



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

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
 Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

25 May 2015
 Trial Day 285

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

The Accused: NUON Chea
 KHIEU Samphan

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 SREA Rattanak

For Court Management Section:
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I N D E X

Ms. MEAS Layhuor (2-TCW-851)

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. DE WILDE D'ESTMAEL	French
Judge FENZ	English
Ms. GUIRAUD	French
Ms. GUISSÉ	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge LAVERGNE	French
Ms. MEAS Layhuor (2-TCW-851)	Khmer
The President (NIL Nonn Presiding)	Khmer
Mr. SREA Rattanak	Khmer

1 PROCEEDINGS

2 (Court opens at 0909H)

3 MR. PRESIDENT:

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

5 Today the Chamber will hear the testimony of a witness -- that
6 is, 2-TCW-851 and before we commence the hearing of the witness,
7 the Chamber will conduct a brief hearing on oral arguments and
8 submissions on the evidence tainted with torture in the
9 proceedings in Case 002/02.

10 And Ms. Se Kolvuthy, please report the attendance of the Parties
11 and other individuals at today's proceedings.

12 THE GREFFIER:

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

15 Mr. Nuon Chea is present in the holding cell downstairs. He has
16 waived his right to be present in the courtroom; the waiver has
17 been delivered to the greffier.

18 A witness who to testify today -- that is, 2-TCW-851 confirms
19 that to his best knowledge the witness has no relationship by
20 blood or by law to any of the two Accused -- that is, Nuon Chea
21 and Khieu Samphan or to any of the civil parties admitted in this
22 case. The witness took an oath before the Iron Club Statue this
23 morning. Thank you.

24 [09.12.19]

25 MR. PRESIDENT:

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1 Thank you. The Chamber now decides on the request by Nuon Chea.
2 The Chamber has received a waiver from Nuon Chea dated 25th May
3 2015, which notes that due to his health -- that is, headache,
4 back pain, he cannot sit or concentrate for long and in order to
5 effectively participate in future hearings, he requests to waive
6 his right to participate in and be present at the 25th May 2015
7 hearing. He advises that his counsel advised him about the
8 consequence of this waiver that in no way it can be construed as
9 a waiver of his right to be tried fairly or to challenge evidence
10 presented or admitted to this Court at any time during this
11 Trial. Having seen the medical report of Nuon Chea by the duty
12 doctor for the Accused at ECCC dated 25th May 2015, who notes
13 that Nuon Chea has a chronic back pain when he sits for long and
14 recommends that the Chamber shall grant him his request so that
15 he can follow the proceedings remotely from the holding cell
16 downstairs.

17 [09.13.48]

18 Based on the above information and pursuant to Rule 81.5 of the
19 ECCC Internal Rules, the Chamber grants Nuon Chea his request to
20 follow today's proceedings remotely from the holding cell
21 downstairs via an audio-visual means.

22 The AV Unit personnel are instructed to link the proceedings to
23 the room downstairs so that Nuon Chea can follow it remotely;
24 that applies for the whole day.

25 The Chamber would also like to inform the Parties and the public

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1 that this week the International Reserve Judge, Judge Karopkin
2 has some other personal matters and he cannot attend the
3 proceedings.

4 The Chamber would like to give the floor to the Parties to
5 provide oral observations regarding the submissions of the
6 tainted torture evidence during the proceedings -- the
7 substantive proceedings in Case 002. And first, the Chamber would
8 like to hand the floor to the Co-Prosecutors and the Lead
9 Co-Lawyers for the civil parties, and total time of 30 minutes is
10 given to the two teams.

11 You may proceed, the Co-Prosecutor.

12 [09.15.22]

13 MR. KOUMJIAN:

14 Thank you, Mr. President; and good morning, Your Honours. We
15 believe that the issue that's to be discussed this morning is
16 very critical in this case, where torture plays such a key role.

17 It was a key feature of the Khmer Rouge regime and we've already
18 seen in the evidence, torture was the basis by which people were
19 identified, arrested and then eventually executed.

20 The issue before this Court this time, how evidence derived from
21 torture. Evidence that came up, statements that came up only
22 because of torture will be treated in this Court. This Court, we
23 believe, and I think all Parties agree is bound by the Convention
24 Against Torture of 1987, to which Cambodia is a party. That
25 provides in Article 15, for an exclusionary rule on the use of

1 statements derived from torture.

2 [09.16.34]

3 Article 15 states that each state party shall ensure that any
4 statement which is established to have been made as a result of
5 torture shall not be invoked as evidence in any proceeding except
6 against a person accused of torture as evidence that the
7 statement was made. Your Honours know that in this case, both
8 Khieu Samphan and Nuon Chea are accused of torture, that's one of
9 the charges in this case. In interpreting the Convention, of
10 course it's important to understand the purpose of that and what
11 we agree on with Nuon Chea's submission is that the primary
12 purpose of the Convention Against Torture is to stop torture, to
13 deter it. In fact in its preamble, the Convention talks about
14 this and says it is because of desiring to make more effective
15 the struggle against torture and other cruel, inhumane or
16 degrading punishment throughout the world that the Convention was
17 entered into.

18 [09.17.55]

19 So, the reasons to exclude evidence derived from torture, there
20 are two basic reasons: the first is it's inherently unreliable,
21 when people are being tortured, when they're being starved,
22 beaten, electrocuted, drowned in water, forced to eat faeces,
23 they can be expected to say anything to please the torturer in
24 order to end the torture. So it's simply unreliable to take that
25 as evidence that proves the truth of the matter that the victim

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1 confesses to. But there's a second reason and that's the primary
2 reason that this Convention was entered into and that is to deter
3 torture. The objective of the Convention and the exclusionary
4 rule is to prevent authorities, governments, armed groups from
5 having an incentive to torture people in order to obtain
6 evidence, or in this case, propaganda, because what the evidence
7 has already shown and will continue to show in this case is that
8 the victims of torture by the Khmer Rouge at places like Krang Ta
9 Chan and S-21, they were not being tortured to obtain evidence
10 for a trial. Nuon Chea and the leadership of the Khmer Rouge gave
11 no trial to any of the victims. They were being tortured in order
12 for the regime to obtain propaganda to justify its actions, to
13 justify its executions and persecutions of its own population and
14 that is exactly the purpose that Nuon Chea wants to use that
15 evidence for in this trial. It's not, I hope he realises, a legal
16 defence even if you have someone confessed to being a spy, you
17 cannot, under International Law execute a spy without a trial.
18 But he's trying to use it to give a justification for propaganda,
19 for public propaganda purposes. Maybe he thinks somehow it helps
20 him in the trial and diminishes his guilt.

21 [09.20.40]

22 So, what we find offensive is that Nuon Chea is attempting to
23 take statements from people who were electrocuted, who were
24 starved, who were beaten and degraded, some had their finger
25 nails pulled out and take confessions that they made under that

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1 torture and present it to the public as this is evidence that our
2 regime had enemies. That all of these people we killed, we had a
3 right to kill them, we had the right to kill them because they
4 were KGB, CIA, "Yuon" spies. What he is wanting to do is to use
5 the torture evidence for exactly the reason that they tortured
6 the people in S-21.

7 Now this is not an issue in this case where the Court has to
8 decide can an Accused ever use evidence from torture, where the
9 Accused person has nothing to do with the torture taking place.
10 One can imagine circumstances, where one Accused wants to use
11 evidence that was obtained by torture that he had nothing to do
12 with, that law enforcement tortured someone and he had nothing to
13 do with that. In that case there's still a problem of reliability
14 but there's no reason to worry about providing an incentive for
15 further torture because it was the law enforcement that committed
16 the torture and they're not benefitting. Here the very people
17 responsible for the torture are attempting to benefit from it and
18 when I say that, there's already evidence on the record and Your
19 Honours will hear more. Nuon Chea was fascinated with torture, he
20 told Thet Sambath

21 [09.21.41]

22 We know that he studied for over two years in Vietnam, made many
23 trips to Vietnam; he told Thet Sambath that he enjoyed reading
24 Vietnamese books about torture and the arrest of Communist
25 members. He also admitted to Thet Sambath, to his friend, very

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1 close friend, Thet Sambath that when discussing confessions -
2 quote: "They normally confessed when they were beaten painfully
3 and seriously tortured." And Nuon Chea told Thet Sambath he
4 confirmed Duch's statement that he became the de facto head of
5 S-21. That's on page 85 of Thet Sambath's book.

6 [09.23.30]

7 So, in this case it's very clear that the one party that's asking
8 to be able to use torture evidence for the truth of the matter,
9 Nuon Chea, because Khieu Samphan, the civil parties and the
10 Prosecution do not say we want to use evidence derived from
11 torture or result of torture for the truth of the matter. The one
12 party that wants to use evidence derived from torture for the
13 truth of the matter is the very person responsible for the
14 torture that took place. Frankly, Your Honours, we're not very
15 worried that you're going to allow that happen.

16 This is a -- Nuon Chea has taken a completely different position
17 now than he took in the first trial. In the first trial, he took
18 the position that Your Honours should exclude any evidence
19 derived from torture for the truth of the matter. He's reversed
20 himself and he is appealing Your Honours' decision for doing
21 exactly what he asked you to do. However, we also think because
22 torture is so key to this case, so key to the way that Khmer
23 Rouge acted, there is important evidence that comes out of or is
24 related to statements made when people were detained and tortured
25 that should be admitted not for the truth of the matter, but to

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1 prove other facts. For example, we have some examples, quite a
2 few examples in our pleading and I'm not going to repeat all of
3 them.

4 [09.25.20]

5 But let me discuss one that is not in our pleading. We know that
6 Duch has testified that he came to Nuon Chea with a confession
7 and told him one of the very high leaders has been implicated.
8 Khieu Samphan has been implicated in an S-21 confession and Duch
9 said Nuon Chea told him to bury that, to make sure that no one
10 saw that and that he didn't come back anymore with evidence
11 against Khieu Samphan and this is confirmed a 100 percent in Thet
12 Sambath's interviews with Nuon Chea. Nuon Chea says exactly the
13 same thing. He says Duch came to him with a confession
14 implicating Khieu Samphan and he said - quote -- page 82 of
15 "Behind the Killing Fields" -- Nuon Chea told Duch -- quote,
16 "Don't report this again and don't say it again".

17 [09.26.22]

18 So what does the Prosecution want to offer that evidence for?
19 We're not offering it because we believe that Khieu Samphan was
20 an opponent of Pol Pot and Nuon Chea, just the opposite. He was
21 in the very inner circle, trusted inner circle and in fact, these
22 facts that I've just discussed prove that, it shows that Nuon
23 Chea saw Khieu Samphan as in that inner circle that had to be
24 protected, the very core of the Khmer Rouge. It also shows yet
25 again that Nuon Chea knew that these confessions under torture

1 were not reliable at all to prove the truth. He didn't question
2 for a second that it was true, so he knew that they were
3 torturing people to obtain unfair, untrue information. And
4 finally, it absolutely shows again Nuon Chea's control over Duch
5 in the whole S-21 torturing killing machine because he was able
6 to give instruction to Duch even when there was a statement
7 implicating a high level accused, "bury it, I don't want to see
8 it again and don't come back again with information like this".
9 So this is extremely relevant information that comes out of this
10 statement, undoubtedly the person who made that was tortured but
11 it's not being offered for the truth, just the opposite, it's
12 being offered to show matters that we say it is untrue, and to
13 show matters these other issues that I've talked about.

14 [09.28.11]

15 Now the Defence in this case has -- this issue arose because of
16 certain questions that were put to witnesses that we say quiet
17 clearly were derived from S-21 confessions -- I want to go
18 through briefly the two concrete examples in the Defence
19 pleading:

20 The first was when Witness Pech Chim was testifying, he had been
21 a member of the District 105 Tram Kak committee and later sent to
22 a rubber plantation in the North Zone and the Defence asked him
23 if he was aware someone who had been a detainee, a victim of
24 S-21, had implicated Pech Chim and his brother as belonging to
25 his network. What's the relevance of whether the witness was

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1 aware of that other than to show that supposedly Si had a network
2 and that Pech Chim was a member? It was offered for the truth of
3 the matter. Now maybe the Defence may say that though they didn't
4 ask him if it was true, they only asked him if he was aware but
5 there's no relevance to whether he was aware of it. Certainly the
6 Defence is entitled, or was entitled to ask Pech Chim, were you a
7 member of Si's network. Were you a member of a network opposing
8 the regime? They could have asked that question, no one would
9 have stopped them but it's a problem when publicly Nuon Chea
10 wants to give evidence put before the public that people who had
11 died, who were tortured and executed were traitorous agents of
12 foreign governments, taking that completely out of context
13 without presenting to the public the context in which this
14 evidence was derived through torture.

15 [09.30.07]

16 The second example was during the testimony of Yeay Boeun and I
17 believe she was asked were you aware, one of the - the Defence
18 wanted to read to her a statement of another S-21 detainee
19 talking about the character of certain people she worked with.
20 Again, the Defence could simply have asked if -- asked Yeay Boeun
21 about the character of those people. There would be no objection
22 from the Prosecution for that. If the confession said these
23 people were incompetent, the Defence could have asked Yeay Boeun,
24 do you believe they were incompetent. If the confession said
25 these people were particularly brutal and that was the point that

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1 counsel wanted to get to, he could have asked Yeay Boeun, were
2 these people particularly brutal and gotten her answer; instead
3 what was clear, it was an attempt to back door to get into
4 evidence before the public, torture evidence without doing so
5 directly.

6 [09.31.20]

7 So there are many reasons, Your Honours, we believe was evidence
8 that's related to detainees' statements can come in; we've
9 indicated those in our filings, for example, things about the
10 types of people targeted. In the Krang Ta Chan interrogator's
11 notebook, for example, it indicates many times that this
12 individual was arrested, he was a Lon Nol Second Lieutenant, or
13 this individual, her husband was a Lon Nol major, indications
14 like that. The Prosecution finds it important to put that before
15 you not to prove -- it's irrelevant to us whether or not in fact
16 the person was a second lieutenant or the husband was a major.
17 What's important is, the Khmer Rouge believed it and it was for
18 this reason that they were targeted. So, regardless of the truth
19 of the matter, these statements in the notes of the interrogators
20 proved the targeting of Lon Nol officers and the policy of the
21 Khmer Rouge.

22 [09.32.37]

23 Another example in many cases, we see people arrested for
24 stealing food, hungry people; again it's irrelevant to us whether
25 or not that is true. We're not offering it to prove that someone

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1 stole a banana or a papaya, we're offering it to prove the
2 brutality of the regime that would arrest and often torture
3 people because of such a trivial offence when they were committed
4 by people who were starving. Similarly many of the confessions
5 record ethnicity or a person's links to Vietnam that they were
6 Khmer Krom or they came from Khmer -- Kampuchea Krom. Again,
7 whether or not they really were from Vietnam is irrelevant to us.
8 It proves again the persecution of all those that the Khmer Rouge
9 viewed as in any way related to Vietnam at that time.
10 Your Honours, I don't believe I have anything else to add and
11 unless you have questions, I would be happy to address any issues
12 that would be helpful to you. I believe my civil parties have
13 five minutes of arguments.

14 [09.34.31]

15 MR. PRESIDENT:

16 (No interpretation)

17 JUDGE FENZ:

18 I have two questions and at least with one I would expect the
19 other parties to give their opinion on that too. So I'll start
20 with this one. You haven't touched on it now in your oral
21 submission but talked about reading the written one. Article 15
22 says -- talks about the statement which is established to have
23 been made as a result of torture. Now my question goes to the
24 standard of what is established and to the time when this should
25 happen. Now to shorten this a bit, let me see if I understood

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1 your submission correctly and then let me ask the question.
2 When it comes to standards you mentioned a couple of them, I
3 don't think you made a final determination provided we don't read
4 it together with the time you consider as the one when to
5 establish it and that would be the verdict and that would mean
6 beyond the reasonable doubt; did I understand you correctly?

7 [09.35.45]

8 MR. KOUMJIAN:

9 No, Your Honour, because the beyond the reasonable doubt standard
10 would apply to evidence that was - well, only to evidence that
11 was necessary to prove guilt. So if the Prosecution was using a
12 statement and the guilt of the Accused depended on that statement
13 being admitted then I would agree we would have to show beyond
14 the reasonable doubt that the statement was not a result of
15 torture. But in other circumstances, I believe this is an open
16 question, I don't know if jurisprudence, but I think the standard
17 would either be that the proponent show by preponderance of the
18 evidence or alternatively and perhaps this would be better by
19 clear and convincing evidence that the statement was not a result
20 of torture.

