



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

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 06-June-2016, 10:46  
CMS/CFO: Sann Rada

**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

19 April 2016

Trial Day 399

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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SONG Chorvoïn

For Court Management Section:  
UCH Arun

I N D E X

Mr. CHUM Mey (2-TCCP-243)

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Mr. NHEM En (2-TCW-919)

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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
Mr. CHUM Mey (2-TCCP-243)	Khmer
Mr. DE WILDE D'ESTMAEL	French
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUIRAUD	French
Ms. GUISSE	French
Mr. KONG Sam Onn	Khmer
Mr. KOPPE	English
Judge LAVERGNE	French
Mr. LYSAK	English
Mr. NHEM En (2-TCW-919)	Khmer
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to hear the remaining testimony of  
6 civil party Chum Mey and, after that, we <will> hear the  
7 responses to the submissions by Nuon Chea's defence to admit some  
8 documents as evidence that can be used to question the next  
9 witness. And after that, the floor will be given to the defence  
10 team for Khieu Samphan to respond to the submission by the  
11 Co-Prosecutors regarding Counsel Kong Sam Onn. And after that, we  
12 <will> hear the testimony of witness 2-TCW-919, in relation to  
13 S-21 Security Centre.

14 Ms. Chea Sivhoang, please report the attendance of the parties  
15 and other individuals to today's proceedings.

16 [09.04.16]

17 THE GREFFIER:

18 Mr. President, for today's proceedings, all parties to this case  
19 are present.

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

23 The <civil party> who is to conclude his testimony today, that  
24 is, Mr. Chum Mey, is present in the courtroom.

25 The upcoming witness, that is, 2-TCW-919, has confirmed that, to

2

1 his best knowledge, he has no relationship, by blood or by law,  
2 to any of the two accused, that is, Nuon Chea and Khieu Samphan,  
3 or to any of the civil parties admitted in this case. The witness  
4 took an oath before the Iron Club Statue this morning.

5 Thank you.

6 MR. PRESIDENT:

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

9 The Chamber has received a waiver from Nuon Chea dated 19 April  
10 2016, which states that, due to his health, that is, headache<,  
11 and> back pain, he cannot sit or concentrate for long and in  
12 order to effectively participate in future hearings, he requests  
13 to waive his right to be present at the 19 April 2016 hearing.  
14 He advises that his counsel advised him about the consequences of  
15 this waiver, that in no way it can be construed as a waiver of  
16 his rights to be tried fairly or to challenge evidence presented  
17 to or admitted by this Court at any time during this trial.

18 [09.06.07]

19 Having seen the medical report of Nuon Chea by the duty doctor  
20 for the accused at ECCC, dated 19 April 2016, which notes that  
21 Nuon Chea has a chronic back pain and it becomes worse when he  
22 sits for long and recommends that the Chamber shall grant him his  
23 request so that he can follow the proceedings remotely from the  
24 holding cell downstairs, based on the above information and  
25 pursuant to Rule 81.5 of the ECCC Internal Rules, the Chamber

3

1 grants Nuon Chea his request to follow today's proceedings  
2 remotely from the holding cell downstairs via an audio-visual  
3 means.

4 The Chamber instructs the AV Unit personnel to link the  
5 proceedings to the room downstairs so that Nuon Chea can follow.  
6 That applies for the whole day.

7 I notice that the Deputy Co-Prosecutor wishes to make a  
8 statement. You may proceed.

9 [09.07.16]

10 MR. DE WILDE D'ESTMAEL:

11 Thank you, Mr. President. Before the Defence starts  
12 cross-examining the civil party, with your leave, I would like to  
13 make a few remarks on the last issues that were made -- presented  
14 yesterday <at about 4.00,> because those questions are <based on>  
15 a distortion of the reality. They were biased, and I'll explain  
16 why.

17 The Defence presented document <> E393.2 with a number of lists  
18 of persons who had worked at the textile manufacturing factory  
19 <where the civil party worked, up until the time of his arrest.>.

20 The Defence <then> asked the civil party whether he knew certain  
21 names. He said he didn't know the names. And <Counsel> Koppe said  
22 on four occasions that those persons listed had been arrested on  
23 the same day, or approximately on the same day as Chum Mey. That  
24 was said at 16.01.53, just before 16.03.56. And also, at  
25 16.04.40, Mr. Koppe said once more<,>

4

1 "I am somewhat perplexed by the fact that you do not know any of  
2 the persons arrested on the same day as yourself or shortly after  
3 you were arrested and who worked at the same factory as  
4 yourself."

5 [09.09.00]

6 And lastly, at 16.07.19, he said on a preliminary basis that he  
7 did not recognize any of the persons who were arrested at the  
8 same time as himself, and I'd like him to explain that.

9 <However>, Mr. President, if we look at the list, which I believe  
10 has not yet been placed before the Chamber and has not been  
11 admitted, <we don't have an E3 yet but that doesn't matter,>  
12 E393.2 is a list of 15,000 names of persons from S-21. And it is  
13 expected to replace the <list that we prepared> in the Duch trial  
14 which included 12,000 names.

15 <Let's take entry 665, it was the first name cited yesterday by  
16 the Defence,> <it is> Chea Huot. In fact, in our list, E342  
17 (sic), he has an alias, Huon, <H-U-O-N>. When you look at the  
18 date of arrest, <it's 27 August, 1978,> two months <before> the  
19 civil party was arrested. The name <is also transcribed> on the  
20 list of prisoners, <E3/1668>, and we find that is the last name  
21 on that list.

22 [09.10.28]

23 The second <entry>, 9337, <Sun Dim,> was that person arrested on  
24 that same day? No, he was arrested on the 8th of April 1978, and  
25 executed <11 May, 1978, at S-21. Six months before Chum Mey went

5

1 to S-21.>. <That's what they say-- the> Defence said that <they  
2 were> arrested on the same day as <you.>The third name, 3431  
3 (sic), Net Khan, alias Nuon, arrested on the 11th of April 1978,  
4 and executed on the 11th of May 1978.

