



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
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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

30 September 2015

Trial Day 333

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

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KHIEU Samphan

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SREA Rattanak

For Court Management Section:
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. FARR	English
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSÉ	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Mr. KOUMJIAN	English
Judge LAVERGNE	French
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
Mr. SOT Sophal (2-TCW-845)	Khmer

1

1 PROCEEDINGS

2 (Court opens at 0901H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear testimony of the witness Sot
6 Sopal in relation to Trapeang Thma Dam worksite. And at the
7 conclusion of his testimony, the Chamber will commence hearing
8 testimony -- rather, the oral submissions on two issues: one is
9 in relation to the request by Nuon Chea for additional witness in
10 relation to Trapeang Thma Dam worksite, pursuant to Rule 87.4,
11 that is document E368. And second, it's the request by the
12 International Co-Prosecutor in relation to hearing the testimony
13 of the expert Ysa Osman -- that is, his concern in relation to
14 the confidentiality of the witness. And the document I refer to
15 is E367.4 by the International Co-Investigating Judge.

16 Greffier, please report the attendance to the Parties and other
17 individuals at today's proceedings.

18 [09.03.37]

19 THE GREFFIER:

20 Mr. President, for today's proceedings, all Parties to this Case
21 are present.

22 Mr. Nuon Chea is present in the holding cell downstairs. He has
23 waived his right to be present in the courtroom. The waiver has
24 been delivered to the greffier.

25 The witness who is to conclude his testimony today -- that is,

2

1 Mr. Sot Sophal, is present in the courtroom. And there is no
2 reserve witness today. Thank you.

3 [09.04.16]

4 MR. PRESIDENT:

5 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the
6 request by Nuon Chea.

7 The Chamber has received a waiver from Nuon, Chea dated 30
8 September 2015, which states that due to his health: headache,
9 back pain, he cannot sit or concentrate for long, and in order to
10 effectively participate in future hearings, he requests to waive
11 his right to participate in and be present at the 30 September
12 2015 hearing. Having seen the medical report of Nuon Chea by the
13 duty doctor for the Accused at the ECCC, dated 30 September 2015,
14 which notes the health condition of Nuon Chea, that he has severe
15 back pain when he sits for long, and recommends that the Chamber
16 grant him his request so that he can follow the proceedings
17 remotely from the holding cell downstairs. Based on the above
18 information and pursuant to Rule 81.5 of the ECCC Internal Rules,
19 the Chamber grants Nuon Chea his request to follow today's
20 proceedings remotely from the holding cell downstairs via
21 audio-visual means. And the Chamber instructs the AV Unit
22 personnel to link the proceedings to the room downstairs so that
23 Nuon Chea can follow it. And that applies to the whole day.
24 The Chamber now hands the floor to the Co-Prosecutors to continue
25 putting questions to this witness. You may proceed.

1 [09.06.04]

2 QUESTIONING BY MR. FARR RESUMES:

3 Thank you, Mr. President. Good morning, Your Honours. Good
4 morning, Counsel. Good morning to you too, Mr. Witness.

5 Q. Yesterday, we discussed your work quota and what would happen
6 to individuals or groups who failed to meet their work quota. Can
7 you start off by telling us how often you personally or your
8 group failed to meet your quota?

9 MR. SOT SOPHAL:

10 A. Although we tried our best despite our exhaustion or sickness,
11 we had to be there to be present at the worksite to meet the
12 quota. And if that is the case, then the ration was not reused.

13 [09.07.10]

14 Q. And on occasions when you failed to meet the quota, what kind
15 of food would you receive? What was your ration if you failed to
16 meet your quota?

17 A. For example, the ration was three ladles. And for failure to
18 meet the quota, the ration would reduce to two ladles of gruel.

19 Q. And what would you do to survive or to get enough to eat when
20 your food ration had been reduced?

21 A. We had no other means. We just focussed on completing the work
22 quota so that we could receive the three ladles of gruel.

23 [09.08.23]

24 Q. I want to ask you about something that you say in your OCIJ
25 statement. This is document E3/7755, the page number in Khmer is

1 00279115; English, 00293004; and French, 00338221. This is what
2 you say: "The people in my group were re-educated and our ration
3 was reduced many times. At that time, we were very hungry. We
4 picked up the burnt part of the yam that the chefs threw away to
5 eat. We would have been smashed if we were seen."

6 Does that refresh your memory? Do you recall scavenging for food
7 in that way?

8 A. Those people who had yam, they threw away the burnt part or
9 the skin. And we did not dare to pick up the thrown away yam, but
10 we actually secretly used our food to get it and to share it
11 among the three of us, because if we were caught picking up the
12 thrown yam, we would be tortured.

13 Q. And why do you say that you would be tortured if you had been
14 seen picking up that food; what makes you say that?

15 A. Because we were told in the meeting that we should eat what we
16 was given. And if we were to eat something out of the ration and
17 caught, then we would be disciplined.

18 [09.10.58]

19 Q. Can you tell us what kind of water you had to drink and how
20 much of it was available?

21 A. If we were to work near a lake, then we drank water from the
22 lake. However, if our spot -- our worksite was far from the water
23 source -- let's say half a kilometre -- then the water would be
24 transported by a truck to the worksite. However, I did not know
25 where they got the water.

1 Q. And when the water was transported to you by truck, did you
2 receive as much as you wanted or was there a limited amount?

3 A. They gave us enough water we could fill our bottle for that
4 day.

5 Q. Okay. I want to ask you now about people you described
6 yesterday. You said that they were young people at the dam armed
7 with long knives or swords. Can you give us an estimate of
8 approximately how old those people were?

9 A. Those people who were watching over us worked in a group. It
10 could be in a group of three or four. For instance, a woman and
11 two pretty young children; the woman would be carrying a weapon
12 while the two young children carried swords.

13 [09.13.01]

14 Q. What kind of weapon would the woman be carrying, the older
15 woman?

16 A. I did not recognize it because I was pretty young at the time.
17 However, it was a pretty small weapon. And I don't see it used
18 these days.

19 Q. And just for clarity, are we talking about some kind of
20 firearm like a pistol or a rifle or some other kind of weapon?

21 A. It was a folded butt rifle.

22 Q. And my recollection is that you described these people as
23 militia; is that correct? Were they militia or soldiers or
24 guards; what were they exactly?

25 A. I heard people refer to them as militia although I myself was

1 never sure about it whether they were soldiers or militia.

2 [09.14.33]

3 Q. And do you know whether they were associated with their
4 commune level or district level or sector level or whom they
5 reported to?

6 A. No, I did not. I only focussed on the work and I kept doing
7 what I was assigned to. I did not know where they came from or
8 where the others came from.

9 Q. You told us yesterday about one occasion you were aware of,
10 when a person was tied up to a wooden frame, and then raised and
11 lowered several times. And I think you also mentioned that he had
12 been told that if he didn't improve his work, he would be killed.
13 Now my question is: Is this something that you're only aware of
14 happening one time or was this particular punishment used on more
15 than one occasion, to your knowledge?

16 A. I only witnessed one occurrence within my unit. The group of
17 three people -- that is, those I refer to, actually took him away
18 and did that. And when he returned, he told me that he has his
19 feet hanged upside down, and they dropped him from the wooden
20 frame. And he was warned that if he did that again next time, he
21 would be killed.

22 [09.16.35]

23 Q. Okay. Thank you for that. I want to ask you now about
24 beatings. Did you ever see the militia that you've described beat
25 anyone? And if so, who?

7

1 A. While I was working, yes, I did see the beatings. However, it
2 was not too severe to make the people collapse or faint.
3 Sometimes they pushed the workers with their long swords to force
4 them to work hard.

5 Q. And can you tell us under what conditions they would do that,
6 why would they do that to a particular worker? Under what
7 circumstances?

8 A. I did not know. Maybe they were too free. They didn't have
9 anything to do, so to poke the workers for fun.

10 Q. Did you hear them say anything to the workers as they would
11 poke them with their swords?

12 A. They ordered us to work harder. And if we were actually
13 working hard, then they didn't poke us with the sword. But if
14 some of the -- was thought not to work hard or was shivering from
15 fever, then the person would be poked with a sword.

16 [09.18.28]

17 Q. And was this done in public within the view of other workers?

18 A. Yes, it happened right at the spot where we were working. They
19 poked workers with their swords.

20 Q. During your time at the Trapeang Thma Dam worksite, did you
21 ever hear anything about special units for workers who were
22 viewed as lazy?

23 A. Please repeat your question.

24 Q. Did you ever learn anything about the existence of units that
25 workers who were thought of as lazy would be sent to? Separate

1 units?

2 A. It did not happen at the area where I worked. They did not
3 have this special unit for the perceived lazy workers, but they
4 set up a unit for the hardworking workers.

5 Q. I'd like to ask you now about arrests. Did you ever see or did
6 you ever learn about situations in which workers were tied up and
7 led away either by the militia or by anyone else?

8 A. Yes, I saw some. Sometimes, I saw it every few days, two or
9 three workers were arrested and taken away. And I'd like to
10 stress that those who were taken away never returned. I did not
11 know where they were kept or whether they were kept in this
12 so-called lazy group. I did not know.

13 [09.21.15]

14 Q. I think you mentioned that you saw that happen every few days.
15 Are you able to estimate on how many occasions you saw workers
16 taken away during your time at the dam worksite?

17 A. They were taken for re-education at the chief's place,
18 although I did not know where it was. So I was afraid and that's
19 why I kept on working hard.

20 Q. Who was it who tied up these workers and led them away?

21 A. It was those young militia. They tied up the workers and led
22 them away. I refer to this group of militia who were watching
23 over us while we were working there.

24 Q. Were those workers in your unit or workers in other units that
25 you could see?

1 A. No, they were not in my unit but they were working nearby next
2 to my unit and we could see them while they could also see us.
3 And sometimes they would throw a piece of dirt at us to signal us
4 or to alert us that the group was coming. And we did that to them
5 also, to alert them if the militia approach us.

6 [09.23.07]

7 Q. And why would you do that? Why would you try to signal your
8 fellow workers that the militia was coming?

9 A. So that we alert them and they kept on working hard. Because
10 when they were not here, we could do our normal work despite our
11 exhaustion. But if they came, for example, they coming from the
12 west side, then we would signal one another to seem to work
13 harder. And when they left, then we worked in a normal way.

14 Q. Do you know why the people were arrested whom you saw being
15 tied up and taken away?

16 A. I did not know the reason. I only saw the arrest. They were
17 arrested while they were working.

18 Q. During your time at the worksite, were you ever required to
19 make a biography or tell anyone about your personal background?

20 A. During the regime, I did not make any biography nor did I see
21 anyone do it. We only kept on working.

22 [09.25.00]

23 Q. I think you mentioned a bit earlier that the people who were
24 arrested were taken to the chief's house. Can you tell us who the
25 chief was and where his house was and what it was used for?

1 A. They were taken to the chief house. However, I did not know
2 where the house was. And the person who was in charge in the area
3 was Ta Val. But I did not know about the location of the house of
4 the chief.

5 Q. And just to be clear, you're saying that they were taken to Ta
6 Val's house?

7 A. They said that they were taken to the chief's house. And I
8 only knew that my chief was Ta Val.

9 Q. You said that these workers never returned. Given that they
10 were not in your unit, how are you able to say that they never
11 returned?

12 A. They worked in a group and they worked near where I worked. So
13 usually they were put into three small groups. And of course,
14 when we worked close to one another, I could see that one person
15 from that group was missing since yesterday. And sometimes, the
16 person who was missing was replaced by someone else. So we could
17 see straight away that it was not the same person, the same
18 worker that was taken away.

19 [09.27.18]

20 Q. Were these people who were arrested children or adults, or
21 were there some of both?

22 A. The workers who were arrested were children. For the segments
23 that I worked consisted only of children workers, not adult
24 workers. Adult workers work on a separate segment.

25 Q. And are you able to estimate approximately how many children

1 workers you saw being arrested during your entire time at the
2 worksite?

3 A. Please repeat your question.

4 Q. I know this may be a difficult question. Can you estimate the
5 total number of children that you saw being tied up and taken
6 away during your time at the Trapeang Thma Dam worksite?

7 A. It is difficult to give you an estimate as it happened
8 randomly. For example, this day only one worker was arrested and
9 taken away. And a few days later, two or three workers were taken
10 away. So I cannot tell you how many workers had been arrested for
11 the duration of working at the dam worksite. I myself was afraid
12 of being arrested too.

13 [09.29.25]

14 Q. You mentioned that the workers who were arrested didn't
15 return. Do you know what happened to them?

16 A. No, I did not. They were taken away and disappeared. I did not
17 know what happened to them.

18 Q. Were you aware of any prisons or re-education offices near the
19 Trapeang Thma dam worksite that workers were taken to?

20 A. No, I did not know. I only knew the location where I worked. I
21 didn't know where they were detained. I only knew where I worked,
22 and only those who worked in the prison or detention centre would
23 know. And it means those soldiers or militia who worked there
24 would know about the location.

25 Q. I want to ask you now about killings at the dam worksite. Did

1 you ever see any workers killed at the worksite by the militia,
2 by soldiers, or by anyone else?

3 A. Yes, I saw some in various places. But it did not occur that
4 often. Once in every 10 days or so, they killed them and then we
5 buried them or covered them with the dirt.

6 [09.31.34]

7 Q. And you were speaking in the plural. So when this killing
8 would occur, as you say, once every 10 days, would it be one
9 person being killed or more than one person being killed?

10 A. When I was working over there, I saw it twice.

11 Q. And on each of those occasions, how many victims were there,
12 how many people were killed on each occasion?

13 A. I did not know whether or not those people were re-educated or
14 so. But I only saw people brought these people and then they got
15 killed, and then covered the dead body with the dirt.

16 Q. My question is: On these occasions when you saw people being
17 killed, did you see -- was it one person who was killed, was it
18 two people who were killed, was it five, was it 10? What was the
19 number of people killed on each of those occasions?

20 A. I saw they brought them one at a time. They never brought many
21 people. They meant to deter us. So they brought one and then they
22 killed him or her. And then the next 10 or so days, they would
23 bring another one. That was meant to deter all of us.

24 [09.33.50]

25 Q. And why do you say that that killing was meant to deter all of

1 you? What makes you think that it was intended as deterrence?

2 A. When they killed that person, they told the comrades saying:

3 "Comrades, in the future, if you fail to follow them, then your

4 fate will eventually be like that person." So, if they required

5 us to dig the canal, we had to do; otherwise we would end up like

6 the person who was killed.

7 Q. And who specifically said that to you? Who told you that you

8 would also be killed if you failed to follow your instructions?

9 A. At the time, they would call the militia. At that time, there

10 were militiamen who came to tell us. And I did not know actually

11 where these militiamen were positioned. But they brought these

12 people in. And I did not even know where they brought that person

13 who was killed from either, because they only brought it and then

14 killed in front of us. And then they said that if we fail to

15 follow the instructions, our fate would be like the person who

16 was killed.

17 [09.35.36]

18 Q. You said that the person was killed in front of you. Can you

19 estimate how many workers were present who witnessed these

20 executions?

21 A. Many people saw the killing. I think there could have been

22 around 50 to 100 people who actually saw the killing.

23 Q. Can you tell us where the killings would take place?

24 A. They killed at the dam site. It was, to my recollection, about

25 100 metres away from the corner of the dam.

1 Q. And I think you said that we, meaning the workers, buried the
2 bodies; is that right? Was it the other workers who buried the
3 bodies of these people who were killed?

4 A. That's what I saw. And immediately after the person was
5 killed, we were required to carry dirt to cover the corpse.

6 [09.37.42]

7 Q. Did you ever personally participate in burying of the bodies
8 of these people who had been killed?

9 A. Many people actually carried the dirt to cover the corpse.
10 There were many people actually. We covered the dead body with
11 dirt. We did not do it -- I did not do it alone but I did it
12 together with other workers. And actually the dead body was
13 buried on the bed (sic) of the dam.

14 Q. And can you tell us exactly who it was that killed the victim,
15 was it the militia or was it someone else?

16 A. Yes. They were the militiamen. I did not know where they came
17 from and where they took the person from either. When we were
18 working over there, there was no military men at that time. But
19 once they brought somebody in, then there were militia who
20 brought that person to be killed. And then they would go into
21 different directions. We could not even recognize their face. And
22 we were very frightened of our fate as well. So whenever we saw
23 the militiamen came, all of us would put our face down. We dare
24 not even look at their face.