21 [09.36.35]

22 And let me just add one comment on what is torture because in the
23 Khieu Samphan's submission, for example, they said Vong Sarun,
24 who testified last week, shows that not every statement in Krang
25 Ta Cham came from torture. She wasn't tortured. I disagree a 100

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1 percent with that submission. Torture is defined by the
2 Convention as physical, severe physical or mental harm. Vong
3 Sarun was arrested for reasons she didn't know after her husband
4 had disappeared; she was taken with her one year old child, she
5 was shackled, she was provided very little food, her baby was
6 crying for lack of food and was beaten. Then she was taken after
7 a week for interrogation, when she got that moment of discussing
8 sitting in that chair of interrogation and even here in this
9 courtroom, 37 years later, anyone in the courtroom realised the
10 severe mental stress she was under. So there's no question in my
11 mind that this is a perfect example of a person who was a victim
12 of torture. She was threatened with a branch, eventually she
13 didn't say anything, she was extremely fortunate, unlike so many
14 thousands of others at Krang Ta Chan, she wasn't tortured and
15 killed. But I think in these types of circumstances in her case,
16 for example, if she had made a confession and the party wanted to
17 use that for the truth of the matter during that interrogation,
18 in my view that would have been the result of the torture.

19 [09.38.11]

20 JUDGE FENZ:

21 So to get back to my original question, as to standards you don't
22 have clear view beyond not to a reasonable doubt? Let me get back
23 to time, you seem to argue that this determination can only be
24 made at the end after all the evidence has been heard. Now, if
25 this is true, don't we end up with the issue of what I would now

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1 call for lack of another applicable concept in civil law, fruit
2 of the poisonous tree? If we allow statements that might have
3 been obtained under torture to be used, for instance, to confront
4 the witness with it and that leads to further statements et
5 cetera, how would you suggest to deal with this issue? And again
6 the fruit of the poisonous tree doctrine is something which is
7 alien to civil law systems.

8 [09.39.13]

9 MR. KOUMJIAN:

10 Thank you. Obviously, the modalities are complex but I would not
11 say that this could be used to confront a witness. This is
12 exactly how it was attempted to be used by the Defence that gave
13 rise to this hearing and in those situations it shouldn't be
14 taken out of context and a witness confronted with it, very, very
15 little is gained and as Your Honour points out, then we have on
16 the record this evidence that Your Honours may very well
17 determine at the end of the day was a result of torture. So what
18 I'm saying is that the final determination, for example, there is
19 no need to confront witnesses with this but if there are
20 confessions that Nuon Chea believes should be offered into
21 evidence, we should have a separate -- at the appropriate time --
22 separate document hearing where we hear the reasons why he
23 believes these statements were not the result of torture or, well
24 in that case, because I don't believe the Court should ever admit
25 a statement offered for the truth of the matter that was a result

1 of torture.

2 [09.40.31]

3 JUDGE FENZ:

4 And the last question just to help me understand some of your
5 arguments, now obviously we cannot deal with each and every case
6 that will come up, it will very much an issue of case to case
7 basis but I wanted to take up the example you mentioned with the
8 banana, so what you said, If I've understood correctly, it would
9 be possible for instance to use this question on that somebody
10 had stolen bananas, not to prove that he or she had stole bananas
11 but to prove that the regime was cruel. Isn't that semantics? I
12 mean in order to prove that the regime is cruel, obviously you
13 will argue because they even killed people who stole bananas, so
14 where is the line?

15 MR. KOUMJIAN:

16 I think the line is clear. The Convention was put forward to
17 prosecute people that commit torture and torture is either to
18 obtain information or as punishment, so when people are tortured
19 as punishment for stealing a banana, this is a crime and it's
20 irrelevant, it's quite clear we don't care whether it's true that
21 they stole the banana or not. I don't think that's mere
22 semantics. It's absolutely clear that it's irrelevant to our case
23 whether they were a thief of bananas or coconuts or not. I think
24 absolutely the Convention would be frustrated if this type of
25 evidence which proves the torture and proves the very charges

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1 against the people responsible for the torture were excluded.

2 [09.42.16]

3 JUDGE FENZ:

4 I don't think you've really answered my question because I think
5 the argue -- that all the evidence had to be excluded came down
6 to a specific example and to this issue of to prove the truth of
7 the matter. But I take your answer. Thank you; that's all from me
8 at the moment.

9 MR. PRESIDENT:

10 (No interpretation)

11 [09.42.55]

12 JUDGE LAVERGNE:

13 Thank you, Mr. President. I would like to start by making a
14 remark. It appears important for me to underscore the fact that
15 many confessions whether they were obtained at S-21 or Krang Ta
16 Chan have already been ruled admissible -- that is to say they
17 have already been admitted on the case file. What appears to be
18 not important today is the fact that the discussion is on the use
19 that can be made of the document. It appears that there are uses
20 of terminology that are important here because sometimes we talk
21 of the exclusion of evidence but I think that such exclusion has
22 nothing to do with admissibility as such. Such exclusion, in my
23 opinion, with regard to the standards applicable and as you
24 rightly pointed out and the standard is Article 15 of the
25 Convention Against Torture. I want to be sure that I have

18

1 understood your submissions. It appears that when we're dealing
2 with confessions made under inhumane, degrading conditions under
3 torture, what would enable us to ascertain the veracity of some
4 of the statements made by the persons subjected to torture is
5 different from the fact of the person who states that that person
6 was a member of my network, that is a fact and such a fact can be
7 relevant because it enables us to know that such and such a
8 person who was accused in a statement was arrested so there are
9 different levels of the use of the evidence. We have the crux of
10 the matter, which is the truth. The veracity of the statement
11 made when you have the simple fact of someone being accused. I
12 don't know whether I'm very clear. We should make this
13 distinction between purely factual evidence which can perhaps be
14 highlighted in a statement to the effect that such and such a
15 person was mentioned in a statement or confession or such and
16 such a person was accused of committing such and such a crime in
17 a statement. But we should overlook everything that has to do
18 with the veracity of the statement. Is that what I should
19 understand from your submission this morning?

20 [09.46.06]

21 MR. KOUMJIAN:

22 Your Honour, I believe you have understood my submission. I think
23 we're very fortunate that we're in a civil law system with
24 professional Judges, so admissibility in systems that have for
25 example juries is a very key question because as we often say,

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1 you can't unring the bell, the jury -- it's very hard to tell the
2 jury to consider evidence for one purpose but not for another.
3 But with professional judges, I think in professional judges are
4 very often required to do just that. So in this case, as Your
5 Honour points out, the impossible to understand the purges of the
6 Khmer Rouge without understanding how people were forced to
7 provide long list of names of strings of accomplices and those
8 people were subsequently arrested, so the fact that people were
9 named in those strings explains the arrest and can be considered
10 for that purpose. But as a professional Judge, if you determine
11 that statement was made under torture, then it's your
12 responsibility and I don't think this is so difficult not to
13 consider that for the truth of the matter. The fact that the
14 person had their finger nails pulled out and then said all of
15 these people were part of my network of KGB, CIA, network that
16 was established 20 years ago, you can simply disregard that both
17 because it should be excluded under the -- it must be excluded
18 under the Torture Convention.

19 [09.47.55]

20 MR. PRESIDENT:

21 Thank you, International Co-Prosecutor. The floor is now given to
22 the Lead Co-Lawyer for civil parties.

23 MS. GUIRAUD:

24 Thank you, Mr. President. Good morning everyone. I will be very
25 brief, Mr. President. I will refer mainly to our pleadings and

1 focus on the point that is of particular interest to the Chamber.
2 That is the distinction that we need to make between the veracity
3 of information contained in statements and the rest of the
4 information, as well as the time when such a matter should be
5 considered. For a start, I would like to simply explain why we
6 have taken a stand in this debate to deal with statements of
7 civil parties directly concerned by this matter and I would
8 invite the Chamber, the Parties and the public to bear in mind
9 that we have civil parties who were admitted by the
10 Co-Investigating Judges as direct victims of crimes committed at
11 S-21. We represent as part of the consolidated group of civil
12 parties, 125 civil parties admitted because they suffered
13 directly as a result of crimes committed at S-21, particularly
14 crimes of torture and in our consolidated groups of civil
15 parties, we have 11 civil parties who suffered directly or
16 indirectly as a result of crimes committed at Krang Ta Chan,
17 particularly the crimes of torture and it is notably on their
18 behalf that we're speaking today.

19 [09.49.57]

20 The manner in which we proceeded in preparing our brief is very
21 simple. We look at the different decisions of the Chamber whether
22 we're talking of written or oral decisions going as far back as
23 the first trial during which the Chamber ruled substantially and
24 in a detailed manner on this subject and we're very confused and
25 I would like to explain why today.

21

1 The confusion is that the measures are very clear and the rules
2 regarding the admissibility of evidence obtained under torture
3 were discussed at length and understood by the Chamber as early
4 as case number 001 and in keeping with Article 15 of the
5 Convention Against Torture. It therefore appears to us that the
6 Chamber has already considered that evidence obtained under
7 torture cannot be used to ascertain the veracity of the contents
8 of the statements against an accused person or by an accused
9 person. It appears to us that this question which Judge Lavergne
10 referred to this morning is a matter which the Chamber has
11 already ruled on and the Chamber has already taken a stand on
12 that matter and that is why I say so because in reading your
13 decision on the admissibility of evidence in case number 001.

14 [09.51.36]

15 It's clear that you considered that the 60 S-21 confessions that
16 had been presented by the prosecutor were certainly admitted and
17 were already on record but they were not admitted as to proof of
18 their contents. This opposition is fundamental for us to
19 understand the manner in which the Chamber has already addressed
20 these S-21 confessions. We consider that this decision on the
21 admissibility of S-21 confessions in the first trial creates in a
22 de facto manner what we consider as a presumption that the S-21
23 confessions were established under torture.
24 It appears to us that this presumption is strengthened by the
25 Judgement in Case 002/01, which is final and in that case,

1 practices of torture at S-21 were largely documented. We are a
2 party to this trial and we've read the decisions of the Chamber.
3 This is the conclusion that we have drawn from our reading of
4 this document.

5 [09.53.08]

6 Now, what are the practical consequences for Case 002/02? We
7 consider that there is a presumption that the confessions -- and
8 I'm referring particularly to S-21 confessions, because that is
9 the crux of the matter that today -- we consider that the Chamber
10 has established a presumption that the S-21 confessions were
11 torture-tainted and we support this conclusion with the decision
12 on the admissibility of the confessions themselves.

13 How are the parties to deal with such presumption? It appears to
14 us that if a Party wishes to use information contained in a
15 confession to prove the veracity of the contents of such a
16 statement, he should make a formal application to the Chamber to
17 reverse such a presumption. We consider therefore, that what
18 happened during the hearing a few weeks ago when the counsel for
19 Nuon Chea, expressed the wish to refer to the contents of a
20 confession without previously requesting the Chamber's leave is
21 inappropriate. The manner in which we read and understand the
22 decisions of the Chamber since Case 002/01 is that, henceforth,
23 if a Party, regardless of who they are, wishes to refer to a
24 confession to prove the veracity of information contained in that
25 confession, it must make a request to the Chamber in order that

1 the Chamber and the Chamber alone may carry out a number of
2 investigations as to the conditions under which that confession
3 in particular was obtained. So the Parties should comply with the
4 Internal Rules of this Chamber and make a motion based on Article
5 93 in which the Party, regardless of who they may be, would be
6 able to explain why it is useful for the manifestation of the
7 truth; that we look at the conditions under which the confession
8 was obtained and why it is timely that that application be made
9 now during the hearing, whereas all the Parties had the
10 possibility of making applications during investigations.

11 [09.55.51]

12 I hope I have answered the questions asked by Judge Fenz and
13 Judge Lavergne.

14 To sum up, it appears quite obvious to us that there is a
15 distinction that must be made between information contained in
16 confessions which is used or may be used by a Party or by the
17 Chamber to prove the veracity of information, and furthermore,
18 this distinction is relevant, necessary and appears to stem from
19 Article 15 of the Convention Against Torture and it also ties in
20 with the practical implications of that article. We believe that
21 the presumption has already been established that confessions at
22 S-21 were obtained under torture and so it is up to each Party to
23 request of the Chamber through an application under Article 93.1
24 so that if need be, the Chamber may conduct an investigation on
25 the specific conditions under which the confession was obtained.

1 I thank you, Mr. President.

2 [09.57.06]

3 JUDGE FENZ:

4 So what about documents that are not coming from S-21 but, for
5 instance, from Krang Ta Chan Security Centre? And in this
6 context, do you have any clear views on the standards? Same
7 question was asked to the prosecutor, standards as to establish,
8 what standards are to be used to fulfil the requirement of --
9 established to have been made under torture.

10 MS. GUIRAUD:

11 Regarding standards, I would leave the matter in the hands of the
12 Chamber; we believe that it is not up to us to take a position on
13 this matter; we would rely on the wisdom of the Chamber because
14 we don't have any written submissions or proposals on this
15 matter. Regarding first issue, it appears that the confessions
16 obtained at Krang Ta Chan should be considered on the same basis
17 as those of S-21. The same conditions for confessions at S-21
18 should apply to confessions obtained at Krang Ta Chan.

19 [09.58.30]

20 MR. PRESIDENT:

21 You may now proceed, Judge Lavergne.

22 JUDGE LAVERGNE:

23 Yes, I would like to insist a little bit on this idea of
24 presumption. I do not believe I heard that this presumption is
25 based on the principle of the res judicata because the Accused in

25

1 this trial are not the same as in the first Trial so I don't
2 think, therefore, that this argument can stand. So, legally
3 speaking, what would be the foundations of the presumption? And
4 there is a general principle as well, which is the principle of
5 the burden of proof -- the onus of the proof, and the onus of the
6 proof is on the Prosecution. So, by establishing a presumption,
7 especially since this presumption is not -- does not have a clear
8 legal base, wouldn't we in this case reverse the onus of the
9 proof by imposing therefore the onus on the Defence in this case?

10 [09.59.46]

11 MS. GUIRAUD:

12 I'm going to try to answer this, Your Honour.

13 By explaining the way that we have proceeded, we have read your
14 decisions and it's by reading your decisions that -- and of
15 course in view of Case 001 as well, because the decision of
16 admissibility in Case 002 is less precise, we consider that you
17 have considered that there was a presumption that the confessions
18 of S-21 had been established under torture and the reason we
19 arrived at this conclusion is that you admitted the S-21
20 confessions under the condition that these confessions are not
21 admitted on the basis of the veracity of their content, so we
22 really based ourselves on your jurisprudence in order to build
23 our position.

24 [10.00.45]

25 Now I must tell the Chamber and the Parties that we are perfectly

26

1 open to the question. I explained the reasons: we presented our
2 observations; it is because we have a high number of civil
3 parties in our collective that are directly concerned by this
4 question. Now, of course, we're going to rely on the wisdom of
5 the Chamber with regard to the point that you are just speaking
6 about, Your Honour.

7 JUDGE LAVERGNE:

8 Fine. Not a question but an observation, I observe here that
9 there are certain number of jurisdictions that have already ruled
10 on this issue. For example, there are decisions from the European
11 Court of Human Rights that seems interesting in this regard and
12 in which it seems that one of the standards that could come from
13 this -- but of course I'll let the Parties judge this -- is that
14 there is a serious risk that torture was used. I'm referring in
15 particular to a case, El Haski versus Belgium, and in paragraph
16 89 of the decision in particular.

17 [10.02.02]

18 MS. GUIRAUD:

19 Just to react to what you're saying -- but I haven't read the
20 submission -- but this notion on substantial risk, I think is
21 part of the footnotes that we included in our submission, and to
22 be very clear with you, this notion of substantial risk could be
23 applied in a perfectly relevant way in this case here.

24 MR. PRESIDENT:

25 Thank you. The Chamber would like to hand the floor to the

1 defence teams, first to the defence team for Nuon Chea.