5 The next <entry> is the same situation, 9432, Chhin, <C-H-H-I-N>,  
6 Sok, alias Son, a combatant, also from the manufacturing unit.

7 <On 11> April 1978, he was admitted to S-21.

8 And lastly, the name cited was 10651, and it is Bun <Neng> That  
9 is a woman. She was a simple combatant at K-9, <she> went to S-21  
10 on 26th of May 1978.

11 Now we have heard that the question that was asked, how come the  
12 civil party doesn't recognize any of those names cited even  
13 though <he himself cited the people who> were arrested at the  
14 same time as himself. Indeed, Mr. President, the civil party  
15 cited names of persons arrested at the same time as himself,  
16 <notably in his> book, "Survivor", <on page 33 in English, 33 in  
17 French, and> page 43 in Khmer, he mentioned the names <Ya Tim  
18 (phonetic)> and <Ta Try> who were with him.

19 [09.12.29]

20 If we look at the revised <OCP> list, I <didn't have time to  
21 look> at the lists from the OCIJ, we find that those two persons  
22 were, indeed, on the list E342 (sic) of the Office of  
23 Co-Prosecutors.

24 Then we have <entry> 983, that is, Rin. Wait a minute. Yes Rin,  
25 that's it. Chhay Saran, alias Rin, arrested on the 28th of



6

1 October 1978. I may have erred when I talked of Rin and Tim.  
2 Then you have <entry> 10471, <Tep Meng>, alias Tim. He was a  
3 sewing machines repairer at Office K-9, arrested on the 27th of  
4 October 1978 and executed on the 2nd of December 1978.

5 Then we have <Try>. The full name is Kim Chheang, alias <Try,  
6 T-R-Y>. It is <entry> <2150>on the list <E342> , arrested on the  
7 <29th> -- or 27th of October<, there are two versions,> and  
8 executed 3rd of December 1978.

9 [09.13.56]

10 Furthermore, <I also note that the names of the> chiefs <of his  
11 unit, who disappeared, he stated, that is> Kun and Yong. Those  
12 two persons are also on the S-21 list provided by the Office of  
13 Co-Prosecutors, E342 (sic), <entry> 4869, that is, Kun, executed  
14 on the 20th of July 1977, at S-21.

15 And lastly, we have <12049>, that is, Yong, <he> was a chief at  
16 the Ministry of Manufacturing and arrested on the 19th of July  
17 1978.

18 Now, we have two things that <seem> false in the questions that  
19 were asked yesterday. The first is that the names that were cited  
20 were not names of persons who <necessarily> came from the same  
21 unit as the civil party. And furthermore, they were not at all  
22 arrested on the same day or around the same day the civil party  
23 was arrested.

24 Then, <> put<ting> pressure to bear on the civil party, <by  
25 saying>, "You see these persons who were arrested on the same day

7

1 as yourself, how do you explain that?" <is not honest> because it  
2 is based on false premises.

3 [09.15.18]

4 Secondly, the names that were cited by the civil party, that is,  
5 names of persons arrested at the same time as himself or chiefs  
6 who were arrested before him, can also be found on the S-21 list.  
7 And on that list, we find Chum Mey's name among the names of S-21  
8 prisoners, <notably> E3/2186.

9 And number two, those colleagues arrested at the same time as  
10 himself are also in that document.

11 So, I'd like the Chamber to urge the defence to cross-check its  
12 information and not to provide false information using that as a  
13 premise to its questions because it intimidates and destabilizes  
14 the civil party since such information is based on false  
15 information, on false premises.

16 I thank you.

17 [09.16.23]

18 MR. KOPPE:

19 Mr. President, if I may respond. The last words of the  
20 Prosecution are serious allegations, but I don't consider them to  
21 be directed to the Defence but, rather, to the person who has  
22 been working for the Office of the Investigating Judges, the  
23 international one, for the last two years. It's -- the  
24 information that we used yesterday to confront the civil party  
25 with was, indeed, from a document -- a very large document of

1 seven or eight hundred pages, E393.2.

2 It is this document that we used when asking the questions  
3 yesterday in relation to the persons being arrested on that same  
4 day as the civil party was arrested. In this, we found the day of  
5 arrest being the day of arrest that we suggested yesterday in our  
6 questioning.

7 Having said that, it is, I believe, the beginning of a very  
8 interesting discussion which we, at one point in time, should  
9 have in this Chamber, in this courtroom, as to what the status is  
10 of this 700 or 800 page document which was prepared in the last  
11 two years by the International Co-Investigating Judge.

12 [09.18.00]

13 It is the Chamber, if I understand it correctly, that has  
14 admitted -- well, maybe not technically or formally admitted, but  
15 has forwarded this document to us. We are understanding that  
16 email of the senior legal officer and the attachment as such,  
17 that this is going to be the basis for understanding how many  
18 prisoners and which prisoners were arrested at S-21.

19 The Prosecution is now citing from its own revised prisoner list,  
20 which is not a contemporaneous document, but which is a document  
21 they, themselves, made, I believe, in 2007 or 2008.

22 So the suggestion, again, that we used false information to put  
23 some kind of pressure on the civil party I reject strongly. It is  
24 information that we have used coming straight from this new  
25 document.

9

1 It is maybe a good opportunity to also indicate now, that we are  
2 preparing a request to the Chamber to have the author of this big  
3 document who worked for two years on this document to have him  
4 summonsed here as a witness to have him explain to the Chamber  
5 the methodology of the list and, as a matter of fact, the  
6 examples used yesterday might be one of the points that -- of  
7 questioning that we could put to him. Why is it that, apparently,  
8 in the revised prisoners' list from Prosecution, there are  
9 different dates of arrest than is now in this new document or  
10 this new Excel sheet?

11 [09.20.09]

12 So it's, I think, the beginning of a much broader discussion  
13 which we believe, at one point, we should have before the  
14 Chamber, but I strongly reject the suggestion that we are using  
15 false information. Again, we are using information provided for  
16 by -- to us and all the parties by the International  
17 Co-Investigating Judge in Cases 003 and 004.