25 [09.39.31]

1 Q. Can you tell us how these people were killed, what weapons
2 were used, what was the technique for the killing?

3 A. They used the stick to beat the person to death.

4 Q. I'd like to ask you now just briefly about the health
5 conditions of the workers at the site. Did the workers at the
6 site get sick often? And if so, what kind of illnesses did they
7 have?

8 A. In terms of health conditions, we were all weak. We were sick,
9 but we dare not stop working. We had to continue working until we
10 collapse. And then if we refuse to carry out the work for the
11 days, they would accuse us of being conscious illness. So we
12 would eventually be re-educated. So at that time, I was told that
13 we had to continue working without stopping. And one day, I was
14 sick. And then they actually brought me some tablets, some pills.
15 And I did not recognize it because it is small and it looks like
16 tablet but something, but I had to take it. And we had to
17 continue working at that time. We dare not stop.

18 [09.41.28]

19 Q. I'd also like to ask you about the hygiene conditions. Can you
20 tell us whether there were any toilet facilities, whether you had
21 any way of bathing yourself, whether your food was clean, things
22 like that?

23 A. Well, in terms of hygiene, it was nothing actually. As for the
24 call of nature, we did not have any latrine. We actually could
25 release ourselves anywhere we could at the time. But as for the

1 urine, we have to collect urine, we have to keep it together so
2 that they can use it as the fertilizer. So we had to keep it in a
3 place.

4 Q. In your OCIJ interview, you say that you eventually ran away
5 from the Trapeang Thma Dam worksite. Can you tell us why you
6 decided to run away?

7 [09.43.03]

8 A. Because at that time, I overworked and the working condition
9 was harsh. So I thought to myself that if I continue, I would die
10 anyway. So I would take the risk of fleeing. So I fled into the
11 jungle. It took me about half a month. And then I got to a little
12 bit better place where I had some potatoes over there that I
13 could eat. So I continue working and then I heard people
14 screaming because the excavator and tractor was actually pushing
15 the people into the hole and they were actually screaming for
16 help.

17 Q. I'll come to that in just a minute. Can you tell me -- do you
18 know how long it was before the end of the Khmer Rouge regime
19 that you escaped from the dam worksite, how many months?

20 A. I escaped from the dam worksite -- well I could not recall the
21 date because I was rather young. But in my estimation, it was
22 about two or three months before the liberation. At that time, I
23 ate raw potato. We did not have any fire to actually grill potato
24 or whatever we could get at that time, we ate it. And at night,
25 we would try to go back to the potato plantations and then we

1 would get the raw potato and ate it.

2 [09.45.25]

3 Q. Now a moment ago, you mentioned arriving at the place where
4 you saw people screaming and falling into a pit. Are you able to
5 estimate how far that place was from the Trapeang Thma Dam
6 worksite?

7 MR. PRESIDENT:

8 Mr. Witness, please hold on. And International Counsel for Mr.
9 Khieu Samphan, you may proceed.

10 MS. GUISSÉ:

11 (No interpretation)

12 THE ENGLISH INTERPRETER:

13 Yes, indeed, there is a problem with the interpretation
14 equipment.

15 MR. PRESIDENT:

16 It seems that there is a problem with the interpretation. Court
17 officer is now instructed to check whether or not it is being
18 sorted out.

19 THE ENGLISH INTERPRETER:

20 Mr. President, Counsel can speak now. We can hear her now.

21 [09.46.56]

22 MR. PRESIDENT:

23 Counsel Anta Guissé, you may proceed. Please repeat your
24 observation earlier because there was no translation earlier on
25 in the comment you made.

1 MS. GUISSÉ:

2 Very well. Let me repeat what I said. What I said was that I
3 object to this line of questioning that the prosecutor is
4 preparing to start, bearing in mind the witness's prior statement
5 in which he stated that he worked at length far from the 1st
6 January Dam. And the witness also pointed out that he didn't see
7 any security centres. He has already made mention of executions
8 he witnessed on the Trapeang Thma Dam worksite. Under those
9 circumstances, if the prosecutor wishes to question the witness
10 on the new site, I would like to point out to the Chamber that
11 that is not in the Severance Order. And this is a point which is
12 therefore not within the scope of this Trial. So the
13 Co-Prosecutor cannot continue to put questions to the witness in
14 this particular line of questioning.

15 [09.48.19]

16 MR. FARR:

17 Mr. President, if I could just respond briefly. My first question
18 was how far this location was from the Trapeang Thma Dam. I'm
19 trying to figure out whether this was some place that was close
20 enough to be inherently part of the site. If it was not, then I
21 would seek the Chamber's leave to just ask very limited questions
22 about the equipment that the witness described having seen at
23 that site in light of the fact that the witness says that there
24 was no equipment being used to build the Trapeang Thma Dam.

25 (Judges deliberate)

1 [09.50.35]

2 MR. PRESIDENT:

3 The objection by the defence counsel for Mr. Khieu Samphan is not
4 sustained because even if the question is not precise but it is
5 related to the fact concerning Trapeang Thma worksite. So the
6 witness is now instructed to respond to this question.

7 Mr. Witness, please respond to the last question posed by the
8 Prosecution if you can recall. Otherwise, we will ask Mr.
9 Prosecutor to repeat his last question. It is likely that you do
10 not recall it. So Mr. Prosecutor, please repeat your question.

11 BY MR. FARR:

12 Thank you, Mr. President.

13 Q. Mr. Witness, are you able to tell us what the approximate
14 distance was from the site that you just described with the pits
15 -- the distance from that site to the Trapeang Thma Dam?

16 MR. SOT SOPHAL:

17 A. In my estimation, it was about 60 to 70 kilometres away from
18 Trapeang Thma worksite to Chamkar Khnol or Chamkar Kau
19 (phonetic).

20 [09.52.10]

21 Q. In that case, I'd just like to ask you a very specific
22 question. You describe seeing a tractor and one or more trucks in
23 use at that location. Now based on the work you were doing at the
24 Trapeang Thma Dam, could that tractor and could those trucks had
25 been used to help the workers there dig the earth and transport

1 the earth to build the dam?

2 MR. PRESIDENT:

3 Mr. Witness, please hold on. And Counsel Koppe, you may proceed.

4 MR. KOPPE:

5 Thank you, Mr. President. I object to this question. This is
6 asking for speculation. The witness at the time must have been 12
7 or 13 years old. He cannot possibly say anything about trucks
8 that he saw some 70 kilometres away from where he worked, whether
9 there was any connection. This is pure speculation the
10 Prosecution is seeking.

11 [09.53.25]

12 MR. FARR:

13 Mr. President, perhaps my question wasn't clear. I was intending
14 to ask -- sorry.

15 MS. GUISSÉ:

16 Yes, I suppose what the Co-Prosecutor's intention is, insofar as
17 the witness has stated that he was at 70 or 80 kilometres from
18 the Trapeang Thma dam worksite, not only as my colleague has
19 said, the Co-Prosecutor is trying to get the witness to
20 speculate, but he is also trying to get the witness to talk about
21 a place that was 70 kilometres from the Trapeang Thma Dam
22 worksite. Whether he is trying to get this witness to speculate
23 in order to elicit questions from the witness which would be out
24 of the scope of the trial. But I think this question should be
25 rejected, Mr. President.

1 MR. PRESIDENT:

2 Mr. Prosecutor, do you have any response to the objection made by
3 the two defence teams?

4 [09.54.51]

5 MR. FARR:

6 My question might not have been clear. My question was whether
7 this equipment was of the type which could have been used in the
8 kind of construction work that the witness was involved in. Of
9 course, he was a child, of course he's not a construction expert,
10 but he knows what he was doing at the Trapeang Thma Dam. And he
11 saw what this equipment was doing at this other site. So I think
12 he probably can tell us whether the equipment could have been
13 used -- what was or the type that could have been used to assist
14 the workers of the Trapeang Thma Dam worksite.

15 MR. KOPPE:

16 But I recall this witness saying that he didn't see any machinery
17 at all at the Trapeang Thma Dam worksite. So how can he even make
18 a comparison?

19 (Judges deliberate)

20 [09.59.38]

21 MR. PRESIDENT:

22 The objection by the two defence teams to the last question posed
23 by the Prosecution is founded. For that reason, the Chamber asks
24 the witness not to respond to the last question by the
25 prosecutor. And at the same time, we wish to advise the

1 Prosecution and the Lead Co-Lawyer for the civil parties that we
2 would give you only 15 more minutes after we resume of the first
3 session of the morning break. That is to compensate the time lost
4 for you.

5 BY MR. FARR:

6 Thank you, Mr. President.

7 Q. Mr. Witness, turning back to your experience at the Trapeang
8 Thma Dam, I'd like to get your reaction to a statement that was
9 made by Khieu Samphan in a speech that he gave in April of 1977.
10 And this document is E3/201, Khmer, 00292810 to 11; English,
11 00419516; and French, 00612170.

12 [10.01.24]

13 MS. GUISSÉ:

14 Mr. President, of course I object to the question the way it has
15 been phrased by the Co-Prosecutor because if I understood well,
16 he is asking the witness for his opinion. And if I'm not
17 mistaken, he said that he never met Khieu Samphan. So if we're
18 asking an opinion of him, well first of all, he's not an expert,
19 and therefore under these conditions, the question it should be
20 rejected. And once again, comments about what Khieu Samphan might
21 have said before or after the facts outside of a context that the
22 witness does not know, does not allow the Chamber to assess
23 properly the credibility of the witness or to have factual
24 elements on the Trapeang Thma dam. So we find that this is kind
25 of a backhanded trick that is not appropriate here. So if the

1 Co-Prosecutor wishes to use Khieu Samphan's statements, he might
2 be able to do so during the final submissions. But doing so here
3 with the witness who has no connection with Khieu Samphan, this
4 is not the moment. So I therefore am asking the Deputy
5 Co-Prosecutor not to be allowed to put that question to the
6 witness. Thank you.

7 [10.02.45]

8 MR. FARR:

9 Mr. President, first of all, I hadn't asked the question. All I'd
10 done is read some ERNs. I didn't even have a chance to read the
11 quote that I want this witness to react to. Counsel just said
12 that this witness can't talk about comments that Khieu Samphan
13 made before or after. This is a comment from April 1977. It's
14 precisely the time period we're talking about. And it's one in
15 which Khieu Samphan is discussing the experience of children in
16 Democratic Kampuchea and describing it in a particular way --
17 children working in Democratic Kampuchea. This witness was a
18 child working in Democratic Kampuchea at exactly that time. I
19 think it's fair to have him react to the description that Khieu
20 Samphan gave of the working conditions and of the way that the
21 children who were working subjectively felt about it. If it
22 assists the Chamber, I could read the quote before your
23 deliberation if you intend to deliberate.

24 [10.03.56]

25 MR. PRESIDENT:

24

1 We haven't heard the question from you that whether this witness
2 ever heard the speech made by Khieu Samphan. So please tell us
3 whether you have put such a question to the witness today or even
4 yesterday afternoon. And if not, then he is not in a position to
5 make an assessment or to give his comment on the speech. Please
6 indicate to the Chamber whether the witness heard the speech made
7 by Khieu Samphan. And if so, when and by what means?

8 MR. FARR:

9 Your Honour, I think the only way for me to do that would be for
10 me to read the quote to the witness, and then ask him whether he
11 heard Khieu Samphan say those things.

12 MS. GUISSÉ:

13 Then I can suggest to the Co-Prosecutor a question. You could
14 say, Witness, have you ever heard a speech by Khieu Samphan? And
15 then we will see.

16 [10.05.42]

17 MR. PICH ANG:

18 Good morning, Mr. President. I think we can proceed if the
19 President grants the Deputy Co-Prosecutor to read that extract so
20 that the witness can say whether during the regime his living
21 condition was similar to what was said by Khieu Samphan in his
22 speech. I think this is reasonable and that it also reflects the
23 living condition as well as the truth in the speech made by Khieu
24 Samphan.

25 MR. PRESIDENT:

1 Then the Deputy Co-Prosecutor, you can read the quote of the
2 speech first, what it's all about.

3 BY MR. FARR:

4 Thank you, Mr. President.

5 Q. Mr. Witness, just to remind you, the quote that I'm going to
6 be reading is from a speech that Khieu Samphan made in April of
7 1977. And this is what he said: "Our children do not play with
8 toy cars, toy boats, and toy guns which were formerly imported at
9 considerable cost. Our children are happy with driving squirrels
10 away from the crops, tending cattle and buffalo, collecting
11 natural fertilizer, and helping to build dams and embankments,
12 and dig reservoirs and ditches." End of quote. And my question,
13 if the Chamber would allow it, is whether that speech by Khieu
14 Samphan is an accurate reflection of your experience as a child
15 working on a dam project during the Democratic Kampuchea period.
16 [10.07.55]

17 MR. PRESIDENT:

18 If that is the case, then the objection by the defence team is
19 overruled and the Chamber will allow the question to be put to
20 the witness. And Mr. Witness, please respond to the last question
21 put to you by the Deputy Co-Prosecutor.

22 MR. SOT SOPHAL:

23 A. It is rather long for me to catch it, so I don't fully get it.

24 MR. PRESIDENT:

25 Deputy Co-Prosecutor, please read the excerpt again, but make it

26

1 rather short to make it simpler for the witness to understand so
2 that he can respond to it. And please try not to use the word "do
3 you understand" because these kinds of phraseology are for the
4 experts not for an ordinary witness like this gentleman.

5 [10.09.15]

6 BY MR. FARR:

7 Q. Sir, I'll read the quite one more time and I'll shorten it,
8 the most important part. He said: "Our children do not play with
9 toy cars, toy boats, and toy guns which were formerly imported at
10 considerable cost. Our children are happy helping to build dams
11 and embankments, and dig reservoirs and ditches."

12 Sir, can you tell us your reaction to this statement, were you
13 happy to help to build the Trapeang Thma Dam?

14 MR. SOT SOPHAL:

15 A. I don't know what to respond to you.

16 [10.10.15]

17 MR. FARR:

18 Mr. President, I think I'll leave it there. Thank you. And thank
19 you, Mr. Witness. I'll now -- well, it may be time for the break,
20 but I've finished my questioning. Thank you.

21 MR. PRESIDENT:

22 Thank you. It is now appropriate for us to take a short break and
23 let we have a break and resume at 10.30.

24 Court officer, please assist the witness during the break time
25 and invite him back into the courtroom at 10.30.

1 (Court recesses from 1011H to 1030H)

2 MR. PRESIDENT:

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

4 Now I hand over the floor to the Lead Co-Lawyers for the civil

5 parties to put the question to the witness. And you have 15

6 minutes. You may now proceed.

7 [10.31.20]

8 QUESTIONING BY MR. PICH ANG:

9 Thank you, Mr. President, for the opportunity to put the

10 questions to the witness. And good morning to Mr. President, Your

11 Honours, everyone in and around the courtroom. Good morning, Mr.

12 Witness. My name is Pich Ang. I am the National Lead Co-Lawyer

13 for the civil parties. I have a few questions to put to you for

14 the next 15 minutes. I will continue from the questionings of the

15 Prosecution.

16 Q. When you were working at the Trapeang Thma worksite, when you

17 were working there you were still a child, can you tell the

18 Court, when you were working over there carrying earth, building

19 the dams, were you happy working there? Were you happy with the

20 work you were assigned?

21 MR. SOT SOPHAL:

22 A. When I was working there, I was happy. But it was -- no,

23 rather, I was not happy. How could we be happy? Because we did

24 not have enough food to eat and then we were made to work very

25 hard.

1 [10.32.42]

2 Q. The speech -- the quotation of the speech of Mr. Khieu Samphan
3 read out to you by the Prosecution, it says they were happy, they
4 minding cattle, catching the birds, and building the dams, carry
5 water and earth, and they were happy. So from that, I would like
6 to ask whether or not this quote from the speech was a reflection
7 of the actual situation at the time.

8 MR. PRESIDENT:

9 Witness, please hold on. The National Counsel for Mr. Khieu
10 Samphan, you may proceed.

11 MR. KONG SAM ONN:

12 Thank you, Mr. President. I would like to object to this question
13 for two reasons: one is it is leading, purely leading question.
14 And second, this witness cannot speak for other children at the
15 worksite during the Democratic Kampuchea period.

16 [10.33.48]

17 MR. PICH ANG:

18 Mr. President, that was -- that is not uncommon that we read the
19 quote from a document, and then we ask the witness to respond to
20 that. I would like to ask this witness to respond or react to the
21 speech quoted of Khieu Samphan. So I think that that is the usual
22 ways of putting the questions to the witness.

23 MR. PRESIDENT:

24 Counsel, could you please put the question again to the witness.
25 It is rather difficult for him to respond to the question.

1 Remember the last question posed by the prosecutor. He could not
2 respond to it very well, so please simplify your question.