2 Counsel, you can proceed.

3 [10.02.45]

4 MR. KOPPE:

5 Thank you, Mr. President. Good morning, Your Honours. Good
6 morning, counsel.

7 From two questions from the Nuon Chea defence to two separate
8 witnesses, we have now, it seems, into a discussion about the all
9 permissible uses of potentially torture-tainted evidence in this
10 trial. We believe that 15 or 20 minutes that we have now is
11 inadequate to properly discuss such a profoundly important issue
12 for our case, for this Tribunal, so we feel it makes a lot of
13 sense and it would be beneficial to all Parties and the Trial
14 Chamber to have an extra written round maybe after this. However,
15 having said that I will briefly respond to the submissions from
16 the Prosecution and the civil parties, but I will not do so
17 without saying two things first:

18 [10.03.57]

19 We never have nor will we ever make the argument that, under
20 certain circumstances, torture at S-21 or Krang Ta Chan was ever
21 justified; we're not making that argument, we will never make
22 that argument. There is an absolute prohibition on torture;
23 there's no doubt about that. Saying that under certain
24 circumstances it is justified, I would argue with an American
25 argument, an argument recently made by the Minister of Defence,

1 Cheney, when it comes to certain prisons, we're not making that
2 argument, that American argument we do not wish to address.
3 That's the first very important point because Prosecution is
4 riding a very high moral -- moral high horse in accusing us of
5 all kinds of things.

6 Secondly, what I find quite astonishing is that we're having a
7 discussion now for about 45 minutes but we haven't addressed what
8 we feel is by far the most important paragraph of the
9 prosecutor's submission and which we see or we believe is a
10 complete turnaround of their position and that is paragraph 18 of
11 their brief. I will get back to paragraph 18 of the brief, but it
12 outlines the way and manners in which an S-21 confession from
13 North Zone Deputy Secretary Chor Chhan can be used as evidence.
14 So it may be in the second round or in written rounds,
15 International Co-Prosecutor should really be focusing, in our
16 opinion, on this very interesting turnaround in paragraph 18.

17 [10.06.00]

18 And of course what we're also not discussing today is the
19 question of what we have -- how we have phrased it, a double
20 standard. Why is it okay to use Krang Ta Chan confessions to
21 prove, as you said, the point that the regime was cruel, but at
22 the same time say that we are not, under any circumstances, to
23 use such evidence? So these two introductory remarks, I think,
24 are very important to put the whole discussion in a proper legal
25 framework.

1 In my limited time, Mr. President, I have available I simply want
2 to give some initial reaction to what the Prosecution has said,
3 flag some of the significant issues that arise in reaction to
4 this discussion, and hopefully, impress upon the Chamber that
5 these are questions of enormous magnitude which we cannot simply
6 deal within such a rushed and cursory way.

7 Now to us, it seems the Chamber has two roads before it. The
8 first road is the easier one, the road advised by the civil
9 parties and I believe also by the defence of Khieu Samphan. You
10 can simply exclude the use of any possible torture-tainted
11 evidence altogether on the basis that all of it is the "fruit of
12 the poisonous tree". I disagree, Judge Fenz, I am from a civil
13 law concept and I believe that we have in fact this doctrine
14 "fruit of poisonous tree" aptly working because of course we also
15 only have professional judges so the doctrine of the fruit of the
16 poisonous tree is something, because of the influence of the
17 Strasbourg Court, which is not alien to any civil law system.

18 [10.07.51]

19 The second road is, I think, what we and the Prosecution have
20 been discussing so far and of course this road is a -- we are
21 really ready to admit that -- a much more slippery slope. Going
22 down this second road would allow the contents of possibly
23 torture-tainted evidence to be used, and then, of course, all
24 sorts of questions arise. What kind of evidence can be used for
25 what purposes, by which Party and of course also in what way? I

1 think these are very complex questions which deserve detailed
2 consideration and debate. Even the first question as to the kind
3 of evidence that can be used is not that simple. The Prosecution,
4 for example, argues that identification evidence given in the
5 confession would not be considered part of its contents and we
6 believe that this is obviously not necessarily correct.

7 [10.09.18]

8 When we move to consider the purpose for which evidence can be
9 used, things get considerably more complicated. For example, our
10 position is that it is necessary to distinguish between evidence
11 used in order to establish the innocence or guilt of the Accused
12 and evidence used for other reasons. But here too, of course,
13 complications arise because as we have argued in our Appeal
14 brief, which is now before the Supreme Court Chamber, we believe
15 there is a distinction under the law between who, which Party can
16 use such evidence and this flows from the permitted purposes for
17 which this evidence can be used. This is what we argued in our
18 Appeal brief and last week we reiterated in our written
19 submissions to this Chamber. In short, it is our view that the
20 law permits us to use such evidence to establish Nuon Chea's
21 innocence, but prohibits the Prosecution from using it to
22 establish his guilt.

23 [10.10.31]

24 And then, of course, we arrive at the most difficult question of
25 all and that is, assuming hypothetically that we permit the

1 contents of possible torture-tainted evidence to be used, in what
2 way can we use it? Example; and that is the example - that's
3 actually a perfect example and I'm turning now to paragraph 18 of
4 the written submissions of the Prosecution. Paragraph 18 is about
5 the S-21 confession, as I said, of the North Zone Deputy
6 Secretary Chor Chhan. If you actually look at his confession,
7 there are indeed paragraphs in which he speaks about the alleged
8 Lon Nol policy of the CPK. However, it is a document, I 'm sorry,
9 Mr. President, document E3/3857; it is heavily relied upon in
10 paragraph 18 of the written submissions, if you see at page
11 English ERN 00825306; in French, 00850255; and in Khmer,
12 00070803; you see the note "has not yet confessed the ground for
13 having him beaten". It would suggest that he is to be beaten by
14 the interrogator. However, if you see to other pages from this
15 confession - these are ERN 00825261, in English; in French,
16 00850216; in Khmer, 0070438; you see that -- it says, his
17 statement is given or his confession is given without torture.
18 [10.13.02]

19 Now, notwithstanding the fact that the Prosecution has just said
20 that anybody who was in Krang Ta Chan, even if he was tortured or
21 not was under duress, we could imagine that the same would go
22 through for this particular person; however, the Prosecution is
23 using a very particular excerpt from his confession to confirm
24 that indeed a policy to smash Lon Nol officers was existing. Now
25 if the Prosecution is offering this way of the use of evidence,

1 then of course it would also possible for the Defence to confront
2 any future witnesses, for instances with parts of his statement
3 or confession in which he says that the traitorous activities of
4 certain people were aimed to sabotage the CPK's economic policy.
5 So we have a very interesting example offered by the Prosecution
6 as to how we should use this S-21 confession. We believe that
7 under certain circumstances we should be able to ask certain
8 questions to certain witnesses based on this S-21 confession, and
9 it seems the Prosecution is saying the exact same thing. They can
10 use whichever passage they find relevant and use it as evidence.
11 Which brings me -- and these are actually, I think, my final
12 remarks to two people who have been thinking about this issue
13 already quite extensively, and these are not lawyers but these
14 are two historians: the first one is David Chandler, who has been
15 testifying here as an expert; and the other person who was
16 supposed to testify as an expert but ended up testifying as a
17 witness, a very important person to the Prosecution, Steve Heder.
18 Both have said some very interesting things about what one should
19 do in terms of the use of confessions.

20 [10.15.25]

21 Now, Mr. President, allow me to quote briefly from Chandler's
22 book "Voices from S-21"; I refer to English page 00192726, in
23 English; Khmer, 00191882; in French, 00357313. Chandler talks
24 about this overwhelming mass of five of six thousand confessions
25 and what you should do with it. First -- and I quote:

1 "First without corroboration from other sources, very few facts"
2 says Chandler, "contained in the confessions aside from strictly
3 autobiographical ones can be taken at face value. Whether
4 prisoners told the truth under torture, said what they were told
5 to say, said what they thought their interrogators wanted to hear
6 or produced a melange of truth, half-truth and fantasy is
7 impossible to determine. It is safe to assume, however, not only
8 that in their broad outlines most confessions were fabricated to
9 suit what S-21 officials assumed to be the wishes of the Party
10 Centre, but", says Chandler, "also that strands of genuine
11 conspirational narrative and actual angry conversations are
12 sometimes woven into the confessions." Then comes the interesting
13 part, he then -- a little further down in the next page, refers
14 to Steve Heder, and he says -- and I quote:

15 [10.17.19]

16 "As Steve Heder has suggested, many of the confessions ring true
17 even without corroboration and it will be wrong to label all the
18 prisoners at S-21 innocent of involvement in conspiracy because
19 their confessions contained absurdities because the regime was
20 evil or because they were all so cruelly treated." So Chandler
21 and Heder are basically formulating our position. You should be
22 very careful but under certain circumstances, certain parts of
23 confessions could be used not necessarily as evidence in the
24 sense of guilt or innocence but in terms of questioning the
25 witness, witnesses who are upcoming. And I have in front of me

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1 and I'm not sure if I'm allowed to read that to you, this is an
2 excerpt in which, I think, Steve Heder formulates it extremely
3 aptly; it is an excerpt from an article which is not on the case
4 file. I remember trying to use it when he was -- I see you are
5 already -- no?

6 (Judges deliberate)

7 [10.19.10]

8 JUDGE FENZ:

9 Counsel, we note it's not on the case file. Second issue, is it
10 actually presenting a confession, the statement you want to read
11 to us?

12 MR. KOPPE:

13 No, no, it's -- Chandler is referring to Heder in the footnote. I
14 just read that part from what -- is on the case file, but I
15 thought it would be very interesting for you to hear what he
16 actually says - what Heder says in his article in terms of the
17 use of those confessions. If you're not interested, then that's
18 fine. But I thought he formulated it quite well.

19 MR. KOUMJIAN:

20 We have no objection.

21 [10.19.58]

22 MR. KOPPE:

23 So Heder is writing this article in 1990 and he says -- and I
24 quote: "Once you are confident you understand the literal meaning
25 of the words on the page", page of the confession, "then comes

1 the even more difficult work of deciding to what extent you can
2 believe a word of what you are reading. In principle, you have to
3 assume that you cannot. You have to assume that every word may be
4 either falsehood forced upon a terrorised writer by his torturing
5 interrogators or an equal falsehood concocted by the same
6 terrorised writer in some desperate attempt to save his or her
7 life by denying what is true or parroting some lie that he or she
8 hopes against hope, might mollify the organisation." And then it
9 comes, "And yet long before one is through the first thousand
10 pages, it becomes obvious to the reader that some things are
11 undoubtedly true. This assessment is based on common sense
12 plausibility and educated intuition. Some things said, appear to
13 be undisputedly simple and straightforward statements of facts
14 which may be taken at face value. At the other end of the
15 spectrum are statements which can be judged as almost as much
16 certainty as being utterly false and fantastic fabrication.
17 However most of what is said, seems to fall somewhere in
18 between."

19 [10.21.45]

20 Now this is exactly formulating our position and we're not here
21 saying that torture is justified, not at all. We are sometimes
22 using -- or we would like sometimes to use very certain parts,
23 certain parts of either Krang Ta Chan confessions or S-21
24 confessions in order to present our narrative; that is, I think,
25 under these circumstances, permissible use of evidence which is

1 possibly torture-tainted.

2 JUDGE FENZ:

3 I'll start with what you quoted from Steve Heder. Well, Steve
4 Heder talks about general things about evaluation of evidence,
5 all of us have done that all our lives. I think the issue here is
6 a different one. We're dealing with what I now call an
7 evidentiary rule in the realm of jus cogens. So, let's go back to
8 the legal issue at hand and I want to give you the opportunity,
9 specifically since this is a public hearing, to perhaps go into a
10 bit more detail as to the reasons for your argument that
11 torture-tainted evidence can be used if it is exculpatory.

12 [10.23.16]

13 Now, in order to, perhaps, structure this a bit, let me point out
14 an obvious contradiction. The Convention Against Torture, and I
15 guess everybody has agreed on that, has in the end the objective
16 to end torture, to put it very generally. Now you are arguing
17 there should be an exemption for exculpatory evidence; that means
18 for the person who actually is the one accused to have tortured.
19 Now doesn't that go against the very idea of the Convention? And
20 secondly, and that's more technical, if the Convention would have
21 wanted this exception, wouldn't it be written down? There is an
22 exception in Article 15, but this exception goes into the other
23 direction. It permits torture-tainted evidence under certain
24 circumstances against the accused, so perhaps, as I said, in the
25 interest of the public understanding of what you're saying --

1 [10.24.20]
2 MR. KOPPE:
3 I agree with you, the word is all about "against the accused".
4 Everybody, I think, in this courtroom would like to have torture
5 eradicated from the World. There's no question about that and if
6 somebody in his S-21 confession confessed something about
7 criminal behaviour, or, for instance, Khieu Samphan or Nuon Chea,
8 then there is no doubt at all that that cannot be used under any
9 circumstances. So I think the reading of Article 15, we agreed to
10 almost -- I think all Parties agreed to almost 80 or 90 percent,
11 the question is and that is exactly what the Prosecution is doing
12 in order to further its case and the use by the Defence. It is
13 about the last piece of use of certain evidence. The Prosecution
14 would like to prove the case that at Krang Ta Chan, people were
15 arrested for trivial reasons and then executed, they are using
16 these confessions in order to establish that point; we are using
17 confessions ultimately to find corroboration in respect of our
18 big narrative. The most important point of our defence that there
19 were in fact two equally strong opposing factions within the
20 Khmer Rouge fighting each other and the use, for instance, as I
21 have done, in two separate cases with Pech Chim and Boeun. From
22 Chou Chet's confession, one could argue, he said that Saom, the
23 Sector 13 person, was a radical person; that is something we're
24 not using that as evidence but as a possible way of asking a
25 witness whether he or she knew something about it. So we're

1 talking about this last part of use of evidence and I think at
2 the end of the day the Prosecution is asking you to be able to do
3 the same thing as we are and that is, I think, having caused this
4 hearing - it's either one standard -- meaning not at all, or
5 another standard, and then both parties, with all the caveats,
6 can use certain parts of possible torture-tainted evidence. I
7 think that is the fundamental issue of the discussion.
8 Prosecution has its case, we have our case and it's up to you at
9 the end of the day to see whether the arguments, based on certain
10 evidence, can be used, yes or no.

11 [10.27.32]

12 MR. PRESIDENT:

13 Judge Lavergne, you have the floor.

14 JUDGE LAVERGNE:

15 Counsel Koppe, I understand what you're saying but don't you
16 think that there is a difference however between using the
17 content of confessions to establish a person is an extremist and
18 using the contents of confession simply to say you have been
19 incriminated without going into the quest for the truth. The
20 content of the evidence is what you wish to establish, the rest
21 is a simple fact; so, don't you think there's a difference here?

22 MR. KOPPE:

23 Judge Lavergne, yes. You will not find -- I can guarantee you
24 this -- in our closing submission the argument that Saom was a
25 radical Maoist and then we use Chou Chet's confession, you will

39

1 not see us do that because we won't touch that; it's too unclear
2 indeed whether he was tortured yes or no. However, signalling
3 something which is of interest to our narrative and then ask a
4 witness whether he or she knew anything about it, I think that is
5 permissible use of this particular part of a confession.

6 [10.29.10]

7 JUDGE LAVERGNE:

8 Well, it seems however to me that in the example that you're
9 providing to us, what you're trying to do is to corroborate an
10 element of evidence regarding the substance. But we're speaking
11 here about the substance, that's what at issue; what the
12 Prosecutors are saying is different, they're not speaking about
13 the substance, they're speaking simply about a fact.

14 MR. KOPPE:

15 One of the arguments that we're trying to make or that we
16 possibly will make is that certain people in Sector 13 were crazy
17 radical people. Now, as I said, we won't use Chou Chet's
18 confession to make that point but we're able to use that part of
19 his confession as an introduction to other witnesses, that's at
20 the end of the day what we're doing. I agree it's a slippery
21 slope but it's not any different from the way the Prosecution is,
22 for instance, trying to use the North Zone secretary's confession
23 from S-21.

24 [10.30.23]

25 MR. PRESIDENT:

40

1 Thank you, Defence Counsel. The Chamber would now like to hand
2 the floor to the defence team for Khieu Samphan. You can proceed,
3 Counsel.

4 MS. GUISSÉ:

5 Thank you, Mr. President. Uncustomarily, this time, we do not
6 have the same perspective on this matter as counsel for Nuon
7 Chea. We do not also share the same position with the
8 Co-Prosecutors. A text was read by the Co-Prosecutor this
9 morning, Article 15 of the Convention Against Torture is clear.
10 Every state makes sure that every document obtained by torture
11 cannot be used in evidence in a trial. They cannot use it to
12 establish that statement was made. Period. No more. No less. And
13 what I understand today from the other side is a broadening of
14 that rule. They're saying that there is a noble use of the
15 contents of confession, on the one hand, and the use that is
16 illegal and vile by the Defence.