18 MR. PRESIDENT:

19 So I see two people on their feet. Which one wishes to stand  
20 first?

21 As for the Lead Co-Lawyer for civil parties, you should take your  
22 stance immediately after the Co-Prosecutor, and not to take a  
23 stance after the Defence which is your -- the other party already  
24 took a stance. <I have told you many times.>

25 And Deputy Co-Prosecutor, you may proceed.

10

1 [09.21.20]

2 MR. DE WILDE D'ESTMAEL:

3 Thank you, Mr. President.

4 I believe the Defence completely misunderstood my remarks. What I  
5 am faulting them <for and what appears to be false statements is  
6 the fact that the Defence> said that all those persons were  
7 arrested on the same day or shortly before or just after the  
8 civil party, Chum Mey, was arrested.

9 Now, in this <list> E393.2, and <which is essentially confirmed  
10 on revised list> <E343>, we have the dates <of arrest and  
11 execution at S-21>. And the date<s> <that I> gave<, that is  
12 April, May, and August 1978 are all> on the list produced by the  
13 Co-Prosecutors, and I have the list before me.

14 May I ask Mr. Koppe to take <entry> 665, and you'll find that  
15 that person entered S-21 on <the> 27th August 1978. So <we are  
16 not blaming the OCIJ for including false information in the list,  
17 that is not the discussion at all. The question is, rather, if  
18 the Defence deliberately refrained from reading> the dates on the  
19 list and, <in order to mislead> the civil party. And that is what  
20 I think happened yesterday.

21 <Mr. KOPPE:

22 Very very-->

23 [09.22.54]

24 MR. PRESIDENT:

25 Counsel Koppe, please hold on. <Another party seems to be very

11

1 eager to take the floor.>

2 And before I give to you, Lead Co-Lawyer, please be reminded once  
3 again that you shall be on your feet immediately after the  
4 submission or observation made by the Deputy Co-Prosecutor <if  
5 you have the same interest or issue>.

6 This time, I grant the floor to you, but this won't be the usual  
7 practice. You may proceed.

8 MS. GUIRAUD:

9 Good morning. Thank you, Mr. President.

10 The reason why I would like to intervene afterwards because I  
11 would like to respond to the remarks made by Mr. Koppe, and it  
12 was not possible for me to do so.

13 MR. PRESIDENT:

14 You are confused. In fact, the Counsel Koppe made his response to  
15 the observation made by the Deputy Co-Prosecutor. If you wish to  
16 add to the observation made by the Deputy Co-Prosecutor, then you  
17 should do so immediately after he concluded his observation so  
18 that the other party, that is, Defence, can make his or their  
19 response to the observation by your party.

20 [09.24.18]

21 MS. GUIRAUD:

22 I <will try> to comply with your instructions, Mr. President. I  
23 <apologize> for not having manifestly respected the order <as I  
24 should have.>.

25 I wanted to tell the Chamber and the parties, and particularly to

12

1 our colleague, that we, ourselves, cross-checked the lists that  
2 were disclosed, lists E393.2, and I think we are talking of the  
3 same list and the same document, the list that was established by  
4 the OCIJ investigator and which we found to contain dates that  
5 were different from those referred to by the Defence yesterday.  
6 And there are several disparities involving months between the  
7 dates of arrest and entry into S-21 of the civil party.  
8 And staff from K-9 were mentioned yesterday by Counsel Koppe, so  
9 it is not a difference of one day or two days, but of several  
10 months between the persons mentioned by the Defence yesterday and  
11 the dates on which Mr. Chum Mey <was arrested and> entered S-21.  
12 I thank you.

13 [09.25.40]

14 MR. KOPPE:

15 Mr. President, if I may make a suggestion.

16 If I could hand over the list that I used yesterday, or the three  
17 pages extracted from that list, to the greffier and then you will  
18 see that number 478 is, indeed, a person called Chum Mey, and  
19 then you see in the same column the date of arrest of the people  
20 that I mentioned.

21 Obviously, this is the product of the people in my team, but I'm  
22 sure, as I know them, they have done their work very diligently.  
23 But I'm happy to have this excerpt checked by the parties and the  
24 greffier because this is, I believe, indeed, the right way of  
25 citing the work of the OCIJ.

13

1 JUDGE FENZ:

2 Sorry, counsel. You're trying to introduce something prepared by  
3 your team as evidence?

4 MR. KOPPE:

5 Well --

6 JUDGE FENZ:

7 Just for me to understand.

8 [09.26.50]

9 MR. KOPPE:

10 No. Well, the thing is, the actual document is 800 pages. What we  
11 have done is getting the -- the names of the particular  
12 individuals from that, what's the word -- I can't think of the  
13 word, but this is what we did.

14 So it's our own work product. Obviously it's not actual evidence  
15 presented, but it is coming directly from the document prepared  
16 by the OCIJ.

17 JUDGE FENZ:

18 If we want to use it, technically, for the case, do you want to  
19 use it to confront the witness, or what?

20 [09.27.34]

21 MR. KOPPE:

22 Well, no, not any more. I've done it yesterday, so there's no  
23 need any more.

24 But I would like the Chamber and the parties to see what,  
25 exactly, is coming out of this OCIJ document. We have nothing to



14

1 hide at all. On the contrary.

2 JUDGE FENZ:

3 So is it supposed to come on the case file or are you making --

4 MR. KOPPE:

5 No. It's just a suggestion. It's not a request for evidence. It's

6 -- because the evidence is already on the case file. It's just

7 the actual relevant excerpts from the OCIJ statement -- document.

8 MR. PRESIDENT:

9 Judge Lavergne, you have the floor.

10 [09.28.25]

11 JUDGE LAVERGNE:

12 Yes. We, indeed, have a problem regarding the use of information

13 featuring on the list produced by the OCIJ. We have, on the one

14 hand, the Co-Prosecutors and the civil parties who assert that

15 when Counsel Koppe cross-examined the civil party, he misused the

16 information on that list. Mr. Koppe is of the view that, in

17 reading the list, he could find that a number of persons working

18 at K-9 were arrested on the same day as Mr. Chum Mey <or on a

19 date very close to his arrest>.