3 BY MR. PICH ANG:

4 Q. I would like to only extract a short portion of the speech. I
5 quote: "Our children were very happy with all the tasks, such as
6 building dams and digging canals." End quote. So from this quote,
7 he indicated that children at that worksite were happy with the
8 work they were assigned to. So my question to you, could you tell
9 the Court whether or not the children were really happy at the
10 time, that was a reflection of what Mr. Khieu Samphan said?

11 [10.35.43]

12 MR. PRESIDENT:

13 Witness, you are now instructed to respond to this question based
14 on what you experienced and you observed at the time.

15 MR. SOT SOPHAL:

16 A. That was what he said, but actually I myself was not happy.
17 How could we be happy? Because we could not go to school. How
18 could we be happy carrying dirt, carrying fertilizer? How could
19 we be happy? We could have been happy if we could go to school.
20 But we were made to work very hard. We did not even have anything
21 to wash our hair. How could we be happy in that condition?

22 BY MR. PICH ANG:

23 Q. Could you tell the Court when you were working in Trapeang
24 Thma worksite in Battambang province, now in Banteay Meanchey,
25 did you go to school, or did they teach you any literacy or

1 numeracy?

2 MR. SOT SOPHAL:

3 A. No, I did not go to school. I could have been literate if I
4 were able to go to school. But at that times, we learned --
5 learned how to dig the canal, how to carry earth, how to collect
6 the fertilizers. That was what we learned.

7 [10.37.30]

8 Q. So at the time, did you want to go to school or did you ever
9 think of going to school at all?

10 A. At that time, we did not even think of going to school because
11 there was no school. We only saw children carrying cow dung,
12 fertilizers, and dirt. There was no school at all, so we could
13 not even think of going to school.

14 Q. Let me expand it a little bit further on your work unit. Was
15 it a child unit? Was it called the children's unit at that time?
16 And how many members were there in your unit back then?

17 A. It was my estimation. There were many members. In my
18 estimation, there could have been around 1,000 to 2,000 members.
19 I did not know where they took the children from, but they
20 recruited them or selected them from the villages. Those who were
21 big enough, they could carry dirt and fertilizers, they would
22 select them.

23 [10.38.56]

24 Q. So there were 1,000 or 2,000 children. Could you tell the
25 Court more specifically of their age range? What was the youngest

1 age and the eldest one in your unit?

2 A. At the time, they recruited from 14 years of age and above. I
3 don't know the eldest age, but at that time I told them that I
4 was 14 years old. They asked me how old I was, and I said that I
5 was 14 years old. And then they told me that, well, if I was 14
6 years old, then I could separate from my parents and I could go
7 to work.

8 Q. So you said there were around 1,000 or 2,000 children. Can you
9 tell the Court the eldest member in your unit? How old were they,
10 the eldest one?

11 A. They recruited children from the age of 14 to 15, 17, 16, 17,
12 18, and then there was another special children group or unit.
13 This special unit would be tasked to carry dirt to the -- to
14 build the dam. So at that time, they lined the children into
15 queues and then they would help each other to carry the earth.
16 [10.40.57]

17 Q. You responded to the question by the prosecutor about
18 biography. You said that -- that there was no biography taking at
19 that time. So you were telling the Court about these things for
20 only the group or the unit you were in at that time. In other
21 words, the biographies were not taken for only your group, but
22 not for others working at the Trapeang Thma worksite. Is that
23 correct?

24 A. No, they did not prepare any biography. They only asked me how
25 old I was, and I told them that I was 14 years old. So they did

1 not actually take or write down the biography. So they would ask
2 one from -- from one to another -- and then they would put them
3 into different units. And I did not know where the children were
4 all from. I only knew myself that I was 14, and there were many
5 people, and I could not know other people. We stayed together for
6 some time, then we got to know some of them.

7 [10.42.20]

8 Q. You also mentioned that there was meeting attended by Ta Val.
9 So to your recollection, did you attend the meeting regularly;
10 for example, weekly or monthly, with any other person other than
11 Ta Val?

12 A. There were other people, but I could not know who they were. I
13 only heard Ta Val. And I actually did not even pay attention to
14 what they said because I only attended that meeting.

15 Q. Rather, let me put it this way. Were you ever called for a
16 meeting in your unit, I mean, unit by unit? Were you ever called
17 to attend such meeting?

18 A. No. For that meeting, I were -- I was never called. But
19 generally, we held a meeting at our worksite for about half an
20 hour or so each times, or sometimes one hour before lunch or
21 after lunch. We would have that meeting. During the break, they
22 convened this unit meeting.

23 Q. During this unit meeting, if you can recall, what was the
24 meeting about and how often was it held?

25 A. It varied at the time. Sometimes once every two days. And all

1 they said was that we had to reiterate our conviction to the
2 work. Then that was -- that was it in the meeting.

3 [10.44.19]

4 Q. Thank you. Let me expand it a little further. You were staying
5 at the Trapeang Thma worksite. Could you tell the Court about the
6 sleeping condition over there, whether or not you were given
7 mosquito net or the bed to sleep on or so -- or the shelter at
8 the time?

9 A. As for the sleeping place, of course there was shelter, but
10 there was no blanket, no mosquito net, but there was shelter.
11 They used the -- we could stay together for 3 to 400 people.
12 There was a very long communal hall or shelter where we could
13 sleep at night. But at that time, we could sleep for a short
14 period of times. In other words, we would go to bed at around
15 8.00 and then we got up at 3.00 in the morning.

16 Q. So if you had such a short time to sleep at night, did you
17 have enough energy the next morning to continue working?

18 A. Of course not.

19 [10.45.55]

20 Q. You also said that you carried earth and then you slept with
21 your hoe and your earth-carrying basket. Did that happen often
22 with you?

23 A. It was everyday occurrence. I slept with my hoe every day so
24 long as I went to work.

25 Q. So when you were sleeping with your hoe nearby, so could you

1 tell the Court how many hours did you sleep per day?

2 A. It depended on the people who were carrying up the dam. If
3 they -- it took them rather long time, then we could have longer
4 time to take a nap as well.

5 Q. I have only little time left. Go to another question. When you
6 were working at Trapeang Thma dam, did you only dig the earth, or
7 you sometime were made to carry the dirt as well?

8 A. We were rotated. On one day we would be made to dig the dirt,
9 and the other days we were made to carry the dirt.

10 [10.47.45]

11 Q. You said that you saw people being killed, and then they were
12 buried on the bed of the dam. How far was it from the scene to
13 the place where you were working?

14 A. I saw that occurrence when I was working on the days. It was
15 about 50 metres away, 40-50 metres away.

16 Q. Did you witness it, the killing? Did you witness the killing
17 by yourself?

18 A. Yes, I saw it by my own eyes. I was shocked when I was
19 carrying the dirt.

20 Q. Did the -- the killer -- was the killer man or woman?

21 A. Of the three people, was the -- the chief was the female.

22 Q. Rather, let me put this question in this way. I would like to
23 talk about the victims, the one who was killed. Was the victim
24 male or female?

25 A. Male.

1 [10.49.45]

2 Q. This is my last question. You did not have enough food ration,
3 in other words, you did not have sufficient food to eat. And
4 sometimes you -- your ration was reduced. Did you have the
5 opportunity to look for something else to supplement your daily
6 ration? And if you could look for that supplementary food, what
7 was it?

8 A. No, not at all. We could not find any supplementary food. We
9 only had access to what was given to us. The food ration, the
10 daily ration they gave to us. And sometimes we had to pick the
11 skin off the potato where they threw away, then we could eat. But
12 generally, we were very frightened as well to do that. If we were
13 found picking that and eating that, we would risk our life being
14 killed.

15 MR. PICH ANG:

16 Mr. President, I do not have any further question. I thank you
17 very much for the opportunity to ask the questions to the
18 witness.

19 MR. PRESIDENT:

20 Thank you. I think next the Judges of the Bench might want to
21 have a few more questions to ask to this witness. Judge Fenz, you
22 may proceed.

23 [10.51.17]

24 QUESTIONING BY JUDGE FENZ:

25 Yes, thank you, President.

1 Q. Witness, my first question is aimed to help me understand how
2 you use numbers. My understanding is you can't read and write,
3 but apparently you can count. Is this correct?

4 MR. SOT SOPHAL:

5 A. I could count only simple numbers -- 1, 2, 3, 4, 5 -- I could
6 -- I could do that.

7 Q. So how far up can you count, till 10, till 100, till 500?

8 A. I could count to a lot of numbers. But anyway, I could count
9 only up to 20, 30, something like that. But too many numbers, I
10 cannot count.

11 Q. And I guess then that you cannot calculate, meaning add
12 numbers or multiply; is that correct?

13 A. Yes.

14 [10.53.04]

15 Q. Now I noted that specifically in the high numbers, you appear
16 to use them perhaps rather randomly. Let me give you an example.
17 When you were asked how many children or juveniles were at the
18 worksite, you gave at least three different numbers, 1,000,
19 2,000, 3,000. Now, my question to you is: are these numbers based
20 on some kind of calculation, or is this your way of saying very
21 many?

22 A. That's what I -- I saw; so many of people, scores of people. I
23 could not count all of them. So I could only say that there were
24 up to thousands, tens of thousands of them. There were many
25 people building the dam.

1 Q. My -- I understand, but my question was: when it comes to
2 young people, juveniles or children, you said at one point there
3 were a thousand, at another point there were 2,000, and I think
4 yesterday there were 3,000. So did you actually, as I said, count
5 them? Or is this your way of saying there were really many young
6 people there?

7 [10.55.00]

8 A. It was my estimation because there were many people. I did not
9 do the counting because there were scores of people. There were
10 not only 10, 20 people, but everywhere I went, there were people.
11 So there were so many people. So, in my estimation, there were
12 that many thousands.

13 Q. I understand. I am moving now to another subject. And I really
14 want you to keep in mind: tell me if you don't remember
15 something. Can you remind us how long you actually were at this
16 worksite?

17 A. At that time, it was a rather long period of time. I cannot
18 recall how many months or years it took, but I know that it
19 lasted for a long period of time.

20 Q. So it could even have been years; did I understand you
21 correctly?

22 A. Yes, that was my estimation. It was rather long. I did not
23 know exactly how many months or years, and I could not bear with
24 it, so I had to escape.

25 Q. I understand that. Let's get away from the numbers. Do you

1 remember that you saw changes of season while you were there? One
2 rainy season or two rainy seasons, three rainy seasons? If you
3 don't tell me, it's just I'm trying to help you.

4 [10.57.15]

5 A. When they mobilized the children force to work over there, it
6 was only at the -- during the dry season. But during the rainy
7 seasons, we were made to carry the seedling.

8 Q. Do you remember how many dry seasons you were working there at
9 the dam?

10 A. For my unit, we were mobilized there for only one season.

11 Q. Okay. Now I'm changing the subject again. I'm now coming to
12 the killings you described to, I believe, the prosecutor. You
13 said there were killings at the worksite, and they were meant to
14 deter other workers. And then you said they happened every 10
15 days, but you only saw it twice. Now my question is: if you only
16 saw it twice, how do you know it happened every 10 days?

17 A. It was my estimation, and I saw the killing of one person when
18 I was carrying the dirt, and then after a while, then I saw
19 another killing. So it was my estimation, but what I saw was two
20 times. That's why I estimated that they would kill this person
21 every five or 10 days. But I did not know what happened after I
22 left.

23 [10.59.51]

24 Q. Let me just clarify if I understood you. The time period
25 between the two killings you saw was five to 10 days, and that's

1 why you thought this happens every five to 10 days. Is this what
2 you are saying?

3 A. Yes, that is correct.

4 Q. And now my last set of questions. I'm changing the subject
5 again. I am now coming to the incident -- incidents you described
6 yesterday where people collapsed at the worksite, and there were
7 attempts to resuscitate them, but they died. That's what you told
8 the prosecutor yesterday. Now what I would want to know is: what
9 happened to the bodies, if you know?

10 A. I did not know where they took the body to. People who died on
11 site were never kept there. They were -- their bodies were taken
12 away, and I did not know whether they were taken and buried
13 elsewhere or they were taken somewhere else.

14 [11.01.45]

15 Q. Can you tell us how they were carried away? Were they put on a
16 cart or did somebody -- did people carry them?

17 A. They -- the body was carried away by two people. It's like on
18 a stretch (sic). That's how the body was taken. Actually the
19 stretch (sic) was made from wooden pieces and I did not know
20 where the body was taken to. At that time, I did not see any
21 hammocks that could be used to carry the body.

22 Q. And how did you actually know that these bodies on the
23 stretchers were dead? Did someone say, "We're giving up now on
24 resuscitation. The guy is dead?" Or did you just assume that?

25 A. The person who collapsed and later died was at the spot near

40

1 where I carried the earth up to the embankment of the dam. After
2 the resuscitation, the person did not survive. And, of course, I
3 could only have a glimpse at the person, and then I heard that
4 the person died. We were not allowed to stand there to look at
5 the person for five to 10 minutes. No, that was not the case.

6 [11.03.40]

7 Q. I'm not blaming you. I'm just trying to clarify things. Who
8 tried to resuscitate this -- this person or these people?

9 A. It was the workers on site because over there when a person
10 collapse, then we would not distinguish whether it's a member of
11 a group or a member of the group next -- next to us. We would go
12 there and try to assist the person. However, after the person
13 died, I did not know how the report went through the chain of
14 command. People would come and pick up the body.

15 Q. How many of those instances did you actually see? How often
16 did you see that the person collapsed and died on the spot after
17 co-workers had tried to resuscitate him or them?

18 A. I saw it rather often, but I did not count -- did not count
19 how many times that I saw it. It happened almost every day.
20 Sometime a person collapsed, sometime two workers collapsed on
21 one day, but sometimes they could be resuscitated and did not
22 die.

23 [11.05.30]

24 Q. Now, I know there are a couple of difficulties with numbers.
25 Let me try. I understand that people collapsed daily, but they

1 didn't die daily. When I asked you how many of those incidents
2 you have said -- seen, you said many. Now my question is, for
3 instance, more than 10, or less than 10, because I understand
4 this is a range where you can count. Did you see more than 10 of
5 those incidents where people died or less than 10?

6 A. It is more than 10 because it happened almost every day. So
7 worker collapsed at least, each worker collapsed each day, or
8 sometime there were two or three workers who collapsed on the
9 day.

10 Q. Again, I'm interested in those who collapsed and died. So the
11 number of those who collapsed and died was more than ten, at
12 least. Is that correct?

13 A. Yes, that is correct.

14 Q. Next question is intentionally vague even though you don't
15 know numbers: many more than 10 -- many more than 10 who
16 collapsed and died?

17 A. Please repeat your question.

18 [11.07.45]

19 Q. I'm trying to figure out how many people you actually saw
20 collapse and die. And I understand there is a difficulty with
21 high numbers. So you told me clearly more than 10, clearly more
22 -- you saw more than 10 people collapse and die at the worksite.
23 Now my question is: did you see many more than 10 people collapse
24 and die at the worksite?

25 A. What else you want me to respond to you? I said people

1 collapsed and died and I responded three times already to you. I
2 don't have anything else to add.

3 JUDGE FENZ:

4 Okay, thank you. I have no further questions.

5 MR. PRESIDENT:

6 Thank you. And the Chamber would like to hand the floor to the
7 defence teams. First, to the defence team for Nuon Chea to put
8 questions to this witness, you may proceed, Counsel.

9 [11.09.19]

10 QUESTIONING BY MR. KOPPE:

11 Q. Thank you, Mr. President. Good morning, Mr. Witness. I would
12 like to ask you some questions. Let me start by asking you some
13 questions in relation to the very last topic, the collapsing of
14 people. You described one example in respect of which you said
15 you saw -- you had a glimpse. Who was the person that you said
16 collapsed? Who was he? Was he a member of your unit, or was he a
17 member of another unit?

18 MR. SOT SOPHAL:

19 A. The worker was in the same big unit, but in a separate small
20 unit. And the worker that I saw collapse didn't -- was not a
21 member of my group.

22 Q. So is it then fair to say you didn't know him personally?

23 A. Of course, there were many workers in the bigger unit and we
24 did not know everyone's name. I only focused on working. And I
25 only knew the person was in the same big unit, but I did not know

1 his name. And that happened to other workers. Maybe today I saw
2 the faces of those workers and next day I saw different faces.

3 [11.11.28]

4 Q. If you didn't know the person that you said collapsed, if you
5 only saw a glimpse -- only had a glimpse of what happened, how
6 did you know the person collapsed because of exhaustion?