17 [10.32.11]

18 It is clear to me that Article 15 of the Convention Against
19 Torture that was drafted by eminent jurists who knew very well
20 what they were doing, it clearly indicates that the only grounds
21 on which a statement given under torture is to establish that a
22 declaration or a statement was made. Period; not the contents
23 thereof, whatever they maybe, and it is understood that whether
24 we're dealing with the Defence or the Prosecution, no parties of
25 such statements can be used, but we cannot use them and we're

1 reminded we cannot use them in evidence.

2 This was noted by the Pre-Trial Chamber of this Tribunal at the
3 level of the investigations as to whether you could use any part
4 of such confessions. This is what was stated in decision
5 D130/10/12 of the 22nd January 2010, in paragraph 8. It is stated
6 clearly that, notwithstanding any indications to the contrary by
7 the Co-Investigating Judges, Article 15 of the Convention Against
8 Torture should be strictly applied. There is no question of using
9 it to ascertain the veracity of the truth or to use it for any
10 other purpose.

11 [10.33.53]

12 What the Co-Prosecutors are asking us to do today is to use it
13 for another purpose and that is not acceptable. Today we are
14 being told -- be careful, we do not want to use the contents of
15 the confessions to say that those contents are true, those
16 confessions are true, but we want to use them to ascertain that,
17 for instance, in Krang Ta Chan, such and such a person was
18 tortured or arrested because they stole a banana. I could take
19 the example in the case of the Defence and say, for instance, if
20 my colleague in the Nuon Chea team wants to use a confession not
21 to prove that it is true but to say that the interrogator, as
22 part of the confession, wanted to find out whether there were any
23 traitors in the zone. It is not a question of saying whether it
24 is true or not, whether they were traitors, but we want to use
25 the confession to prove that the reason for the torture or the

1 arrest was to establish that people were sought for those
2 reasons, people were tortured for those reasons.

3 [10.35.06]

4 What is the difference between the goal sought by the
5 Co-Prosecutors and the goal sought by the Defence? There is no
6 difference; the only thing is that we have a moral filter to say
7 that since it is the Co-Prosecutors who want to prove something
8 in the interest of the victims or in the interest of their case,
9 that would be admissible. But when it is the Defence that is, on
10 the same basis, trying to prove -- not that it is true, but that
11 the interrogator was looking for this kind of information, it is
12 admissible. It's perhaps tempting for us lawyers because we
13 believe that we need data or evidence because it is the beginning
14 of the trial, but it is not admissible, it is applicable under
15 Article 15 of the Convention Against Torture.

16 [10.36.03]

17 Another point that needs to be clarified since it appears that
18 the Co-Prosecutor read our submissions partially, a very brief in
19 French and perhaps he did not quite understand them, the position
20 of Khieu Samphan is stronger than that because we believe that
21 under Cambodian law, and in view of the fact that in the absence
22 of precise rules as regards administration of evidence, there is
23 an alignment with international practice. Our submission is that
24 the application of rules regarding confessions or statements made
25 under torture are also applicable as is the case with statements

1 made under coercion. If the Co-Prosecutor had understood our
2 submission, it is clear that when we referred to the case of Vong
3 Sarun in our submissions, we had stated that, in the pure sense
4 of the term, we cannot say that there was physical torture of
5 Vong Sarun. If we consider that there was at least fear on the
6 part of that witness, and Article 38 of the Cambodian
7 Constitution and the Cambodian penal code also states precisely
8 that confessions, as other forms of evidence, should be assessed
9 by the Tribunal. Statements obtained under physical or moral
10 duress are without any probative value, so there is, as far as
11 we're concerned, an alignment between statements made under
12 torture, statement made under duress. So, on this basis, we
13 cannot say that certain points or certain arguments cannot be
14 raised, they can be raised and I want to respond to examples
15 given by the Co-Prosecutor.

16 [10.38.24]

17 He mentions the case of Khieu Samphan, referred to in confessions
18 and to say that we want to use this document as evidence because
19 Duch was instructed not to use those confessions. Even when the
20 name of Khieu Samphan is mentioned, we can decide to rule out all
21 such statements and evidence and the Co-Prosecutor will be able
22 to interrogate Duch, and they don't need to rely on documents
23 that are torture-tainted which come under the ambit of Article 15
24 of the Convention Against Torture, so we cannot use the contents
25 of the document to corroborate anything.

1 So, what we 're saying is that, it is to establish a statement
2 was made and to know that a statement was made, we have to use
3 only the name of the person who was interrogated, the date and
4 possibly the place of interrogation; that is all. We don't need
5 to go into the contents of the statement. We do not have the
6 right to use it. It is frustrating because we're may be of the
7 view that such evidence can support our case but it is a rule
8 that can be applied differently whether we're talking of the
9 Prosecution or Defence. It is a matter of principle and I keep
10 harping on this theme of principle because when we try to figure
11 out how these statements can be used, we are in a judicial
12 proceeding and the proceeding should be of a high level of
13 integrity. We are dealing with documents that are obtained under
14 torture, so we're not just talking of basic principles of
15 reliability. This is the point I wanted to make regarding the
16 substance.

17 [10.40.38]

18 Another point which is important to clarify and I believe Judge
19 Lavergne responded to it partly. It has to do with S-21
20 confessions, indeed decisions were taken as part of the Duch
21 trial. You reach certain conclusions but that is a trial in which
22 neither Mr. Khieu Samphan or Mr. Nuon Chea were charged. The
23 presented evidence and you reached conclusions that have nothing
24 to do with the Accused persons in this Trial. And let me give one
25 example, paragraph 332 of your judgement of 7th August 2014 in

1 which you revisited the findings you reached in the Duch trial in
2 which you stated that Nuon Chea was supposedly a member of the
3 military committee, and as part of your trial judgement in Case
4 002/01 with other evidence, you've reached another finding, a
5 different finding, which means that there is no presumption as
6 such. It is a matter of applying a standard of administration of
7 evidence. If Parties intend to use evidence on the basis that
8 such evidence is not torture-tainted, that is something that is
9 debatable in this Tribunal but there is no presumption that it
10 can be confronted to different Parties without any adversarial
11 debate in this trial.

12 [10.42.32]

13 To conclude, let me simply point out that all we're asking you to
14 do is to strictly apply Article 15 of the Convention Against
15 Torture. There is absolutely no question regarding with whatever
16 maybe the contents of those statements. To use those contents and
17 only basic elements -- I'm referring to the personal particulars
18 of the person interrogated; it doesn't have to do with the entire
19 biography of the person as I understood from the submission of
20 the Co-Prosecutors because we should be very clear on this. We
21 know where they're headed; it can support their case to have the
22 entire narrative of the family biography of -- in certain
23 confessions to corroborate their case. But if we are of the view
24 that there are indeed certain pieces of information that were
25 obtained under torture as part of the drafting of these

1 biographies, we do not know whether those pieces of evidence are
2 true or false and this was mentioned in the questioning of Vong
3 Sarun. We cannot know first-hand whether the confessions were
4 obtained under duress, but in any case the contents cannot be
5 used as part of this trial. We cannot use the contents of a
6 confession and that is the thrust of the Article 15 of the
7 Convention. We cannot use such evidence, and everyone has read
8 and re-read the fact that the only exception is to establish that
9 a statement was made. Period.

10 [10.44.27]

11 MR. PRESIDENT:

12 You may now proceed, Judge Fenz.

13 JUDGE FENZ:

14 Yes, I have two questions: the first one is again to the
15 standard, when is it established? You appear to indicate that
16 even factual findings in the final verdict, factual findings to
17 the effect that torture has happened, for instance in S-21 in a
18 verdict, don't meet the standard because they were against other
19 accused, which, I don't think plays a role for the question of
20 standard here. So, if this doesn't meet your requirements of
21 standard, what does? Any comments on the standard issue? And as
22 Judge Lavergne pointed out on the exact opposite scale of the
23 whole thing, the European Court appears in at least one decision
24 to have established a very low standard or comparatively low
25 standard; namely, substantial risk.

1 And the second question is: You mentioned Article 321 of the
2 Cambodian Procedural Code; were you trying to argue that the
3 Torture Convention as it is implemented in Cambodian law is
4 actually wider -- or in Cambodian law it's actually wider because
5 it's not only torture, but it also covers statements made under
6 physical and mental duress? Thank you.

7 [10.46.12]

8 MS. GUISSÉ:

9 To respond to your first question, I do not whether the problem
10 is one of interpretation; perhaps I wasn't very clear. When I
11 talked of the principle of res judicata, I was saying that you
12 reached certain findings in the Judgement; you were not one of
13 the Judges who deliberated in the case of the Judge (sic) trial.
14 All I am saying is that certain findings were reached in the Duch
15 judgement, which cannot be applied to the Accused in this Case.
16 That is what I meant when I refer to res judicata. That was just
17 to clarify that point.

18 Yes, Article 321 of the Cambodian Penal Code is broader in its
19 scope because it indeed refers to statements made under physical
20 or moral duress, so it is broader than the scope of Article 15,
21 in strict sense of the word.

22 [10.47.31]

23 MR. PRESIDENT:

24 Thank you for your oral submissions in relation to the use of
25 torture-tainted evidence and we have heard from Parties whether

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1 torture-tainted evidence can be used in our Case 002/02. The
2 Chamber will take all your comments and observations into
3 consideration and the Chamber will respond and decide on the
4 requests made by the Parties.

5 It is now convenient time for a short break and the Chamber will
6 take break from now until 11.15 a.m., and when we resume we will
7 hear 2-TCW-851.

8 The Court is now in recess.

9 (Court recesses from 1048H to 1106H)

10 MR. PRESIDENT:

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

12 Court officer, please usher the witness into the courtroom. Thank
13 you.

14 (Witness 2-TCW-851 enters courtroom)

15 [11.08.59]

16 QUESTIONING BY THE PRESIDENT:

17 Good morning, Madam Witness. What is your name?

18 MS. MEAS LAYHUOR:

19 A. My name is Meas Layhuor.

20 Q. Thank you, Madam Meas Layhuor. Can you tell us when you were
21 born?

22 A. I cannot recall my date of birth.

23 Q. How old are you this year?

24 A. I am 57 years old.

25 Q. Where were you born -- that is, the village, commune, and

1 district of your birth?

2 A. I was born in Baray district, Kampong Thom province. In fact,
3 it was in Ballangk commune.

4 [11.10.11]

5 Q. What is your current address?

6 A. It is in Tras village.

7 Q. And in which commune is Tras village located in?

8 A. It is in Ballangk commune, Baray district, Kampong Thom
9 province.

10 Q. What is your occupation?

11 A. I'm a grocery seller.

12 Q. What are the names of your parents?

13 A. My father is Meas Saray (phonetic) and my mother is Saom Vorn.

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

15 A. My husband is Phuk Sochorn and we have three children.

16 [11.11.28]

17 Q. Thank you, Madam Meas Layhuor. The greffier made an oral
18 report this morning that to your best knowledge, none of your
19 father, mother, ascendant's children or descendants, brothers,
20 sisters, in-laws or husband is admitted as a civil party in Case
21 002 or is related by blood to any of the two Accused; is this
22 information correct?

23 A. Yes, it is.

24 Q. The greffier also reported that you already took an oath
25 before your appearance; is that correct?

1 A. Yes, it is.

2 Q. The Chamber would like to inform you of your rights and
3 obligations as a witness.

4 Regarding your rights, as a witness in the proceedings before the
5 Chamber, you may refuse to respond to any question or to make any
6 comment which may incriminate you. That is your right against
7 self-incrimination. And on your obligations as a witness in the
8 proceedings before the Chamber, you must respond to any questions
9 by the Bench or relevant Parties, except where your response or
10 comments to those questions may incriminate you as the Chamber
11 has just informed you of your right as a witness. Also as a
12 witness, you must tell the truth that you have known, heard,
13 seen, remembered, experienced or observed directly in relation to
14 an event or occurrence relevant to the questions that the Bench
15 or Parties pose to you.

16 And Madam Meas Layhuor, have you been interviewed by
17 investigators of the Office of the Co-Investigating Judges? If
18 so, how many times, when and where?

19 A. I was interviewed once at the house of the village chief.

20 [11.13.55]

21 Q. Thank you. And before you appear before the Chamber, have you
22 read, reviewed, or get someone to read to you the previous
23 written record of your statement at the house of the village
24 chief in order to refresh your memory?

25 A. Yes.

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1 Q. Thank you. And to your best knowledge and recollection, is the
2 written record of your statement consistent with your statement
3 you provided to the investigators at the house of the village
4 chief?

5 A. Please repeat.

6 Q. Regarding the content of the written record of your interview,
7 is it consistent or similar to the statement you made previously?

8 A. Yes, it is.

9 [11.15.18]

10 MR. PRESIDENT:

11 Thank you. And for questioning this witness pursuant to Rule
12 81bis of the ECCC Internal Rules, the Chamber will give the floor
13 to the Co-Prosecutors first before other Parties. And the
14 combined time for the Co-Prosecutors and the Lead Co-Lawyers for
15 civil parties are three sessions. And the Co-Prosecutor, you may
16 proceed.

17 QUESTIONING BY MR. SREA RATTANAK:

18 Good morning, Mr. President. Good morning, Your Honours. And good
19 morning, all Parties. And good morning, Madam Witness. My name is
20 Srea Rattanak, a National Deputy Co-Prosecutor. I have some
21 questions for you.

22 Q. Before 1975, that is prior to 17 April 1975, where did you
23 live?

24 MS. MEAS LAYHUOR:

25 A. I lived in Tras village.

1 [11.16.30]

2 Q. Can you tell us further in which commune, district, and
3 province the Tras village is located in?

4 A. It was in Ballangk commune, Baray district, Kampong Thom
5 province.

6 Q. And what did you do at the time?

7 A. Actually, I stayed at home at the time.

8 Q. I meant did you have a job at the time or what were you doing
9 for a living?

10 A. I was a rice farmer.

11 MR. PRESIDENT:

12 The Chamber would like to inform the Parties and the general
13 public that the hearing of this witness is as -- of Ms. Meas
14 Layhuor is as a witness. However, due to her health concerns, she
15 requests the support from the TPO representative. And as such,
16 Madam Chhay Marideth has been assigned to assist the witness
17 during her testimony.

18 And the Deputy National Co-Prosecutor, you may resume.

19 [11.18.23]

20 BY MR. SREA RATTANAK:

21 A. And between 17 April 1975 and 7 January 1979, where did you
22 live?

23 MS. MEAS LAYHUOR:

24 A. I still live in Tras village.

25 Q. Did you remain living in the same village or were you

1 transferred elsewhere?

2 A. I cannot recall when I was relocated to Veal Pring during the
3 Chenla first movement.

4 Q. Please, I'd like you to make it precise if you can recall --
5 that is, the exact year, if you can recall it. And what I am
6 interested here is between the periods of the 17 April 1975 to
7 the 7 January 1979. And that would be the focus of my questions.
8 So please, repeat your answer, if you can recall the year in
9 between this period -- that is, from 17 April 1975 to the 7
10 January 1979, which simply meant during the Khmer Rouge period;
11 where did you live?

12 A. I lived in Tras village; however, I was placed in a special
13 mobile unit. So sometimes, I was sent to work at the 1st January
14 Dam construction worksite or sometimes at the 6th January Dam
15 construction worksite.

16 [11.20.340]

17 Q. So you were placed in a mobile unit to work at the 1st January
18 Dam worksite and please tell us the year that you were assigned
19 to go there.

20 A. It was in 1977.

21 Q. Can you recall the month, was it at the beginning of the year,
22 in the middle, or towards the end of the year?

23 A. I cannot recall that. I cannot say whether it was at the
24 beginning or towards the end of the year.

25 Q. Can you try to recall when you were sent to work at the 1st

1 January Dam worksite, had other workers been assigned there
2 before you arrived?

3 A. All the forces in the mobile unit in the village were sent to
4 work there.

5 [11.22.05]

6 Q. And upon your arrival at the 1st January Dam site, did you see
7 other workers?

8 A. Yes, there were many. There were many, many workers. I could
9 say there were thousands or tens of thousands workers there.

10 Q. And did you know where those workers had been sent from?

11 A. They were sent from everywhere within the North Zone to come
12 and work at the 1st January Dam worksite.

13 Q. And in your unit, how many members?

14 A. There were hundreds of us in the unit -- that is, all the
15 forces within the special mobile unit under the Ballangk commune
16 were there.

17 Q. Can you please be more specific? You just stated about the
18 total forces within the commune and there were hundreds of people
19 from the Ballangk commune. And my question is whether those
20 forces were subdivided into village forces or group forces?