20 The Co-Prosecutors and the civil party Lead Co-Lawyers say that

21 that list was misread and that, as a matter of fact, the dates of

22 arrest alleged by Mr. Koppe do not correspond to the reality.

23 I believe we have a lot of information at our disposal, and this

24 information has to do with the probative value of the list <and

25 we will look into the matter in due course>.

15

1 [09.29.35]

2 MR. KOPPE:

3 Well, that's a very interesting point, Judge Lavergne, but I do  
4 not agree with the words "misused". What the Prosecution is  
5 citing from is also its own work product. It's just an Excel  
6 sheet they made some time in 2007-2008, as, at the end of the  
7 day, is this work product from the OCIJ. That's also an Excel  
8 sheet.

9 It's not contemporaneous evidence that the Prosecution is citing  
10 from. It's, like I said, just an Excel sheet. Whether that is  
11 correct or not, I haven't been able to verify. I just assume that  
12 Prosecution is right.

13 But maybe the Excel sheet from the Prosecution is wrong, and  
14 maybe the OCIJ is right. As a matter of fact, I have more  
15 confidence in the investigators of the Co-Investigating Judge  
16 than I have in the Prosecution. So let's not jump yet to  
17 conclusions, Judge Lavergne, but I think, as I said, it does  
18 raise an interesting point which we should debate very soon.

19 [09.30.45]

20 MR. PRESIDENT:

21 Let me conclude the discussion and the debate on this point. And  
22 Counsel Koppe, please hand in a copy of that document to the  
23 Bench and make copies available to the parties.

24 And we'd like to make the following observations.

25 First, all parties are reminded that, since yesterday, an issue

16

1 re-emerged in relation to the fast pace of speaking and  
2 questioning the witness, and also, you didn't obey the  
3 instructions by the Chamber that when you read a document number,  
4 ERNs, names of persons, locations and dates, you shall read them  
5 slowly and, if necessary, read them twice. However, it seems  
6 that all parties ignored these instructions.

7 [09.31.50]

8 Secondly, it is also a common practice in this Chamber during the  
9 examinations of witnesses that, in case of urgency, if you wish  
10 to make your objections to the other party, please do so  
11 immediately so that the Chamber can decide whether it is  
12 sustained or overruled.

13 Another issue that emerged and that we have actually informed the  
14 parties rather frequently, is that all relevant parties in the  
15 proceedings shall not use this -- the Chamber as a lecturing  
16 ground as in the university. Parties have the right to question  
17 the witnesses according to their strategy, and if you think that  
18 is not according to your own strategy, you have your own time to  
19 question or to use your strategy, but you shall not object to the  
20 approach or the techniques used by the other parties, as they may  
21 elect to use their own strategies as long as it is allowed by the  
22 Court.

23 And these problems seems to emerge again and again, and I believe  
24 this shall be -- shall not be an issue any more since it becomes  
25 rather frequent.

17

1 And of course, when there is an issue, you should make a  
2 submission to the Chamber as requested by Counsel Koppe as on  
3 which list or document that the question is put to the witness,  
4 in particular, in this instance, that is, list of incoming  
5 prisoners into S-21 prison.

6 So far, it seems that there are discrepancies in the number of  
7 prisoners in the list. That's the list that we <used> in Case  
8 001. And for that reason, the Defence actually relied on a list  
9 consolidated by an investigator from the Office of the  
10 Co-Investigating Judges, and it is rather a long, extensive list,  
11 <about 800 pages long, so inconsistencies are unavoidable. We  
12 will clarify this issue again. If we are to discuss this issue  
13 adequately, note this is not the appropriate time as the current  
14 segment does not pertain to that issue>.

15 And also, Chum Mey is not available all the time <and> he shall  
16 only be available for one hour this morning, in fact. <Therefore,  
17 in order to expedite the proceedings, we have to move forward>.

18 And I notice that Chum Mey raised his hand. You may proceed.

19 [09.35.12]

20 MR. PRESIDENT:

21 Mr. Civil Party, please observe the mic before you speak.

22 MR. CHUM MEY:

23 The questions are not clear when I was asked. If the questioner  
24 wanted to ask me how many people were arrested <together with me,  
25 I could respond to that. Regarding> 1,200 people, I have no idea

18

1 about that; <they disappeared subsequently>. And <when I was  
2 taken there>, there were <only> three of us;<> Ta Tim, Ta <Try>  
3 (phonetic) and I.

4 [09.36.02]

5 MR. PRESIDENT:

6 You answered very clearly already that there were only three of  
7 you on the Lambretta when you were told to go and work in  
8 Vietnam. The answer was clear -- is clear. Nothing can be changed  
9 that in your testimony.

10 However, in the Court proceeding, there will be time when you  
11 <are> cross-examined, as I was -- as I told you yesterday. That  
12 is why I reminded you to be careful in listening to the  
13 questions. And also, you have to be careful when answering the  
14 question. This is the Court proceeding, and sometimes you are  
15 impeached or you -- the <questions> were put to you to explore  
16 deeply of your knowledge. So you have to think carefully before  
17 you answer, and also you have to remember that the questioners  
18 are very thorough in asking you.

19 And now the Defence Counsel is given the floor so that you can  
20 resume your questioning to the civil party if you still have more  
21 questions to put.

22 [09.37.20]

23 QUESTIONING BY MR. KOPPE RESUMES:

24 Yes. Thank you, Mr. President.

25 Q. Mr. Civil Party, you were asked some questions yesterday about

19

1 Chum Mey's confession. And in E3/5163, Khmer ERN, 00176401;  
2 English, 00176405; and French, 00176408; you said that, "Yes,  
3 this is my confession". You were shown the confession. You said,  
4 I quote, "I remember perfectly."

5 And then the question by the Co-Investigating Judges is, "What  
6 can you tell us about the content of this confession, in  
7 particular regarding its accuracy?"