7 A. That was my personal conclusion. It's because of the overwork.
8 And due to sickness, people collapse while they were working.

9 Q. But is it correct you didn't actually speak to any of the
10 medics or any of the people who carried this person away? The
11 fact that he collapsed because of exhaustion is only your
12 conclusion; is that correct?

13 A. There was no medic came to attend the person. As I said,
14 during the regime, there was no medic there to provide the
15 treatment.

16 Q. Are you saying there weren't any medics working at the
17 Trapeang Thma Dam worksite?

18 A. Yes.

19 Q. And if someone got sick in your unit, for instance in the
20 morning, and he said to your unit chief, "I am sick. I cannot
21 work." What would happen?

22 [11.13.50]

23 A. If we were sick, we did not have the authority to ask for
24 permission from the big unit chief. We could only ask permission
25 from our group chief. However, we had to go to work although we

1 were sick, and at the end of the day, maybe an hour or two before
2 our rest time, we were given some round pellets to take. And of
3 -- and of course, there was no guarantee the pellets that we took
4 actually treated us.

5 Q. Did you or any members of your unit ever go to a hospital
6 nearby when that person stayed sick?

7 A. I never saw a hospital, and I did not see any worker being
8 sent to the hospital. What I saw was that when people got sick,
9 they informed the group chief, and for some reason the group
10 chief delivered the pellets for the workers to take.

11 Q. This collapsing of people that you described, is that
12 something that was seen by many workers at the dam?

13 [11.15.42]

14 A. Almost everyone saw it, but of course, I cannot tell you who
15 saw it. We knew each other by faces only and not the names. You
16 could see a person was in rather good state today and maybe next
17 day their -- his body was swollen. Or the day after, another
18 worker had their -- body became so shrink, so skinny, and bony.
19 Everyone looked so terrible. And it's even hard to identify and
20 recognize the person that you saw yesterday.

21 Q. If you said so many people saw this as well, can you explain
22 to me why only you in this courtroom ever saw somebody collapse
23 and die while working at the Trapeang Thma Dam worksite?

24 MR. FARR:

25 Objection, Mr. President. Counsel is asking this witness to

1 explain the other -- the evidence of other witnesses without
2 having any idea who the other witnesses are, what part of the dam
3 they worked on. He's been very clear that what he saw was for the
4 most part limited to people in his unit and nearby him. It's an
5 unfair question to ask him to explain evidence that he didn't
6 hear.

7 [11.17.20]

8 MR. KOPPE:

9 Well, Mr. President, we've all been in this courtroom hearing
10 witnesses. Nobody testified to this fact. Maybe he has an
11 explanation as to why this is the case. Maybe indeed his unit was
12 at a particular place, maybe the regime under which he was
13 working was particularly harsh. There could be all kinds of
14 reasons that this witness can give to us which would explain this
15 remarkable discrepancy.

16 MR. PRESIDENT:

17 The observation and objection by the International Deputy
18 Co-Prosecutor is sustained, and if you wish to put such a
19 question, please quote the statement extract from the previous
20 witnesses. And I believe so far, we haven't heard any testimony
21 from witnesses who were -- who worked in the children group like
22 the current one before us. So if your question is rather too
23 broad, I don't believe this witness can provide you an answer,
24 and it does not help in ascertaining the truth in this case at
25 all.

1 [11.18.40]

2 BY MR. KOPPE:

3 Q. Thank you, Mr. President. Although it's kind of hard to cite
4 evidence which doesn't exist, however, I shall move on.

5 Smaller detailed question, Mr. Witness: Did I just understand you
6 correctly when you said that you didn't have any mosquito nets
7 while sleeping at night?

8 MR. SOT SOPHAL:

9 A. In the regime, no, there were no mosquito nets. That's how I
10 went through, so how can I tell you if there was any?

11 Q. Well, let me then quote something you said to the
12 investigators. Mr. President, E3/7755: Khmer, ERN 00279113;
13 English, 00293003; and French, 00338220; and this is what you
14 said: "When I lived there, they made a long shelter for us to
15 sleep in. We had mosquito nets and blankets, but we did not have
16 pillows." End of quote. So, Mr. Witness, you seem to be saying to
17 the investigators a few years ago that you did have mosquito
18 nets. So which one is it? Did you have mosquito nets or you
19 didn't have mosquito nets?

20 [11.20.35]

21 MR. PRESIDENT:

22 Witness, please hold on. And Counsel Pich Ang, you have the
23 floor.

24 MR. PICH ANG:

25 The Khmer version of the ERN as stated by Counsel Koppe did not

1 have any mention of mosquito net. It talks about the long shelter
2 with two levels, and he was given a sleeping mat, and the mat was
3 taken every time he went. So in the Khmer version, there is no
4 mentioning at all of a mosquito net.

5 BY MR. KOPPE:

6 Q. I shall read -- maybe I gave the wrong page. It was Khmer,
7 00279114. Of course, I cannot read the Khmer, but in my English
8 version it says: "When I lived there, they made a long shelter
9 for us to sleep in. We had mosquito nets and blankets, but we did
10 not have pillows."

11 [11.22.11]

12 MR. PRESIDENT:

13 Witness, please respond to the question.

14 MR. SOT SOPHAL:

15 A. I cannot recall that. The event took place a long time ago.

16 MR. PRESIDENT:

17 Counsel Pich Ang, you have the floor.

18 MR. PICH ANG:

19 Thank you, Mr. President. The page quoted by Counsel Koppe --
20 that is, on the ERN mentioned by Counsel Koppe, is not related to
21 the Trapeang Thma Dam. Although there were -- mosquito net was
22 mentioned, but this is a separate event not related to Trapeang
23 Thma Dam. Thank you.

24 [11.23.20]

25 BY MR. KOPPE:

1 Q. That could be, I don't know, but then, let me rephrase my
2 question.

3 Mr. Witness, you said that there were no mosquito nets at all
4 during the regime. You just said that. But here you said that,
5 maybe on another site, you had mosquito nets and blankets; is
6 that correct?

7 MR. PRESIDENT:

8 Witness, please respond to the defence counsel's question.

9 MR. SOT SOPHAL:

10 A. I do not know how to respond to that question.

11 BY MR. KOPPE:

12 Q. I will move on, then, Mr. Witness. Let me now ask you another
13 question. This morning and yesterday, you spoke about the person
14 who was in charge of the Trapeang Thma dam worksite, Ta Val. You
15 were asked yesterday by the Prosecution whether you knew if Ta
16 Val remained in his position or whether he was replaced. And then
17 you answered yesterday, "I don't know where he went after 1979,
18 but he was there until the end of the regime." Can you tell me
19 how you knew that -- or how you know, rather that he was -- that
20 Ta Val was there until the end of the regime?

21 [11.25.43]

22 MR. SOT SOPHAL:

23 A. I do not know what year, but I was relocated to work at Ta
24 Krahom (phonetic) and to dig a pond there. And they mentioned
25 that the pond was named Ta Val's pond. So everybody referred to

1 Ta Val, although I myself never saw him in person. And we always
2 heard that the instructions for us or the assignments for us came
3 from Ta Val. And then when the Vietnamese came to attack while I
4 was digging the pond, I fled. And everybody went to his or her
5 houses. And that's my conclusion that Ta Val was in charge until
6 that day, the day of the liberation, because every assignment,
7 every worksite was named after him.

8 Q. In your recollection, while working at the dam in your unit,
9 was Ta Val always the one who was in charge of the whole
10 worksite?

11 [11.27.35]

12 A. As I said, I never saw Ta Val in person. However, every time
13 my -- my chief told us about the work assignment, he always
14 mentioned Ta Val, that the instructions came from Ta Val, that's
15 when we had to build a dam or dig a canal, or that later on we
16 had to dig a pond. And during a meeting, I was told that there
17 would be a big meeting where Ta Val would attend for the
18 inauguration of the pond-digging project.

19 Q. Maybe a bit difficult -- difficult question, but do you
20 remember at one point in time when you were working at the dam,
21 that the group chief didn't say anymore the orders come from Ta
22 Val but from someone else, or did he always say orders were
23 coming from Ta Val?

24 A. During each meeting that I attended, I always heard Ta Val's
25 name. I heard people saying that Ta Val came to inaugurate a

1 project worksite to build a dam or to dig a pond. And regarding
2 the pond, the pond that I was assigned to dig, it was not
3 completed when the regime fell, so I fled to my home while other
4 workers fled to their respective villages. And during the big
5 meeting, although Ta Val -- there was announcement that Ta Val
6 was present, there were so many attendees and I could not
7 recognise which one was Ta Val. And usually the meeting took
8 place in late afternoon. And there was also a performance by
9 dancers. However, the theme of the dance was nothing more than
10 digging the earth or carrying the earth.

11 [11.30.19]

12 Q. Again, maybe a difficult question, but I'm posing it anyway.
13 We know in this courtroom that the building of the dam, the
14 Trapeang Thma Dam, started in 1977 around February. And we also
15 know that Ta Val wasn't working anymore at the dam as of June
16 '77, a few months later. If I tell you this, would that help you
17 in telling us which period you were working there?

18 MR. PRESIDENT:

19 Witness, please wait; and Counsel Pich Ang, you have the floor.

20 MR. PICH ANG:

21 The question put by the defence counsel to the witness is
22 improper. He mentioned that everybody here in this courtroom knew
23 about the starting date of the building of the dam, which is not
24 a proper assumption. Counsel Koppe should refer to any particular
25 document which mentions the starting date of the dam-building

1 project rather than to say that everybody in this courtroom knows
2 the starting date of the dam project.

3 [11.32.05]

4 MR. KOPPE:

5 Well, the objection shows that I was wrong in assuming that
6 everybody knows the date, but I think it's not in dispute that
7 the dam-building started in February '77. There are FBIS reports,
8 there's other evidence that goes to show that the dam-building
9 started in February '77. So I think, in all fairness, I can say
10 that. It's unfortunate that the civil party lawyer doesn't seem
11 to know that. But I'm trying to assist the witness by phrasing my
12 question in simple terms, but I think I'm allowed to say between
13 February and June as two dates that we relatively know for sure
14 are in existence.

15 MR. PRESIDENT:

16 The Chamber does not give the floor to a party to make a second
17 objection to the response by the party who put the question to
18 the witness. For that reason, Lead Co-Lawyer, please be seated.

19 (Judges deliberate)

20 [11.34.54]

21 MR. PRESIDENT:

22 Counsel Koppe, please rephrase your question, and your assumption
23 that everybody in this courtroom knows that the starting date of
24 the building project of the Trapeang Thma Dam is rather improper,
25 and that is your personal conclusion because so far we have heard

1 of different dates the project of building the dam was started.

2 You can put a question to this witness about his personal

3 knowledge as to when the dam worksite commenced or -- or when he

4 himself was assigned to participate in the building of the dam.

5 Of course, you acknowledge that your question is difficult, and

6 for that reason it should be rephrased properly. And it is rather

7 improper for you to imply that everybody in this courtroom knows

8 about the starting date of the dam project.

9 [11.36.19]

10 BY MR. KOPPE:

11 Q. Mr. Witness, do you know when you started working at the

12 Trapeang Thma Dam worksite? Was it in 1977?

13 MR. SOT SOPHAL:

14 A. As for the date, the month, the year, or the day, I do not

15 recall. I did not know when it was started. I do not recall. I

16 can only recall that, at that time, I was made to carry dirt.

17 Q. And maybe my final short question to follow up. Do you know

18 how many months, or what period of time you worked at the dam?

19 For how long?

20 A. It lasted rather long period of time, but I do not recall the

21 exact time period. And at that time, you know, even if I worked

22 for one month, it was like for 10 years, because the working

23 condition was very harsh at that time. And at that time, the

24 three years, eight months, and 20 days period was like a lifetime

25 for me already. Working condition was so harsh.

1 [11.38.01]

2 MR. PRESIDENT:

3 The time is now appropriate for lunch adjournment. The Chamber
4 shall adjourn now and resume at 1.30 this afternoon.

5 Court Officer, please assist the witness during the recess, and
6 have him back to this courtroom before 1.30 p.m.

7 Security guards are now instructed to bring Mr. Khieu Samphan to
8 the holding cell downstairs, and have him back in this courtroom
9 this afternoon before 1.30.

10 The Court is now adjourned.

11 (Court recesses from 1138H to 1333H)

12 MR. PRESIDENT:

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

14 I hand over the floor to the defence team to put the questions to
15 the witness. Maybe the defence team for Nuon Chea has not
16 concluded their lines of questioning so you may proceed if you
17 have any further questions.

18 BY MR. KOPPE:

19 Thank you, Mr. President, yes we do.

20 Q. Good afternoon Mr. Witness, I have some questions that I would
21 like to put to you this afternoon. Firstly let me go back to a
22 topic that we discussed before the lunch break that was the
23 collapse of a worker who saw -- who was resuscitated and then,
24 according to you, died. Do you know if there is anybody who is
25 still alive today, who was also there together with you watching

1 this event and who could confirm what you're saying?

2 [13.34.56]

3 MR. SOT SOPHAL:

4 A. We separated in 1979, and I do not know who was still alive
5 and I have never returned to the place. I came to the place where
6 I'm living now and since then I did not know who was still alive
7 who dead.

8 Q. And you said that such incidents happened more than ten times.
9 In the other incidents that you said you saw, did you know who
10 those workers were, did you know any of them?

11 A. I did not know the victims, I only saw that that person was
12 killed I did not know who he was.

13 [13.36.19]

14 Q. Maybe something went wrong in translation. I meant the other
15 times that you said saw people collapse because of possible
16 overwork or exhaustion. Those incidents you said you saw do you
17 know who were the workers who collapsed of exhaustion?

18 A. Could you please repeat the question?

19 Q. Before the lunch break, you discussed situation when a worker
20 collapsed and was resuscitated, you also said that this happened
21 more than ten times. The other ten or more times you saw this, do
22 you know who the workers were that were involved in such
23 incidents, who were they that also collapsed?

24 A. I did not know the name, neither did I know the face, I only
25 saw person collapse and I only knew that they were the co-workers

1 over there but I dare not go closer to see the person I only knew
2 that he was the member of the unit and some others whom we asked,
3 the other co-workers who were working over there, I asked what
4 happened to the guy then he said that, that person passed away.

5 [13.38.34]

6 Q. Did you ever speak to people who were involved in trying to
7 save, to rescue these people; did you ever speak to anybody who
8 could say something about what you saw?

9 A. We at that time we asked each other, we actually did not go
10 and talk to the person who fainted but we asked other co-workers
11 what happened to that person and then they told me that he had
12 passed away so we were actually at that time minding our own work
13 so we did not dare to go closer and ask.

14 Q. Let me now move on to the killings that you said you
15 witnessed, if I understand correctly you said you saw it twice.
16 One incident you described, it was one man who was killed. Do you
17 know who this man was?

18 [13.40.14]

19 A. I saw the killing but I did not know who he was and whether or
20 not he was a prisoner and where he was brought from but he was
21 killed in front of the other. After they killed that person, they
22 warned to other workers that everyone had to continue to work
23 hard otherwise our fate would eventually be like the person who
24 was just killed.

25 Q. Where exactly were you when you saw this particular incident

1 of one man being killed? Where were you and where was -- where
2 did the killing take place?

3 A. In my estimation it was about 200 metres away. It was about
4 100 to 200 metres away from the corner of the dam.

5 Q. And was anyone standing next you or were there many people
6 standing next to you who saw the same thing as what you saw?

7 A. Yes all the workers who were working over there witnessed the
8 killing. Those who were nearby -- working nearby, they witnessed
9 the killing.

10 [13.42.21]

11 Q. So would it be fair to say that hundreds of people saw what
12 you saw?

13 A. Again, please.

14 Q. So, is it correct when I say that hundreds of people or maybe
15 even thousands of people saw what you saw, they saw the same
16 thing?

17 A. Yes many people but I do not know whether or not those people
18 are still alive today so I cannot go and ask them but I did
19 witness the killing at that scene.

20 Q. Now let me go to the second time, the second incident, or the
21 second killing rather, that you said you witnessed. Can you
22 describe for me what you saw during the second killing, what did
23 you see?

24 A. For the first and the second killing was similar in the manner
25 they killed the person. They would beat that person to death and

1 then they warned other workers that everyone had to continue
2 working hard, if they could not complete the work they would
3 eventually be killed. So it was in the same pattern when they did
4 it.

5 [13.44.34]

6 Q. So it was again one man, one worker being killed, is that
7 correct?

8 A. Yes that is correct. They killed only one at a time not
9 several people, they killed only one and then they warned us of
10 the consequences if we did not work.