21 A. The forces were divided into each village respectively, and
22 there were about 50 workers for each village.

23 [11.24.30]

24 Q. So there were about 50 workers from each village. Does it mean
25 it is regarded as one unit per village?

1 A. Yes, it is.

2 Q. In document D166/38, ERN in Khmer is 00239932; and in English,
3 00244166; and in French, 00283911; you stated that there were 11
4 members in your group -- rather 12 members in your group. What do
5 you mean by that?

6 A. Twelve workers comprised a group.

7 Q. And please, what do you mean by a group consisted of 12
8 workers?

9 A. As I said, there were 12 workers which were assigned into a
10 group.

11 [11.26.06]

12 Q. So you meant you were part of a group of 12 which was a
13 smaller part of a unit; am I correct?

14 A. Yes, because the 50-person unit was subdivided into groups.

15 Q. And what were you assigned to do at the worksite?

16 A. I was assigned to work in the mobile unit, and that was all.

17 Q. And in that mobile unit, what kind of work were you assigned
18 to do?

19 A. We were instructed to carry one cubic metre of earth per day
20 per each worker. If one could finish earlier, that person could
21 rest, and for those who did not finish, they had to complete the
22 quota before they could rest.

23 MR. SREA RATTANAK:

24 And Mr. President, when I read extracts from the document, it
25 seems that the witness finds it difficult to follow it. Is it

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1 possible for me to deliver her previous statement to her?

2 [11.28.00]

3 MR. PRESIDENT:

4 Madam Meas Layhuor, can you read the Khmer language?

5 MS. MEAS LAYHUOR:

6 No, I cannot read it.

7 MR. PRESIDENT:

8 I think that is clear, Mr. Deputy Co-Prosecutor. There is no
9 point of giving her the statement because she cannot read it.

10 BY MR. SREA RATTANAK:

11 Q. Again in document D166/38 at ERN in Khmer, 00239929; in
12 English, 00244163; and in French, 00283907; I'd like to make the
13 following quote -- [free translation] -- When you were asked
14 about the 1st January Dam, you said that, "Yes, I know because
15 the 1st January Dam worksite was a hot battlefield". And my
16 question is: What do you mean when you refer to it as "a hot
17 battlefield"?

18 [11.29.23]

19 MS. MEAS LAYHUOR:

20 A. It means that we had to complete the work quota of one cubic
21 metre of carrying soil per day. And we had to work through the
22 night until 12 o'clock midnight, then we were allowed to rest.
23 And in the morning, the soldiers whistled -- blew the whistle and
24 we had to get up early to work. And we could only rest for meal
25 at 12 noon. We were given the ration that we could eat to our

1 fill -- that is, rice and some fish. Sometimes we were given two
2 fish for lunch. And that was the special ration for that specific
3 battlefield.

4 Q. And also on the point that you just said regarding the working
5 hours, and you also mention that in your statement before the
6 OCIJ investigator -- that is, in document D166/38 at Khmer ERN at
7 00239930; in English, 00244164; and in French, 00283909; you said
8 that the work began at 3 o'clock in the morning and it continued
9 until 12 noon. It resumed again from 1.00 p.m. until 5.00 p.m.,
10 and at night-time, it started from 6.00 p.m. and continued until
11 12 midnight. From what you said regarding the working hours, you
12 work about nine hours -- that is, during the morning from 3
13 o'clock a.m. until 12.00., and then 4 o'clock in the afternoon --
14 rather four hours in the afternoon and five hours at night. So
15 the total number of hours is 19 hours. Is it due to this long
16 extensive working hours you regarded the workplace as a hot
17 battlefield?

18 [11.31.53]

19 MR. PRESIDENT:

20 Witness, please hold on. And Counsel Kong Sam Onn, you may
21 proceed.

22 MR. KONG SAM ONN:

23 Thank you, Mr. President. I object to this question as it is
24 really a leading question.

25 MR. SREA RATTANAK:

1 In my opinion, this is not a leading question as the witness
2 already confirmed the worksite was a hot battlefield and she
3 described the working hours. And what I just made in my last
4 question is just to total the number of working hours.

5 MR. PRESIDENT:

6 Deputy Co-Prosecutor, please move on or rephrase your question as
7 this is a leading question.

8 [11.32.50]

9 BY MR. SREA RATTANAK:

10 Q. Regarding the working hours as you mentioned in your previous
11 interview with OCIJ investigator, is it like a constant general
12 working hours during the time that you worked at the 1st January
13 Dam worksite? Or did it happen only for a special period of time?
14 And please if my question is complicated, I may try to simplify
15 it. Let me know.

16 MS. MEAS LAYHUOR:

17 A. Please repeat your question.

18 Q. You spoke about the working hours before the OCIJ
19 investigator, that you started working from 3.00 to 12.00, 1.00
20 to 5.00, then 6.00 to 12.00 again. Is this a general working
21 hours while you worked there at the 1st January Dam worksite? Did
22 you continue working following these working hours? Or were these
23 working hours applied for a special period only?

24 A. The working hours applied until the conclusion of my work at
25 the 1st January Dam worksite.

1 [11.34.42]

2 Q. And during the time that you worked there, were you allowed to
3 rest? For example, between 3.00 a.m. and 12.00 p.m., were you
4 allowed any break between these times?

5 A. No, there was no rest time. If we rested, then militia would
6 order us to return to work again. For example, if I had to take a
7 short break under a tree, then a militiaman would come and order
8 me to return to work.

9 Q. And what happened when you were thirsty or you needed to
10 relieve yourself?

11 A. Yes, we were allowed to go and relieve ourselves or to go and
12 drink water because some people from the mobile unit would carry
13 the water -- drinking water to us so that we could drink that
14 water.

15 Q. How many minutes were you allowed, for example, to have a
16 small rest when you had to drink water?

17 A. We were only given like five minutes, then we had to return to
18 work again.

19 [11.36.22]

20 MR. PRESIDENT:

21 Thank you, Deputy Co-Prosecutor. The time is convenient for a
22 short -- for a lunch break. We take a break and resume at 1.30
23 this afternoon.

24 Court officer, please assist the witness in the room for the
25 civil parties and witnesses during the lunch break, and invite

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1 her to return to the courtroom again, as well as the TPO staff at
2 1.30.

3 And security personnel, you are instructed to take Khieu Samphan
4 to the waiting room downstairs and have him returned to attend
5 the proceedings this afternoon before 1.30.

6 The Court is now in recess.

7 (Court recesses from 1137H to 1334H)

8 MR. PRESIDENT:

9 Please be seated. The Court is back in session.

10 Before I give the floor to the Co-Prosecutor, the Chamber would
11 like to make an oral ruling on Nuon Chea's request for
12 clarification on whether the Khmer Krom are included as a
13 targeted group in Case 002/02.

14 [13.34.42]

15 On 5th of March 2015, following the disclosure of evidence
16 pertaining to the Khmer Krom from Cases 003 and 004, the Nuon
17 Chea defence requested that the Trial Chamber assure the Parties
18 that the Khmer Krom will not be included as a quasi-targeted
19 group in Case 002/02 trial, document E319/16. During the Trial
20 Management Meeting on the same day, the Nuon Chea defence
21 reiterated its request, and the Co-Prosecutors and the
22 International Lead Co-Lawyer for the Civil Parties responded. In
23 considering the request, the Trial Chamber has had regard to all
24 relevant, factual, and legal findings in the Closing Order
25 included within the scope of Case 002/02. The Chamber hereby

1 rules that:

2 1) Case 002/02 does not include charges relating to the targeting
3 of the Khmer Krom as a specific group -- that is, persecution as
4 a crime against humanity or genocide of the Khmer Krom. No Party
5 has requested to re-characterise any factual allegations within
6 the scope of Case 002/02 to include counts of persecution or
7 genocide directed at the Khmer Krom as a distinct group.

8 [13.36.39]

9 2) The Chamber will continue to assess evidence on a case by case
10 basis in accordance with the ECCC legal framework. As a general
11 guideline where evidence is proposed or discussed in Court, which
12 appears to relate solely to the targeting of the Khmer Krom, and
13 to be exclusively relevant to the establishment of the elements
14 of persecution as a crime against humanity or genocide against
15 the Khmer Krom, it will be deemed not relevant and will not be
16 allowed.

17 3) Evidence pertaining to the Khmer Krom may, nonetheless, be
18 relevant to other issues in Case 002/02, such as the historical
19 and political context of the case or to other crimes which are
20 charged, and certain of the victims happen to be Khmer Krom, and
21 as such may be admissible. However, the Chamber request that the
22 Parties focus on leading evidence which most strongly pertains to
23 the charges at issue in Case 002/02. While the Chamber will not
24 exclude witness or civil party testimony which touches upon the
25 fact that an individual is Khmer Krom insofar as it is relevant

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1 to other issues within the scope of Case 002/02, this should not
2 be the focus of counsels' questioning as the targeting of Khmer
3 Krom is not charged in this case.

4 And now the floor is given to the National Deputy Co-Prosecutor
5 to put questions to this witness.

6 [13.38.52]

7 BY MR. SREA RATTANAK:

8 Thank you, Mr. President. Good afternoon, Madam Witness. This
9 morning, you stated that you were assigned to worked and also you
10 were assigned to meet the quota of one cubic metre per day. Who
11 set that quota?

12 MS. MEAS LAYHUOR

13 A. It was set by a unit chief. He set the quota of one cubic
14 metre per day.

15 Q. On what basis was the quota set, whether it was on race,
16 gender, or it was set equally?

17 A. The quota was set equally for everyone.

18 [13.40.08]

19 Q. What about you, could you meet the work quota?

20 A. Yes. I tried to meet the quota, otherwise I would be punished.

21 Q. The International Deputy Co-Prosecutor will focus on this
22 later. And I would like to continue my line of questioning.

23 During the time that you were working at the dam site, had you
24 ever encounter any accident at the dam site?

25 A. Sometime when I was carrying earth and I took a shelter at one

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1 particular place, and there was soil collapse and people may die
2 -- may have died because of soil collapse.

3 Q. Did you witness this by yourself?

4 A. I witnessed this by myself.

5 Q. Did it happen in your group or unit? Or did it happen
6 elsewhere?

7 A. It happened elsewhere, not in my unit.

8 [13.42.08]

9 Q. In document D166/38, ERN in Khmer is at, 00239930 - 31; ERN in
10 English is at, 00244164; ERN in French is at, 00283909; you
11 stated as follows: "There were two meals per day and there was
12 dessert once every 10 days. As for the special mobile units, they
13 let us eat rice, but they distributed the food rations. They did
14 not allow us to eat freely. Anyone who normally ate little got
15 their fill, but anyone who ate a lot did not get their fill.
16 There was morning glory soup almost every single day, and it was
17 mixed with a little bit of fish. It was not even equal to the
18 gruel for pigs these days." Concerning this statement, in your
19 special mobile unit, "they let us eat rice", what does this mean?
20 Did any other mobile unit have rice to eat?

21 [13.43.54]

22 A. We received the same food ration; other units received the
23 same food ration.

24 Q. In your statement, you stated, "anyone who ate little got
25 their fill, but anyone who ate a lot did not get their fill",

1 what do you mean by saying this?

2 A. Those who ate a lot did not get their fill, and anyone ate
3 little they got their fill.

4 Q. What about you did you have your fill?

5 A. I could eat my fill. But for those who ate a lot, they could
6 not eat their fill.

7 Q. You also stated that it was not even equal to the gruel for
8 pigs these days. Did you refer to the quantity of food ration or
9 did you refer to quality of food, or did you refer to hygiene?

10 A. There was morning glory with a little bit of fish, and the
11 food was served to workers during that period.

12 [13.45.51]

13 Q. In your statement, you stated that there was morning glory
14 soup with a little bit of fish and it was not even equal to the
15 gruel for pigs these days. I would like to know whether you
16 wanted to say that there was very little of meal or were you
17 referring to the hygiene or quantity of meal at that time?

18 A. I do not get your question. Please repeat it.

19 Q. You made a comparison between the food ration on that day with
20 that of these days. And you stated that the food ration was not
21 even equal to the gruel for pigs these days. What do you mean by
22 saying this? You wanted to make a comparison in relation to the
23 quantity of food, quality of it or hygiene of it? Do you
24 understand my question, Madam?

25 [13.47.14]

1 A. As for gruels for pigs these days, there were -- we put many
2 things in the gruel. And during that period, morning glory soup
3 consisted of only a little bit fish.

4 Q. You stated also in your written record that, "anyone who ate
5 little, got their fill, but anyone who ate a lot did not get
6 their fill." Did anyone steal food?

7 A. Those who stole food, they were arrested for refashion.
8 Because they stole the food, they could only have for him or
9 herself, but others did not have food to eat.

10 Q. My question is that did anyone steal food during that time?

11 A. Yes, there were people stealing food. And as I said, those who
12 stole food, they were sent for refashion.

13 [13.48.41]

14 Q. Did anyone complain about food provided to them?

15 A. No one dared complain because everyone was afraid that they
16 were taken to be killed.

17 MR. SREA RATTANAK:

18 Thank you very much, Madam Witness, for answering my question.

19 Mr. President, I conclude my line of questioning, and my
20 colleagues have further questions to put to this witness.

21 MR. PRESIDENT:

22 You may now proceed, International Deputy Co-Prosecutor.

23 [13.49.30]

24 QUESTIONING BY MR. DE WILDE D'ESTMAEL:

25 Thank you. Good afternoon, Mr. President, Your Honours, and all

1 the Parties. And good afternoon to you, Madam Witness. I am
2 Vincent de Wilde. I will also put some questions to you, still
3 with regard to what happened at the 1st January Dam. May I
4 request you to respond to my questions as sincerely and as
5 completely as possible. I would like you to respond as briefly as
6 possible and avoid giving details that are not called for. As a
7 follow-up to what my colleague said a while ago, I will revisit
8 living conditions at the 1st January Dam.

9 You said a while ago that when you were thirsty, some of your
10 colleagues in your mobile group gave you some water. What access
11 did the workers have to drinking water? Was there sufficient
12 drinking water for you to be able to quench your thirst while you
13 were working?

14 [13.50.45]

15 MS. MEAS LAYHUOR:

16 A. We had our fill. And the person in the mobile unit was
17 assigned to collect the water. And after we drank the water, we
18 continue our work.

19 Q. Did you notice whether the workers sometimes drank water from
20 the river when they were too thirsty?

21 A. Yes, everyone drank that water from the river. There was no
22 other source of water but only from the river.

23 Q. Was it not risky for your health to drink water from the
24 river? Wouldn't you have fallen sick, for instance?

25 A. Yes. Some were contracted with dysentery because they drank

1 water which was not boiled.

2 [13.52.29]

3 Q. I would like us to talk about the food you ate. You said you
4 were fed. But the question of food was not one of quantity but of
5 variety. Did you feel strong enough after eating to do your work
6 you had to do from very early in the morning and far in to the
7 night?

8 A. We had no strength and energy, but we had to try to carry
9 earth, otherwise we would be taken for refashion.

10 Q. Did you yourself and your colleagues become skinny in the
11 course of the work you did on that 1st January Dam worksite?

12 A. I myself was getting skinnier because I was undernourishment.
13 We had worked too hard, even we got our fill, we still got
14 thinner.

15 [13.54.03]

16 Q. Can you describe to us where you were housed and what it was
17 built of, and how many people slept in that house?

18 A. The place where we stayed, it was -- the roof was made from
19 thatch and the wall was made from (inaudible) stick. And we were
20 told to sleep in the open air with no mosquito nets.

21 Q. Since your roof was thatched, didn't it rain on you at night?

22 A. If there was heavy rain, everyone got soaked.

23 Q. Did it happen that you fell sick because you were drenched by
24 the rain at night?

25 A. Sometimes I got a cold and I could not go to work. But I had

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1 to try my best to carry earth, otherwise I would be taken away
2 for refashion.

3 [13.55.50]

4 Q. You stated that there were no mosquito nets. Were you often
5 bitten by mosquitoes and other insects as a result of that? And
6 as a result, did people fall sick of malaria?

7 A. There was no--

8 MR. PRESIDENT:

9 Please hold on, Madam Witness. You may now proceed, Mr. Koppe.

10 MR. KOPPE:

11 I object to this question, first of relevance. I get bitten all
12 the time by mosquitoes in Phnom Penh. Secondly, this witness is
13 not able to say whether somebody, because he or she was bitten by
14 a mosquito, then subsequently developed malaria. That is way
15 beyond her capacity. So I object on two grounds to this specific
16 question.

17 MR. DE WILDE D'ESTMAEL:

18 Mr. President, I do not think that they've asked Defence to
19 testify as to whether they got -- whether they were bitten by
20 mosquitoes. Secondly, we know that malaria can be contracted from
21 mosquito bites, and that is why I think this question is in
22 order.