8 And then you answer the following:

9 [09.38.33]

10 "It is partially true. The details I gave regarding the different  
11 positions I held are accurate. However, everything I explained  
12 regarding organized sabotage, my belonging to the CIA and the  
13 network of traitors that had been established, all that is  
14 invention. The only question I was asked -- I was continually  
15 asked was whether I belonged to the CIA or the KGB. To escape  
16 torture, I made it all up." End of quote.

17 You remember saying this to the Co-Investigating Judges, and is  
18 it accurate?

19 MR. CHUM MEY:

20 A. That is true, what I answered.

21 Q. Mr. Civil Party, do you remember when you saw for the very  
22 first time Chum Mey's confession or your confession? When was it  
23 that you saw it for the first time?

24 Was it in 1981 when you spoke to the East German photographer or  
25 filmmakers, or was it even earlier? Do you remember?

20

1 A. Regarding the confession, I learned about the confession after  
2 I submitted my application with the Court that -- the Khmer Rouge  
3 Court.

4 (Short pause)

5 [09.40.55]

6 Q. So is it correct to say that when you gave this interview to  
7 the Investigating Judges, you had just before seen your  
8 confession for the first time?

9 A. That is true, Mr. President.

10 Q. Have you read all 43 pages?

11 A. I did not have a full reading. I had a skim through and, after  
12 that, I <put> it away.

13 Q. I -- I understand, but was it difficult for you to read again?

14 A. It is quite difficult for me for some reasons. One is my  
15 limited knowledge in education, and the second thing is I had --  
16 I have poor eyesight as a result of electrocution <using>  
17 electrical wire<; I cannot see anything anymore out of my eye on  
18 one side>.

19 [09.42.46]

20 Q. Is it correct -- let me rephrase. Yesterday, you might  
21 remember we spoke about the period before 1975, and you being  
22 close to General Prince Chan Raingsey. And in your civil party  
23 application, you had said that he had given orders to you.  
24 Is it correct that your involvement with Prince Chan Raingsey  
25 cannot be found in the confession?

21

1 A. I did not implicate -- I did not implicate him during the  
2 time.

3 Q. Is it -- you haven't studied it in detail. I understand that.  
4 We have. In English, there's about 11,000 words in those 43  
5 pages. And the word "CIA" appears only 11 times. The rest is  
6 about all kinds of activities in the sewing factory.

7 Yesterday and before, you said that the only thing the  
8 investigators -- or the interrogators, sorry, asked you was  
9 whether you belonged to the CIA, yes or no.

10 Is it correct when I say that the vast majority of the confession  
11 is not about the CIA, but about what happened at the garment  
12 factory?

13 [09.45.10]

14 MR. PRESIDENT:

15 Please hold on, Mr. Chum Mey.

16 Please proceed, Lead Co-Lawyer for civil parties.

17 MS. GUIRAUD:

18 Thank you, Mr. President. A short remark here.

19 It appears to me that our <colleague has actually been> putting  
20 questions on the content of Chum Mey's confession, and not on  
21 what he thought subjectively of the process that was ongoing. I  
22 think that we've really crossed a line, and we've really gone  
23 beyond the line of the content of the confessions.

24 I will, of course, like to rely on the Chamber's wisdom, but in  
25 our eyes, we're going a bit too far.



1 [09.45.58]

2 MR. KOPPE:

3 I have yesterday's ruling in the back of my mind, Mr. President.

4 The Prosecution was allowed to ask the civil party some questions  
5 about the names in the confession.

6 I think I'm still on that line, and haven't crossed it yet.

7 MR. PRESIDENT:

8 I think it is an observation from the Lead Co-Lawyer for civil  
9 party, and usually, the Chamber will not decide on an  
10 observation.

11 Mr. Chum Mey, do you recall the question last put by Counsel  
12 Koppe for Mr. Nuon Chea?

13 MR. CHUM MEY:

14 Mr. President, I want you, Mr. President, to ask a question -- to  
15 put a question to Mr. Nuon Chea--

16 MR. PRESIDENT:

17 Please wait. You will be given an opportunity to ask the  
18 questions, and please answer the question put to you first by the  
19 parties.

20 [09.47.18]

21 JUDGE FENZ:

22 May I just clarify something because there might be a translation  
23 issue. Did you object to the -- to a question, or did you make a  
24 comment?

25 MS. GUIRAUD:

1 Thank you, Your Honour. I was making an observation but, of  
2 course, maybe I will object now so that the Chamber may rule on  
3 this.

4 I said that it seems to me that the line had been crossed and  
5 that the questions were really focused on the content of the  
6 confession, and I wanted to have the opinion of the Chamber in  
7 order to see if the line had been crossed or not.

8 [09.48.06]

9 MR. PRESIDENT:

10 I can allow the question to be put by the counsel for the Accused  
11 since the counsel did not cross over the line, and the question  
12 was allowed yesterday to put by the Co-Prosecutor. And perhaps  
13 the civil party may have forgotten the question.

14 You may ask the question again, Counsel.

15 BY MR. KOPPE:

16 Certainly, Mr. President.

17 Q. Mr. Civil Party, on many occasions, you have stated that the  
18 interrogators only questioned you whether you were a member of  
19 the CIA or KGB. You've just said that you didn't have a very  
20 close look at the confession. The confession is 43 pages, about  
21 11,000 words, but only 11 times the word "CIA" is mentioned.

22 Is it correct when I say that the subject of you being a member  
23 of CIA was only a very limited subject that was discussed during  
24 the interrogation?

25 [09.49.40]

1 MR. CHUM MEY:

2 A. Let me tell you, I was beaten up and I was interrogated how  
3 many of us joined the CIA or KGB and who introduced us into  
4 <the> KGB or CIA. I replied that I was not introduced by anyone,  
5 and I did not <know> the CIA or KGB. <That's what I told them and  
6 they beat me up, and my finger got> broken.

7 Q. In your statements to the investigators and also in Court in  
8 Case 001, you talked about Kun.

9 What, exactly, was Kun's position, and do you have any knowledge  
10 as to why Kun was arrested?

11 A. I told you that Kun was the chief of <the sewing> unit at Ou  
12 Ruessei. Whether he had been arrested or not, I do not know. What  
13 I know is that he disappeared.

