the envelope. I saw such
5 figures 1007 and 1006 and in the message itself the figure 06 and
6 07 were used.

7 [13.29.18]

8 Q. When were both divisions finally successful in beating,
9 definitively, the Lon Nol Army, how many days after 17 April '75
10 was that the case?

11 A. I could not figure it out how many days. It was after the 6th
12 or perhaps a few days after that date.

13 Q. Once the Lon Nol forces were formally, officially beaten what
14 happened then with the population of Battambang or Pursat, were
15 people evacuated?

16 A. After the country was immediately liberated, Ta Vanh was in
17 charge of the radio station of Chamkar Chek. He was in charge of
18 announcing to Lon Nol force to lay down weapons and people in
19 general felt very happy and delighted about that. Later on I do
20 not tell you the exact date, later on, the happiness turned into
21 distress; people were evacuated from their houses in towns to --
22 into the forest, no more houses for people to live in.

23 [13.31.36]

24 Q. And what happened to the Lon Nol armed forces who had just
25 surrendered and had put down their weapons, what happened to

1 them?

2 A. They were gathered to welcome the late King Norodom Sihanouk.
3 They were transported in vehicles and I felt jealous at that time
4 because I was thinking that I was living in the forest for so
5 long and I was not allowed to go and welcome the late King. Ten
6 days later I realised that these former soldiers were taken away
7 and killed.

8 Q. And who within the northwest zone forces was responsible for
9 the decision that these former Lon Nol military were to be
10 killed?

11 MR. KOUMJIAN:

12 Mr. President, I have one objection, the question "who within the
13 northwest military" presumes something, that it was a person
14 within northwest military. So I would ask Counsel to phrase the
15 question neutrally as to who was responsible.

16 [13.33.19]

17 BY MR. KOPPE:

18 I have no problem doing that, Mr. President. Who, Mr. Witness,
19 was responsible for the killing, the physical act of killing, I
20 mean, who was in charge of executing former Lon Nol military, who
21 did the actual killing, can you tell us a little bit more?

22 MR. TOIT THOEURN:

23 A. I have no full information. What I saw is that these people
24 were put in trucks and vehicles and taken away to welcome the
25 late King Sihanouk. The vehicles were the kind of CMC trucks with

60

1 cover and they were told they had to go and welcome the late King
2 at that time. I felt envious because I was not allowed to go and
3 welcome the late King. I did not know who was in charge of the
4 killings.

5 [13.34.41]

6 Q. Mr. Witness, let me read to you an excerpt from a statement of
7 one of the soldiers from the Northwest Zone, somebody who
8 testified in Court, so I can pronounce his name. It's witness
9 with the name Ung Chhat. Mr. President that is document, E3/5774,
10 English, 00284420; French, 00352333; and Khmer, 0027333. Now I
11 will read a small excerpt from his statement and then I will ask
12 your reaction, Mr. Witness.

13 Question: "Did Ta Sarun battalion participate in the operation to
14 kill Lon Nol soldiers at Tuol Po Chrey?"

15 Answer: "Those participated personally were Ta Khleung, Ta Sot and
16 Ta San."

17 On that same English page on -- on the top of that page it says
18 as follows. "Where were the Khmer Rouge soldiers who carried out
19 the killing of those Lon Nol soldiers from?" And Ung Chhat
20 answers as follows, Mr. Witness "My unit in the 26 battalion was
21 not involved with this operation. As I knew it those were troops
22 of Battalion 201 from Sector 7 and the zone troops of Battalion
23 24 who carried out this operation." Could you please give your
24 reaction to this statement?

25 [13.36.54]

1 MR. KOUMJIAN:

2 Your Honours, I don't think it is particularly helpful to just
3 read a statement and ask the witness for reaction. He can testify
4 to his knowledge, he's already talked about the fact he learnt
5 about these events 10 days later. If Counsel has a specific
6 question from that, as to whether or not this witness is aware or
7 agrees or disagrees, that would be fine.

8 MR. KOPPE:

9 If I had all the time in the world, Mr. President, I surely would
10 approach it more openly. But he has already indicated he wasn't
11 quite sure who was responsible militarily that's why I thought it
12 would be appropriate to confront him with these specific
13 excerpts. So at this stage I think I would be entitled to read
14 out these excerpts from Ung Chhat's statement.

15 (Judges deliberate)

16 [13.38.07]

17 MR. PRESIDENT:

18 Counsel wanted to confirm with the witness and wanted to hear the
19 reaction from the witness and it is very difficult for the
20 witness to give and reactions to that question or to the excerpts
21 read by Counsel. Could you please rephrase your question so that
22 witness could give response to you?

23 BY MR. KOPPE:

24 Certainly, Mr. President. Mr. Witness, were forces of Division
25 1006 or 1007, as you call them, involved in the killing or

1 execution of these former Lon Nol soldiers?

2 MR. TOIT THOEURN:

3 A. I do not know. As I said I was a messenger from the
4 headquarter of Ta Nhim to the rear battlefield, Office 20, and I
5 do not know about that.

6 Q. But who decided that these military who had surrendered were
7 to be killed and why, what was the reason to kill these soldiers?

8 A. I do not know.

9 [13.40.05]

10 Q. You do not who and you also do not know why, is that my
11 understanding?

12 A. Yes, that is correct.

13 Q. Considering the structure, the military structure of Divisions
14 1006 and 1007, being led by your foster father, is it correct
15 when I say to you, when I put to you, that it was your foster
16 father who ordered the execution of these Lon Nol soldiers?

17 A. I have no idea because I was merely a messenger carrying
18 messages. I cannot say whether what you have just said is correct
19 or not.

20 Q. Later in the year, Mr. Witness, you became the deputy chief of
21 the general staff, in that same year you were also responsible
22 for collecting the weapons that had belonged to these soldiers,
23 did you hear in that capacity later, as to who gave the order to
24 kill these people?

25 [13.41.49]

1 A. I did not hear of it later on, I was in charge of collecting
2 weapons and put them in piles at Chamkar Chek farms, that is the
3 work that I did. One had to mind their own business at that time;
4 we did not care about other business.

5 Q. But you did hear or had heard that all these soldiers were
6 invited to a meeting so that they could see the King, you said
7 that you were even a little bit jealous, that you were not
8 present, that you were in the forest. When did you hear this and
9 who told you?

10 A. These soldiers was told to welcome the late King by Ta Vanh.

11 Q. But when did you hear that this was the invitation, this was
12 happening and that they were fooled into this meeting and that
13 they were subsequently killed, when did you hear this for the
14 first time?

15 A. It was after I carried a message to Telegram Office 20.

16 Q. And when was this 1976 or 1977, 1975 maybe?

17 A. It happened a long time ago I cannot give you the exact date.
18 But from my estimate it was 10 days after the country was
19 liberated, perhaps was a bit below that or above that.

20 [13.44.38]

21 Q. So, quite quickly after liberation, you heard about the fate
22 of these Lon Nol soldiers, is that correct, very quickly after?

23 MR. KOUMJIAN:

24 Your Honour, perhaps I think the record might be clarified
25 because the witness has talked about when he learned about the

1 call for soldiers to go meet the King and as I recollect his
2 testimony he gave, he said he didn't immediately learn the fate
3 so the question might be clarified which the Counsel is asking
4 about. When he heard the call to see the King or when he heard
5 about the ultimate fate.

6 BY MR. KOPPE:

7 I was referring in my question, maybe that was unclear, to, and I
8 will rephrase, the moment, Mr. Witness, that you had heard about
9 the fate of these soldiers. When did you hear that they were
10 killed, was that briefly after liberation?

11 [13.45.50]

12 MR. TOIT THOEURN:

13 A. I stated earlier already it was after the liberation, it was
14 perhaps 10 days after the liberation or a bit shortly before or
15 after 10 days. It happened a long time ago so I could not give
16 you exact estimates.

17 Q. Did you speak to Khmeng or to your foster father and ask him
18 why did these people have to be killed, what was the reason
19 behind it, did you have any conversation about the why?

20 A. I did not question Ta Khmeng. He was living in his own way and
21 I as messenger living about 50 meters away from his place. I was
22 residing in a separate house from him, he was living with his
23 people in Kampong Preah commune, Panhnha village. When he gave me
24 messages and these messages were already sealed in the envelopes
25 I had forward these messages to the office at the upper level

1 part of that place and I had to return after I had given messages
2 to that office. And after I took messages and delivered to that
3 place, I returned to my normal place and I was away from his
4 office.

5 Q. Mr. Witness, let me try it differently, let me try to ask you
6 the question differently. Today you're giving testimony in the
7 appeal that Nuon Chea and Khieu Samphan initiated against a
8 judgment, a judgement of the Trial Chamber. In this judgement the
9 Trial Chamber held that it was your foster father Nhim who
10 ordered the execution of these soldiers, is that correct or is
11 that false?

12 [13.48.43]

13 MR. KOUMJIAN:

14 That's been asked and answered, as far as his knowledge of
15 whether Nhim ordered the execution.

16 MR. KOPPE:

17 I thought I'd try it a bit differently. It's true I've asked the
18 question but I think I should be able to ask the question. Did
19 your foster father order the execution of these former Lon Nol
20 soldiers and officials, Mr. Witness?

21 [13.49.19]

22 MR. KOUMJIAN:

23 Again it's the same question, I don't know if there is a ruling.
24 I respect whatever ruling is given but I object.

25 MR. PRESIDENT:

1 The question is repetitive but, Mr. Witness, you are instructed
2 to give your response once again.

3 MR. TOIT THOEURN:

4 A. I do not know which level ordered the killings.

5 BY MR. KOPPE:

6 Q. Very well, Mr. Witness. Do you know if after liberation in
7 April 1975, within the military of the Northwest Zone there were
8 sentiments of feelings of revenge, revenge against brutal
9 actions, brutal decapitating heads, brutal military actions of
10 the Lon Nol army, do you know of any of these existing
11 sentiments?

12 MR. TOIT THOEURN:

13 A. I have never heard of such words described by you. I heard
14 only that the country was liberated so people could meet with the
15 families and live with their family members happily.

16 [13.50.59]

17 Q. My final question to you, Mr. Witness, is relating to more
18 specifically events at this fort -- this fortress at Tuol Po
19 Chrey. There is evidence that the heads of the Lon Nol commanding
20 officers of this fort were decapitated and put on the post of
21 that fortress. I would like to show you a photo from before the
22 liberation in April '75, and I would like to ask your reaction.
23 Mr. President, this is also my final question. It is -- we've
24 discussed this with the AV Unit, document E3/19, English,
25 00396327; French, 00639638; I apologise, it's E3/9.

1 MR. PRESIDENT:

2 Counsel, please read the reference number slowly so that
3 interpreter could catch up.

4 [13.52.11]

5 MR. KOPPE:

6 Sorry, it's a photo from a book, a book written by Philip Short,
7 its E3/9 and the English is 00396327; and French, 00639638; there
8 is no Khmer version because it's a photo. So with your
9 permission, Mr. President, I would seek leave for the AV unit to
10 put this photo on the screen and ask the witness his reaction.
11 Do we have permission, Mr. President, to show it on the screen to
12 the witness?