23 [13.57.17]

24 MR. PRESIDENT:

25 The objection of the Defence Counsel is overruled. The question

1 is appropriate and is allowed to put to this witness. The Chamber
2 needs to hear the answer from the witness. And Madam Witness,
3 please respond to the question by the Co-Prosecutor, if you may
4 recall.

5 MS. MEAS LAYHUOR:

6 Could you repeat your question, please?

7 BY MR. DE WILDE D'ESTMAEL:

8 Q. I will repeat it. Since there were no mosquito nets, were you
9 bitten by mosquitoes and as a result, did you and your colleagues
10 fall sick of malaria?

11 MS. MEAS LAYHUOR:

12 A. Some people had malaria. When we got many mosquito bites, we
13 collected rubbish and burned to scare away mosquitoes.

14 [13.58.32]

15 Q. Were there any latrines adjacent to your lodgings or you had
16 to relieve yourself in the bushes?

17 A. We relieved ourselves in the forest. There was no proper
18 toilets. And for this reason, there were many flies and people
19 fell sick and they got dysentery. Some people in the mobile units
20 fell sick, they had fever and dysentery because there were many
21 mosquitoes -- there were many flies rather.

22 Q. And at night, were you able to recover enough and to sleep
23 enough to be in good shape and ready to -- for a long day or for
24 many hours of work before the first meal of the day at around
25 12.00?

1 A. We did not have enough sleep. The whistle was blown at 3.00
2 a.m. in the morning to awake us to work because everyone was
3 required to work at the 1st January Dam. It was the hot
4 battlefield.

5 Q. How would you manage to stand all of this and -- by getting up
6 so early in the morning and working straight until about 12.00,
7 can you explain to us what were the hardships of working under
8 those conditions?

9 [14.00.34]

10 A. Even if we were sick, we had to go to work, otherwise we would
11 be sent for refashioning. If we were to be absent from work, then
12 we would be punished, we would be deprived of our food.

13 Q. Did you sometimes try to complete your diet by picking fruit,
14 by catching insects or frogs?

15 A. Yes, I did. When I returned from carrying earth, I picked tree
16 leaves, then I sort those leaves and put a little bit of salt,
17 and then I use it as my supplementary diet to the food that I was
18 given. And in the morning when the whistle was blown, I would eat
19 the leftover rice with the tree leaves mixed with salt that I
20 prepared from the previous day. And then I would go for the earth
21 carrying task.

22 Q. And did Angkar allow you to pick these leaves or were you
23 taking a risk in doing that?

24 [14.02.23]

25 MR. PRESIDENT:

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1 Witness, please hold on, and counsel Koppe, you have the floor.

2 MR. KOPPE:

3 Thank you, Mr. President. In this specific phrasing of the
4 question, I have a problem. The Prosecution can ask who forbid
5 something or who instructed, but not sort of in general terms
6 refer to Angkar. Angkar is sometimes referred to as an
7 organisation that is true, but here we have a very specific
8 situation on the ground where her unit chief, who has a name I'm
9 sure, could have said or instructed something. In this particular
10 case, the way the word Angkar is used is something I object to.

11 [14.03.12]

12 BY MR. DE WILDE D'ESTMAEL:

13 Well, I will then rephrase my question.

14 Q. Well, were you therefore allowed to pick these leaves or were
15 you taking a risk when you would pick these leaves?

16 MS. MEAS LAYHUOR:

17 A. Of course, I secretly picked the leaves and pocketed them
18 without allowing anyone to see it.

19 Q. Fine. Now let me speak about health and about sanitation in
20 particular. And you already said that many workers became ill,
21 that there was dysentery, malaria. And was there also cholera?
22 Was cholera also rife on the 1st January Dam worksite?

23 A. Yes, there were many cases of dysentery. And that's due to the
24 excess number of flies. And because of the hot weather, we
25 consumed quite a lot of water.

1 [14.04.37]

2 Q. So thus, did some people die because of these illnesses
3 whether in your group or even beyond your group?

4 MR. PRESIDENT:

5 Witness, please wait, and Counsel Koppe, you have the floor.

6 MR. KOPPE:

7 I object to this question because the witness is in no position
8 to say whether somebody died of a certain disease. She's not a
9 medical expert nor did she work as a nurse or a medic. So this is
10 beyond her capacity as a witness.

11 [14.05.18]

12 MR. DE WILDE D'ESTMAEL:

13 Mr. President, I believe that this objection is not justified.
14 She spent time working on the dam and she spoke about the
15 diseases. She is an adult person and she knew what the conditions
16 were like on site. So you do not need to be a doctor to know
17 whether or not people died. I think therefore that my question is
18 justified especially since the witness already spoke about this
19 before the Co-Investigating Judges.

20 MR. PRESIDENT:

21 The objection by the Defence team is overruled as the Chamber
22 needs to hear the response from the witness. And Madam Witness,
23 please respond to the last question.

24 BY MR. DE WILDE D'ESTMAEL:

25 I will repeat my question. So, because of the illnesses that were

1 rife on the worksite, did people in your group or in other groups
2 die because of these illnesses?

3 MS. MEAS LAYHUOR:

4 A. Yes, there were many instances where people died from
5 dysentery.

6 [14.06.59]

7 Q. And in terms of the care that was provided back then, was
8 there any medical staff on site? And what means did they have to
9 face all of these illnesses?

10 A. There were some medical staff from the village who walked
11 around and who would provide some tablets or injections to those
12 workers who felt ill. The injection included the B1 and B2. And
13 as for the tablets, they gave tablets to workers. They were in
14 form of the rabbit drop pellets. And there was no proper set-up
15 for a medical unit.

16 Q. And were -- was this (unintelligible) sufficient against
17 dysentery, against malaria, against cholera?

18 A. Some workers recovered while others unfortunately died. Of
19 course it was not as effective as the treatment nowadays.

20 [14.08.34]

21 Q. I have a question that might be a little bit embarrassing but
22 I hope you can answer it. This is a question that regards female
23 hygiene. And back then at the worksite, women who were
24 menstruating, could they enjoy specific hygiene measures such as
25 hygienic napkins or clothes or clean water to wash?

1 A. No, there was none. There was not available, we only have a
2 piece of cloth for our monthly menstrual cycle. There was no
3 proper sanitary pad.

4 Q. Now, I'd like to read out what a witness, 2-TCW-896, stated.
5 He was a driver and a member of Ke Pauk's family, and he
6 travelled to the 1st January Dam worksite. And let me read out
7 what he said regarding this. And I'm going to ask you what you
8 think about this. It is document E3/5264, on page 4 in French,
9 page 5 in English, and pages 5 and 6 in Khmer. And this is what
10 this witness says, and I will quote: "Back then, there were
11 thousands of people who were working -- working hard, in
12 particular women. And when they were menstruating, they had no
13 water to wash. Some had their rear end invaded by flies. There
14 were many, many flies on the worksite, as many as bees." End of
15 quote. So did you see the same thing regarding women that this
16 witness described, also regarding the flies?

17 [14.10.59]

18 A. I didn't see any bees, but there were many flies. You could
19 see like a dark cloud of flies. And when we went to relieve
20 ourselves near the forest, there were too many flies. And also
21 when we were having our lunch, many flies would just surround us.
22 Sometimes, we had to eat far from the kitchen in order to avoid
23 the cloud of flies. So there was no hygiene at all at the
24 worksite.

25 Q. I will get back to follow-up questions in relation to what you

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1 said when you answered my colleague. You constantly were speaking
2 about a special mobile unit which was yours. So how was this unit
3 special in relation to the other units?

4 A. At the 1st January Dam, we were in the workforce belongs to
5 the special mobile units because that was a hot battlefield. And
6 we all were working under the same condition.

7 [14.12.20]

8 Q. You also said in your written record of interview, it's at the
9 second answer that you provided, you said that your chief was
10 called Neary Me, and that she hanged herself. So can you tell us
11 if Neary Me remained your unit chief when you worked at the 1 and
12 6 January worksites?

13 A. Yes.

14 Q. Can you tell us if she hanged herself when the work was going
15 on or did this happen afterwards?

16 A. It happened after 1979. Actually, she drank alcohol and she
17 got drunk, and then she hanged herself to death.

18 Q. Fine. So according to what you learnt on site when you worked
19 on the 1st January Dam or according to what you were told, was
20 this dam on a Chinit river an imposing work? Was it something
21 that was a priority project for your sector or for the North
22 Zone?

23 [14.14.02]

24 A. I did not know about that. But people were gathered from
25 within the North Zone to come and work at that worksite. And I

1 learnt of that information through meetings.

2 Q. And when you say that people came from the North Zone, do you
3 mean that they came from all sectors that composed the North
4 Zone? And if that is the case, can you give us the names of these
5 sectors?

6 A. I do not know about the names of the sectors. But in the
7 meetings, we were told that all the people from the North Zone
8 came to work at the 1st January Dam worksite. And that
9 information was repeated every time I attended the meeting.

10 Q. And was this dam supposed to be built swiftly? Were there
11 strict deadlines that had been set by the leader?

12 [14.15.23]

13 A. I do not know about that. When I finished my work at the 1st
14 January Dam, then I was assigned to work at the 6th January Dam
15 worksite. However, at the second worksite, it was not considered
16 a hot battlefield as we did not have to work at night. And we
17 were given a similar food ration. And we were assigned only to
18 work during the day and the afternoon, and we were allowed to
19 rest at night.

20 Q. So can we say that at the 1st January Dam, you were under a
21 lot of pressure because you also had to work at night; is that
22 indeed the case?

23 A. We were forced to work hard at the 1st January Dam worksite,
24 but not at the 6th January Dam worksite, although we were
25 assigned a cubic metre as a work ration. However the soil

1 condition at the 6 January worksite was better as it was composed
2 of sand. So it was rather loose and we could complete the work
3 quota earlier.

4 [14.17.03]

5 Q. Fine. I would get back to this issue of the quality of the
6 soil later. But did you know the head of the zone back then? Do
7 you know who he was? And did he often come to the worksite -- to
8 the 1st January Dam worksite?

9 A. I heard that Ke Pauk was the zone committee. And for the
10 sector committee, his name was Oeun. Allow me to say that I only
11 heard about that through announcement during the meeting. And
12 each time they came by speed boat to the meeting at the worksite,
13 we were asked to stand along the embankment of the dam in order
14 to greet those leaders. But I was far from them, and I could only
15 see them from a distance. So their faces were unclear to me.

16 [14.18.12]

17 Q. So, Baray was part of which sector? May be you do not know the
18 names of all of the sectors in the zone, but with regard to your
19 sector, did it have a special number?

20 A. No, I do not know. I did not hear people talking about the
21 number for the sector.

22 Q. Fine. So before Oeun, was there someone else who performed the
23 same duties as he?

24 A. No, I do not know. And I only caught the name through the
25 announcement at the 1st January Dam and I did not know who was

1 before, in that position.

2 Q. Did you see leaders in your Baray or people from the district
3 committee come to visit or inspect the 1st January Dam?

4 A. No, I did not. As I said earlier, I only saw the zone
5 committee and the sector committee coming to visit the worksite
6 and not -- I did not see the district committee. And I knew about
7 the zone and the sector committees through the announcement
8 during the meeting at the worksite.

9 [14.20.09]

10 Q. Did you learn if the zone and district committees were
11 sometimes accompanied by foreign cadres?

12 A. I saw some female Chinese coming along with Chen Yonggui, and
13 that Chen Yonggui was Chinese. And we were asked to go and greet
14 them at the 6th January Dam worksite, from my recollection. And
15 of course, I heard about the name Chen Yonggui during the
16 announcement at the worksite. And there were many, many Chinese
17 females coming along with him.

18 Q. So during the visit of these Chinese cadres, did you receive
19 any particular instructions in terms of how you should behave
20 when they would arrive on site? Did you receive any kinds of
21 directions, any kinds of instructions on what you had to do when
22 they would be there?

23 [14.21.25]

24 A. We were instructed to greet them, and only some were assigned
25 to do so. And the rest, they had to continue working. And then

1 our unit chief instructed those at the worksite to work quicker
2 so that it seems that we were very active during the Chinese
3 delegation visit.

4 Q. And were you given similar instructions upon other occasions
5 when other visitors were coming, not necessarily foreign? Did you
6 receive similar instructions, that is to say, to work very, very
7 fast? Did you receive similar instructions at other moments?

8 A. Only when the Chinese delegation came, we were asked to work
9 quicker. But usually we worked in a normal pace because the 6th
10 January Dam worksite was not a hot battlefield.

11 Q. Well, now I'm going to try to get back to the period when you
12 worked on the 1 January worksite and you said earlier on that
13 this was in 1977, but you were not able to provide us with the
14 month. So can you however tell me when you started working on the
15 1 January worksite, was it during the dry season or was it during
16 the raining season?

17 [14.23.14]

18 A. It was during the dry season as the weather was hot. And of
19 course, we could only dig the ground during a dry season. And
20 that task would be much more difficult if it were to be done
21 during the raining season.

22 Q. And when you arrived on the 1 January worksite, did the work
23 already start or were you among the first groups working on that
24 dam?

25 A. My mobile unit was the first to arrive at the worksite. And

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1 then more mobile units would arrive from various other districts
2 or communes, and then they continued working from where we
3 started. So there were many, many forces coming from various
4 other districts.

5 Q. And if you were there since the start, therefore did you work
6 for several months on the 1 January worksite? Is that the case or
7 can you correct me?

8 [14.24.31]

9 A. Yes, that is correct. However, I cannot recall when the work
10 was started or when it was completed.

11 Q. And do you remember a ceremony that took place when the work
12 started, to launch the work on that dam?

13 A. To me it seems there was no ceremony or any celebration. There
14 were only meetings held at the worksite.

15 Q. Thank you. Now with regard to your transfer to the 6th January
16 Dam, can you tell us for how long, approximately, you worked on
17 the 6th January Dam? Was it up until when the Vietnamese arrived,
18 or if I understood well, was it until the time when you got
19 married?

20 [14.25.42]

21 A. I don't recall in which month or year I was transferred to
22 work at the 6th January Dam worksite. However, I became sick then
23 I was sent for treatment back at the village. I fell at the river
24 so I couldn't carry any soil and I could not walk. Then I was put
25 on a tractor to return to the village. And I did not know when it

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1 was completed, although I knew it was completed during the
2 regime.

3 Q. So can we say that you also worked for a long time at the 6
4 January worksite or was it for a short period of time?

5 A. It was quite a long time at the worksite. However, when I
6 started working at the 6th January Dam, it was almost towards the
7 end of the dry season. And then I continued working through the
8 raining season, as we had also to carry soil during the raining
9 season, if my recollection is right.

10 [14.27.17]

11 Q. So you worked for a very long time on the 6 January worksite.
12 Were there many like you who worked so long or was there a
13 rotation system in place, let's say people who would come and who
14 would leave after a few months?

15 A. No. As I said, I was part of the special mobile unit and we
16 were always assigned to work at these so-called battlefields.

17 Q. So among the workers at the 1 January worksite, were there a
18 majority of people who were Base People? And can you tell us if
19 there were also many New People?

20 A. There was a mixture of the New and the Old People, and we were
21 working together.

22 Q. And did these New People arrive after the cities were
23 evacuated or later, let's say in '76 or 1977?

24 A. Please repeat your question.

25 Q. Yes. Did the New People arrive at Kampong Thom and Kampong

1 Cham after the cities were evacuated, that is to say around April
2 or May 1975? Or did they arrive one or two years after that?

3 [14.29.18]

4 A. Immediately upon their arrival, those people were assigned to
5 work at the worksites. And they were working -- mixing with the
6 Base People.

7 Q. Were there also people who were members of the Cham Islam, so
8 to speak?

9 A. Yes, there were Cham people working with us. However, those
10 Cham people had been evacuated from the East Zone -- that is,
11 from Kampong Cham. And they were assigned to work in the mobile
12 units together, working with us. They were actually transported
13 to Prey Srangae pagoda, and the situation there was rather
14 overcrowded. And later on, they were sent to various villages and
15 assigned to work in the various mobile units.

16 Q. And lastly, regarding the composition of the groups working on
17 the site. Were they also soldiers, members of the revolutionary
18 army who assisted you in the construction of the dam?

19 A. It seems there were none. However, there was presence of
20 soldiers who were watching over us. They would watch us when we
21 went to relieve ourselves in the bushes. But I did not see
22 soldiers assisting us in our work. They were guarding the
23 worksite in order to get us back to work if we were to rest under
24 a tree or stay too long relieving ourselves in the forest.