14 [09.51.17]

15 Q. Have you ever heard of a person called Doeun, chief of, at one  
16 point, Office 870? Doeun, someone who was connected to Koy Thuon.

17 A. I <do> not know the person by the name Doeun.

18 Q. Do you know anything about attempts in the factory where you  
19 were working in October '78 -- attempts to incite people to  
20 rebel?

21 A. I do not know about that.

22 Q. Let me move away now from the confession, Mr. Civil Party, and  
23 let me turn to another subject. You might recall that you took  
24 part in a re-enactment at S-21.

25 I'm referring, Mr. President, to E3/5769, more particularly to

1 Khmer page, 00166590; English, 00166563; French, 00166573.  
2 You are there together with Vann Nath, Bou Meng and also with  
3 Duch. And at one point, you say to the Investigating Judges the  
4 following, and I quote you:

5 "Civil Party Chum Mey:

6 I was arrested at Phsar Ou Ruessei on 28 October 1978. When I  
7 arrived in S-21, I was detained for over 12 days and 12 nights in  
8 the brick cell I showed you on the ground floor of Building C. It  
9 is during that period that I was tortured every day in Building A  
10 as I showed you. Then, I was sent to work in the place where they  
11 repaired sewing machines. I was then transferred to the cell on  
12 the second floor of Building C, where Vann Nath and Bou Meng were  
13 detained before me. I stayed there until the liberation. I was  
14 chained during the night." End of quote.

15 You remember saying this, Mr. Civil Party?

16 [09.54.54]

17 A. I may have forgotten what happened. In fact, I was not  
18 detained in Building A. I was detained in Building C.

19 Q. There's another document, E3/5765, which I quoted earlier  
20 yesterday as well, that you describe on point 6.7 -- that's for  
21 all languages the same. It says:

22 "Civil Party Chum Mey described the torture he suffered in  
23 Building A while he was being held in a brick cell in Building C.  
24 He was transferred to the fourth room on the top floor in  
25 Building A, where he stayed for 12 days and 12 nights."

26

1 Now, Duch, on the next page under point 6.8, gives a reaction to  
2 your statement, and says:

3 "The charged person indicated that there was nothing over-stated  
4 about Chum Mey's account and presented his apologies. But then  
5 Duch went on to say that it must have been a mistake to carry out  
6 interrogations in this building, as it was normally set aside for  
7 prominent or foreign prisoners because there may have been  
8 confusion when this detainee arrived."

9 I wasn't there, and we still have to ask questions to him. But it  
10 seems that Duch was a bit surprised when you gave that version,  
11 and that he said it was unusual that the interrogation took place  
12 in the building you described.

13 Do you remember this?

14 MR. PRESIDENT:

15 Please hold on, Mr. Chum Mey.

16 You have the floor now, International Deputy Co-Prosecutor.

17 [09.57.36]

18 MR. DE WILDE D'ESTMAEL:

19 I believe that the excerpt wasn't read out correctly. In any  
20 case, in French, we didn't properly understand the last segment  
21 of paragraph 6.8, so I should repeat this because there was a  
22 passage missing:

23 "So Duch indicates that Chum Mey's account is not excessive in  
24 any way, and he <apologizes>. Duch adds that the fact that the  
25 interrogation took place in that building, that is to say,

27

1 Building A, in particular, which was reserved for important or  
2 foreign prisoners, must have been the result of a mistake due to  
3 the confusion when this prisoner arrived."

4 I think now this will make it clearer. Duch never said that  
5 interrogations didn't take place in Building A, but that these  
6 interrogations were reserved for certain kinds of people.

7 [09.58.37]

8 MR. PRESIDENT:

9 Can you answer that question, Mr. Chum Mey? What is your reaction  
10 to Duch<'s> statement on this issue?

11 MR. CHUM MEY:

12 The statement by Duch is correct. Regarding the time when I was  
13 beaten up, it did happen in Building A; <that's consistent with  
14 what investigating judges said>. I was beaten up and interrogated  
15 <there> and, after that, I was sent to be detained in Building C.

16 BY MR. KOPPE:

17 Q. Well, I wasn't there, as I said before, but you're saying here  
18 that you suffered torture in Building A, but Duch is saying that  
19 it must have been a mistake to carry out interrogation in this  
20 building, Building A. So are you saying that the interrogations  
21 didn't take place in Building A, but somewhere else?

22 <A. I was not interrogated-->

23 MR. PRESIDENT:

24 Please hold on. You have the floor first, International Deputy  
25 Co-Prosecutor.

1 [10.00.15]

2 MR. DE WILDE D'ESTMAEL:

3 Mr. President, the <witness's -- the> civil party's response was  
4 very clear. <> He <consistently> said that he was interrogated in  
5 Building A, and now the question as it is formulated would want  
6 him to say whether yes, you were not interrogated in Building A,  
7 isn't that the case? <No, let's be serious, there is no basis for  
8 this question, the way it was asked. The passages that the  
9 attorney read earlier clearly all say the same thing.> He was  
10 detained in Building C <on the ground floor> and for <12> days  
11 <and 12 nights>, was interrogated in Building <A>, <and was then  
12 kept in Building C, on another floor in a big room and then in a  
13 small room. This is clear> so <there is no need to ask thousands  
14 of > questions on this<, or mislead the witness> on the basis of  
15 a distortion of the information provided by the <witness - by the  
16 >civil party.

17 [10.01.16]

18 MR. PRESIDENT:

19 Please move on, Counsel. The Chamber will consider the evidence  
20 or testimony by the civil party, and it was -- it is the  
21 statement by Duch, perhaps, the mistake was made by the guards  
22 there or it is not clear whether the mistake had something to do  
23 with Chum Mey, as Duch said.  
24 I don't think that there are questions to explore on this issue,  
25 and as the Chamber is scheduled, <Duch> will come here to certify

1 and confirm the issue, so you can move on, Counsel Koppe.