11 Q. And this second incident, this second killing that you said
12 you witnessed, did you know that particular worker, did you know
13 who he was?

14 A. No, I did not know him. I only saw that he was being
15 frogmarched to the place and they were beaten to the death and
16 then they warned to other workers that all of you had to work
17 hard otherwise you would be executed.

18 Q. And this second killing that you said you saw, was this also
19 witnessed by many other workers in the same manner as the other
20 event that you described?

21 A. Well, the second time was the same as the first one and all
22 the workers actually witnessed the killing the second time.

23 [13.46.40]

24 Q. Let me read to you, Mr. Witness, an excerpt from your WRI,
25 your statement E3/7755. Mr. President, that is, 00293004 in

1 English; Khmer, 00279115; and French--

2 MR. PRESIDENT:

3 Counsel Koppe, please read the ERN number again for proper
4 record.

5 MR. KOPPE:

6 Khmer ERN, 00279115; this document is E3/7755, French; 00338221;
7 and English, 00293004. Mr. Witness, this is your statement to the
8 investigators of the Court and you said:

9 "At that time I saw them beat the people; they also killed the
10 people at the site or tied the people's hands at the back and
11 took them away. I personally saw them killing hundreds of people
12 and buried them at the bottom of the dam. I saw them tie the
13 people's feet up in the air with a rope and dropped and lifted
14 them a few times. Most people at the site saw this punishment
15 too. They did not kill them but they wanted to threaten them.
16 They would be killed if they did not learn a lesson."

17 Now let me focus on one particular aspect of your statement, of
18 your WRI, you said that you saw the killings of hundreds of
19 people and today you gave testimony that you saw two separate
20 killings of two separate individuals, is that correct?

21 [13.49.22]

22 MR. PRESIDENT:

23 Mr. Witness, please hold on, the National Lead Co-Lawyer for the
24 civil party, you may proceed.

25 MR. PICH ANG:

1 Mr. President, I would like to clarify this, in Khmer it reads,
2 "I saw they killed people, hundreds of people were killed and
3 they were buried on the bank of the dam." That what it was read
4 in Khmer.

5 MR. PRESIDENT:

6 How does that differ from the statement read by the counsel just
7 now?

8 MR. PICH ANG:

9 Just now through the translation I heard it reads, "I saw people
10 -- hundreds of people were killed at the scene." But in this
11 written record of interview, it reads that, "I saw that person
12 killed at the -- by my own eyes, over there."

13 [13.50.33]

14 MR. PRESIDENT:

15 I do not see any variation Counsel, between the two statements,
16 so witness is now instructed to respond to the last question put
17 by the defence counsel.

18 MR. SOT SOPHAL:

19 A. I say I saw it by my own eyes, because that's what I saw and I
20 responded it. I saw it not at the worksite, construction worksite
21 but when I was living with my parents, I saw many people were
22 killed in other places near Ta Ngel (phonetic) and other places.
23 So I did not say that I saw hundreds of people were killed at the
24 Trapeang Thma worksite but elsewhere.

25 [13.51.34]

1 BY MR. KOPPE:

2 Q. But Mr. Witness, I'm reading from your statement, you're
3 discussing what you saw while working at the dam. You describe
4 the burying of hundreds of people at the bottom of the dam. So my
5 question is when you describe personally seeing killing hundreds
6 of people, are you now saying they were killed somewhere else and
7 not at the dam or weren't they killed at all, what is exactly
8 your testimony?

9 MR. SOT SOPHAL:

10 A. I cannot answer your question. I do not know how to answer it
11 further because I said precisely that I saw only two people who
12 were killed at the construction worksite. But I saw hundreds of
13 other people killed in other places, in the plantations and other
14 places and some were screaming for help. That's what I saw.

15 Q. Ok to be very clear, you never saw hundreds of people being
16 killed and buried at the bottom of the Trapeang Thma Dam, is that
17 correct?

18 [13.53.24]

19 A. No, not these hundreds of people who were buried at the bottom
20 of the dam. I did not see that I only saw two people killed at
21 the Trapeang Thma worksite and then they were buried on the
22 bottom of the dam.

23 Q. Okay. Now you also spoke earlier about militia men who were
24 going around at the dam site beating workers, poking the workers
25 with swords, arresting workers, these people that you described

1 were they the same people who were involved in those two killings
2 that you said you saw?

3 A. The militia who pointed the sword at the workers, they were
4 different from the one who killed the workers and they came in
5 group of three people, one woman and two young men and the woman
6 was armed with a rifle, the younger men they were carrying stick,
7 then they frogmarched the person to the construction worksite and
8 then that person was beaten to death and his body was buried in
9 the bottom of the dam.

10 [13.55.32]

11 Q. If they were not members of that militia that you described,
12 where were they from, were they military or soldiers or cadres
13 from the district maybe or from the commune or from the zone, did
14 you know who they were?

15 A. No, I did not know. I did not know whether or not they were
16 from the village or commune or from the district. I only
17 witnessed the killing and they did the killing.

18 Q. These two incidents that you said you saw, the two killings,
19 did they happen in the time when you heard your group chief speak
20 about orders from Ta Val in other words was Ta Val in charge when
21 you said you saw these killings?

22 A. No, they did not mention anything like that but they only
23 warned other workers that they had to be extra cautious on the
24 work that they were assigned to otherwise their fate would like
25 the person who was just killed. But they did not mention that

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1 they received the order from Ta Val or from, they followed Ta
2 Val's instructions or anybody's instruction, they came, they
3 brought that person, and then they killed and then they left.

4 [13.57.29]

5 Q. My question was probably not clear enough but those two
6 killings, did these happen when Ta Val was still the overall boss
7 of Trapeang Thma Dam worksite, was it at the same time that he
8 was the boss?

9 A. When I was working over there, it was under the overall
10 supervision of Ta Val, but I never met Ta Val and Ta Val did not
11 do the killing, I only saw these militiamen who killed. For the
12 daily militiamen who patrolled the worksite, they did not do the
13 killings, but the militiamen who brought the person to kill at
14 the worksite were different militiamen from other places that I
15 do not know.

16 Q. One last question on these two killings. I heard you also say
17 earlier that many people carried the earth to bury the bodies.
18 What were you referring to when you said these words, "many
19 people carried the earth to bury the bodies"?

20 [13.59.14]

21 A. Because at that time we had to carry the dirt and then we had
22 to dump it there so it was our turn to do the job so we had to
23 carry the earth and then just dump it to build the dam and that
24 was it and that was the instruction we had to follow.

25 Q. So are you saying that the carrying of the earth had nothing

1 to do with the burying of the bodies?

2 A. Now it was the turn that everyone had to carry the earth and
3 then to build the dam so we had to continue to do that and we
4 actually dumped the earth on the corpses over there and everybody
5 did that because it was our duty to carry the earth and build the
6 dam.

7 Q. Let to move to another subject now, that is your unit and your
8 group. I read in your WRI that Roeun was your group leader,
9 Saroeun was your company chairman and Run was your battalion
10 commander, is that correct?

11 A. Roeun at the time, Roeun or Van was the unit's chief; I cannot
12 recall which one is exactly.

13 [14.01.22]

14 Q. Now were Run, Saroeun and Roeun involved in giving
15 instructions to your unit, instructions about quota, instructions
16 about where to start the work, instructions as to how you were
17 working, were those the responsible superiors for you?

18 A. The work plan I received was from either Roeun or Van because
19 he was my direct superior. They were the one who measured the
20 land for us to dig and I did not know from whom they received the
21 work plan or instruction. So allow me to say, I received the work
22 plan from these small cell unit chief.

23 Q. Now if someone in your unit did not work hard enough on a
24 particular day, who was it that would talk to this worker, was
25 Roeun, Saroeun or Run?

1 A. Roeun was my small cell chief who was the one who reduced our
2 food ration for instance and if a ladle of gruel was reduced from
3 my ration then that ladle of gruel would be distributed to the
4 other two members within the group.

5 [14.03.33]

6 Q. Now, these three people were in charge of your smaller unit
7 and the bigger unit that you were in, can you explain to me why
8 it was that they needed the help of militia, militia members to
9 force the workers to work harder, why did they need the help of
10 the militia members who were working there?

11 MR. PRESIDENT:

12 Mr. Witness, please wait and Counsel Pich Ang, you have the
13 floor.

14 MR. PICH ANG:

15 Mr. President, I think the question seems to draw the witness
16 conclusion on the mind of the chief of the small unit which is
17 improper.

18 MR. KOPPE:

19 I'm not asking for conclusion, I'm asking if he knows a reason
20 why apparently Roeun, Saroeun and Run needed the assistance of
21 militia with swords poking the workers, maybe he is privy to any
22 knowledge because its I think unusual what he's describing that's
23 why I would like to know.

24 [14.05.30]

25 MR. PRESIDENT:

1 The objection is overruled and Mr. Witness, please respond to the
2 question.

3 MR. SOT SOPHAL:

4 A. The small unit chief and the group chief gave orders to those
5 militiamen to force us to work harder because they apparently
6 received the orders from the upper echelon or from Angkar and
7 they imposed those instructions upon us.

8 BY MR. KOPPE:

9 Q. Did you ever see Roeun, Saroeun or Run directly giving orders
10 to those militia members?

11 MR. SOT SOPHAL:

12 A. No I did not.

13 [14.06.40]

14 Q. You also said that, in your WRI, that "we were not allowed to
15 rest during working hours". Is that correct, is that what
16 happened, you were not allowed to rest during working hours?

17 A. Please repeat your question, I don't fully get it.

18 Q. In your statement to the investigators you said that you were
19 not allowed to rest during working hours, is that correct and if
20 yes, who instructed -- who gave that instruction?

21 A. It was the group chief who instructed us not to rest.

22 Q. And if that happened anyway, who was then instructing the
23 particular worker to stand up and go work again?

24 A. Again it was the group chief.

25 Q. Did it also happen that it was one of those militia members

1 who said to one of the workers to stand up and go working again?

2 A. No, it was not the militiamen, it was the group chief and the
3 small unit chief who didn't allow us to rest because the
4 militiamen only came to poke the workers to work harder and they
5 were not with us all the time but the group chief and the small
6 unit chief were present there to monitor how we worked. They
7 always pushed us to work harder.

8 [14.09.28]

9 Q. My last question now, Mr. Witness. In your WRI, the very first
10 question, you said the following: "Five months after liberation
11 in 1975, my family and I were evacuated to Svay. At that time
12 they had us study because we were children later on we were not
13 allowed to study after we had grown up." Do you remember saying
14 this to the investigators?

15 A. Yes, that is my statement. However, there was no proper
16 schools, we were studied in the village under the tree, and we
17 studied for a day and we stopped for four or five days until we
18 started again and sometimes we only studied for an hour or so for
19 that study session and for the rest of the time we were assigned
20 to gather "kantreang khet" trees to make fertiliser. There was no
21 textbook or book and what we learnt was to cut the tree leaves or
22 to break the termite mount.

23 Q. Is it correct if say, Mr. Witness, that in 1975, you were 11
24 years old?

25 [14.11.24]

1 A. I forget, I cannot recall how old I was at the time whether I
2 was 12 years old or 14 years old.

3 Q. Do you remember going to school when you were four years old
4 or five years old or maybe six years old, did you go to school
5 before 1975?

6 A. No, I did not. Before 1975, I was living in the forest with my
7 parents and it was the war time. Usually my parents would have
8 stayed in the trench to avoid the aerial bombardment.

9 MR. KOPPE:

10 Thank you, Mr. President. Thank you, Mr. Witness.

11 MR. PRESIDENT:

12 Thank you. The floor is now given to the defence team for Khieu
13 Samphan to put the questions to this witness and you may proceed.

14 [14.13.00]

15 QUESTIONING BY MS. GUISSÉ:

16 Thank you, Mr. President. Good after Mr Sot Sophal. I am Anta
17 Guissé and I am the international co-counsel for Khieu Samphan
18 and I have few questions to put to you for clarification. I don't
19 have many questions but my colleague will have some extra
20 questions. So, I would like to get back to the period during
21 which you worked at the Trapeang Thma Dam, you said that you do
22 not exactly remember how old you were when you started and in
23 fact you said that you did not know when you were born but you
24 did tell the President that you were born in 1964 because -- and
25 you remember that date because that is what your parents told

1 you. So did I understand your testimony properly, were you indeed
2 born in 1964?

3 [14.14.06]

4 MR. SOT SOPHAL:

5 A. Yes, I recall it clearly that I was born in 1964, because
6 after the liberation we had to register ourselves and my father
7 told me to recite that I was born in 1964 and that's how I remember
8 it. I refer to the time that the country was liberated by the
9 Vietnamese troops and from that day onward I remember that I was
10 born in 1964. So later on every time I had to provide my year of
11 birth I used the year of 1964 but I do not know my real age or
12 actually how I can deduct the current year against the year that
13 I was born that is year of 1964 as my father told me.

14 Q. Thank you for this clarification, Witness, and please do not
15 be concerned, based on that indication we would be able to
16 calculate it ourselves. So on the basis of the element that you
17 provided to us, I conclude that in 1975, you were 11 years old
18 and especially, I believe you said, but please correct me if I am
19 wrong, but you said you started working in the unit of teenagers
20 of 14 to 18 and you said that you started working at the age of
21 14. You said that you joined the children's unit at the age of
22 14, did I understand your testimony properly?

23 A. As I said my parents told me that I was 14 years old so I
24 remember it, that I was 14 years old at the time. Even if my age
25 was 11 or 12 years old but when I was asked how old I was I

1 recalled what my father told me and I told people that I was 14
2 years old.

3 Q. Do you remember how much time after having joined the
4 children's unit, how much time after that did you start working
5 at the Trapeang Thma Dam, was it right afterwards or did some
6 time go by, do you remember?

7 [14.17.06]

8 A. I do not recall how many months after but I spent pretty,
9 quite -- I spent several months cutting the "kantreang khet" tree
10 leaves. Then the Angkar representative came to ask my mother how
11 old I was and she told them, I don't know, maybe she told them
12 that I was 12 or 13 years old, then that Angkar listed down on a
13 piece of paper about my age and later on I was gathered to go.

14 Q. I don't understand very well, you said that you were 14 years
15 old back then and it is your parents who told you that you were
16 14 years old and now I understand from your answer that maybe
17 your mother said you were of another age. So were you told to say
18 that you were 14 years old when you joined the children's unit,
19 were you told to say that that was your age?

20 [14.18.35]

21 A. They did not ask about my age at my unit, they asked my
22 parents, actually my mother, how old I was and my mother told
23 Angkar that I was 12 years old or maybe 14 years old, I only
24 heard about it and I recall that age and I cannot recall it
25 exactly whether I was 12 or 14 years old and that's the only few

1 words that I can recall at the time.

2 Q. That's not a problem. So I will continue with Trapeang Thma.

3 When you were answering the questions of Judge Fenz, you said

4 that even if you didn't remember exactly how long you remained at

5 the dam, you said, however, that you had worked there during the

6 dry season because during the rainy season you were not asked to

7 dig canals. So my first question is, can you tell the Chamber how

8 much time does the dry season last from which month to which

9 month, if you know, as of when during the year can we start

10 speaking about the dry season?

11 A. I do not know when the dry season started. From my

12 recollection, the dry season started when it's no longer raining

13 and that was the time that I was reassigned and actually when it

14 stopped raining, our children's unit was asked to work on the

15 rice field that was the transplantation period of the year.

16 [14.20.55]

17 Q. You said, when you answered the Deputy Co-Prosecutor regarding

18 the place where you worked at the Trapeang Thma Dam, you said

19 that you were on the east side, at the eastern corner facing

20 west. So my question is do you remember what was the name of the

21 closest village to where you were working so that I can have a

22 better understanding of the location where you were working, do

23 you remember the name of the village that was the closest to

24 where you were working at the dam?

25 A. During the time that I was working there, there was a village

1 called Trapeang Thma it was in Phnum Srok district and there was
2 another village called Snuol if my recollection is correct. So it
3 is either one of these, Trapeang Thma or Snuol which was the
4 closest village to where the dam was being built.

5 [14.22.13]

6 Q. Thank you for this clarification. You said that you were being
7 watched when you were working at Trapeang Thma, you said to my
8 colleague, that those who would watch over you or the person who
9 did that was often your unit chief and you also spoke about
10 militia men. More specifically you said, today when you were
11 answering questions, that there was another unit that was working
12 next to you and that sometimes in order to warn each other that
13 the militiamen were coming you would throw stones at each other.
14 So my question is the following, must I understand that the
15 militiamen were not permanently there and that is why you could
16 warn each other that the militiamen were arriving?