25 [14.31.43]

1 Q. Let us return to working hours. Did you occasionally get a
2 day's rest and if so, how regularly?

3 A. We were allowed to rest every 10 days. And on the 10 days,
4 dessert was served. And the same practice applied at the
5 cooperative -- that is, every tenth day, a dessert was made and
6 we were allowed to rest.

7 Q. Were you free to move about freely on your day of rest? Could
8 you for instance go back to your village to visit your family
9 during your day of rest?

10 A. Yes, we could make a visit, a short visit, and after that, we
11 had to return back to work. On day 10 -- that is, the day that we
12 were allowed to take a rest, we could ask our unit chief to go
13 and visit our home for a brief moment, and after that, we had to
14 return back to work.

15 Q. Now regarding the work you did at the dam, is it fair to say
16 that at the beginning, you worked on the site which was in the
17 Ballangk commune territory? Or you worked on a territory in
18 another commune?

19 [14.33.51]

20 A. I worked in Ballangk commune, the place where the 1st January
21 Dam was situated.

22 Q. Can you tell us a bit more about the difficulties you faced in
23 doing that task which involved digging earth and transporting it
24 up to the dam? Can you explain to us how difficult that work was?

25 A. We had to do hard work. We were hungry and we were tired.

1 Q. Between the place where you had to dig and where you had to
2 pour the earth, what was the distance? Did you have to run or
3 walk in order to throw the earth on the dam site?

4 A. Yes, it was far, about 200 metre away. So I had to carry earth
5 from the bottom of the canal and brought the dirt to the upper
6 level of the dam.

7 Q. Can you give us an idea of the weight of each basket full of
8 earth which you carried on a shoulder pole?

9 A. The weight -- the total weight was about 30 kilograms (sic),
10 and we had to carry earth. And for me, I had to carry the earth
11 from the spillway structure to the dam.

12 [14.36.19]

13 Q. When you say 30 kilograms, is it 30 kilograms per basket or
14 for both baskets?

15 A. The two baskets weighed about 30 kilograms. One basket weighed
16 about 15 kilograms.

17 Q. Did such very physical work cause any kinds of illnesses or
18 pain? Were you -- did you feel pains on the back, on your thighs,
19 on your shoulders, or did you also feel pain in your skin or in
20 your body because of that work?

21 MR. PRESIDENT:

22 Madam Witness, please hold on. You may now proceed, Anta Guissé.

23 [14.37.29]

24 MS. GUISSÉ:

25 I have no problem with the fact that the Prosecutor wants to put

1 questions to the witness, but he should avoid putting words in
2 the witness's mouth. So he should ask open questions, because
3 sometimes he asks questions and gives some answers in his
4 questions with specific words. And the witness responds
5 spontaneously. I do not intervene very often, but the
6 Co-Prosecutor has been asking such questions. He should put
7 questions to the witness in such a manner as to allow the witness
8 to answer the questions without putting words into his mouth.

9 BY MR. DE WILDE D'ESTMAEL:

10 I will move on in order to gain time. Transporting 30 kilograms
11 over a period of 100 metres caused any physical pains?

12 MS. MEAS LAYHUOR:

13 A. Yes. First I had a physical pain over my body, but after a
14 while we got used to it. After we worked every day, we had no
15 more pain, physical pain.

16 Q. In Baray district and where you worked -- that is, in Ballangk
17 commune, was the soil rocky or stony or softer? You said at the
18 6th January Dam worksite, it was easier to dig the earth. How
19 about the 6th of January dam, was it easier there?

20 [14.39.27]

21 A. There were many rocks in the site of the 1st January Dam. For
22 the 6th January Dam, most of the soil under the dam were sand.

23 Q. On account of the texture of the soil, were machines or
24 explosives used to assist you in your work?

25 A. I noticed the explosive was used to break the rock. That work

1 was carried out by the male workers. Women were carrying earth,
2 and for men, they were carrying the broken rocks.

3 MR. DE WILDE D'ESTMAEL:

4 Mr. President, I want to go into another line of questioning. If
5 you would like us to take a break, I think this would be the
6 right time. Thank you.

7 [14.40.46]

8 MR. PRESIDENT:

9 Thank you. It is now convenient time for break. The Chamber will
10 take a break from now until 3.00 p.m. Court officer, please find
11 a proper place for this witness and the supporting staff during
12 the break time. And please return them into the courtroom at 3.00
13 p.m.

14 The Court is now in recess.

15 (Court recesses from 1441H to 1502H)

16 MR. PRESIDENT:

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

18 And again the Chamber is giving the floor to the Deputy

19 Co-Prosecutor to continue putting questions to the witness. You
20 may proceed.

21 BY MR. DE WILDE D'ESTMAEL:

22 Thank you Mr. President.

23 Q. Witness, I now would like to speak about the supervision

24 mechanisms on the 1st January Dam worksite, then we will speak

25 about punishments, as well as arrests, and about what happened at

1 Wat Baray Choan Dek. First of all, you said earlier that they
2 were militiamen or soldiers who would watch over the workers, in
3 particular in the forests when the workers would go relieve
4 themselves. Were there many, therefore were there many militiamen
5 and soldiers on site, and do you know where they came from? Did
6 they come from the commune, from the district, from the sector or
7 from the zone?

8 [15.03.43]

9 MS. MEAS LAYHUOR:

10 A. There were many of them and those soldiers were the district
11 soldiers and they were assigned to stand guard at the worksite or
12 to gather along the bushes to avoid people staying long in the
13 bushes when they went to relieve themselves. And again as I said
14 they were soldiers from the Baray district.

15 [15.04.21]

16 Q. Were they armed?

17 A. Yes, those soldiers standing guard near the bushes, they were
18 armed.

19 Q. I believe you said earlier that when you would stop working
20 for a brief moment these people would tell you to get back to
21 work. Was it also their job to watch over all of the workers in
22 your group?

23 A. We were instructed to continue working and those soldiers who
24 were standing guard near the forest was to deter us from resting
25 in the forest during the working hours.

1 Q. And on the worksite did you ever hear about the notion about
2 enemies to the revolution, for example during meetings? Or did
3 you ever hear about enemies from within?

4 A. I only heard they talked about enemies, and if we were not to
5 go to work we were considered the enemy as we opposed Angkar.

6 [15.06.28]

7 Q. And the people, who were New People, or the Cham, were they
8 subjected to any kind of specific supervision?

9 A. New people would be monitored and if they were considered to
10 be lazy when they were working they would take away -- would be
11 taken away and killed, that is after they had been educated and
12 they did not reform.

13 Q. I'm now going to try to define with you the notion of enemy,
14 such as you understood it back then. So a worker who would openly
15 complain about the working or living conditions on site, would
16 this worker be considered an enemy?

17 A. For people who complained, they would be considered the enemy
18 or those who didn't go to work and stayed at the resting shelter,
19 they would be taken away. Because they said that if people were
20 to stay in the shelter and did not go to work, sooner or later
21 other people would follow.

22 [15.08.12]

23 Q. And a person who would refuse to obey this discipline, what
24 would happen to such a person?

25 A. If people didn't obey they would be taken for re-education,

1 although I did not know where they would be sent to, as they
2 simply disappeared.

3 Q. And someone who would break the equipment on site, such as
4 hoes or baskets, would this person be considered an enemy as
5 well?

6 MR. PRESIDENT:

7 Witness, please wait. And Counsel Koppe you have the floor.

8 MR. KOPPE:

9 Thank you, Mr. President. This is the second example in a row
10 that the Prosecution is asking questions in the form of a
11 hypothetical. What would happen if he or she didn't obey? What
12 would happen if whatever; this is asking for speculation. The
13 proper way to question the witness is to ask whether such a thing
14 happened, and if yes who did what at what time. So that would
15 leave no room for speculation. Asking, I'm asking you to order
16 the Prosecution to ask for concrete events that unfolded at the
17 dam site.

18 BY MR. DE WILDE D'ESTMAEL:

19 Q. Yes, indeed that is indeed my intention. So did you ever note
20 or were you ever told that a person who would break the equipment
21 on site would be considered an enemy?

22 MS. MEAS LAYHUOR:

23 A. I didn't see anyone doing that. As I saw the unit chief
24 brought replacement tools for the tools that was damaged and I
25 did not see anyone accused of being an enemy for damaging a tool.

1 [15.10.54]

2 MR. KOPPE:

3 Just an observation, maybe there is something in the translation,
4 but I hear in English "who would break"; now that is a
5 hypothetical situation. I'm not sure what the original French
6 word is that is being used. The proper word would be "did
7 somebody break" not "would". I don't know if that is -- no, you
8 can sign whatever you like Judge Fenz, but it's a crucial
9 difference between asking for speculation and asking for a
10 concrete event.

11 [15.11.32]

12 BY MR. DE WILDE D'ESTMAEL:

13 Mr. President, I am simply putting very simple and concrete
14 questions to the witness. If the witness did not see this kind of
15 event, she should say so, she is perfectly free to; there was
16 nothing conditional about the last question I put to her, nothing
17 hypothetical. I would like now to move on to another question.
18 Were there cases of people who fled, who escaped from the
19 worksite, or who hid in order not to have to work?

20 MS. MEAS LAYHUOR:

21 A. People who evaded work would be sent back to the worksite, or
22 for those who hid themselves in order to avoid going to work
23 would be found by the militia and brought back to the worksite.

24 Q. And you yourself, did you ever think about escaping and if
25 not, why not?

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1 A. I never thought of escaping, as I would not go very far. So
2 then I just concentrated on working in order to receive my food
3 ration. Although we wanted to have delicious food for the hard
4 work but unfortunately we were not given -- we were only given
5 the ration just enough to eat our fill and to continue working,
6 and the same situation applied to every worker.

7 [15.13.27]

8 Q. And you said in your written record of interview, D166/38, in
9 Khmer it's on page, 00239929 until 30 I believe; in English,
10 00244163; and in French, 00283908; and you said the following:

11 "If someone could not achieve the objectives that were set, that
12 person would be punished." So let me read out the quote and I'll
13 repeat the French ERN: "If someone could not achieve the
14 objectives that were set, that person would be punished and
15 tortured." The ERN in French is 00283908, until 09 probably. So
16 you spoke about torture and punishments, and what were the
17 different punishments that were meted out when someone would not
18 achieve the plan that was set out; do you know what kind of
19 punishment would be administered?

20 A. I saw a person being punished. The person was advised to work
21 hard and if the person could not be reformed then the person was
22 given to the security and the security would educate that person.

23 Q. And did you sometimes see someone, who had not finished his or
24 her work, would have to finish working during mealtime, or would
25 that person be deprived of eating?

1 [15.16.01]

2 A. If we did not go to work rather frequently then the food
3 ration would be deprived as we were accused of being lazy in
4 carrying the earth.

5 Q. Now with regard to harsher forms of punishment. You spoke
6 about detention, temporary detention in a wooden cage that was
7 located in a forest near the construction site. And before
8 reading out the excerpt in question can you confirm having seen
9 that, and can you tell us what you saw exactly in that forest?

10 A. Indeed a person named Try, was re-educated to carry earth. He
11 didn't -- he was considered not to be reformed. He was then
12 handed to the security and the security placed him in a cage a
13 bit far for the dam construction site and later on he
14 disappeared. And one day when I went to relieve myself in a
15 forest, I saw Try being in a cage in the forest and the cage size
16 was about two meters long and it was the district security who
17 placed him in the cage, and from that day onward he disappeared
18 and I have never seen him again.

19 Q. So did you come into that forest by chance? How was it that
20 you were able to see that?

21 [15.18.17]

22 A. I went to relieve myself in the forest with a few other female
23 workers and I saw that, but we kept quiet when we returned to the
24 worksite, as we were afraid that if we were to break what we saw
25 we would be taken away and killed.

1 Q. So was this a forest or was this a secret place based on what
2 you noted, or on the contrary, everyone was aware of the
3 existence of those cages?

4 A. For people who were considered lazy they would be placed in
5 the cage and if the person reformed then the person would be
6 allowed to return to work. And if not then the security would
7 take them away and I did not know where they were taken to.

8 [15.19.38]

9 Q. In your written record of interview, it's at the same page as
10 I quoted earlier, you said that there were many cages and there
11 was one cage per village. And you also said that; "The person who
12 would be arrested would be locked up for two days or more,
13 depending on the necessary re-education; that person was detained
14 during the day and at night and once that person was re-educated
15 that person was released and the person could go back to work and
16 eat like all the others. During that person's detention in the
17 cage that person would be subjected to psychological testing and
18 if through these tests he proved that he had been well
19 re-educated that person would be released." So how did you learn
20 that there were several cages and that there was one cage per
21 village?

22 A. I saw cages there and for each commune there were soldiers who
23 were assigned to guard in that area.

24 Q. At the end of the same page in French, 00283908; Khmer,
25 00239930; English, 00244163; you said that you saw Neary Leap in

1 a cage. Who was Neary Leap and what did she do to deserve such
2 punishment based on what you learned there about that?

3 [15.22.07]

4 A. From what I learned at the time that she didn't go to work so
5 she was placed in a cage for re-education and if she promised to
6 work then she was allowed to return to work and the same food
7 ration was again resumed for her. So the cage was like a
8 re-education school, people would be sent there and if they were
9 to reform then they would be allowed to return to work. And allow
10 me to say, later on, from what I know, that lady died later on.

11 Q. Now I will be speaking about the Baray Choan Dek pagoda. And
12 can you tell me if this pagoda was located close to your village
13 of Tras in Ballangk commune?

14 A. Baray Choan Dek pagoda is located right in my village. And it
15 was a killing site.

16 Q. And were you obliged to pass in front of this pagoda when you
17 would go home to your village every 10 days when you had your day
18 off, every tenth day of the month?

19 [15.23.57]

20 A. Every tenth day we were given dessert to eat and then we could
21 return to the village, and one day while I was passing by the
22 pagoda a music was played over the loudspeaker and then two
23 soldiers came out with the guns pointing at me and threatened me
24 not to trespass the area again. And I was trembled with fear, and
25 later on when I heard loudspeaker was used to play music to me it

1 means that people were being killed and then I would avoid the
2 area.

3 Q. And could you see the pagoda from the worksite on the Chinit
4 river? That is to say, from -- were you able to see the pagoda
5 from where you were working, in the distance or close by?

6 [15.25.11]

7 MR. PRESIDENT:

8 Witness, please hold on and Counsel Koppe you have the floor.

9 MR. KOPPE:

10 Thank you, Mr. President. I have an objection in relation to
11 questions being asked in respect of the Wat Baray Choan Dek
12 pagoda. My first objection is that this particular pagoda, in its
13 functioning potentially as a security site, is not part of this
14 trial, not part of this segment. A few questions of course can be
15 asked, but not any questions as to the functioning of this
16 particular security centre. And secondly I would like to refer
17 the Chamber to document D166/186, that is English ERN, 00342223;
18 Khmer, 00347592; I see I don't have the French ERN, I apologise.
19 But this is a site identification report, signed by Philip Caine,
20 investigator of the OCIJ, and on the third page of his report in
21 chapter called "Conclusion", on ERN, 00342225; Khmer, 00347495;
22 he said the following: "The testimonies of the witnesses Meas
23 Layhuor, a former detainee, and Yin Doth, a former prison guard,
24 provide adequate evidence that Wat Baray Choan Dek was used as a
25 prison, torture and execution site." And then: "The witnesses

1 cannot however provide a direct link between the security centre
2 and the 1st January Dam as asserted in the introductory
3 submissions. Further investigation may be necessary in order to
4 establish this link." I don't know if that has happened but we
5 are dealing today with the 1st January Dam and it's a security
6 centre that the witness is referring to and the Prosecution, is
7 not linked apparently to the 1st January Dam.

8 [15.27.41]

9 MR. DE WILDE D'ESTMAEL:

10 Mr. President, I'm going to respond to that very long objection
11 that has cost me many minutes in my examination. The objection is
12 not at all justified; it's based first of all on the fact that
13 the conclusion of the site identification report could not allow
14 then to make a connection with the 1st January Dam worksite. But
15 at the time the investigation was just developing. If my
16 colleague had read the Closing Order that was produced by the
17 Co-Investigating Judges, at the end of the investigation he would
18 have understood that Wat Baray Choan Dek was a security centre
19 where people who were working on the 1st January Dam worksite or
20 the 6th January Dam worksite were executed. That was not the only
21 reason for that centre, but however, people from the worksite
22 were executed there according to the Closing Order. So therefore
23 it is quite clear that questions may be put to the witness with
24 regard to the security centre, this pagoda, because there is a
25 direct connection with the worksite, and I will ask the Chamber

1 for leave to continue with my examination.