13 MR. PRESIDENT:

14 Yes, you may do so and the photo could be projected.

15 BY MR. KOPPE:

16 Mr. Witness it's about the photo that you see in front of you,
17 the caption reads as follows, "In the civil war which followed"
18 civil war between '70 and '75, "government troops took the heads
19 of communist soldiers as trophies". Is this what you see on that
20 photo something that somehow jogs your memory?

21 [13.54.20]

22 MR. KOUMJIAN:

23 Mr. President, Your Honours, perhaps we need a little reminder of
24 why we are here. We are here for an appeal hearing on the
25 Judgement in Case 002/01. What Counsel is showing is evidence of

68

1 war crime committed by Lon Nol soldiers, that's not even relevant
2 to any defence in this Case 002/01 or in 002/02. There is a
3 fundamental principle in International Criminal Law, tu quoque,
4 the crimes of some other force do not excuse the crimes charged,
5 you cannot blame, use as a defence "well other people did it to".
6 So the question is completely irrelevant and perhaps indicative
7 that this witness has no evidence relevant to the appeal.

8 [13.55.13]

9 MR. KOPPE:

10 Mr. President, if I may briefly respond. One of -- as you know of
11 course the main argument in our defence in the appeal is there
12 was no policy to execute former Lon Nol military, we have also
13 indicated the possibility that whatever happened at Tuol Po Chrey
14 was the result of revenge against actions of Lon Nol troops.
15 Certainly I agree with the Prosecution that revenge, in itself is
16 not an excuse to execute unarmed soldiers, however it might have
17 been a factor at play. So I think my question is appropriate and
18 I should be entitled to ask the witness whether actions such as
19 portrayed on this photo led to any sentiments of wanting to seek
20 revenge against these troops.

21 [13.56.15]

22 MR. PRESIDENT:

23 I want to clarify with Counsel a little bit. So, the photo that
24 you asked to project a moment ago, what year did it happen?

25 MR. KOPPE:

1 In the civil war, so, between 1970 and 1975.

2 MR. PRESIDENT:

3 So this photo perhaps was taken before 1975, so the observation
4 of the Co-Prosecutor is correct because it is not within the
5 scope of trial in this Case 002/01, so do you have any other
6 questions to put to this witness or you may rephrase your
7 question.

8 [13.57.20]

9 MR. KOPPE:

10 Mr. President, your observation is completely correct, however
11 the actions at Tuol Po Chrey are indeed part of this appeal and
12 I'm only trying to establish whether atrocities committed by the
13 Lon Nol army had any influence on the decision taken by Ros Nhim
14 to execute soldiers at Tuol Po Chrey, that's what I'm trying to
15 establish. I'm not trying to discuss a war crime, possible war
16 crime, committed by Lon Nol but I'm trying to see if there is a
17 connection between these atrocities and the subsequent actions,
18 possible of revenge, by the Northwest Zone forces.

19 [13.58.11]

20 MR. PRESIDENT:

21 Mr. Witness, you are instructed to give you response if you have.

22 MR. TOIT THOEURN:

23 A. I want to say that I cannot give my response because I do not
24 know.

25 MR. KOPPE:

1 Thank you very much, Mr. Witness. Thank you, Mr. President. Thank
2 you, Your Honours.

3 MR. PRESIDENT:

4 Thank you. Next, you have the floor, Counsel for Mr. Khieu
5 Samphan.

6 QUESTIONING BY MR. VERCKEN:

7 Thank you, Mr. President. Good afternoon, Witness. My name is
8 Arthur Vercken and I am one of Khieu Samphan's counsels. I have a
9 few brief questions to put to you, won't take that long or at
10 least I hope so.

11 Q. First of all, I would like to ask you for some clarification
12 with regard to your role as a messenger because when you were
13 questioned by the investigators, it appeared according to me at
14 least but of course you can tell me if I am wrong, but you seem
15 to be saying that your role as a messenger did not simply consist
16 in carrying messages but also in carrying out security duties, is
17 that true or not?

18 [13.59.48]

19 MR. TOIT THOEURN:

20 A. During the communication of messages, I also performed as a
21 security personnel, however when I actually communicated messages
22 to the front battlefield that was the sole task that I did.

23 Q. Fine. So you were not in charge of ensuring Ros Nhim's
24 security, is that so?

25 A. When I was at the front battlefield, I was no longer in charge

71

1 of security affairs but when I was in the rear, yes, I was
2 involved with the security matter.

3 Q. So what does it mean exactly taking care of security matters,
4 can you tell us what this actually entailed?

5 A. At night time I was on a guard duty and it was a roster base.

6 [14.01.40]

7 Q. And what would you watch over?

8 A. I provided protection to my superior of course and to the
9 office itself.

10 Q. But what were you guarding, a house, a base, barracks, can you
11 be a bit more specific about what you were guarding, were you
12 guarding the place where Ros Nhim would sleep? Can you be a bit
13 more specific?

14 A. Of course, I guarded Ros Nhim at his residence where he stayed
15 and slept. It was a common house where Ros Nhim and Ta Keu
16 resided together. However it was, they resided to one side each
17 and there were security guards there but when needed, I would
18 also take part in the roster system to provide them with
19 protection.

20 Q. And did this mission as of begin 1970, this extra security
21 mission that is what I am talking about?

22 A. Yes. And actually it started since the time that I moved to
23 live with him -- that is, in 1970, and I was on a roster basis to
24 guard the premises and when there was a message for me to deliver
25 I would carry out that task to communicate the messages to the --

1 another message office at the lower part.

2 [14.04.20]

3 Q. So we have just seen that it is only 1975, that the cities
4 such as Battambang and Pursat were captured, so can you tell us
5 in 1970 and in the following years, where was Ta Nhim based,
6 where exactly was he based. Where was his house, because it could
7 have been Battambang or Pursat. So can you provide details about
8 the place he was?

9 A. I don't fully get question. Please be more specific as to the
10 year.

11 Q. Can you provide us rapidly with the list of the different
12 locations where Ros Nhim had settled between 1970 and 1975? Where
13 was his headquarters in 1970 for example? Can you just tell us
14 the place?

15 A. Between 1970 to '75, his office remained at the same place --
16 that is, in the forest, I refer to Office 20. His wife and
17 children also resided there. And only in 1975, he attached to the
18 battlefield and for that reason he mainly resided in various
19 locations in the forest for instance or at villager's houses.

20 [14.06.24]

21 Q. Fine. Maybe you said -- told us this, this morning if that's
22 the case I apologise but please be more specific. Speaking about
23 the forest is a bit vague in terms of the entire Northwest Zone.
24 So please can you tell us specifically where this forest was
25 located?

1 A. Actually I already said it was at Phnum Thum and Thom mountain
2 which is next to Kravanh mountain.

3 Q. Thank you. In your written record of interview, at answer 124
4 in particular, you speak about the numerous time you heard Ros
5 Nhim complaining about the Centre. So I'm going to quote what you
6 answered to the investigators, at answer 124 you say, "I heard
7 him speak about -- I heard Ros Nhim often complain about the
8 centre. He was depressed by the fact that people had been sent
9 out of the cities, that money was cancelled, he said that no
10 country in the world had applied such policies." End of quote. So
11 can you confirm this statement you made in 2013?

12 A. Yes, that is the statement that I made at that time. While I
13 was with him, sometimes I would act as his driver and he
14 sometimes met with his former friends who were former professors
15 for instance and they discussed the issue of people evacuation.

16 [14.09.12]

17 Q. And what were they saying, therefore?

18 A. He said that the war raged throughout the world and after the
19 war ended only disaster remained and in our case the war ended
20 and the only option was to build the country was to obtain
21 foreign aids and for that reason it was improper to evacuate
22 people from their homes. That's what they said.

23 Q. And do you remember this episode that you just described to
24 us, do you remember when it happened, can you place it in
25 relation to other events?

1 A. That was before they attended the conference at the centre and
2 there were other people present during the discussion including
3 Ta Keu, Ta Paet and Ta Tom. Ta Mei was also present.

4 [14.11.15]

5 Q. So this was -- this was a big car -- this was a conversation
6 that took place in the car or did you hear it elsewhere.

7 According to your record this is something that came up quite
8 often, that Ros Nhim spoke about quite often.

9 A. They were speaking while they were in the car and they also
10 spoke about the matter while they were at the residence. They
11 touched upon the issue of the non-circulation of the printed
12 money and they said that was -- it was observed that printed
13 money was not circulated and it never happened in other countries
14 in the world and that we already had printed money but it was not
15 used or circulated.

16 Q. Now with regard to the evacuation of the cities, can we
17 understand, on the basis of what you said, that Ros Nhim did not
18 agree with that?

19 A. He opposed the evacuation of the people.

20 [14.13.19]

21 Q. Do you remember if in 1974, you accompanied Ros Nhim to a
22 meeting that lasted two weeks and that was held about 300
23 kilometres away from B-20? Do you remember travelling with Ros
24 Nhim to go to a meeting that lasted two weeks in a village which
25 was about 40 kilometres north of Kampong Cham, does that ring a

1 bell?

2 A. No, not in 1974, but I think it was in 1975 and it happened
3 after the conference.

4 Q. What are you thinking about?

5 A. I don't understand your question.

6 Q. Maybe my question was too broad but you seem to be finding
7 some kind of echo to the meeting that I was speaking to you about
8 but you say that it happened at another moment and when you say
9 1975, was it after the 17 April victory?

10 [14.15.37]

11 A. Please step back a little and refresh my memory by referring
12 to which meeting that you are referring to?

13 Q. Yes, of course. Does the village of Meakh in Preaek Kak
14 commune ring a bell; did you ever go there with Ros Nhim in 1974?

15 A. No, I did not.

16 Q. And without having gone there do remember if Ros Nhim
17 travelled for two weeks to go to a meeting that was held about
18 300 kilometres away from B-20?

19 A. I cannot recall that.

20 Q. Did Ros Nhim ever speak to you about a meeting which he
21 apparently attended in 1974 and during which apparently he
22 approved the evacuation of the cities?

23 A. No, he never said that to me since my task was dealing with
24 messages and that was mainly what I was assigned to you.

25 [14.17.50]

1 Q. Naturally. As far you remember the capture of Battambang and
2 Pursat and the North Zone -- the Northwest Zone, did this lead to
3 very heavy fighting, do you know what happened and what do you
4 know? Was it very, very difficult for the revolutionary army to
5 completely occupy the Northwest Zone or was it relatively easy,
6 can you somehow describe and tell us how this capture took place?

7 A. The fighting was rather intensive and all the senior
8 commanders were there on the ground and they were present at all
9 the main spearheads, including Ta Nhim and Ta Paet. Ta Paet was
10 in charge of food supply -- that is, logistics, at that time. And
11 Ta Keu was also present at the front battlefield. And I myself,
12 communicated messages from Ta Nhim's place at the front office to
13 office at the front battlefield to Office 20 and the situation
14 was rather intensified at that time.