2 BY MR. KOPPE:

3 Thank you very much, Mr. President, and I understand what you're  
4 saying. On the other hand, the Defence deals for the very first  
5 time with S-21, and I do hope all parties and also the Chamber  
6 has an open mind to all facts which might have been established  
7 in Case 001. We never were in a position to interview Duch on  
8 this, so -- anyway, I will move on -- move on to S-24, or Prey  
9 Sar.

10 Q. Mr. Civil Party, in your book, you said somewhere, ending up  
11 after your escape of S-21 and Prey Sar and meeting your wife that  
12 it was a very lucky -- lucky break, that you were very much in  
13 luck that, in the first days after your escape, you saw your wife  
14 and child at Prey Sar. Is my understanding correct?

15 MR. CHUM MEY:

16 A. Yes, that is correct.

17 [10.03.35]

18 Q. Okay. Can you explain to the Chamber how it was even possible  
19 to just encounter your wife? After all, she was a person who was  
20 being re-educated at Prey Sar, was supposedly also detained. How  
21 did that happen?

22 A. Allow me to clarify this point. When I was taken from Ou  
23 Ruessei, I did not know that my wife would be detained at Prey  
24 Sar, nor did she know that I was detained in S-21. However, when  
25 the <Front> troops came, we were herded towards the direction of



30

1 Amleang. And when we reached Prey Sar, it was vacant. There  
2 <were> only females who were there. And we stayed there for about  
3 two hours. <At dawn,> we were taken to Amleang.

4 [10.04.56]

5 And <when we arrived at> Angk Snuol, I met my wife, who had just  
6 delivered <our> child two month<s earlier>. And I <asked  
7 permission> to <take my baby> with us, <and they agreed>. And  
8 then she gave me a scarf or krama to give to a lady who just  
9 delivered a baby under a palm tree <so I did that>. Then we  
10 crossed the road to the north part, and <there, half of us> were  
11 separated;<> the <Front> troops and the <Vietnamese> troops  
12 <fired at us>.

13 <At the time,> Vann Nath, <Ta Kong> and Ta <Pech went backwards>  
14 while <I> moved on towards Amleang<>.

15 Q. So is it then correct to say that your wife had just been  
16 released together with all the other women at Prey Sar?

17 A. Yes, that is correct. About 10 female prisoners were released  
18 from Prey Sar <prison>, and they <went to meet up> at Angk Snuol.

19 Q. Do you know anything about other prisoners from Prey Sar other  
20 than those 10, those 10 women?

21 A. No, I did not. And only later on, when those women were  
22 called, <we knew> that some women actually had been detained at  
23 Prey Sar <prison>.

24 Q. When you were together with your wife, did she tell you how  
25 many prisoners were detained at Prey Sar, how many prisoners were

31

1 there for re-education?

2 [10.07.21]

3 A. I did not ask her about that due to the limited time we had.

4 Q. There's something that apparently she did say to you, and I  
5 would like to ask some additional questions about this. In your  
6 testimony before the Trial Chamber in Case 001, on 30 June 2009,  
7 that is now document E3/7451, at about 11.04 in the morning, you  
8 answered a question and then you say:

9 "However, I'm not satisfied even until now because my two month  
10 old baby was taken away to be executed. And at that location,  
11 there were about 2,000 children who were detained, and I saw a  
12 very old lady who was detained."

13 So you're talking about 2,000 children at Prey Sar. Who told you  
14 this? Was that your wife, or did you observe it yourself or did  
15 someone else tell you?

16 [10.08.55]

17 A. I did not ask my wife about that. I learned of that  
18 information as Vann Nath told me that there were 2,000 children  
19 who were killed. <That's what he told me.>

20 Q. It says here about 2,000 children who were detained. Are you  
21 now saying that they were killed and, if yes, how do you know?

22 A. I did not confirm that children were detained at Prey Sar.  
23 However, Vann Nath told me that about 2,000 children were killed  
24 and about 20,000 men were also killed <at Tuol Sleng>.

25 Q. And did he say how he knew this, or was it just speculation?

1 A. To my knowledge, <perhaps> he made his own <estimate>. Even  
2 for Duch, Duch also made his own estimate; <Duch did not know for  
3 sure about that>. At one point, he said that there were about  
4 13,000 detainees who were detained there, and <some said> that  
5 there were about 20,000, so there is no clear figure from anyone.

6 MR. KOPPE:

7 Mr. President, I have one last subject, and there's 10 minutes of  
8 footage that maybe after the break, I would like to show to the  
9 civil party. It's 10 minutes from the documentary that we  
10 discussed yesterday.

11 Yesterday, it seemed that the civil party was a bit unclear as to  
12 the difference between him being photographed and, at the same  
13 time, being filmed. I don't believe in Case 001, we -- the East  
14 German documentary or footage therefrom was ever shown, and we  
15 will be using that documentary more often, so with your leave, we  
16 have prepared it already. After the break, I would like to show  
17 the civil party 10 minutes from the East German documentary.

18 (Judges deliberate)

19 [10.11.55]

20 JUDGE FENZ:

21 Is there an arrangement between the defence team so the time can  
22 be respected?

23 MS. GUISSÉ:

24 Yes, Judge Fenz, Mr. President. We told our colleague of the Nuon  
25 Chea team that we'd have no questions for the civil party, so all

33

1 the time allotted to the Defence can be used in its entirety by  
2 the Nuon Chea defence.

3 MR. PRESIDENT:

4 Yes, you can do that. And please coordinate the time with your  
5 teams and also coordinate with the AV Unit as for the portion of  
6 the video clip you wish to make.

7 Let <us> have a short break. We will take a break now and resume  
8 at 10.30.

9 Court officer, please assist the civil party during the break  
10 time, and invite him back into the courtroom at 10.30.