2 (Judges deliberate)

3 [15.30.00]

4 MR. PRESIDENT:

5 The objection raised by the Defence Counsel for Nuon Chea is

6 overruled, as the fact is related to the 1st January Dam

7 worksite, or at least related to certain workers there. And Madam

8 Witness, please respond to the last question put to you by the

9 Deputy Co-Prosecutor; and if you cannot recall it then the Deputy

10 Co-Prosecutor can repeat the question for you.

11 MS. MEAS LAYHUOR:

12 Please repeat the question.

13 BY MR. DE WILDE D'ESTMAEL:

14 Q. Thank you. All I wanted to know was whether from your worksite

15 at the 1st January Dam you could see the Baray Choan Dek pagoda?

16 [15.31.03]

17 A. Yes, from the dam worksite I could clearly see the pagoda.

18 Q. Very well, let me read an extract from your record of

19 interview, and I will then put questions to you on that extract.

20 It is on page 00239929, in Khmer, up to 30; in English, 00244163;

21 and in French, 00283908. This is what you stated: "In the case of

22 persistence the person would be taken to the security centre at

23 the Baray Choan Dek pagoda and subsequently executed. All those

24 who were taken to the Baray Choan Dek pagoda were executed. They

25 were taken to the security centre -- about four or five people in

1 my team were taken to the security site at Baray Choan Dek
2 pagoda, including Try, a Base Person. I don't remember the names
3 of the others because they were New People. Try objected to
4 Angkar about not getting enough food and was stubborn and
5 refused." The French translation was not accurate because in
6 English it says was stubborn and refused to perform labour and
7 was arrested by Angkar. I will pause here for the time being.
8 You stated that four or five members of your mobile group were
9 led away to that security centre, so one Base Person and three
10 New People. Regarding Try, you gave the reasons for her (sic)
11 arrest. She (sic) had protested against the quantity of food she
12 (sic) was receiving and refused to work. Now in your group were
13 there other persons who are Base People who dared to protest
14 regarding the food they received and who stopped working as Try
15 did?

16 [15.33.59]

17 A. There was no one else. We were working very hard because we
18 were afraid of being killed.

19 Q. Regarding the three or four other New People, do you know what
20 errors they committed before they were arrested and led away to
21 the Baray Choan Dek pagoda?

22 A. I do not know about it. They disappeared and I did not know
23 what happened to them.

24 Q. Regarding the New People, do you know whether on the 1st
25 January Dam worksite they looked for people who had played any

1 role during the Lon Nol regime? Do you have any such information?

2 [15.35.18]

3 A. I did not have any information.

4 Q. You said later, still in your record of interview, this is
5 another passage concerning Baray Choan Dek pagoda, the Khmer page
6 is, 00239932; in English, 00244165; and in French, 00283910 up to
7 11; you refer to the fact that you passed next to the pagoda and
8 you heard messages being broadcast on loudspeakers, and this is
9 what you said and I quote: "I knew that people were being
10 executed because I saw them transporting people by ox carts into
11 that site. I saw them several times. They were transported in ox
12 carts at night and in trucks during the day. Those who were
13 transported into that security site were New People or Cham, the
14 arrests and taking people to the security office were during the
15 time I was working at the 1st January Dam worksite. Those
16 arrested and sent to the security office were people living in
17 the villages and people working in the mobile units." End of
18 quote. I have not yet asked any question and I can see that my
19 learned friend is on his feet.

20 [15.37.17]

21 MR. KOPPE:

22 Yes, on my feet indeed. Mr. President, you have made a reasoned
23 decision as to the scope of this trial. You have selected three
24 security centres: Krang Ta Chan, S-21 and a third one which name
25 I now forget. We're not dealing with this security centre. The

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1 Prosecution is forcing us now to ask this witness all kinds of
2 questions about the security centre of which she doesn't know
3 anything. Why not urge the Prosecutions to limit itself and just
4 simply ask questions about what happened at the 1st January Dam
5 without also trying to squeeze this into the debate at trial. It
6 is pointless, it is a waste of time, it is going directly outside
7 the scope of your decision that we are dealing with three
8 security centres only. So again, my objection, let's not go
9 there.

10 [15.38.20]

11 MS. GUISSÉ:

12 Mr. President, with your leave I would like to submit that to be
13 more precise and to complete my colleague's objection regarding
14 issues that are not covered by your severance decision, Annex
15 E300/9/12 (sic), the ERN in French is, 00982093; the ERN in
16 English, 00981688; and the ERN in Khmer, 00981694; regarding the
17 facts relevant to the alleged crimes, this is what you stated
18 regarding the security centres. These are the security centres
19 listed in the Annex to your severance decision:

20 "VI, S-21 security centre;

21 VII, Krang Ta Chang security centre;

22 VIII, Au Kanseng security centre;

23 IX, Phnom Kraol security centre."

24 There is no security centre at the pagoda the Co-Prosecutor is
25 referring to and if we are told that people went to that location

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1 as the witness said in the answer, we didn't want to interrupt
2 the witness, but any questions on that security centre the modes
3 of functioning, whereas it is clearly specified that it was when
4 she left the 1st January Dam and was returning to the village
5 that she noticed that site. We are no longer on the 1st January
6 worksite.

7 [15.40.23]

8 If we continue referring to facts that are not covered by the
9 severance decision it is not proper. A decision was taken and we
10 are working on the basis of very specific points. We should be
11 able to stick to that, otherwise there is no legal certainty. If
12 you had wanted to include that security centre, I imagine that
13 you would have easily included it on the list of security centres
14 I have just listed; you didn't do so. You only said the 1st
15 January Dam worksite and you meant the worksite and not the
16 security centre.

17 If the Co-Prosecutor is establishing an artificial link between
18 the 1st January Dam and the security centre, which is not among
19 the security centres you listed in the severance decision, we are
20 clearly straying from the scope of the trial and we cannot
21 conduct a criminal trial on this basis and we cannot defend our
22 clients on this basis. So may I request that your severance
23 decision be abided by and please order the Co-Prosecutor to stop
24 putting questions on that security centre.

25 [15.41.37]

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1 MR. DE WILDE D'ESTMAEL:

2 Mr. President if I may respond, I am not establishing an
3 artificial link; it is in the Closing Order. Read all the
4 paragraphs regarding the 1st January Dam, they talk of the Choan
5 Dek dam (sic) as being one of the places where people were placed
6 and sent for execution. It is to an artificial link. I am basing
7 myself on the Closing Order document which seizes the Trial
8 Chamber of these criminal charges. If it wasn't part of this
9 segment the Chamber would not be able to fulfil its duties. The
10 Chamber was seized of these facts and it has to rule on these
11 facts.

12 [15.42.22]

13 And I have insisted a while ago to say that, to the extent that
14 there's a link to the 1st January Dam worksite we can ask
15 questions on it; and we can say the same of the Angk Roka
16 security centre. These are all part of the whole. You want to
17 deprive the Prosecution of the possibility of establishing the
18 murder and the exterminations carried out at the site of that dam
19 and to take a quarter of an hour to make these objections and
20 prevent us from asking these questions. These are very relevant
21 to the site of the dam and the victims which the witness has
22 already referred to. That would be improper. Thank you.

23 [15.43.15]

24 MS. GUISSÉ:

25 Mr. President, I just wish to respond in order that we should

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1 focus on the law. A number of things have been said in the
2 Closing Order, but since then several decisions have been issued.
3 We are not saying that certain things are not in the Closing
4 Order. The question before us is whether or not we will apply the
5 decision of the Chamber, that is the crux of the matter.

6 (Judges deliberate)

7 [15.45.41]

8 MR. PRESIDENT:

9 I give the floor to Judge Lavergne, to decide on the objections
10 by the Defence Counsels concerning the questions put by the
11 International Deputy Co-Prosecutor. You may now proceed.

12 JUDGE LAVERGNE:

13 Thank you Mr. President. The objection made by the Defence teams
14 is denied. The Chamber notes that in the annex to the severance
15 decision regarding the 1st January Dam, a number of paragraphs
16 are referred to including paragraph 167 of the Closing Order
17 which expressly refers to that site indicating that some
18 witnesses witnessed arrests and heard that people working at the
19 1st January Dam worksite were sent to those locations. So the
20 Chamber is of the view that these questions are relevant and
21 should be asked and the witness should answer them. Bearing in
22 mind the fact that the Prosecutors have been deprived of some of
23 the time allotted to them, the Chamber will grant them 15
24 additional minutes in order for them to put further questions to
25 the witness.

1 BY MR. DE WILDE D'ESTMAEL:

2 Q. Thank you, Mr. President, Your Honours. Witness, I will try to
3 retrace the thread of my questions. You said that people were
4 brought in trucks during the day and in ox carts at night and
5 that these were essentially New People and Chams who were led
6 away. How were you able to know all these details regarding the
7 Baray Choan Dek pagoda? How did you know what happened there and
8 specifically that people were executed there?

9 MS. MEAS LAYHUOR:

10 A. I knew through the village chief. He told me that these people
11 were put at Baray Choan Dek and they never came out of this
12 security site again. I was in a mobile unit, the people who were
13 transported in trucks and in ox carts at night-time. During the
14 daytime they were brought in trucks and they never returned after
15 they were sent to that place.

16 Q. What was the name of the village chief and what was his
17 relationship with that pagoda? Was he in charge of that pagoda?
18 [15.49.03]

19 A. He had no any role in the security. He was in the -- he was
20 the village chief and he cooperated with other chiefs. And people
21 were brought to that place and I did not know what happened. When
22 I was transplanting the seedlings at night-time, I asked the
23 village chief, "Uncle where were these people brought to?" And I
24 was told that they were brought to that place.

25 Q. Did you speak to that village chief before you started work at

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1 the 1st January Dam worksite, or it was while you were working
2 there?

3 A. I was in the mobile unit, I was told to go and uproot the
4 seedlings at night-time. It was after my work at the 6th January
5 Dam. I was not allowed to have any free time. I was told to go
6 and uproot the seedlings after I did the work at the 6th January
7 Dam.

8 [15.50.45]

9 Q. After that Baray Choan Dek pagoda started being used as a
10 security centre up to when you started work at the 1st January
11 Dam worksite, what time elapsed during that period?

12 A. Yes, it was until the regime fell.

13 Q. I have a few questions regarding the Cham. In the record of
14 your interview you stated, and it is on page 00239931, in Khmer;
15 in English, 00244165; and in French, 00283910; you stated that
16 you saw Cham; this is what you said, I quote: "There were no Cham
17 in my team but I saw some in the other teams. Those Cham lived in
18 the same conditions as the ethnic Khmer people. They did not let
19 the Cham practice their religion. They had them do everything
20 like the ethnic Khmer. If they saw them practicing Islam they
21 would take them away and kill them." End of quote. A while ago
22 you said that the majority of the people taken to Baray Choan Dek
23 pagoda were New People or Cham. Apart from the prohibition to
24 practice their religions, did the Cham have the right to speak
25 their language?

1 [15.52.48]

2 A. No, they were not allowed to speak Cham language and they were
3 not allowed to practice their religion as well. They were told to
4 speak Khmer language.

5 Q. On the dam's worksite, were they allowed to wear distinctive
6 clothes -- that is, different clothes? For instance, could the
7 women wear scarves?

8 A. Actually we could wrap krama around our neck and we had to
9 dress in black.

10 Q. While you were working at the 1st January and the 6th January
11 worksites, did you have the opportunity to eat pork?

12 [15.54.05]

13 A. Yes, I had pork once in a while. And most of the time we had
14 fish in the morning glory soup, on every 10 days we had desert
15 and we also had a fish soup and we would be served with fish
16 soup. On some other occasions, on every 10 days, we would have
17 pork.

18 Q. When the pork was served did the Cham have to eat it? Did they
19 have the choice not to eat it?

20 A. Everyone was instructed to eat pork. No one could refuse. And
21 if we did not eat pork we had nothing to eat, so we had to eat
22 pork anyway.

23 [15.55.30]

24 Q. This brings me to what happened in your commune Ballangk, your
25 village and beyond that in Baray district. During the period when

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1 you lived there did you hear of purges among the cadres in your
2 village, in your commune or in your district?

3 A. I heard about the network of KGB and CIA agents and I asked
4 people why cadres were taken to be killed, and I was told that
5 they were linked to CIA or KGB agents, that is why they were
6 taken to be killed. I was told that these people were linked to
7 KGB and CIA agents and I really have no idea what KGB or CIA
8 agents are. I asked about this matter from my colleagues.

9 [15.57.02]

10 Q. While you were at the dam worksite did you attend meetings at
11 which some cadres of the North Zone were accused of being
12 traitors?

13 A. I have never heard of it. I only knew that these people, I
14 mean the cadres, disappeared and I was told that they were part
15 of CIA and KGB agents. I have no idea what KGB or CIA is about.
16 And cadres and people were killed in different places.

17 Q. Did you see or hear that cadres from other zones came to
18 replace those who had been arrested or executed?

19 A. I saw some cadres were taken away and people from the East
20 Zone replaced these cadres and the cadres from the East Zone has
21 accent in their way of speaking. I am a Base Person and I could
22 ask my village chief about the matter.

23 [15.59.01]

24 Q. Did you see people from the Southwest Zone come to that
25 location to play a role in the management of the 1st January Dam

1 worksite?

2 A. It was later, after we completed the work at the 1st January
3 Dam, I could see that cadres from the Southwest Zone replaced the
4 former cadres who were taken away.

5 Q. And at the district level, at the Baray district level, did
6 you know someone of the name of Ta Pauch -- that is, P-A-U-C-H.
7 [16.00.02]

8 A. I have heard of him. He perhaps was the former Baray district,
9 but I am not sure of his position. He was perhaps the former
10 district, there were many former district chiefs.

11 Q. And once the cadres from the North Zone were replaced, were
12 there any changes in the discipline when other cadres came from
13 other zones, in particularly the cadres from the Southwest Zone?
14 So what was the discipline like, under the cadres from the
15 Southwest Zone, in relation to the previous cadres?

16 A. Base people and New People were afraid of the cadres from the
17 Southwest Zone.

18 Q. Well, I'm going to finish the day by asking you a few
19 questions with regard to the rights that you enjoyed when you
20 were working on the 1st and 6th January Dam worksite. So, on the
21 worksite, were you free to choose the work that you liked the
22 most?

23 A. No. We had to go where we were assigned to go. If we did not
24 go we would be taken for refashioning. We would be deprived of
25 meals. So we cannot refuse the order or instruction of Angkar.

1 [16.02.12]

2 Q. And on the worksite were you well paid for the work that you
3 were doing? Would you receive a salary, a significant salary for
4 that?

5 A. No, money was not used then. No salary actually, and we were
6 happy to have meals to eat.

7 Q. Were you allowed to hold meetings on the worksite among
8 yourselves, to spend an evening among friends just chatting away
9 freely?

10 A. No, we could not. We could not meet with our colleagues. No
11 one was free at that time. Only the elderly and young children
12 were free and for those who could work they would be assigned to
13 do work in different places, to make fertilizer or to work in the
14 fields. I was in work until the regime in 1979, fell.

15 [16.03.42]

16 Q. My last question for today maybe. On the worksite could young
17 people flirt with the person of their choice? You were young back
18 then, so did you ever have the chance to spend time with young
19 men back then?

20 A. No, I could not make any contact with male workers. If we
21 happened to chat with male workers, two of us would be assigned
22 to dig the termite mounds at a far place. And if we happened to
23 chat and contact each other we would be sent away to work.

24 MR. PRESIDENT:

25 Thank you. It is now time for the adjournment and the Chamber

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1 will resume its hearing tomorrow on 26th May 2015. And the
2 Chamber will resume hearing the testimony of witness, Meas
3 Layhuor, and then we continue to hear, 2-TCCP-55.

4 Thank you very much, Madam Meas Layhuor. The hearing of your
5 testimony does not come to an end yet. You are invited to be here
6 again tomorrow, starting to give your testimony at 9.00 a.m.

7 And support staff from TPO you can now also rest. And you are
8 also invited to support the witness tomorrow at 9 o'clock.

9 Court officer, please work with the WESU to send this witness to
10 his place -- to her place and return her tomorrow into the
11 courtroom before 9 a.m.

12 Security personnel are instructed to bring the two Accused back
13 to the detention facility, and please bring them back into the
14 courtroom before 9 a.m.

15 The Court is now adjourned.

16 (Court adjourns at 1606H)

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