17 A. Yes, that is correct.

18 Q. So does this mean that they didn't come every day?

19 A. They came every day but they did not walk to our area every
20 hour. Usually they would walk passing our area and maybe heading
21 to the west side and maybe they reappeared in another half an
22 hour.

23 Q. And I understood from your testimony that a woman was the
24 chief of these militiamen and she had a small weapon and you
25 spoke about two to three other militiamen, so was it always the

1 same militiamen who would watch over you at the worksite, was it
2 always the same soldiers or the same militiamen, if you remember?

3 [14.24.55]

4 A. No, they were not the same, they were on rotation basis.

5 Sometimes I saw different militiamen. As for the young
6 militiamen, they were constantly there, however for the woman,
7 the woman came rotated, however they carried the same weapon, I
8 do not recognise the make or the model and I don't see its use at
9 present time.

10 Q. So when you say that there was a rotation, was it the rotation
11 of the group chief and you said that the other militiamen were
12 always the same, is that what I must understand?

13 A. Yes, the militiamen who carried sword were the same but for
14 the woman, the woman was changed rather constantly. Sometimes I
15 saw her for two days then disappeared and sometimes I only saw
16 her for one day then a new face came.

17 [14.26.17]

18 Q. And you said that there were three young men militiamen, so
19 were there always three of them, always the same three?

20 A. They came in a group of three persons however the woman was
21 replaced by another woman on rotation basis but the militiamen
22 remained the same. Every two or three days another woman would
23 replace the one that I saw but the young militiamen remained on
24 site despite the changes of the woman.

25 Q. You said that there were many of you in your unit, so did you

1 all come from the same village or from the same commune, do you
2 know that?

3 A. The children's unit came from the same village and commune,
4 however allow me to stress that they did not come from their
5 native villages. Those children might have come from other
6 villages but it happened that there were in the same village or
7 commune and then they were put in this children's unit for that
8 reason I did not know many of them since some of the children
9 belonged to the New People group.

10 [14.28.14]

11 Q. The militiamen you saw on a daily basis, do you know if they
12 came from that same village?

13 A. They were from the same children's unit and they were promoted
14 to be part of the militia group.

15 Q. You said that you do not know if there were hospitals in the
16 vicinity of the Trapeang Thma Dam, so did I understand your
17 testimony properly?

18 A. Yes, I said that there was no hospital because I myself never
19 saw one and patients were treated on site and when we asked for
20 medicines actually we asked from the group chief and then the
21 group chief would give us the medicine and despite, there were
22 all kinds of illnesses, we received the same pellets. So we
23 usually asked for medicine from the group chief and for example I
24 have an upset stomach and I would ask for pellets and the same
25 pallet was given to me as that given to the other workers who

1 were sick from other diseases.

2 Q. Mr. Witness, I am putting this question to you because we have
3 heard many witnesses who also worked on the Trapeang Thma Dam
4 worksite testify here and some of them talked about hospitals and
5 to refresh your memory, I'm referring to the transcript of the
6 hearing of the 17th August 2015, shortly before 14.23. That
7 witness explained that each unit had a healthcare worker and if
8 any worker was seriously ill, that person would be sent to the
9 Trapeang Thma pagoda hospital. My question to you is whether you
10 heard of the hospital of the Trapeang Thma pagoda?

11 A. No, I never heard from anybody about the hospital. If we were
12 sick, then our unit chief would give us the medicine. If for
13 example, I was sick, I had stomach ache or so, I would ask my
14 unit chief and then they would give me something, a few pills to
15 take and then I would go to rest. Generally after I took the
16 pill, I rested for about five minutes or so and then I resumed
17 work again.

18 Q. Mr. Witness, I am running out of time and I'm trying to put
19 very specific questions to you. I have heard your testimony you
20 have already given the same answer before, may I request you to
21 focus on my questions and give me the answers I am expecting of
22 you so that we may make progress. Another witness, Yi Laisov, at
23 the 20th August 2015 hearing, referred to a hospital that was
24 shortly before 11.17 and he stated that he was sent to Paoy Char
25 hospital, have you ever heard of that hospital?

1 [14.33.05]

2 A. It's the same answer. I never heard anybody mention about
3 hospital. I never heard of it at all. Whenever I was sick, I only
4 go to see my unit chief, I never go the hospital or to the doctor
5 asking for medicine, I never saw hospital, I never saw any
6 doctor, whenever I was sick I only approached my unit chief. My
7 unit chief might have known the doctors but for me I never knew
8 any doctor at all.

9 Q. I'll go back to what you said a while ago, you gave more
10 details as to where you were when you worked at the Trapeang Thma
11 Dam worksite. Are you still standing by your statement that you
12 were aware of what was done there based on the instructions that
13 were given to you and as to what happened elsewhere you did not
14 know.

15 A. Yes.

16 [14.34.45]

17 MS. GUISSÉ:

18 Thank you for this clarification, Mr. Witness. I will not bother
19 you any further and I'll now give the floor to my colleague Kong
20 Sam Onn.

21 MR. PRESIDENT:

22 Thank you. Now Counsel Kong Sam Onn, you have the floor.

23 QUESTIONING BY MR. KONG SAM ONN:

24 Thank you, Mr. President, and good afternoon, Your Honours. Good
25 afternoon, Mr. Witness. I have only a very few questions. In your

1 clarification earlier you mentioned that in your unit you would
2 have other unit battalion or platoon or company chiefs and
3 others. You said that you did not know the name of the platoon
4 chief or the company chief. I would like to ask you about this
5 issue; when they divided up the groups into smaller units, were
6 the unit chief children as well or they were adults?

7 MR. SOT SOPHAL:

8 A. For the unit chief, they were also juveniles but they were
9 rather older than others -- than the rest of the unit and that
10 person was the eldest in the team and then they have strong built
11 and height, that person would be assigned as the unit chief.

12 [14.36.34]

13 Q. Do you refer to the height of the person then somebody was the
14 tallest one then that person would be assigned to be the unit
15 chief?

16 A. I refer to the height as well as the physical build of the
17 person.

18 Q. Thank you. Now I would like to talk about the company. Do you
19 know whether or not there was any code number assigned to the
20 companies or so, that you were associated then?

21 A. I do not recall. I do not recall the code numbers or the
22 company's or platoon numbers or unit numbers, it has been so many
23 years I have forgotten it all.

24 Q. Thank you. You told the Court this morning about the unit
25 chief, you said that the unit chief did not work, they only

1 supervised the workers, particularly they would alert all the
2 workers to go on with the work. Besides this duty what else do
3 you know about the role of the unit chief, what else did he do?
4 [14.38.31]

5 A. Well, his role was to inspect and observe all the workers
6 performance for the day.

7 Q. About the group chief, you said that when you were sick you
8 would approach the group chief in order to obtain some medicine
9 do you happen to know where the group chief got the medicine
10 from.

11 A. I informed the group chief that I had stomach ache or I got
12 diarrhoea and then the group chief would ask -- report it to the
13 unit chief. I asked two or three times and then they would give
14 the medicine. Generally the unit chief would give it to the group
15 chief and then the group chief would give it to me but as for
16 where -- from where the medicine was obtained, I did not know.

17 Q. Thank you. I have one point, I would like your clarification,
18 you said that you never met Ta Val in person but at other times
19 you said that even toward the later day when you were at the
20 worksite, even digging a pond it bared the name of Ta Val. And
21 you said that Ta Val was the supervisor of the worksite for the
22 entire period until the liberation of -- I would like to ask you
23 to inform the Court as to how you got to know the name of Ta Val?
24 [14.40.51]

25 A. I heard by the word of mouth from one person to another. I

1 heard from others that -- one day people told me that tomorrow,
2 Ta Val would come to preside over the construction site before we
3 started to dig the pond. So, I never saw Ta Val, I only saw the
4 platoon chief or the unit chief or the group chief came to the
5 worksite. I never saw Ta Val, I had no idea what he looked like,
6 I only met the platoon chief, the company chief or the unit
7 chief, they were close, they worked very closely with us on a day
8 to day basis.

9 Q. Thank you. You mentioned about digging Ta Val pond, do you
10 recall the date, the precise date when the pond was dug?

11 A. As to the date I do not recall at all but if I can recollect,
12 I can only recall the location of the pond.

13 Q. So can you tell the Court the location of the pond?

14 A. If I am not mistaken, the location of this pond is towards the
15 west of the red hall or "sala kraham".

16 [14.42.59]

17 Q. Can you be a bit more precise on the whereabouts of the sala
18 kraham?

19 A. Sala kraham was located in Serei Saophoan district currently
20 it is in Banteay Meanchey province.

21 Q. Was it located close to the district office?

22 A. No, it was not really close to the district office.

23 Q. Could you tell the Court the distance from between the sala
24 kraham and Banteay Meanchey provincial town?

25 A. I have no idea how many kilometres from each other but it was

1 rather far.

2 Q. Did it go between districts or communes?

3 A. No, at that location it was not somewhere near the district
4 office it's quite far and that pond was on the south of the route
5 but as for the distance I have no idea, I cannot guess I do not
6 know how far it is.

7 Q. Can you tell the Court the distance from the pond to the
8 Trapeang Thma worksite, how far was it from the pond and the
9 Trapeang Thma Dam?

10 [14.45.05]

11 A. It's really far, I don't know how many kilometres. Trapeang
12 Thma was in Preah Netr Preah district and Ta Val pond was in
13 Serei Saophoan district and it was towards the west of the
14 district office and between those two places I have no idea how
15 many kilometres away from each other.

16 Q. Could you tell if it is farther than 50 kilometres or closer
17 than 50 kilometres?

18 A. I really have no idea. I just know that it is very far but as
19 to how many kilometres precisely I do not know I have no idea I
20 only know that it is far from each other.

21 Q. Thank you. I would like to now discuss the time when you were
22 working at the Trapeang Thma worksite. When Judge Fenz asked you
23 about the duration when you were working at the Trapeang Thma
24 worksite, you did not give a precise answer as to how long you
25 worked there but you said that you worked for one season and you

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1 also said that it was the dry season when you were working there
2 and during the rainy season you were asked to work in the rice
3 field carrying seedling. So there was question about the precise
4 months and time period when you were working there and you said
5 you cannot recollect. But I would like to ask you further on any
6 circumstance when you can recall from the starting to the ending
7 period of one dry season during which you were working at the
8 Trapeang Thma. Did you -- do you recall any circumstance that may
9 ring a bell of what you did at the time?

10 [14.47.30]

11 A. I only recall that at that time it was dry season. Dry season
12 means there was no rain so I can only recall that, as for the
13 date I do not recall.

14 Q. I understand that you do not recall the exact date but just in
15 case you remember any incidents or any circumstance which you can
16 recall the event but if you do not recall it just tell me so I do
17 not want to dwell on this topic anyway.

18 A. No, I do not recall.

19 MR. KONG SAM ONN:

20 Thank you. Thank you, Mr. Witness. And Mr. President, I have no
21 further questions.

22 [14.48.24]

23 MR. PRESIDENT:

24 Thank you. Now the hearing of the witness Sot Sophal is coming to
25 an end. Mr. Sophal, thank you very much for spending time to

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1 testify before the Court in your capacity as a witness before the
2 Chamber for the last two days. Of course your testimony will
3 contribute significantly to ascertaining the truth before this
4 Chamber so you are now released. You can go back home or to any
5 destination you wish to go. I wish you all the best of luck.
6 Court officer is now instructed to assist the witness to return
7 back home or to any destination where he wishes to go.
8 Now the Chamber would like to adjourn for the afternoon break
9 until 3 p.m. The Chamber will resume at 3 p.m. and we will hear
10 the submission by Parties on certain issues as well as the
11 request by the defence team for Khieu Samphan.
12 The Court is now adjourned.
13 (Court recesses from 1449H to 1506H)
14 MR. PRESIDENT:
15 Please be seated. The Court is now back in session.
16 Per email sent to the Parties by the senior legal officer on the
17 25th, 28th and 30th September 2015, that this afternoon the Trial
18 Chamber will hear observations and submissions by Parties on
19 three issues. The first is the request by the defence team for
20 Nuon Chea for the Chamber to hear an additional witness in
21 relation to Trapeang Thma Dam work site, and that is pursuant to
22 Rule 87.4 of the Internal Rules. I refer to document E368.
23 And the second issue for discussion this afternoon is the
24 observations from all Parties in relation to the letter by the
25 International Co-Investigating Judge regarding the proceeding to

1 hear testimony of an expert -- that is, 2-TCE-95, before the
2 Trial Chamber. That is document E367/1.

3 [15]

4 And the third item is the disclosure of 11 documents from Case
5 004 to Case 002/02 by the International Co-Investigating --
6 International Co-Prosecutor in relation to the treatment of Cham.
7 That is document E319/33.

8 Additionally, we'll hear the submission by the Khieu Samphan
9 defence team regarding certain matters.

10 Let me now move on to the first item for our discussion this
11 afternoon, and the Chamber would like to ask the Parties whether
12 they wish to make their observation regarding the request by the
13 defence team for Nuon Chea. And in order to clarify the matter,
14 the Chamber would like to hand the floor to the defence team for
15 Nuon Chea, to provide a brief summary of your request to hear an
16 additional witness in relation to the Trapeang Thma Dam work
17 site. You can proceed, Counsel.

18 [15.08.55]

19 MR. KOPPE:

20 Thank you, Mr. President. I don't think I have actually that much
21 to add to our request. I think it is argued why this particular
22 witness is necessary to hear in relation to Trapeang Thma Dam. I
23 think he can potentially provide very interesting evidence as to
24 structures, etc., at the dam, but of course also in relation to
25 possible events in the Northwest Zone in more general terms. You

1 know that we have confronted certain witnesses already with his
2 testimony, so I think this particular witness is an important
3 witness and should come to the courtroom to testify. So I think
4 all our arguments are in here, so I have nothing really to add
5 specifically. Thank you.

6 MR. PRESIDENT:

7 Thank you, Counsel. And the Chamber would like to give the floor
8 to the Co-Prosecutors to make your observation or response to the
9 request by the defence team for Nuon Chea on this said topic. You
10 may proceed.

11 MR. FARR:

12 Thank you, Mr. President. I think I can be very brief. The
13 Prosecution does not oppose the defence request to hear this
14 additional witness, given the fact that his WRI and his DC-Cam
15 statement are both already before the Chamber, and given the fact
16 that they've been used with a number of witnesses. We think it's
17 a reasonable request. We think that the -- perhaps the Defence's
18 primary point is the witness's evidence regarding what they would
19 characterize as a planned rebellion. In our submission, the
20 written evidence that's now before the Chamber is ambiguous and
21 incomplete in that regard, and for that reason, we submit that it
22 would be reasonable to call the additional witness.

23 I would just add that we don't agree with the Defence's
24 characterization of his evidence on the conditions at the dam as
25 being exculpatory. We would submit that the excerpts of his

1 evidence they've selected are very narrow, and don't accurately
2 portray the whole of his evidence, and that his evidence
3 regarding the conditions will ultimately be inculpatory. But I
4 also believe that's a conversation that we can have at another
5 time. So in short, Your Honour, we don't oppose the Defence's
6 motion.

7 [15.11.52]

8 MR. PRESIDENT:

9 Thank you. And the Lead Co-Lawyers for civil parties, do you wish
10 to make an observation?

11 MR. PICH ANG:

12 Mr. President, the Lead Co-Lawyers do not have any observation or
13 oppose this request. Thank you.

14 MR. PRESIDENT:

15 And I believe the defence team for Khieu Samphan does not have
16 any objection to the request. If you have any, please take the
17 floor.

18 MS. GUISSÉ:

19 No, Mr. President, we will rely on the Chamber's wisdom.

20 MR. PRESIDENT:

21 Thank you, thank you. And let me move to the second issue, that
22 is, in relation to the content of the letter by the International
23 Co-Investigating Judge. And before we decide whether or how the
24 hearing of the testimony of the expert, 2-TCE-95 is to be
25 organized, the Chamber wishes to hear opinions from the concerned

1 Parties. First, the Chamber would like to hand the floor to the
2 Co-Prosecutors. You may proceed.

3 [15.13.16]

4 MR. KOUMJIAN:

5 Thank you, Your Honours. Good afternoon to everyone.

6 Your Honour, the Co-Prosecutors have read the letter from the
7 International Co-Investigating Judge. We believe his request to
8 have a legal officer present is reasonable. We understand that
9 investigations are confidential, not by his discretionary
10 decision, but by law at the ECCC. I would say, though, that I
11 don't anticipate that there should be a great problem with any
12 disclosures of confidential information. I do not -- the
13 Prosecution does not plan to ask the expert about what people
14 said to OCIJ. Those records of interview are on the Case file
15 already, the relevant ones, and they speak for themselves. We
16 will be asking the expert questions regarding the Cham and what
17 happened to them, based on his work. He has written two books. He
18 clearly has made many, many, many interviews outside of his work
19 for the OCIJ.