15 [14.19.49]

16 Q. A very intense situation, can you give us more details about
17 this? Of course you went to the front line so you were direct
18 witness of the fighting, or if that was not the case please tell
19 us but what do you mean by very intense situation? You mean that
20 when you would travel to bring messages to the front lines you
21 would hear explosions, you would see the fighting, you would see
22 soldiers manoeuvring on the field, can you tell us what was
23 happening?

24 A. Of course I heard exchange of fire and I was also at the
25 operational headquarters at the front battlefield wherever it

1 moved I would be there in order to take the messages to the
2 central command at the rear.

3 Q. Where were you when the fighting stopped, in Pursat and in
4 Battambang, where were you posted then?

5 A. Three days after the fighting stopped I returned from the
6 front battle operational office to Kampong Preah commune in
7 Battambang province and there was another military headquarter
8 there and Ta Nhim also returned to that office.

9 Q. Yes, but you're telling me what you did three days later, I'm
10 asking what you did during. So when the Lon Nol troops
11 surrendered, where were you?

12 [14.22.24]

13 A. I was still a messenger and on that day I actually took a
14 message to the front battlefield office -- that is, on the day
15 the fighting stopped, so that the telegram section there could
16 relay it to the Centre.

17 Q. Fine. And where was this front line office located?

18 A. It was located in Kampong Preah.

19 Q. Fine. Witness, earlier you spoke about the summoning of the
20 former Lon Nol soldiers to go meet the King and so were you in
21 Pursat on that day, I didn't really understand if you were
22 speaking about something that you learnt about later or if you
23 were physically in Pursat when the former Lon Nol soldiers were
24 gathered, were you at the provincial office when that happened?

25 [14.24.10]

1 A. I was at Kampong Preah and there were three of us who was on a
2 roster basis to relay messages to the Centre. At that particular
3 point in time usually there were two messages that we had to
4 deliver each day and it would take us one full day and night to
5 reach the office where we delivered the message and the ceasefire
6 announcement actually was broadcasted via radio.

7 Q. Fine thank you very much, Witness. So this place how far was
8 it from Pursat -- how far is it from Pursat you would say?

9 A. It was roughly 100 kilometres from Pursat.

10 Q. And at that time, you are telling us that the former Lon Nol
11 soldiers were called up and they boarded GMC trucks and so where
12 were was Ros Nhim when all this happened?

13 A. He was right there in Kampong Preah.

14 Q. After the 17 April victory and once Cambodia was unified, what
15 did the servicemen in your zone do, where were they assigned,
16 what were they asked to do, did they continue being involved in
17 military activities or did they begin doing other things?

18 A. I cannot tell you about that. I only knew what was happening
19 with my messenger group.

20 [14.27.05]

21 Q. So within your unit, were you given the mission of trying to
22 identify and eliminate the former servicemen of the Khmer
23 Republic?

24 A. I did not know anything about that.

25 Q. In your written record of interview of 2013, at answer 177,

1 you were shown a telegram and you said, "As far as I know
2 Division 1007 was assigned to repair railroad while Division 1006
3 was assigned to repair National Road 5."

4 MR. PRESIDENT:

5 Defence Counsel, please slower your speed.

6 BY MR. VERCKEN:

7 Yes, I will repeat this. I apologise. Let me repeat my question.

8 At answer 177 in your written record of interview you said and I
9 quote: "After April 1975, Division 1007 was assigned to repair
10 railroads whereas Division 1006 was assigned to repair National
11 Road 5." End of quote. So do you stand by this answer or not?

12 [14.29.02]

13 MR. TOIT THOEURN:

14 A. Yes, I do stand by my previous statement.

15 Q. When we read your 2013 record, which is very long, we
16 understand that you became the deputy general staff leader in
17 charge of economics of the zone army and this happened at the end
18 of 1975, you said that this lasted about a month. So here I'm
19 basing myself on answer 175 and answer 94. So can you confirm
20 that it is at the end of 1975, that you became the deputy leader
21 -- deputy staff leader in charge of the zone army?

22 A. After the return from the conference, I was at the economic
23 section and I was tasked to oversight the weapon warehouse.

24 Q. Sometimes I wonder what kind of translation you are receiving
25 of my questions. So let me repeat my question. So was it at the

1 end of 1975, that you became the deputy leader of the general
2 staff in charge of the economics of the zone army, was this at
3 the end of 1975?

4 A. Yes, it was in late 1975.

5 Q. And was this is close to the date when you left for China?

6 [14.31.47]

7 A. After I managed the storage of those weapons, he assigned me
8 to go to China.

9 Q. And when you were in charge of storing the weapons were you
10 already a deputy leader of the general staff or not?

11 A. Yes, I was already the deputy chief of the general staff in
12 charge of storing weapons.

13 Q. So at the end of 1975, the Northwest Zone army was still under
14 the leadership of the zone, is that correct?

15 A. Yes it was under the zone at that time.

16 Q. Well, we know that the creation of the army had been announced
17 in July 1975, is your answer suggesting that there were one or
18 two problems transferring the power of the army towards the
19 Centre? Was this a little bit more complicated in Northwest Zone
20 so that by the end of 1975, perhaps the handover had not yet
21 occurred, can you enlighten us at all on this subject?

22 Mr. President, I was told that I was speaking a little fast so
23 I'm going to put the question again.

24 [14.34.07]

25 MR. PRESIDENT:

1 Please repeat your question and please be a little slower so that
2 the interpreter could catch up.

3 BY MR. VERCKEN:

4 Yes, I do apologise. We know that the RAK was established or at
5 least it was announced in July 1975. Now, you told us at the end
6 of 1975 you were appointed to a position in the zone army and
7 that at the end of '75, the Northwest Zone army was still under
8 the zone leadership. Now do you know what the reasons for the
9 situation were, perhaps there were difficulties, for example, in
10 transferring authority from zone to Centre, have you any
11 information you can share on this subject?

12 MR. TOIT THOEURN:

13 A. No, no transferring of authority or power, it was removed at
14 that time. The centre removed the power or authority at that
15 time. After the completion of railroads and after the completion
16 of building national roads and after that time leaders were
17 called into a study session, after which they disappeared.

18 [14.36.08]

19 Q. When did -- was this withdrawal of authority from the army
20 that you just mentioned, was it at the end of 1975?

21 A. No, it was not in late 1975, I could not give you the exact
22 year. I noticed that the army was put in tempering centre. I do
23 not know when this was removed.

24 Q. About these weapons, the 20,000 weapons, from what you were
25 saying this morning I understood that your job was not so much to

1 gather up these weapons from the soldiers but you were meant to
2 take them to farm near Banan where there were stored, cleaned and
3 then put away in the warehouse that you set up in the forest.

4 Have I understood correctly?

5 A. Yes, that is correct.

6 [14.38.08]

7 Q. Were there only weapons in this cache or did you put anything
8 else such as food, medicines or clothing?

9 A. No food supplies, only weapons were kept.

10 Q. And the three grandfathers who you recruited to build this
11 weapons cache, were these people you already knew and who you
12 found to be reliable, did you trust them?

13 A. They were old people and they used to transport weapons and
14 food supply during the war time. He was the chief.

15 Q. Chief of what?

16 A. Chief of transportation unit. Chief of transportation unit,
17 transporting weapons to the battlefield and also food supplies to
18 the battlefield. Usually he was referred to being as a Chief.

19 Q. Very well. In your written record you say you were sent to
20 China to learn how to pilot a T28 Bomber, can you tell us little
21 bit more about these bombers?

22 [14.40.48]

23 A. It was a kind of airplane, jet airplane, used by the former
24 Lon Nol army and the jets was located close to the pilot cabin.

25 Q. Okay, so it wasn't a propeller driven aircraft, is that

1 correct?

2 A. Yes, it was a propeller airplane.

3 Q. But before you were sent to China did you have any training in
4 aeronautical things?

5 A. No.

6 Q. And so by the end you knew how to pilot a T28?

7 A. I learnt about the theory but I did not -- I was not trained
8 how to pilot it.

9 Q. So what exactly was the purpose of the training, what were you
10 meant to be able to do on the aircraft?

11 A. I attended classes on theories, how to fly the airplane.

12 [14.43.27]

13 Q. Could you please repeat that again, Mr. Witness, I think it
14 was -- didn't come through in the interpreting.

15 JUDGE KLONOWIECKA-MILART:

16 Could you help me understand the relevance of these questions?

17 MR. VERCKEN:

18 It's a secret, Madam. No, I want to know why this gentleman was
19 sent to China and then I want to ask him questions about his
20 return and the reasons why Ros Nhim was so unhappy about the fact
21 that he didn't want to go back to China. I'm trying to understand
22 the logic of it all, what he was doing there, he apparently went
23 to learn to fly Bombers, now I've discovered that wasn't really
24 the case so I'm interested in looking further.

25 JUDGE KLONOWIECKA-MILART:

1 Thank you.

2 BY MR. VERCKEN:

3 Q. So what is exactly for the purpose of your training on T28s?

4 What exactly were you meant to learn, you were meant to come back
5 from China with what kind of additional knowledge?

6 [14.45.00]

7 MR. TOIT THOEURN:

8 A. I do not know why I was sent to attend such class. I have no
9 idea beyond the fact that I was merely assigned to get the
10 training there. It was dependent on Angkar's decision.

11 Q. Why was Ros Nhim so annoyed when you got back for brief
12 vacation apparently but then according to what you previously
13 said you refused to go back to China now why was Ros Nhim so
14 unhappy about this, what did he say?

15 A. He only suggested that I should go for further training until
16 the completion of the course. And he stated, during a lunch time
17 together, I never forget this statement, he told me that we had
18 to know how to fly this airplane so that we could capture back
19 Kampuchea Krom, Surin, Kulreat (phonetic). It was mentioned to me
20 when I had meal with him and I told him back that I would not go
21 back to the training abroad, I would not want to die abroad, I
22 did not want to go back although you killed me.

23 [14.47.15]

24 Q. Because in the record, you say that you were punished for
25 refusing to go back to China and you were sent to make fertiliser

1 from human faeces, which I can well imagine was not much fun. So
2 why were you punished, can you tell us about that?

3 A. He said that if I refuse to go back abroad I should go to make
4 fertiliser out of faeces or excrement. It was the number one
5 fertiliser, he told me that and after that time I was assigned to
6 make fertiliser out of excrement.

7 Q. Later you decided to set up a resistance unit and did Ros Nhim
8 support you in that activity?

9 A. He did not know about that or perhaps he knew that I was the
10 initiator since I could not -- I could no longer live in the
11 Angkar regime. Most of my colleagues had been arrested and
12 disappeared and no one survived so there may have been confession
13 related to me and the arrest attempt made twice against and after
14 that time I decided to defect the regime. And I told him that if
15 he want to shoot me dead, he should go ahead and he told me that
16 sooner or later I would be arrested.

17 [14.49.50]

18 Q. In answer 41 of the record 2013, you referred to the fact that
19 Ros Nhim came to talk with you, you were in the forest, you had
20 already gone underground and you said, "He supported the
21 establishment of my resistance movement." So he apparently was
22 aware of your movement and even at least twice came and visited
23 and you say that he supported it. I also note that, unless I'm
24 mistaken, this morning you said that your men were armed with
25 weapons that had been hidden in the arsenal that you secretly

1 built up with Ros Nhim. So now what exactly is your position on
2 the support of Ros Nhim to this movement of yours?

3 [14.51.16]

4 A. It was not like what you said. After he learned that he also
5 understood that he would be arrested later on because guards and
6 everyone around him had already been arrested. He did not go to
7 the area where I was in control. He was in the other side of the
8 stream or the river. The first time he went to see me was with 10
9 or 20 trucks and at that time I was about to attack and destroy
10 his troops because I thought he was there to attack me and I told
11 him that if he wanted to see me, he should go alone without any
12 army or soldiers. Later on he went to my area with a driver and
13 the youngest daughter -- his youngest daughter, Kanhchreng
14 (phonetic), and by the time I decided to come out and see him.

15 MR. PRESIDENT:

16 Counsel, please be seated for one minute because we need to
17 change the DVD.

18 (Short pause)

19 [14.53.31]

20 MR. PRESIDENT:

21 Counsel, do you still have many more questions to put to this
22 witness, if so, you may now resume your line of questioning.

23 BY MR. VERCKEN:

24 Mr. President, I'm almost done it won't be long.

25 Q. So, Mr. Witness, you have just explained some things to us

1 about Ros Nhim's attitude towards you but you also say in the
2 record that at his request you sent him 300 men to protect him.
3 Does this not suggest quite a degree of cooperation between the
4 two of you, it's quite summoning to send Ros Nhim 300 men for his
5 protection.

6 [14.54.34]

7 MR. TOIT THOEURN:

8 A. He made a request to me that he had no more soldiers to help
9 protect his security because his subordinates were gone and he
10 asked for 300 members from me. I was considering at that time and
11 I agreed with -- I agreed to his request but there was the
12 condition for him that my soldiers should not be taken away and
13 shot dead. I told him that I would provide 300 soldiers to him
14 together with weapons for his security, it was not a cooperation
15 as I said it was a request made by him.

16 Q. Very well. I suppose it is a matter of interpretation, Mr.
17 President, my last question now or the penultimate one. Now, Mr.
18 Witness, after 1979, you went to do some studies in the USSR for
19 18 months, shortly before you had been to China, did this create
20 any difficulty with the Soviets?

21 [14.56.20]

22 A. Not any trouble. I had a bit trouble in my mind when I was in
23 the USSR because some of my colleagues in the country said that I
24 had been arrested by the "Yuon" and because they learnt such
25 false information, they stopped being soldiers, some of them

1 escaped to Thailand and to other places. Actually I was sent for
2 a training, I was not arrested but there was an intimidation
3 against my subordinates or my colleagues.

4 Q. One last question. Did you go to Vietnam between 1975 and
5 1979?

6 A. No, I did not know where Vietnam was.

7 MR. VERCKEN:

8 Mr. President, my colleague has one question to put. Thank you,
9 Sir.

10 QUESTIONING BY MR. KONG SAM ONN:

11 Thank you, Mr. President. Good afternoon, Mr. Toit Thoeurn. I
12 have a very short question regarding the keeping or storing
13 weapons in Battambang. You stated that you gathered up weapons
14 from Chamkar Chek and stored it near Phnom Veay Chab (phonetic).
15 I would like to seek your clarification concerning this matter.

16 Q. Did Ros Nhim instruct you how to hide those weapons?

17 [14.58.52]

18 MR. TOIT THOEURN:

19 A. No, he did not give any instructions. He told me that these
20 weapons should be kept properly in the warehouse and also should
21 be cleaned.

22 Q. Thank you. Concerning the building, the warehouse, and the
23 warehouse was built out of sight of the general public. Did Ros
24 Nhim instruct you about the height, the width, particularly the
25 site of the warehouse?

1 A. No, I used to -- I had experience building warehouse during
2 the war time, that is why he did not give any instruction to me
3 how to build a warehouse.

4 [15.00.03]

5 Q. Thank you. Let me clarify, based on your testimony a while
6 ago, Ros Nhim knew well your experience in building a warehouse.
7 Is that correct?

8 A. Yes. He was aware that I was meticulous in keeping things
9 properly and three Ta's or grandfathers whom I brought to be in
10 charge of the warehouse were skilful in this matter.

11 Q. How many weapon warehouses did you construct during your
12 participation in the movement?

13 A. During the war time I built warehouses at three different
14 locations, namely at Office 410 located in the area adjacent to
15 Pursat and Battambang border demarcation. The second warehouse
16 was at -- was built in Moung district in an area called Lang Dai
17 (phonetic). In fact the land caved-in in that area near the
18 stream and that's where the warehouse was erected and the third
19 warehouse was there for the Office 20.

20 Q. Thank you. And about the three old men you mentioned Ta Oeun,
21 Ta Chim and Ta Chou, did you know their fate after the conclusion
22 of the weapon warehouse construction?

23 A. They stayed at the warehouse and later on when I left to the
24 forest they went along with me and when I returned in 1979, they
25 also returned with me. And it was in 1985, the old men died from

1 age.

2 Q. I have another question regarding the last part where you
3 fight against the Khmer Rouge force as they were being defeated
4 and went away from Phnom Penh and they were in quite a large
5 amount of number and they were being defeated by the liberation
6 front movement and later on you co-operated with this Khmer Rouge
7 force and counter attacked the liberation force in the East Zone.
8 Could you inform the Chamber how you established connection with
9 this Khmer Rouge group?

10 [15.04.04]

11 A. We actually fought one another for a brief period of time and
12 in fact they had white complexion and I did not know, I thought
13 they were Chinese soldiers coming to aid the Khmer Rouge soldiers
14 and I was not aware they were Vietnamese troops and only after I
15 captured seven of them and they told me that they were Vietnamese
16 soldiers lending their support to the liberation front led by
17 Heng Samrin and Chea Sim. So I released three of them and they,
18 along with my seven or eight of my men to go with and I warned
19 them if my 10 men did not return in 10 days the rest of them who
20 are being kept -- who were being kept with me would be executed
21 but four days later they returned and that led to our joint
22 cooperation to fight along the Khmer-Thai border at a later
23 stage.

24 [15.05.42]

25 MR. KONG SAM ONN:

1 Thank you, Mr. Witness. And Mr. President, I don't have any
2 further questions.

3 MR. PRESIDENT:

4 Yes, Judge you can take the floor.

5 JUDGE KLONOWIECKA-MILART:

6 Thank you very much, Mr. President. Just again to speed up things
7 and retain some chronology, a short question regarding your visit
8 -- your stay in China. When you cite your foster father, say, "We
9 have to know how to fly these aircrafts so we could capture
10 Kampuchea Krom and these other cities." Whom did you infer he
11 meant as "we", who needed to capture these cities?

12 MR. TOIT THOEURN:

13 A. I did not fully understand his overall objective. However that
14 was what he told me but I refused to participate in the action.

15 Q. You also said that you had answered to him that you wouldn't
16 go abroad because you wouldn't want to die in China. Why did you
17 consider it dangerous to go back to China?

18 [15.07.35]

19 A. I was thinking at that time that many, many soldiers had been
20 arrested in the East Zone so it won't be long -- rather in the
21 Northwest Zone, so I thought it won't be long before my turn came
22 and that's was what I was thinking about.

23 Q. Wouldn't it then be safer to stay in China?

24 A. No, I did not think like that. I thought that my comrades in
25 arms had been arrested and some had been killed and I preferred

1 to stay in my motherland and that I -- if I were to stay I would
2 have an opportunity to resist any attempts to capture me or to
3 arrest me and I of course I would trade my life with any attempt
4 to capture or to kill me.

5 [15.08.47]

6 JUDGE KLONOWIECKA-MILART:

7 Thank you.

8 MR. PRESIDENT:

9 Before the Chamber hands the floor to the Co-Prosecutor, the
10 Chamber would like to ask both the Co-Prosecutors and the Lead
11 Co-Lawyers how much combined time do you -- do you anticipate or
12 whether you prefer to adhere to the set times?

13 MR. KOUMJIAN:

14 May we confer for one moment?

15 MS. GUIRAUD:

16 I will need about 10 to 15 minutes to put my questions and I
17 would like to start if you allow me to do so and then I will let
18 my -- let the Co-Prosecutor answer you.

19 [15.10.01]

20 MR. KOUMJIAN:

21 Your Honours, I was on the wrong channel. I missed my colleague's
22 response. I am confident we can complete our questioning by 4
23 o'clock. I am very confident we can do so. Apparently there was
24 no translation. I'll repeat it. I am very confident that we can
25 complete, the Civil Parties and the Co-Prosecutors, our questions

1 before 4 o'clock.

2 (Judges deliberate)

3 [15.11.22]

4 MR. PRESIDENT:

5 The Chamber will take a 10-minute short break and resume after.

6 (Court recesses from 1511H to 1525H)

7 MR. PRESIDENT:

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

9 And the Chamber now hands the floor to the Lead Co-Lawyers for
10 Civil Parties followed by the Co-Prosecutors. You may proceed.

11 QUESTIONING BY MS. GUIRAUD:

12 Thank you, Mr. President. Good afternoon to all of you. Good
13 afternoon, Witness. My name is Marie Guiraud, I am a civil party
14 Lawyer, and I have a few brief questions to put to you for
15 purposes of clarification following the testimony that you have
16 been giving to the Chamber since the start of the day. The first
17 question is -- relates to your stay in China. You said this
18 morning and this afternoon again that you travelled to China in
19 1976, but you never told us exactly when -- which month it was.
20 So can you tell the Chamber when exactly you went to China to
21 undergo this training you spoke about earlier?

22 [15.26.27]

23 MR. TOIT THOEURN:

24 A. It happened a long time ago and I cannot recall it clearly. I
25 cannot recall the month, however it happened in early 1976.

1 Q. Thank you. In your written record of interview which we have
2 been speaking about at length since the start of the day, at
3 answer 12, you said you went to China in January 1976; is that
4 what you remember today, January 1976?

5 A. Yes, I think it is around that month.

6 Q. Do you remember when you returned from China?

7 A. I cannot recall the exact period, however, I returned in a
8 rainy season and that is after the Pchum water festival that
9 year.

10 [15.28.09]

11 Q. Thank you. In the same record, you said at answer 13, that you
12 returned in November 1977. Does this somehow jog your memory?

13 MR. KOPPE:

14 Mr. President?

15 MR. TOIT THOEURN:

16 A. Probably that was the time that I returned.

17 MR. KOPPE:

18 Thank you. I seek some guidance in relation to your decision as
19 to which documents can be used with this witness. I have read
20 your decision and I understood that both civil party lawyers and
21 the Prosecution are forbidden -- are prohibited from using the
22 statement of this witness. So of course we have been using it
23 extensively. But is your ruling such that in fact both civil
24 party lawyers and the Prosecution cannot refer to his statement?