20 [15.14.39]

21 But I do think it's reasonable, the concern of the International
22 Co-Investigating Judge, and because his concerns are reasonable,
23 it would be advantageous -- I believe, but up to Your Honours --
24 to have a legal officer from that Chamber present, to bring to
25 Your Honours' attentions any concerns they have about disclosing

1 confidential information.

2 MR. PRESIDENT:

3 Thank you. And the Lead Co-Lawyers for civil parties, you wish to
4 make any observation or to give your opinion on the content of
5 the letter of the International Co-Investigating Judge?

6 MS. GUIRAUD:

7 Thank you, Mr. President. We have no specific observations to
8 make with regard to that letter, which we have read. So we will
9 rely on the Chamber's wisdom regarding that issue.

10 [15.15.40]

11 MR. PRESIDENT:

12 Thank you. And the defence team for Nuon Chea, do you wish to
13 make an observation regarding the content of that letter, that
14 is, in relation to the hearing of the testimony of 2-TCE-95 in
15 the very near future? That is, in relation to this case.

16 MR. KOPPE:

17 Yes, thank you, Mr. President. I'm not -- we're not convinced yet
18 that it is quite as simple as the Prosecution is describing. Let
19 me first say, of course, there are confidentiality issues in Case
20 004. There is no dispute or discussion, I think, there. However,
21 Mr. Osman is primarily here to come and testify as an expert --
22 that is, a personal obligation of him to the Court. And it's up
23 to him, first of all, to decide whether he, when answering any
24 questions, is violating certain procedural rules, or certain
25 confidentiality issues in the investigation.

1 [15.17.09]

2 So, I think all Parties should be able to ask all the questions
3 they would like to ask. It is then up to Mr. Osman to decide
4 whether answering any such question would bring -- would bring
5 him into problems. And then it's up to you to decide whether he
6 in a particular instance can indeed decline to answer. So it is
7 there that potential problems might arise, obviously not in the
8 questions that we are asking.

9 Let me give you an example. Obviously in our case, in this Trial
10 we're talking about events in -- at Wat Au Trakuon, Wat Au
11 Trakuon, the pagoda. We all know that this particular pagoda is
12 part of the investigation of Case 004. If I would ask him in
13 general terms about what he knows of, for instance, the command
14 structure at Wat Au Trakuon, he would potentially get into
15 problems, because this very same topic is being investigated
16 right now. So, in theory it might not seem problematic, but in
17 practice we could enter quickly a situation where there's all
18 kinds of debates coming as to whether his answers are bound by,
19 or ruled by, the confidentiality restrictions or not.

20 [15.19.10]

21 So, the problem is that we are both dealing with the same
22 investigations, or at least partially, that are being done in
23 Case 004. So, I think that should be resolved per question, but
24 I'm not quite sure how in this very simple example things would
25 go, because strictly speaking, he could answer, "Well, I cannot

1 say anything about that." Because technically he would be right,
2 because that is part of Case 004. But if it's such a broad
3 formulation, then it will possibly end up in him not giving any
4 answers, for instance, about what happened in Sector 41, or more
5 particularly, in Wat Au Trakuon.

6 In respect of -- in respect of the question whether someone
7 should be sitting next to him, that is, I think, also not without
8 problems. I think there is some comparable case law at the ICTY,
9 in which in the appeal proceedings, I think it was in the
10 Milosevic case, where two government officials were present in
11 the courtroom while a witness was -- while a witness was
12 answering questions. The Appeals Chamber ruled that, although
13 there was no provision to do this, the Trial Chamber at the time
14 was allowed to have government officials in the courtroom.

15 [15.21.21]

16 But I don't think these government officials were allowed to
17 intervene with the particular witness. They couldn't coach him,
18 or they couldn't say that one question or the other question
19 could be answered, yes or no. Having said that, the question then
20 arises whether Ms. Ewing, who is I understand a legal officer, is
21 the one who should be entitled to be present and possibly assist
22 the expert. In my own jurisdiction, that would be typically --
23 excuse me -- a lawyer representing the witness, who could advise
24 the witness whether certain questions should be answered, yes or
25 no. I don't think -- or maybe that is the case, but I'd be happy

1 to hear that -- whether Ms. Ewing is in fact admitted to the
2 Cambodian bar, and allowed to advise the expert. I think that is
3 something that we should find out. And the expert is sitting here
4 in his personal title, and therefore I think if assisted by
5 someone in the courtroom, it should be a lawyer allowed to
6 practice in the Courts of Cambodia.

7 So, I think in theory it might not be problematic, but in
8 practice it could be problematic. So I think we should have a
9 debate on how exactly we should proceed with the expert,
10 especially when it comes to issues in relation to Sector 41 or
11 Wat Au Trakuon. Thank you.

12 [15.23.43]

13 MS. GUISSÉ:

14 Thank you, Mr. President. As far as we are concerned in the Khieu
15 Samphan defence, there are two issues. So we understand the
16 confidential nature of the investigation and the process, and at
17 the same time, if the expert 2-TCE-95 was called by the Chamber
18 as an expert, is that the Chamber believes that he has useful
19 information regarding facts concerning the proceedings. And for
20 Khieu Samphan as an Accused person, these facts should be debated
21 publicly without going into in camera, which is something
22 exceptional.

23 [15.24.45]

24 Now, regarding the interviews of this expert with a certain
25 number of witnesses who testified before this Chamber, there's no

1 problem because all these interviews are part of the case file.
2 Now regarding the answers to other questions, such as what my
3 colleague brought up in a more generic way, if the person is an
4 expert, and if we consider that he has the level of an expert, he
5 should on his own, without the assistance of anyone be able to
6 determine what he is able to say, or not to say. We are not
7 referring here to any ordinary witness. If the Chamber deemed
8 that it's necessary to call him as an expert -- and I'd like to
9 remind you that the Khieu Samphan defence was anticipating these
10 problems, and did not want him to testify as an expert, but okay,
11 the Chamber's decision was taken, so in that case he has to be
12 treated as any expert. And therefore he should independently
13 answer the questions without holding him by the hand, of course
14 by respecting his confidentiality obligations if he is subjected
15 to any.

16 [15.26.03]

17 So, as an expert, I believe, I don't think he needs to be
18 assisted. So having someone from the OCIJ in the room, in the
19 courtroom, to follow more completely the proceedings is not a
20 problem for us. But having this person intervene, and having this
21 person suggest to the expert to answer in one way or the other
22 does not seem appropriate in a legal proceeding. So that is the
23 Khieu Samphan defence's position. So if he's coming as an expert,
24 then he should testify as an expert, answering to the best of his
25 knowledge. Of course, we're going to -- while respecting of

1 course his professional obligations. So this is how we understand
2 the way this hearing should be organized.

3 So, what we are interested in is what is in the Case file 002/02
4 regarding the facts that Khieu Samphan is being accused of. And
5 we hope to include other elements because we're referring here to
6 elements which he was a Party to the Investigation of.

7 So we have other observations to make regarding the expert. I
8 don't know if, Mr. President, you want me to make these
9 observations now so that the Party may respond? Or do you want
10 first to ask questions regarding what we have just said?

11 [15.28.04]

12 MR. PRESIDENT:

13 Let me solve these issues one at a time. And Judge Fenz, you have
14 the floor.

15 JUDGE FENZ:

16 I just want to make one comment. I don't expect the Parties here
17 to answer this question, but for me, frankly, it's not completely
18 clear. If one reads the request, point A, it would appear that
19 the Investigating Judge says he cannot be asked any questions
20 gathered during or for investigation under any circumstances. So,
21 no matter whether it's closed or open session, completely closed.
22 While if one reads the paragraph above, it appears to indicate
23 that it might be possible to ask him these questions in closed
24 session, because it says: "If this will take place in open court,
25 he will not be at liberty to disclose." So, I think we might have

1 to clarify, actually, what that means. Does he want to preclude
2 any information under any circumstances that he considers
3 confidential? Or would he agree to such information being given
4 in closed court?

5 [15.29.25]

6 MR. KOUMJIAN:

7 Your Honour, I believe -- it's my understanding of the letter
8 that the defence seems to be misconstruing what Judge Bohlander
9 is asking the legal officer to do. It is not to represent Ysa
10 Osman, the witness. It is to represent his office in making sure
11 that confidential information from that investigation is not
12 disclosed. Counsel's indicated that some complex issues could
13 arise from his questioning about what can and cannot be
14 disclosed. I don't believe Mr. -- the witness is a lawyer
15 himself, and the Judge in charge of the investigation has asked
16 to have a lawyer from his office represent his office, not the
17 witness. Clearly, it would be improper for any legal officer
18 representing the Judge to tell the witness how to answer a
19 question. That would be wrong. Not to give them information about
20 how to answer, but she should be allowed to advise the Court,
21 Your Honours, about what types of questions would lead to
22 violations of the confidentiality required in those
23 investigations, or to confer, I believe, with the witness to
24 determine if his answer would reveal confidential information,
25 and then instruct him whether -- or tell Your Honours whether or

1 not he is permitted to give that answer. Again, he's not
2 representing -- or the legal officer would not be representing
3 the witness. They're representing the Office of the
4 Co-Investigating Judges.

5 [15.31.10]

6 MR. KOPPE:

7 If I may respond, quickly, Mr. President? In this courtroom, in
8 Case 002, the International Co-Investigating Judge has no status.
9 He is no Party. He is someone, of course, that we're dealing with
10 because of the statements that he is disclosing to us, but as
11 such, his office has no standing in this courtroom. Following
12 from that, any legal officer from his office has no status in
13 this courtroom. Only lawyers, like for instance lawyers advising
14 witnesses not to answer questions if that could incriminate
15 themselves -- the witnesses. These are Parties or functionaries
16 who actually have proper standing in this Court. A legal officer
17 representing an organ which doesn't have any standing in this
18 Court, I don't think is a proper way of proceeding.

19 If I read the brief -- the letter from the International
20 Co-Investigating Judge, it says: "Should any questions arise
21 regarding the proper scope of his testimony, this will permit him
22 -- the expert -- to consult her, the legal officer, in the
23 presence of the Trial Chamber and the Parties." So, not being his
24 lawyer would cause a very unusual situation, I think. A
25 representative, or the office itself, have no proper standing in

1 Case 002, so that's why I think we should be very precise in this
2 respect, and if you were to decide that a legal officer has a
3 function, or can function in this Court, we should be very clear
4 as to what her position is. So, I do think it is problematic.

5 [15.33.45]

6 MS. GUISSÉ:

7 I would like to clarify something. To say that, apart from the
8 submissions I've made, the Khieu Samphan defence would like to
9 remind the Chamber that the decision E319/7 as to the manner in
10 which documents from an ongoing investigation should be used,
11 should also be applicable to the Parties. I can go into details
12 in public session as to how we can proceed. This Chamber has
13 already set out a procedure for the use of documents from
14 investigations. I suppose that the same measures should be
15 applicable to the questions that will be put to the expert.

16 [15.34.44]

17 MS. GUIRAUD:

18 Thank you, Mr. President. I would like to make a brief remark.

19 MR. PRESIDENT:

20 Please, please hold on. Let's finish on the defence team. Counsel
21 Kong Sam Onn, you may proceed.

22 MR. KONG SAM ONN:

23 Thank you, Mr. President. I would like to draw the Chamber's
24 attention, and the Parties' attention, to the request made by the
25 International Co-Investigating Judge. I understand the endeavour

1 of the Investigating Judge to maintain confidentiality of the
2 other future cases, other than Case 002/02. I would like to draw
3 the attention of the Chamber to consider the publicity of the
4 proceedings of this Court in balance of the right of my client,
5 as well as the other Accused in Case 002/02, because we have the
6 proceeding, the protective measures, on the documents in Case 003
7 and 004, and how to proceed to maintain confidentiality of the
8 cases.

9 So, if there is any restriction in any manner, when such
10 restrictions -- or that material restriction may affect the
11 interests of my client. So it does not oblige us to follow the
12 respect of confidentiality that may run in contradiction to the
13 interests of my client, because we are here to represent the
14 interests of our client. So, if there is any dispute, which the
15 Investigating Judge has warned that we not raise any questions
16 that might affect the interests of my client, that will hinder
17 the ability of the defence to represent the interests of our
18 client. There is no law to restrict the Accused to abandon their
19 -- their legal interests in order to safeguard the
20 confidentiality of something else.

21 [15.37.33]

22 MR. PRESIDENT:

23 International Lead Co-Lawyer for the civil parties, you may
24 proceed.

25 MS. GUIRAUD:

1 Thank you, Mr. President. The rule that I consider important is
2 Rule 56 of the Internal Rules, which provides that investigations
3 are confidential, and that all persons participating in such
4 investigations should observe confidentiality. So each person
5 participating in investigations is therefore under a duty not to
6 reveal any confidential information. So I agree with the Defence
7 Counsel that it is up to Ysa Osman to know what information comes
8 under the category of confidential information which he cannot
9 reveal. So as far as I'm concerned, there are two solutions open
10 to the Chamber: either Ysa Osman is assisted by counsel, who will
11 advise him on the scope of his duty of confidentiality and his
12 contract before the OCIJ, and also to have a legal officer who
13 will appear to represent the interests of the office of
14 Co-Investigating Judges. That would be proper. As for Mr. Ysa
15 Osman, he is under a duty to observe strict confidentiality, and
16 it is his duty to define the parameters of his confidentiality.

17 [15.39.02]

18 MR. KOUMJIAN:

19 What Counsel said earlier is correct. There is some precedent of
20 lawyers for outside organisations representing a witness -- not
21 the witness, excuse me -- but representing, in this case,
22 governments. I think Counsel mentioned the Milosevic case. In
23 these other tribunals, they have rules regarding national
24 interests: that information that can compromise national
25 interests can be provided to the Court under certain

1 circumstances, and kept confidential. So in the Milosevic case,
2 Wesley Clark, a General from the United States, Ambassador Ogun,
3 US Ambassador, testified with US government representatives
4 present to argue about the applicability of that rule, Rule 70,
5 to limit his testimony.

6 Also, in the -- a more recent case -- in the Stanisic case, the
7 UK ambassador -- I believe his name was Roberts -- testified, and
8 representatives of the government of the United Kingdom did not
9 represent him, they represented his government, in saying what
10 information would be confidential, that he could not be asked
11 about or could not disclose.

12 [15.40.32]

13 So it's exactly the same situation in this case: to ask a
14 witness, a non-lawyer, to make those determinations, I think,
15 would be very unfair to him and to the Office of Co-Investigating
16 Judges. Especially since we've heard from Defence Counsel just
17 now, that they anticipate that they may ask about confidential
18 information and disclose it, because it's in the interests of
19 their client.

20 MR. PRESIDENT:

21 Judge Jean-Marc Lavergne, please. You may proceed.

22 JUDGE LAVERGNE:

23 Yes, I would like to react to what the Civil Party Lead
24 Co-Lawyers have stated. We have two solutions: either the witness
25 is assisted by a lawyer, or we have someone representing the

1 Office of Co-Investigating Judges. I do not see the point in
2 having a lawyer present in the courtroom to advise Mr. Ysa Osman
3 in so far as such a lawyer would not be a party to these
4 proceedings, and that person cannot therefore discuss issues of
5 confidentiality that could arise.

6 I didn't quite understand something. Perhaps Counsel Guiraud
7 could clarify what she was proposing, because I don't quite
8 understand it.

9 [15.42.04]

10 MS. GUIRAUD:

11 Your Honour, I am listening to you, and I realize that that
12 wouldn't be a good solution. But I would like to remind the
13 Chamber that it's a personal obligation of confidentiality, and
14 it is up to the experts to determine whether the information and
15 the questions that are asked, would lead him to share with us
16 information that he considers confidential.

17 MR. KOPPE:

18 One brief point if you'll allow me, Mr. President, I would like
19 to make. Both the Civil Party Lawyer and Judge Lavergne are
20 speaking of the Office of the Co-Investigating Judges. I don't
21 think that is properly formulated. It is the request of only the
22 International Co-Investigating Judge, and you might think, "Well,
23 does that matter?" Well, possibly it might matter, especially in
24 the light of a very recent decision, a decision that was released
25 on last Friday, in the case of Meas Muth's urgent request for a

1 stay of execution of his arrest warrant.