25 [15.29.16]

1 MS. GUIRAUD:

2 The clarification was necessary, Mr. President, because that's
3 not at all how I understood your decision. It seems to me that we
4 are fully entitled to use that statement and to confront the
5 witness with what he has said. And in F26, to which I refer now,
6 it doesn't say that the civil party and the Prosecution are to be
7 treated differently to the Defence in the use of documents. So I
8 would ask you to respect the letter of your decision, F26, and
9 allow me thus to ask my question which has already been answered,
10 I admit, by the witness. But that's another matter.

11 MR. KOPPE:

12 Maybe, I'm not completely correct as to the civil party lawyers,
13 but I'm definitely sure about the decision of the Chamber to
14 prohibit the Prosecution from using this document; is that
15 correct?

16 MS. GUIRAUD:

17 I await your instructions to know whether I can proceed or not.
18 From what I understood from F26, we are entitled to use this
19 document. Let me sit down and wait until you have a decision.

20 [15.31.12]

21 MR. KOUMJIAN:

22 Just to help move things along, I believe the document probably
23 is listed as excluded from the use of the Co-Prosecutors because
24 the ERNs were not given until the next day but that did not apply
25 to the civil party Co-Lawyers. And I'll say nothing else on that

1 right now.

2 JUDGE KLONOWIECKA-MILART:

3 May I -- may I please ask the Defence, you are familiar with this
4 record, with the document to which the civil party is referring?

5 MR. KOPPE:

6 Yes. We use it extensively. And I, in itself, don't have a
7 problem with the civil parties using the document although I
8 think they didn't put it on their list. But I don't have a
9 problem if they use it. However, you specifically prohibited the
10 Prosecution from using it. And I think the Supreme Court Chamber
11 should stick to that decision.

12 [15.32.14]

13 JUDGE KLONOWIECKA-MILART:

14 And Mr. Vercken? Sir, are you -- is the defence of Khieu Samphan
15 familiar with this record?

16 MR. VERCKEN:

17 Yes, I am familiar with it. Yes.

18 JUDGE KLONOWIECKA-MILART:

19 And do you object with the Prosecution using it, notwithstanding
20 our prior decision on the subject?

21 MR. VERCKEN:

22 Madam, I believe that the Prosecution should not use it in
23 accordance with the decision that you took.

24 MR. PRESIDENT:

25 Defence Counsel, the document in Khmer is F2/411. However, on the

1 screen that I have in front of me, it's E319/127. Could you
2 please confirm whether these two IDs refer to the same document?
3 [15.33.45]

4 MR. KOPPE:

5 Yes. The document that I've been referring to all morning is now
6 being used by the civil party lawyers which, again, we don't have
7 a problem with. Although it wasn't on their list but we do have a
8 problem with Prosecution using it because you explicitly
9 prohibited. If they are now allowed to use it, then the question
10 rises what was the point of the decision?

11 JUDGE KLONOWIECKA-MILART:

12 Indeed, Mr. Koppe, there was a -- because of the pressure of the
13 time, we had like two objectives in mind to allow prior
14 statements, and yet disallow documents that were too long to
15 familiarize with them, to enable the proper familiarisation of
16 all the participants to the hearing, considering however, we
17 mainly had you in mind, and prevent the Defence being
18 inconvenienced by documents that were suddenly pulled out of the
19 -- to the light. So, let us ask the Prosecution if they find this
20 record useful or whether all the parts covered by the record --
21 that they are interested in have been covered by the record. And
22 if you still find it useful, we will quickly deliberate whether
23 to rescind our decision in this area.

24 [15.35.09]

25 MR. KOUMJIAN:

1 We don't need it and we'd ask to just move on. Thank you.

2 MR. PRESIDENT:

3 You may now proceed.

4 BY MS. GUIRAUD:

5 Thank you very much, Mr. President. Let me return to my question
6 on the assumption that if need be I am authorized to cite another
7 extract from the witness interview record which the Defence has
8 abundantly referred to since the beginning of proceedings today.

9 So, I'd like to put my last question to the witness, so this
10 should go into the record.

11 Q. Sir, you said just now that your memories were rather blurred
12 about the date of your return from China. And then, I pointed out
13 response 13 in the record where you referred to November 1977.
14 And now I'm asking you to react to that date and to see if does
15 indeed tally with what you remember.

16 [15.36.23]

17 MR. TOIT THOEURN:

18 A. It is about right.

19 Q. When you were in China, were you kept abreast with what was
20 going on in the Northwest Zone?

21 A. No. And there was no information broadcasted over the radio
22 about that.

23 Q. Thank you. Earlier on today, you made several references to a
24 conference that Ros Nhim attended in Phnom Penh and you went
25 along with him as a driver, I believe. I just wanted to ask you a

1 couple of follow-up conferences (sic) to be sure that we are
2 talking about the same conference. Can you tell the Court how
3 long the conference lasted? Can you remember, was it one day or a
4 lot more? What can you tell us about that?

5 A. The conference lasted for many days. Perhaps it lasted for
6 almost one month or a lot more than one month. Because of time
7 passing by, I could not recall it.

8 Q. Can you remember where the conference took place in Phnom
9 Penh?

10 [15.38.26]

11 A. I did not know where it was held. After I drove him, and
12 arrived in front of the Royal Palace, and after I had a meal
13 together with them at Borei Keila, I went back to my place.

14 Q. If I may, Mr. President, I'd like to mention two places that
15 are quoted in a paragraph of the judgement that is being appealed
16 by Khieu Samphan and Nuon Chea. And I want to ask if these two
17 names mean something to our witness, the silver pagoda where a
18 meeting took place in May 1975 and the Olympic stadium. Now these
19 two places, Mr. Witness, do they mean something to you, do they
20 ring a bell here?

21 A. I do not know the place where the conference was held. As I
22 said, there was someone in Phnom Penh in charge of sending him or
23 driving him to the conference venue.

24 [15.40.06]

25 Q. And when you said just now that the conference lasted about a

100

1 month, can you tell us if Ros Nhim stayed a month in Phnom Penh
2 for the duration of the conference? Do you know the answer to
3 that?

4 A. Everyone including Ros Nhim, Ta Keu, Ta Paet, they were
5 staying in Phnom Penh. Messenger and I changed our shifts, and
6 some of us went back to Battambang to collect rice. So we work on
7 the roster basis until he completed the meeting.

8 Q. Before you left for China in January 1975, did you ever take
9 Ros Nhim to Phnom Penh on other occasions other than this
10 conference you've just told us about?

11 A. No. No, I only drove him to Phnom Penh once.

12 Q. And did you know at the time if Ros Nhim was in the habit of
13 going regularly to Phnom Penh before you went off to China in
14 January 1976?

15 A. After he returned to his zone, I did not know whether he
16 visited Phnom Penh regularly later on.

17 Q. Before you went to China in January '76, did you ever witness
18 visits from Angkar leaders or from the standing committee members
19 in your zone?

20 [15.42.45]

21 A. Yes. But I do not know who was who. They were in vehicles and
22 the window of the vehicles were blackened, and only the
23 windshield and the window at the back could be seen. And there
24 were security guards with them. I did not know who was who at
25 that time.

1 Q. And at the time, did anybody say to you who the members of the
2 delegation were?

3 A. No. I did not question them, I did not dare to ask them.

4 Q. Thank you. Can I draw your attention to a paragraph in the
5 judgement that is being appealed by the two Accused. It's
6 paragraph 747 of the judgement which makes a reference to a visit
7 by the Standing Committee to the Northwest Zone in August 1975.
8 Now with that date August 1975 correspond to the one in which you
9 saw those cars with their blacked out windows?

10 A. I do not recall it, but I notice that some of them were there.

11 I do not recall when -- what month exactly.

12 Q. Do you know what they did when they were there, what their
13 programme of activities was, where they visited or did you have
14 any idea what was going on behind those dark windows?

15 [15.44.55]

16 A. I did not know where they were heading to, but what I only
17 knew that they were heading to Ta Nhim's house at Prum Pil
18 Prohang (phonetic). And after they left the house, I did not know
19 where they were going to.

20 Q. Thank you very much. You answered a question this morning from
21 my colleague, Mr. Koppe, about Nuon Chea. And you said that you
22 had heard his name but you never actually met him personally. May
23 I draw to your attention an answer that you gave to the
24 investigators when they came to talk to you in 2013 and in answer
25 35, you said that Nuon Chea and Ta Nhim had been friends for a

1 long time and they used to study together in Thailand. What can
2 you tell us about the relations between Nuon Chea and Ta Nhim in
3 terms of what you knew at the time, Mr. Witness?

4 [15.46.20]

5 A. I heard of this from my foster father. He described the
6 background of Nuon Chea -- he told me about Nuon Chea's
7 background.

8 Q. When you talk about background, what exactly do you mean?

9 Could you give us a few more examples and ideas?

10 A. Can you repeat your question? I do not really get it fully.

11 Q. Yes, of course. I was drawing your attention to one of the
12 answers that you gave the investigators when you had an interview
13 and as written down in the record, you said, Nuon Chea and Ta
14 Nhim had been close friends and they used to study together in
15 Thailand. And in French, "they were ordained as monks as well at
16 the same time." Now, I'm asking you if you know any further
17 information about the relationship that Nuon Chea and Ta Nhim
18 enjoyed at that time.

19 [15.48.00]

20 A. I knew from Ta Nhim, my foster father, he told me about his
21 relationship with Nuon Chea as stated in that document.

22 Q. Mr. Witness, this is my last question. At the same place in
23 the record, you say that you spoke to your adopted father and he
24 said that Nuon Chea had betrayed us. Can you tell us more about
25 this conversation? Why did your adopted father say that Nuon Chea

1 had betrayed you?

2 A. Actually, it was not my foster father said such thing. I in
3 fact told my foster father that perhaps Nuon Chea had betrayed,
4 that is why the people -- cadres in Northwest Zone were killed.

5 MS. GUIRAUD:

6 Thank you. Mr. President, I have no further questions. So if I
7 may, I will hand over the floor to my colleagues from the
8 Co-Prosecutor's office.

9 [15.49.59]

10 QUESTIONING BY MS. SONG CHORVOIN:

11 Good afternoon, Mr. President, Your Honours, everyone in and
12 around the courtroom. Good afternoon, Mr. Witness. My name is
13 Song Chorvoin. I have a few questions for you and I have a
14 follow-up question from International Co-Lead Lawyer. You stated
15 that you told your foster father that perhaps Nuon Chea had
16 betrayed us. So why did you tell such things to your foster
17 father?

18 MR. TOIT THOEURN:

19 A. I was thinking that Nuon Chea was living in Voat Kor,
20 Battambang province. And my foster father married a wife in Phnum
21 -- my foster father live in Phnum Srok, but he married a wife in
22 Pou. People in my zone in sector or division were called into a
23 study session and they were all arrested. And I told my foster
24 father that if Nuon Chea did not betray us, cadres from the
25 Northwest Zone were not arrested. This is what I told my foster

1 father.