2 [15.43.30]

3 There's a very interesting paragraph in the opinion of the three
4 national judges. Meas Muth had asked to ask for a stay of the
5 execution of the arrest warrant, and had asked that to the
6 Pre-Trial Chamber. And the Pre-Trial Chamber National Judges said
7 the following thing, and it's very interesting: "The arrest
8 warrant is a coercive measure to be enforced by judicial police,
9 to bring Meas Muth before the International Co-Investigating
10 Judge alone, but not before both Co-Investigating Judges. This
11 measure in Cambodian society is regarded as humiliating, and
12 affecting Meas Muth's honour, dignity and rights, substantially
13 and irremediably."

14 Now--

15 MR. PRESIDENT:

16 Can you explain to the Court what the ground is for your
17 intervention here? Because we are now discussing on the issue of
18 the legal officer at the Office of International Co-Investigating
19 Judge, and the documents that you are presenting to us, can you
20 please explain us first the reason, and its annexes? How is it
21 related to the methodology? Particularly that we did not hear the
22 2-TCE-95, and now that we require that there is the presence of
23 the legal officer of the International Co-Investigating Judge to
24 assist in reminding or clarifying whether or not that should
25 respond or not, and whether or not that relates to the

100

1 confidentiality of the case.

2 [15.46.02]

3 MR. KOPPE:

4 I was -- I was getting to my point, Mr. President. It seems that
5 the Pre-Trial Judges, the National Pre-Trial Judges, are making a
6 distinction if a measure, coercive measure, or anything, is
7 coming from only the International Co-Investigating Judges,
8 rather than from both. Now, the reason I was standing up is that
9 we are talking about a letter, or a request, from only the
10 International Co-Investigating Judges. And if that is the case,
11 it seems that National Judges should react differently, possibly,
12 to such requests.

13 So, I'm just making the observation that we're speaking about the
14 office of the Co-Investigating Judges, but that's not accurate.
15 We're speaking about a request only of the International
16 Co-Investigating Judge. And a similar request from an
17 International Co-Investigating Judge was met by the national
18 judges in Case 004 as something -- well, affecting the Accused's
19 rights substantially and irremediably. So, I think we should also
20 maybe hear from the National Co-Prosecutor what his position is
21 in relation to this request in respect of the expert only coming
22 from the Office of the International Co-Investigating Judges.

23 [15.48.00]

24 MR. PRESIDENT:

25 The National Prosecutor, do you have any observation on this

1 issue?

2 MR. SREA RATTANAK:

3 Mr. President, on this point the National Prosecutor has no
4 comment.

5 MR. PRESIDENT:

6 Mr. Victor Koppe, are you saying that this request is not valid,
7 and it should not be the subject of the discussion? And that this
8 issue is acceptable. It's not on the issue of forms, but it is
9 substance that we discuss. Is that your position that if it is
10 admitted, it is not right procedurally? Or what?

11 [15.48.58]

12 MR. KOPPE:

13 Well, it is our position, when it comes to the request to summon
14 three witnesses. We -- last week, we filed our response, and we
15 argued that the request from the International Co-Prosecutor was
16 null and void, and could not be entertained by the Trial Chamber.
17 So it is our position in relation to that particular request. It
18 will be our position in relation to the pending requests for
19 disclosure and adding into evidence of certain Case 004
20 disclosures. If it's our position here, I'm not entirely sure yet
21 because the decision is a bit ambiguous, but I think we can all
22 agree that there is a problem, a legal problem, if there's only
23 International Co-Investigating Judge asking this and his national
24 counterpart is completely silent. So I think it is a problem,
25 yes.

1 [15.50.24]

2 MR. KOUMJIAN:

3 I would just point out that the National Co-Investigating Judge
4 has consistently stressed the confidentiality of the
5 investigation.

6 (Judges deliberate)

7 [15.50.54]

8 MR. PRESIDENT:

9 Let us move to the other subject, topic three, for the Chamber to
10 arrange the scheduling order, particularly the scheduling for the
11 hearing of the expert, 2-TCE-95, in the future. The Chamber
12 wishes to ask the International Prosecutor whether or not you
13 want to put more documents, in addition to the recently put
14 documents, such as document E319/33 or not? And if so, what are
15 the documents that you are likely to submit in relation to the
16 treatment of the target group, in particular the Cham?

17 [15.51.57]

18 MR. KOUMJIAN:

19 Thank you. Your Honours, from our review today, the status is
20 that we have completed the review of all the written records of
21 interview that are in English on the Case 004 case file. And all
22 of them that are related to the Cham have been disclosed. There
23 still are 27 records of interview that are in Khmer only, that we
24 are in process of having reviewed with the limited staff that we
25 have that can review those in Khmer. So I don't know whether or

1 not they will be the subject of a disclosure motion or not.
2 There also are three requests currently pending before the Office
3 of the Co-Investigating Judges, for disclosure of a few civil
4 party applications, and we're waiting -- I would expect decisions
5 soon, but we're awaiting those. But those are only civil party
6 applications, not records of interview. And I would stress that
7 we've taken to heart what Your Honours said about the Prosecution
8 being very limiting, using our discretion to the -- only request
9 only the most critical civil party applications for admission
10 under 87.4. But these are being reviewed also, for whether or
11 not, of course, there's any exculpatory information.

12 [15.53.33]

13 There still are, from my understanding today, about 400
14 applications, victim applications, civil party applications, that
15 have not yet been reviewed, and those we would also review under
16 the same criteria. Now, this is unless the defence is saying, and
17 Your Honours, wish us not to review those. If everyone doesn't
18 want us to review those, I'm happy not to do that. It's a lot of
19 work for us. But the current plan is to fulfil our obligations to
20 the Defence and the Chamber, and to continue to review those last
21 400 applications. We've reviewed about 1,300 applications
22 already.

23 JUDGE FENZ:

24 Can I just ask a supplementary question? I believe you mentioned
25 27 are currently under consideration; is that correct?

1 MR. KOUMJIAN:

2 There are 27 that are not in English--

3 JUDGE FENZ:

4 Yes.

5 [15.54.32]

6 MR. KOUMJIAN:

7 --they're in Khmer, and we're in the process of, which is much
8 slower, of having those reviewed.

9 JUDGE FENZ:

10 So, can you give me any indication as to -- if any of those will
11 be disclosed, when this will be? And obviously, they need to be
12 translated because only in Khmer.

13 MR. KOUMJIAN:

14 I mean it would take some time. I don't know the answer to that,
15 really. I'd be just guessing.

16 MR. PRESIDENT:

17 Counsel Victor Koppe, you may proceed.

18 [15.55.08]

19 MR. KOPPE:

20 Thank you, Mr. President. One remark, the documents that were
21 disclosed yesterday contains a WRI of a witness considered to be
22 very important, maybe the most important one. This witness was
23 only interviewed a few weeks ago, a month ago. This means that
24 the investigation is on-going as we speak. This means that it
25 will not stop, obviously, with those 27, or the seven from

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1 yesterday, but it will continue. And I think that is the crux of
2 the problem. It will go on, even now as we speak.

3 MR. KOUMJIAN:

4 And just for the record, of course, that is correct. The
5 investigation goes on, so we continue to have them come in, these
6 records of interview. I would say that we were behind, and we've
7 pretty much caught up to the backlog. So now we're dealing only
8 with them as they come in, so it will be a much faster
9 turnaround.

10 [15.56.28]

11 MS. GUISSÉ:

12 At this stage, Mr. President, I am rising to my feet to say that
13 we are waiting impatiently for your response to our motion. There
14 will be limits that we have to take into account as this case
15 presses on, and I note that we are giving time limits to the
16 Defence to study new documents, and it is important to bear in
17 mind and to highlight the fact that these deadline extensions are
18 not uncalled for. We asked for them in light of the disclosures
19 that keep coming in. We still do not have access to the new
20 documents that the Co-Prosecutor has referred to. A motion has
21 been filed regarding disclosure of documents, but we do not have
22 access to those documents. We also have the issue of timelines
23 for the provision of these documents. So we are waiting for your
24 decision, since we cannot limit the influx of all these documents
25 since Cases 003 and 004 are still being investigated.

1 MR. PRESIDENT:

2 Thank you. Now I hand over the floor to the defence team for
3 Khieu Samphan to present the request that they made -- actually,
4 through email -- to the Trial Chamber. So you may now enlighten
5 the Chamber briefly and orally on this request.

6 [15.58.33]

7 MS. GUISSÉ:

8 Thank you, Mr. President. I'm going to start first with the issue
9 of the expert we were speaking about earlier. I believe that the
10 first request that we have is very logical. In the context of
11 your first schedule, you programmed to have this expert testify
12 at the very end, once all of the people regarding the treatment
13 of the Cham have testified. For various reasons that regard
14 scheduling issues, for example, a certain number of witnesses who
15 were supposed to testify, could not testify when expected. So, I
16 believe I understand that these witnesses are going to be called
17 later. So, my first request is, of course, to make sure the
18 expert can still testify after the testimony of the other
19 witnesses, because a certain number of these witnesses have been
20 interviewed by the expert, and in our cross-examination, we would
21 like to get back to these interviews when the witnesses testify.
22 So therefore it's logical that this expert in fact, of course,
23 testifies once all of the witnesses have testified before.

24 [15.59.57]

25 Second point, which of course is connected to the first, which is

1 that we have noted during the proceedings that there are a
2 certain number of documents that we would like to submit to the
3 expert. Parts are the segments that we would like to have him
4 comment about, and given what's happening during the proceedings
5 when we have to provide ERNs and all that, it takes time.
6 We believe that, in the Khieu Samphan defence, that the two days
7 that had initially been scheduled by the Chamber, which would
8 represent a half-day of cross-examination for the Khieu Samphan
9 team, two hours and twenty minutes approximately, would be too
10 short to allow us to review within reasonable time the different
11 documents, and the different statements, and the different points
12 that we would like to discuss with the expert. So therefore, we
13 wish -- so that we are not too rushed, we would like to have
14 extra time. So, we would like to ask the Chamber to consider
15 giving us at least one extra session per Party. I'm speaking on
16 behalf of the Khieu Samphan defence. I don't know if it's the
17 same idea for other Parties, but just for practical reasons, and
18 for organizational reasons, the half-day that we have been
19 granted seems to be a little bit tight if we want to have a
20 cross-examination which is substantial.
21 So, that's -- that is what the Khieu Samphan defence team has to
22 say with regard to that specific question. So I don't know if you
23 want to give the floor to the other Parties first, or if you have
24 any specific questions to put to me before I start discussing my
25 next request.

1 [16.02.07]

2 MR. PRESIDENT:

3 You may proceed to your second request.

4 MS. GUISSÉ:

5 Well, my second request is maybe a bit premature, but it is in
6 reaction to the issue that I hadn't quite well understood when it
7 was raised by Judge Fenz a few days ago during a hearing: that is
8 to say, how much time the defence will need to prepare the appeal
9 hearings? Because as I understand it, this was a concern of the
10 Chamber in terms of scheduling.

11 [16.02.49]

12 We still do not have a scheduling order before the SCC. We
13 expect, based on unofficial correspondence, that these hearings
14 will occur before the end of the year for sure: maybe
15 mid-November, between mid-November and the end of November, and
16 maybe even the beginning of December. I don't really know because
17 there's also a week of holidays. So, we do not know exactly when
18 these appeal hearings will take place, but we can give you a
19 bracket of about 10 days.

20 And we calculated that depending on the work that we will have to
21 do, that we will need in our team, the defence lawyers, we will
22 need five weeks without hearings to prepare these appeal
23 hearings, which you know will be not only the time when we will
24 present our appeal grounds, but also the only moment when we will
25 be able to reply to the other Parties, because there is no

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1 written response that has been scheduled or planned by the
2 Supreme Court. So, we will have therefore, a lot of work to do in
3 that regard.

4 And furthermore, there is also the possibility -- well, new
5 witnesses have been heard, and therefore these new elements will
6 be debated. Therefore, there is a chance that in these appeal
7 hearings, that other witnesses will be heard. So this is
8 something that we have to take into consideration.

9 [16.04.46]

10 So we calculated, because we can't be everywhere at the same
11 time, that is to say, being here before this Chamber, and at the
12 same time in our offices preparing our final -- our submissions.
13 We know that this is going to be the last straight line before a
14 decision that will have an impact on Case 002, so it's important
15 for all Parties, but it's particularly for the defence to have
16 this time. So, these are the elements I can provide to you. I do
17 not know in fact right now what's going to be the date that the
18 Supreme Court is going to schedule. But in terms of duration, in
19 terms of work load, I think five weeks, full time, for the
20 Co-Lawyers is a reasonable expectation.

21 MR. PRESIDENT:

22 I have one question for the Counsel for Khieu Samphan. I refer to
23 your first request as for the time we want to allocate to put the
24 question to the 2-TCE-95. According to you, it's rather short.
25 So, to you, what or how much time do you think is appropriate for

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1 you to put the question to this expert? Because generally if you
2 ask for the extension of time, the other Parties might ask for
3 the extension as well.

4 [16.06.38]

5 MS. GUISSÉ:

6 Yes, indeed. Well, this is why I'm making the demand ahead of
7 time. For me, a minimum of three sessions would be necessary to
8 cross-examine the expert. Instead of a half-day, I would like to
9 have three sessions. Instead of two, three.

10 MR. PRESIDENT:

11 Thank you. How about the defence team for Nuon Chea? Do you have
12 any issues regarding this extension of time for putting questions
13 -- no, rather the five weeks to prepare the submission, the
14 closing submission, in relation to the appeal and the decision of
15 the Supreme Court Chamber?

16 [16.07.44]

17 MR. KOPPE:

18 Thank you, Mr. President. We understood the request to be that as
19 soon as there is an official scheduling order, that we should
20 give our views as to how long preparation time should be. It's
21 still unclear whether it is indeed between 10 and 20 November, or
22 maybe even the first two weeks of December. I think that is now
23 maybe debated at the Supreme Court Chamber.

24 Having said that, I do not think the request of the Khieu Samphan
25 team to ask for five weeks is unreasonable. As you know, the

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1 appeal is extensive. There's a lot of preparation to do. As you
2 know, we've been fully busy with Case 002/02. We've been flooded
3 with Case 003 and 004 documents, so we have been working, as
4 argued last week or two weeks ago, almost non-stop. So, I would
5 argue that the requested time is not unreasonable. But we haven't
6 come up with a final position yet, because as I said, we
7 understood your request to be that as soon as there's a
8 scheduling order, that we would then come up with our views.

9 [16.09.17]

10 MR. PRESIDENT:

11 Thank you, and thank you to all Parties for your observations and
12 comments on the various issues that the Chamber has considered
13 the challenges that we are facing. And now, the International
14 Co-Prosecutor, you may proceed.

15 MR. KOUMJIAN:

16 Yes, thank you, Mr. President. I was just waiting to make some
17 very brief comments on the submissions of the Khieu Samphan team.
18 First, we agree with the Nuon Chea team that it's premature at
19 the moment to even talk about the time necessary to prepare
20 appeal, because we don't have neither a date in the Supreme
21 Court, nor an indication of the format. How many days hearings
22 that will be, and whether the Supreme Court is going to limit the
23 Parties to specific issues to talk about, which I would hope that
24 they would, because there's somewhere between 300 and 400 grounds
25 of appeal. So, we think it's premature to talk about time for

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1 preparation.

2 As far as the time allotted to the expert on the Cham, we do
3 think two days is more than sufficient. That's sufficient time.
4 But I do concur with Counsel's proposal that the Chamber -- it
5 would be more efficient to have the expert testify at the end of
6 the segment, after the other witnesses. I think that makes sense.

7 [16.10.38]

8 MR. PRESIDENT:

9 Thank you. The Chamber will take this issue into deliberation,
10 and we will sort out this issue. Any issues that we can resolve
11 it immediately, we will do it. And others, we will address them
12 in due course.

13 So, the hearing today is coming to a conclusion. The Chamber
14 shall adjourn now and resume on the 5th of October, on Monday
15 next week. And the Chamber shall hear 2-TCW-950, and there are
16 2-TCW-904, as a reserve witness after 2-TCW-950. So this is the
17 notice to all the Parties and members of the public.

18 MR. KOPPE:

19 Just to be sure, no hearing tomorrow?

20 [16.12.00]

21 MR. PRESIDENT:

22 No, there is no hearing toward the end of this week because we do
23 not have any individuals whom we can hear, because those
24 individuals are not available for the hearing.

25 The security guards are now instructed to bring the two

1 Co-Accused back to the detention facility, and have them back in
2 this courtroom on the 5th of October, that is, Monday, before 9
3 a.m.

4 The Court is now adjourned.

5 (Court adjourns at 1612H)

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