2 [15.51.39]

3 Q. Thank you. Coming back to 17 April 1975, you stated before the
4 Chamber that 10 days after the liberation, perhaps it's shortly
5 before that or a bit long before that, Ta Nah (phonetic) was in
6 charge of radio station and he announced to others that they
7 should lay down weapon, rather it was Vanh who was the chief of
8 radio station unit. So what did he make -- what kind of
9 announcement did he make at that time and where was the
10 announcement made?

11 A. Ta Vanh was the chief of Sector 2 at that time and he was a
12 professor in charge of internal intellectuals. This means that he
13 was in charge of the former intellectuals from Lon Nol time. Ta
14 Vanh was known widely. That is why he was assigned to make a
15 statement over the radio, so that everyone could recognize and
16 could be persuaded.

17 [15.53.27]

18 Q. What did he say on the radio? What objective he wanted at that
19 time?

20 A. As far as I can recall, I could not give you all the details.
21 He said that the country had been liberated and the imperialists
22 collapsed. So the late King Norodom Sihanouk would come back to
23 be the head of state. And he also stated that the war was over,
24 so everyone should follow the announcement by the United Front.

25 Q. What kind of people did he want the message to reach to?

1 A. He was making announcement to everyone including civilians,
2 civil servants and all soldiers.

3 Q. After the announcement made by him, who would join with him?
4 And what kind of people sided with him?

5 A. Armed forces of Lon Nol in Battambang joined with him at that
6 time. It was called "kong svay tran" and members of this unit
7 laid down weapons. And weapons were scattered everywhere on
8 roads. And later on, these weapons were gathered up and placed in
9 Chamkar Chek.

10 Q. After they laid down their weapon and joined with him, so what
11 happened to these former Lon Nol soldiers?

12 A. I have told the Court already. Later on, they were invited to
13 go and welcome the late King. They were transported in trucks or
14 vehicles to welcome the late King Norodom Sihanouk. Ten days
15 later, I realised that these people were all killed.

16 [15.57.45]

17 Q. Why did you know that these former Lon Nol soldier were
18 killed?

19 A. I did not know where they were killed but I could see that
20 these former soldiers were transported in vehicles or truck near
21 Kampong Treas, the place where I was staying. At first, I felt
22 disappointed with my foster father. I was thinking that I had
23 joined the Revolution for so long and I was so committed, while I
24 was not allowed to go and welcome the late King at that time.
25 After communicating messages two times, I took rest. And at that

106

1 time, Nau told me that these former soldiers had been killed at
2 Tuol Sdach. So if I had asked them to go with these former
3 soldiers, I would have been killed.

4 [15.59.07]

5 Q. You state that these former soldiers were transported in
6 vehicle passing you at that time. What situation did you observe
7 and how many of them were there on vehicles and where were they
8 transported to?

9 A. These former soldiers were transported in CMC trucks with net
10 cover. And they were shouting "bravo, the King", they were
11 shouting, "bravo, the King" on the trucks. And they said that
12 they were all going to welcome the late King. The vehicle was
13 passing me on the road to Samraong and Kampong Treas. So I
14 observed that these former soldiers were being transported and
15 they were shouting happily on the vehicles "bravo, the late
16 King". And I felt disappointed at that time.

17 Q. What do you know about the policy to gather up all those
18 former Lon Nol soldiers?

19 A. I don't get your question, please rephrase it.

20 Q. Allow me to rephrase it. Do you know why there existed a
21 policy to gather up those former soldiers and later executed
22 them?

23 [16.01.28]

24 JUDGE KLONOWIECKA-MILART:

25 Madam Prosecutor, the witness was asked question, who ordered and

1 why ordered and answered. The question the way you are proposing
2 it is suggestive that there was a policy to which the witness --
3 which the witness did not confirm such fact. Please rephrase.

4 BY MS. SONG CHORVOIN:

5 Madam Judge, I rephrase my question. And Mr. Witness, do you know
6 why those people were gathered up and trucked out to be sent away
7 and killed?

8 MR. TOIT THOEURN:

9 A. No, I don't have that knowledge. I don't know which level of
10 chain of command the order was issued.

11 [16.02.30]

12 Q. I'd like to ask you on the issue when your foster father Ros
13 Nhim sent you to a pilot course in China, and upon your return,
14 he instructed you again to go to China, to which you refused. And
15 he told you that you should attend the pilot course in order to
16 regain the Kampuchean territory -- Kampuchea Krom territory. And
17 my question to you is the following: what was his idea on the
18 recapturing or retake of the Kampuchea Krom territory? Did he
19 mean anything else when he told you so?

20 A. I did not fully understand what he said. However, that was
21 what he told me. Maybe what he told me was in -- an incentive for
22 me to return to China or whether it was his real intention to
23 recapture Kampuchea Krom or Nokoreach -- that is, the land that
24 we had lost in the past. But I refused to return because my
25 comrades in arms had disappeared, many of them had disappeared.

108

1 Q. Now I move on to another issue on the visits by leadership to
2 Battambang province. You responded to the Lead Co-Lawyer for
3 Civil Parties, that the leader -- the leaders came to Battambang
4 province once every month or once every fortnight. Could you
5 please confirm whether this was a regular occurrence commencing
6 from the 17 April 1975? Or at which particular point in time did
7 it start?

8 [16.05.08]

9 A. It happened after they all returned from the conclusion of the
10 conference held in Phnom Penh.

11 Q. And how many times, if you can recall, they made their visits
12 after the conclusion of the conference?

13 A. I cannot recall it clearly. I think it's between two to three
14 times.

15 MS. SONG CHORVOIN:

16 Thank you. And Mr. President, I don't have any more questions.
17 I'd like to give the floor to my international colleague. And
18 thank you, Mr. Witness.

19 [16.06.08]

20 QUESTIONING BY MR. KOUMJIAN:

21 Thank you. Sir, my name is Nicholas Koumjian. Sir, just a couple
22 of questions. You had mentioned today messages from the zone to
23 the centre. My question is focussed on April 1975, that month
24 only. As far as you were aware, how many messages per day were
25 sent from the zone to the Centre?

1 MR. TOIT THOEURN:

2 A. When the attack campaign commenced, the message was delivered
3 -- at least one message was delivered on a daily basis, and a
4 maximum of three messages were sent. For that reason, the three
5 of us -- that is, the messengers, would roster ourselves to take
6 the message. And for example, if a message was to be sent in the
7 morning, one of us would deliver the message and if another one
8 had to be sent in the evening, then another messenger would be
9 assigned. And we always took turn to take the -- to deliver the
10 message as it took us quite a long distance to deliver the
11 messages. And that's what happened during the commencement of the
12 attack operation or campaign.

13 Q. When you talk about delivering the messages to the Centre, are
14 you talking about going to a location or are they sent by
15 telegraph?

16 [16.08.19]

17 A. I took his message which was in a sealed envelope and it had a
18 serial number on it, a number was registered, then I would take
19 it to Office 20, and the Office 20 would decode the message and
20 retransmitted it. And likewise, if there was a message from the
21 Centre, it would reach Office 20, decoded and then sealed in an
22 envelope, and my team would deliver the message to him.

23 Q. So just to be clear, you talked about daily, one to three
24 times a day messages from the zone to the centre. How many
25 messages per day in April 1975 were there from the Centre to the

110

1 zone?

2 MR. KOPPE:

3 Mr. President, if I may make an observation on this question. It
4 might be because of the way you use the word "Centre". Centre,
5 not obviously in the sense of an office in Phnom Penh because
6 Phnom Penh still had to be taken. So maybe the witness is
7 confused or maybe something went wrong in translation. But there
8 weren't messages, obviously, before 17 April '75 between the zone
9 and the Centre because the Centre as such didn't exist. So maybe
10 Prosecution could ask -- could be more specific on this issue.

11 [16.10.04]

12 BY MR. KOUMJIAN:

13 Mr. Witness, so we're clear what we're talking about. You seem to
14 understand my question. When I speak of the Centre what do you
15 understand -- when we say "Centre", what do you understand that
16 to mean?

17 MR. TOIT THOEURN:

18 A. At that point in time in the Northwest Zone, they used the
19 word Centre. And the word Centre referred to the upper echelon.
20 And it was commonly used since we were in the forest.

21 Q. Thank you, sir. So my question was -- you talked about the
22 amount of messages from the zone to the Centre, how many messages
23 per day were there from the Centre to the zone?

24 A. I cannot recall it clearly how many messages were sent from
25 the upper echelon or from the Centre because sometimes, I receive

111

1 it for the delivery and sometimes other messengers received them.

2 Q. Fine. Do you know if those occurred on a regular basis or not?

3 Can you tell us anything about the frequency of messages from the

4 Centre to the zone?

5 [16.11.43]

6 A. At the start of the campaign, I received a message from the

7 Centre once every two days or three days. However, I only speak

8 about myself and I cannot speak about the other two messengers,

9 how many messages they received per day or they received from the

10 Centre at the time.

11 Q. Thank you. And we appreciate the fact that you limit what you

12 say to things you actually know and have experienced. So sir,

13 after the Phnom Penh was captured ,the 17th of April 1975, did

14 you ever take messages, carry them to Phnom Penh?

15 A. Three months after the 17 April 1975, so I could say it was in

16 July or August that year, the telegraph was actually set up in

17 Ros Nhim's office, rather it was attached to a vehicle -- a

18 military vehicle seized from the former Lon Nol troop. And it was

19 always with him on mobile on that military vehicle.

20 [16.13.47]

21 Q. Okay, I apologize. My question is, did you ever travel to

22 Phnom Penh with messages from Ros Nhim?

23 A. Yes, I did. Yes, and I delivered messages to Phnom Penh. I

24 delivered messages, I delivered rice, durian and other fruits to

25 Phnom Penh.

1 Q. Sir, when you delivered the messages, who did you actually
2 hand them over to?

3 A. I delivered the messages to a person by the name of Pang.
4 There was a messenger's office situated opposite the Royal
5 Palace, and that's where messages were delivered. And actually,
6 they used a hand-wound phone, and the messages would be delivered
7 to Pang and the number would be hand dialled for him. As for the
8 rice again and the fruits again, everything was delivered to
9 Pang.

10 Q. Did you ever take a group of people with you through Phnom
11 Penh?

12 [16.15.48]

13 A. No, I never brought any group of people to Phnom Penh. And if
14 a group of people was brought in, it was only during the time
15 that I brought in those senior cadres to attend the conference.

16 Q. Did you ever transport Kampuchea Krom people?

17 A. Please repeat your question. You refer to transporting
18 Kampuchea Krom people from where to where?

19 Q. Well, just tell me, did you ever transport Kampuchea Krom
20 people through or near Phnom Penh?

21 A. I transported Kampuchea Krom people once. Actually, I did not
22 transport them but I escorted Vietnamese people to return to
23 Vietnam. And it was not a land transportation, it was by river
24 from Sala Takon (phonetic) in Battambang through Tonle Sap River.
25 And that would lead to Phnom Penh. Then I went to receive a

113

1 letter from Pang and we continued our boat journey to K'am
2 Samnar. And then with the note -- handwritten note from Pang, I
3 handed over the Vietnamese people as well as the Vietnamese boat
4 to the Vietnamese authority there. In fact, when we took or
5 escorted those Vietnamese on their boat, we towed our boat and
6 when we returned, we returned with our towed boat.

7 [16.18.22]

8 Q. Thank you. Sir, you mentioned that you took messages from Ros
9 Nhim to Pang and that on this occasion, you received a message
10 from Pang that you turned over to the Vietnamese. What was the
11 function, if you know, of Pang? Do you know -- can you tell us
12 anything about his job and where he fit in the hierarchy?

13 A. I do not know his clear function or position, however, at the
14 time, he was known as the office chief.

15 MR. KOUMJIAN:

16 Thank you very much, Mr. Witness. Mr. Witness, you may not know
17 the function of Pang but I refer Your Honours, to the Judgement
18 paragraphs 211 through 214 and paragraph 383 regarding the
19 function of Pang. Thank you, sir. Mr. President, I have no
20 further questions.

21 [16.19.28]

22 MR. KOPPE:

23 Mr. President, if you would allow me, I would add that Pang was
24 arrested and subsequently executed for treason.

25 MR. KONG SAM ONN:

114

1 Mr. President, I'd like to make a brief a brief observation
2 through the testimony of the witness. He didn't mention that Pang
3 sent a message to the Vietnamese, however, he made an annotation
4 on the letter so that the witness could take the letter to the
5 Vietnamese authority.

6 MR. PRESIDENT:

7 Thank you, everyone. And if the Defence Counsels and the
8 Co-Prosecutors and the Lead Co-Lawyers do not have any further
9 question, it is now the Bench's turn to put questions to the
10 witness. And Judge Mumba, you may start first.

11 [16.20.38]

12 QUESTIONING BY JUDGE MWACHANDE-MUMBA:

13 Thank you, Mr. President. Witness, I have a few questions
14 concerning Tuol Po Chrey. The first question is, did you witness
15 the meeting which took place at Pursat town hall in which former
16 Lon Nol soldiers and senior officers were gathered after
17 liberation?

18 MR. TOIT THOEURN:

19 A. No, I did not witness that.

20 Q. So since you didn't witness that, you didn't know what type of
21 officials and the ranks that attended.

22 A. That is correct. I did not know about that or when that
23 meeting was convened.

24 JUDGE MWACHANDE-MUMBA:

25 Thank you, witness. Thank you, Mr. President.

1 [16.22.01]

2 MR. PRESIDENT:

3 I'd like now to hand the floor to Judge Mong Monichariya.

4 QUESTIONING BY JUDGE MONG MONICHARIYA:

5 Thank you, Mr. President. Mr. Witness, my questions are about

6 your personal experience. You were a messenger and subsequently

7 you became a deputy chief of the zone general staff. In both

8 capacities -- that is, before and after 1975, did you ever attend

9 any study session or training sessions organized by the

10 Democratic Kampuchea regime?

11 MR. TOIT THOEURN:

12 A. No, I did not. However, I heard something about the contents

13 of the meetings, for example, when the zone cadres were sent for

14 study sessions or when the sector cadres were attending the study

15 sessions at the zone.

16 [16.23.35]

17 Q. You said you heard about some contents of the study session.

18 Did you hear any particular instructors who actually gave

19 instructions to those trainees?

20 A. I don't understand your question, Your Honour.

21 Q. You said you heard some contents but you did not hear it. Did

22 you hear about the dissemination of policies, or what did you

23 hear?

24 A. I heard and I knew about dissemination of policies because it

25 disseminated by Nhim who I was always with him as a bodyguard.

1 And some study sessions lasted between two to three days, or the
2 shortest one would last one day and the sole instructor would be
3 Ros Nhim as for the two study sessions or Ta Keu would be
4 instructor. And usually, these two were the main instructors. Ta
5 Paet was not capable of training those cadres.

6 Q. You were with them extensively and you might have known
7 something for the period either prior to or after 1975. Can you
8 tell the Chamber how the order or the instructions from the upper
9 echelon were implemented?

10 [16.25.40]

11 A. Before 17 April 1975, their trainings focused on popular
12 democratic revolution, and that was the main content of the
13 sessions where to make the popular democratic revolution and to
14 defend the country. And after the conclusion of the conference
15 held in Phnom, the trainings were given to cadres at the sector
16 level, Ta Nhim engaged in a one-day training, where Ta Keu
17 engaged in the two-day training course. And actually, I took them
18 to these two training locations. By that time, the tone of the
19 session had changed from the popular democratic revolution to the
20 socialist revolution. That's what I can recall. And they also
21 spoke about the establishment of cooperatives. Actually by that
22 time, I did not know what cooperatives were though I remember the
23 gist of their training programmes. And in general, on the issue
24 of documentation, I do not know much about whether those cadres
25 would go to the bases and disseminate the experience they learnt

1 through the study sessions.

2 [16.27.39]

3 Q. Were you aware at that time of the chains of command, for
4 example, the level of authorities at various level?

5 A. No, I was not aware of the authority at various levels. My
6 understanding was that if you were in charge of food supply or
7 logistics, you would deal with the food supply or logistics
8 issues alone, and if you were to deal with the forces, then you
9 were solely in charge in dealing with that. There were two
10 organisational structures, one was the secretary or in the
11 military it would be the commissioner or the commander. And the
12 commissioner would be in charge of the management or the
13 organisation. And the commander would be in charge of the troops
14 itself. And the same structure applies to the zone level. There
15 will be a zone party secretary, his deputy, and a zone commander.

16 Q. Were you aware of the policy dissemination regarding the
17 arrest of people, for example, those who made mistake or who
18 violated the policies of the party? Or did you hear them talking
19 about policy towards the former Lon Nol soldiers after the 17
20 April 1975 liberation?

21 [16.29.43]

22 A. To that point, I did not have a great understanding. I did not
23 know much about why people were evacuated or why those people
24 were gathered up to receive the King, nor the arrest of people
25 who were their own cadres. However, later on when I put my

118

1 concerns to questions and to Nam, I was told those people were
2 advised to attend study sessions in Phnom Penh. However, they
3 turn out to be -- it turned out that they were arrested.

4 MR. PRESIDENT:

5 Let we rest for one minute for the changing of DVD.

6 (Short pause)

7 [16.31.34]

8 MR. PRESIDENT:

9 You may now resume your line of questioning, Judge Mong
10 Monichariya.

11 BY JUDGE MONG MONICHARIYA:

12 In relation one more fact which you have stated, you said you
13 witnessed former Lon Nol soldiers had been transported to be
14 killed. I have a question in relation to this fact. After the 17
15 April 1975, were the former Lon Nol soldiers gathered up in one
16 place and after that they were trucked out to be killed?

17 MR. TOIT THOEURN:

18 A. I have no idea. I witness these former Lon Nol soldiers were
19 being transported in vehicles on the road from Kampong Preah to
20 Moug and vice versa. I did not know where they were taken to.
21 And I also did not know how these former soldiers were gathered
22 up.

23 Q. Were there only former Lon Nol soldier with ranks or were
24 there family members of these former Lon Nol soldier as well in
25 the vehicles?

1 [16.33.22]

2 A. There were only soldiers.

3 Q. A while ago, you mentioned a person by the name Nau who told
4 you that these former Lon Nol soldier had been killed. Who was
5 Nau and how was he related to you and why did he know this
6 account precisely?

7 A. Nau was the personal bodyguard of Ta Nhim. Houm (phonetic),
8 Nam, Thoung, Nau – four of them were personal bodyguards of Ta
9 Nhim. Houm (phonetic) was in charge of preparing toothbrush and
10 clothes for Ta Nhim. Nam was tasked with gathering food and
11 vegetable. Nau was in charge of cooking with Houm (phonetic).
12 They were in different duties although they were bodyguards.

13 Q. Did you ask Nau why he learn that information, whether he
14 learnt from Ros Nhim or did he know that these former soldiers
15 were being transported by himself?

16 [16.35.19]

17 A. I have no idea where he learn this information from. I
18 frequently made complaint to him that I was committed and I was
19 committed so much in the Revolution why I was not allowed to go
20 and welcome the late King. And in reply he said that, "Where did
21 you want to go? These former Lon Nol soldiers were taken away and
22 killed in fact."

23 JUDGE MONG MONICHARIYA:

24 Thank you very much, Mr. Witness. Thank you, Mr. President.

25 MR. PRESIDENT:

120

1 You may now have the floor, Judge Som Sereyvuth.

2 QUESTIONING BY JUDGE SOM SEREYVUTH:

3 Good afternoon, Mr. Witness. I would like to ask about your
4 personal experience. You stated that you were able to convince
5 people in that time -- in that period, it was said that land was
6 made for people to work in and live in, and how could you
7 convince people to join you? During the Pol Pt time, there was no
8 radio used to broadcast and convince people. So how could you be
9 able to convince people to join you more and more?

10 [16.37.07]

11 MR. TOIT THOEURN:

12 A. I did not convince them to join me including the mobile units.
13 At the outset, I told them that I wanted to be a thief, stealing
14 rice and other food supplies. And later on, it became very
15 popular that there were soldiers in the forest led by me. And
16 everyone started to join one after another. And they started to
17 escape into the forest 500 or more, or 1,000 per day, they joined
18 me in the forest. I did not make any effort to convince them.
19 They initiated the idea by themselves and joined me.

20 Q. I am still doubtful that you did not convince them and they
21 joined you in the large number. So were these people living in
22 the area where you were in control of?

23 [16.38.56]

24 A. Your Honour, first after my attack, it became very popular.
25 And the place where I attacked was close to Battambang -- was

121

1 close to Battambang Leu, it was called at that time. And it was
2 close to Koas Krala district, Moung district. So the area where
3 people were living was close to the area where I launch my
4 attack. I had my own supplies -- that is, rice, and they joined
5 me one after another. I provided rice to them to eat. And after
6 many mobile units joined me and other soldier form Kokor, Kaoh
7 Roka joined me, I could be able to convince the low-ranking
8 officers and the leaders from battalion, from regiments. So I
9 started to indoctrinate them and I assigned them with different
10 tasks and duties. Later on, I went to different cooperatives and
11 I could be able to meet some district governors.

12 MR. PRESIDENT:

13 Mr. Witness, please give short response, if you can. We prefer to
14 have shorter responses.

15 Judge Som Sereyvuth would -- want to know, how you convince
16 people to join with you. So please be short because of time.

17 BY JUDGE SOM SEREYVUTH:

18 Q. I have another question for you. I would like you to clarify
19 concerning the timing. I have heard your testimony and you stated
20 that you could be able to mobilize 7,000 families at that time.
21 Was it the time that coincided with the entry of the Vietnamese
22 troop or was it before that time?

23 [16.42.04]

24 MR. TOIT THOEURN:

25 A. It was before the Vietnamese troop came into the country --

1 that is, 7 January.

2 MR. PRESIDENT:

3 Judge Milart, you now have the floor.

4 QUESTIONING BY JUDGE KLONOWIECKA-MILART:

5 Thank you. Mr. Witness, you told us that you saw trucks
6 transporting Lon Nol soldiers. Could you tell us how many trucks
7 did you see?

8 MR. TOIT THOEURN:

9 A. Your Honour, because of long time ago -- because of my memory
10 and because it happened long time ago, the trucks were more than
11 10 trucks.

12 Q. Did you see them pass just once or did they return to pick up
13 more?

14 [16.43.36]

15 A. I witnessed truck being driven away two times during the day
16 time and night time. I witnessed the trucks being driven away
17 during the day time and another time was when the skies was going
18 too dark. I was staying in Ta Nhim's house, close to the road
19 where the trucks were being driven away. And soldiers on the
20 truck were shouting, "long live King Norodom Sihanouk".

21 Q. How many people would there be on each truck, approximately?

22 A. I could not give my estimate. The trucks which were covered
23 with net tent consisted of 30 to 40 soldiers.

24 Q. Were they wearing uniforms?

25 A. They were in military gear. Some were with ranks on their

1 shoulders and all of them were in military uniform with no arms,
2 since weapons had been thrown away at the place where they were
3 gathered up onto the truck.

4 [16.45.52]

5 Q. I understand. Thank you, sir. Just one question and please
6 excuse, it's slightly repetitive to the question that was already
7 asked by Judge Monichariya, but I didn't get your answer clearly.
8 But -- so help me if I understand correctly. Are you aware or not
9 of any policy whatsoever of what to do with Lon Nol soldiers,
10 whether to take care of them or whether to do anything else with
11 them including kill them? Any policy, general statement of what
12 to do with Lon Nol soldiers that would come from the conferences
13 or from personal announcements or that you heard of in the course
14 of your duties?

15 A. I have never heard of -- I have heard of Khmer Rouge policy
16 but I do not understand the policy fully. The policy was to smash
17 all former imperialists and was to smash the former feudalists.

18 [16.47.32]

19 Q. And how did you hear of this policy or policies?

20 A. In the meeting, I was close to the meeting place.

21 Q. Who told you of them?

22 A. No one told me. I overheard the policy and Ta Keu was the one
23 who spoke about the policies in the meeting. The meeting was held
24 in Chrab Krasang, Battambang.

25 Q. When?

1 A. It was nearly one month after the liberation before he came to
2 attend the conference in Phnom Penh.

3 Q. So after the liberation but before the conference in Phnom
4 Penh. Was it before or after you saw the trucks?

5 A. After I saw the trucks transporting people. It was after that
6 time.

7 Q. And who was in attendance at this meeting? Anyone from the
8 Centre, anyone from the zone?

9 [16.49.53]

10 A. Those who were present in the meeting consisted of Ta Nhim who
11 presided over the meeting, Ta Keu. And as for the speakers, there
12 were Ta Paet, Ta Say, Ta Vanh, Ta Tom, Ta Hoeng, Ta Suy, and Ta
13 Sou, chief of sectors.

14 Q. Was the policy presented as the policy of Ros Nhim or someone
15 else's?

16 A. It was the policy from the upper echelon – the policies
17 ordered by the upper echelon.

18 Q. So all that you said about the meeting, you witnessed yourself
19 and heard yourself; is that correct? Or you heard it from other
20 people?

21 A. I overheard the policy. I was not in the meeting itself. The
22 meeting was held in a two stories wooden house. The meeting was
23 taking place on the first floor and I was down on the ground
24 floor. I could overhear the statement about policies.

25 [16.52.19]

1 Q. And by the upper echelon, whom did you understand?

2 A. If it was -- because it was discussed by people at the zone
3 level, upper echelon here refers to those who were in the Centre.

4 Q. Was there any particular name mentioned?

5 A. No. Only the word "upper echelon" was referred to.

6 Q. By Ros Nhim?

7 A. This word was mentioned by Ta Kaoh.

8 Q. And? Go on, please.

9 A. Ta Kaoh was the speaker while Ta Nhim was present together
10 with other cadres.

11 [16.54.10]

12 Q. Was your impression that those in the meeting were in
13 agreement with this policy or not?

14 A. Two days after the meeting, from what I heard, they said that
15 they would advocate with the people in the Centre not to -- they
16 would complain to the Centre that people should be allowed to
17 return back to their homes. Later on, the conference was taking
18 place.

19 Q. Which conference?

20 A. The conference that I accompanied Nhim to.

21 Q. So before people were expressing -- if I -- please correct me
22 if I understood you wrong, that before this conference, some
23 people expressed opinions or sentiments that the Lon Nol soldiers
24 should be allowed to go back to society; is that correct? But
25 then the policy was announced at the conference; did I get it

1 right, sir?

2 A. The purpose of zone and sector leaders was to spare lives of
3 the former soldier and they wanted people to go back and live in
4 their respective houses. This was the sole intention of sectors
5 and zone chief. And they also wanted to -- wanted the money to be
6 in circulation as well.

7 [16.57.15]

8 Q. Thank you, sir. Sorry, one more. Did you -- have you ever
9 heard about a withdrawal from this policy? Was there any order
10 that would rescind this policy, subsequent to this meeting?

11 A. I have never heard of it.

12 JUDGE KLONOWIECKA-MILART:

13 Thank you.

14 MR. PRESIDENT:

15 You may now proceed, Judge Ya Narin.

16 QUESTIONING BY JUDGE YA NARIN:

17 Thank you, Mr. President. Mr. Witness, I would like to ask you
18 some questions. Please give a short response if you can, since my
19 questions are also short as well. Without further ado, it is now
20 5 o'clock, I would like to know about Office 560; what is it?

21 [16.58.43]

22 MR. TOIT THOEURN:

23 A. Office 560 changed its name from Office 20 from what I know.

24 Q. Who was in charge of this office?

25 A. It was under zone authority.

1 Q. What about Office 870, what is it?

2 A. Office 870 was under responsibility of Pang.

3 Q. And who was in charge of that Office 870?

4 A. I do not really know but what I know is that Pang was the
5 chief of that office and that office was located in Phnom Penh.

6 Q. From the period of 1975 to 1976, you were a messenger. Did you
7 ever carry messages from Office 860 (sic) to 870 often?

8 A. No, I never deliver any messages from Office 560, I only
9 delivered messages from Ros Nhim. And I took the messages
10 personally from Ros Nhim to Pang.

11 [17.00.59]

12 Q. Did you deliver -- did you hand-deliver the messages from Ros
13 Nhim to Pang in person at Office 870?

14 A. Yes, I came to Phnom Penh to the office opposite the Royal
15 Palace. And then I telephoned Pang to come to receive the
16 messages.

17 Q. On average, how many messages did you deliver to him per
18 month?

19 A. After the Office 20 were separated into other offices, I
20 delivered the messages three times to him.

21 Q. Do you recall the date that you took group of soldiers into
22 the forest?

23 A. It happened in 1978 and it was between mid to end -- to late
24 1978, and I cannot recall the exact month or the day. However, I
25 recall that the rice in the field was about to become ripe. It

1 was fully grown.

2 [17.02.58]

3 Q. By that time, was Ros Nhim still zone chief?

4 A. After I had left, Ros Nhim was still zone chief.

5 Q. Did Ros Nhim ever assigned a group of soldiers to go and
6 terminate your group?

7 A. No, he did not. And I did not know whether he was aware of the
8 existence of my group. And as I said earlier, later on, he came
9 to request for some forces from me and I decided to give him.

10 Q. You said that later on you told Ros Nhim about your group --
11 about the troop that you brought along into the forest. And what
12 was his reaction?

13 A. No, I did not tell him that I took a group of soldiers into
14 the forest to rebel. But I told him that we would be like bandits
15 because we didn't want to be arrested, and if he wanted to kill
16 me, go ahead. I could even give him a gun to shoot me and if he
17 didn't decide to kill me by then, then there was no need for him
18 to chase after me, after I took those troops with me to be
19 bandits. That's what I told him.

20 JUDGE YA NARIN:

21 Thank you. I don't have any more questions.

22 MR. KOPPE:

23 Will you allow me, please, to ask one final question to the
24 witness?

25 MR. PRESIDENT:

1 (No interpretation).

2 [17.05.27]

3 BY MR. KOPPE:

4 Mr. Witness, do you know why Ros Nhim ordered the killing of Lon
5 Nol soldiers so quickly after the liberation of Pursat in
6 Battambang? Why not wait with killing them like So Phim did in
7 the East Zone. He simply arrested these people and then released
8 them. Why was it necessary to kill them so quickly?

9 MR. TOIT THOEURN:

10 A. I did not know the reason.

11 MR. KOPPE:

12 Thank you, Mr. President.

13 [17.06.08]

14 MR. PRESIDENT:

15 Judge Jayasinghe, you have the floor.

16 QUESTIONING BY JUDGE JAYASINGHE:

17 Witness, since we have gone beyond 5 o'clock, I do not wish to
18 detain you any longer. I have two short questions for you. You
19 said that you detailed 300 bodyguards for Ros Nhim's protection.
20 Considering that he was a zonal secretary, why did he need your
21 help and did he not have troops at his disposal?

22 MR. TOIT THOEURN:

23 A. By that time, the soldiers under his command had all been
24 arrested.

25 Q. Okay. Thank you. Just one other question. You asked him to

130

1 join you in the forest where you had 4,000 troops at your
2 command. However, he did not, even considering the fact that his
3 arrest was impending, he did not join you. Can you just give an
4 explanation why he did not join you in the forest where you were
5 there with about 4,000 troops under your command?

6 [17.07.53]

7 A. The troops that I brought along -- actually he was not aware
8 of the number. I don't know whether he did not believe me at the
9 time or whether he already made up his mind not to join me.

10 Q. But you requested him to join you, didn't you?

11 A. Before I handed him 300 of my men, I requested him to come
12 along and to be our leader to join our resistance, but he decided
13 not to go and he only sought 300 men from me as his -- for his
14 protection.

15 Q. He was arrested soon after you invited him to join you; is
16 that right?

17 A. It took place about 10 days after or it could be between 10
18 days to a fortnight.

19 JUDGE JAYASINGHE:

20 Thank you, Mr. -- thank you very much, sir.

21 MR. PRESIDENT:

22 If there is no more questions, Mr. Witness, the Chamber is
23 grateful of your time and patience and for your testimony before
24 the Supreme Court Chamber. And you may now be excused from the
25 courtroom. And the Chamber will like to notify the Defence

131

1 Counsel as well as the Co-Prosecutors and the Lead Co-Lawyers and
2 other Parties that the Chamber will hold a next schedule per
3 notification by the Supreme Court Chamber which will be issued in
4 due course. And this segment of the appeal proceedings is now
5 adjourned.

6 And security personnel, you are instructed to take the two
7 Accused back to the detention facility, and the Appeal
8 proceedings are now adjourned.

9 (Court adjourns at 1711H)

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