11 The Court is now in recess.

12 (Court recesses from 1013H to 1033H)

13 MR. PRESIDENT:

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

15 Before handing over the floor to the defence team for Mr. Nuon  
16 Chea to resume the questioning, the Chamber first gives the floor  
17 to Judge Lavergne to clarify the issue arose this morning, in  
18 particular, the question in examination of civil parties <by  
19 Counsel Koppe> and also in relation to the objection and  
20 observation by <the Co-prosecutor> and <the Lead Co-lawyer for  
21 civil parties>.

22 You may now have the floor, Judge Lavergne.

23 [10.34.36]

24 JUDGE LAVERGNE:

25 Thank you, Mr. President.

1 The Chamber, during the break, verified the information in the  
2 prisoner list of S-21 which was drafted by the OCIJ, that is to  
3 say, list <E393.2> . In particular, the Chamber checked the date  
4 when the employees of K-9, which Counsel Koppe referred to during  
5 his cross-examination of Chum Mey, and it checked if these dates  
6 indicated as the entry dates of these prisoners at S-21.

7 Upon reading this document, it appears that the assertion that  
8 the prisoners corresponding to <entries> 665, 9337, 9431 and  
9 10651 -- so the assertion that these prisoners entered on the  
10 same day or <on> days that were close to Chum Mey's arrest is  
11 erroneous. It does not correspond to the data in this list.

12 Indeed, prisoner 665 entered S-21 on 27 August 1978. Prisoner  
13 9337 entered on 8 April 1978. Prisoner 9431 entered on 11 April  
14 1978. And prisoner 10651 entered on 26 May 1978. And I'd like to  
15 recall that the same list makes it clear that Chum Mey entered  
16 S-21 on 28 October 1978, so therefore, we are not speaking about  
17 the same dates at all.

18 So for the moment, the Chamber simply notes in an objective  
19 manner the information -- that this information does not  
20 correspond to the indications in the list.

21 [10.37.01]

22 MR. KOPPE:

23 I take duly note of what you're saying, Judge Lavergne. Let me  
24 get back to the Chamber as soon as possible.

25 We did the search on the Excel sheet in good faith. It seemed

35

1 that the column used for the date of entry in relation to Chum  
2 Mey is the same column that was used in relation to the other  
3 prisoners. I am not at all an Excel sheet specialist. I don't  
4 even really know how to work with it, but let us -- if you allow  
5 me, Mr. President, Judges, to get back on this subject and give  
6 you our formal response.

7 MR. PRESIDENT:

8 And now the floor is given to you, counsel Koppe, to resume your  
9 questioning to the civil party. And you can respond to that issue  
10 in due course.

11 [10.38.14]

12 BY MR. KOPPE:

13 Thank you, Mr. President.

14 Q. Good morning again, Mr. Civil Party. Before I would like to  
15 show you those 10 minutes of footage from the East German  
16 documentary in 1981 on which you feature, let me address one last  
17 subject with you.

18 Yesterday, responding to a question from the Prosecution, you  
19 said at one point in time you attended a meeting during which  
20 Nuon Chea spoke. This is an issue that you never mentioned in any  
21 of your WRIs, nor in your civil party application, nor in your  
22 testimony in Case 001.

23 Is there any reason that, at that time, you never mentioned this?

24 MR. CHUM MEY:

25 A. I did not make mention of that point. Now I am before the

36

1 Tribunal, I really want to know from Nuon Chea, who was a senior  
2 leader back then, I want to know whether he was aware of Tuol  
3 Sleng prison in Phnom Penh city back then. That is my question I  
4 wish to put to him.

5 [10.40.01]

6 MR. PRESIDENT:

7 Please wait, Mr. Civil Party. <There> will be <an> opportunity  
8 <for> you <to> put questions to the Accused. And if you cannot  
9 <understand> the question, you can ask counsel to put the  
10 question again. You, a while ago, did not answer the question  
11 last put by Counsel Koppe.

12 Mr. Koppe, please put the question again. The civil party may not  
13 have understood your question correctly.

14 BY MR. KOPPE:

15 Yes. Certainly, Mr. President.

16 Q. Mr. Civil Party, yesterday, the Prosecutor asked you whether  
17 you ever saw Nuon Chea speak at a meeting or whether you ever saw  
18 him. You never mentioned this before, ever, not in your testimony  
19 before the OCIJ, not in your testimony before the Chamber, and  
20 not in your civil party application. My question is very simple.  
21 What was the reason for not mentioning that before?

22 [10.41.25]

23 MR. CHUM MEY:

24 A. I did not state that issue in my letter. You are true -- you  
25 are correct.

1 Q. But had you forgotten about it and because of the question  
2 yesterday, all of a sudden, your memory was jogged? Is that what  
3 happened yesterday?

4 A. I do not recall that.

5 Q. Maybe my question wasn't properly formulated. Yesterday, the  
6 Prosecution all of a sudden asked you whether you had ever seen  
7 Nuon Chea, and then you said, "Yes, I have". Was it yesterday  
8 that, all of a sudden, your memory was jogged about having seen  
9 Nuon Chea during a meeting?

10 A. Yes, you are right. That was the day that my memory was  
11 jogged.

12 Q. When was this meeting that you said you attended?

13 A. I did not pay attention to when the meeting took place.  
14 Perhaps it happened in <'77 --> late 1976 or early 1977.

15 Q. And how did you come to realize that the person who spoke at  
16 this meeting was, in fact, as you said, Nuon Chea?

17 [10.43.58]

18 A. It was because, at the time, many tailors <from> Ou Ruessei  
19 <went to listen to his speech>, and <those from Ou Ruessei> knew  
20 Nuon Chea well, <but I did not know him>. I asked them who was  
21 speaking, addressing the crowd, and I was told that he was Nuon  
22 Chea. That was the time when I started to know Nuon Chea.

23 Q. And were any other speakers at that meeting?

24 A. No other speakers. There was only him, the speaker.

25 Q. How long had you been working at the garment factory already



1 when you saw Nuon Chea speak?

2 [10.45.14]

3 A. I was transferred from Ruessei Keo <in late> 1976, to that  
4 location to train other people to repair sewing <machines> at Ou  
5 Ruessei market or Phsar Ou Ruessei.

6 Q. Let me get back to when you said the meeting was. You said  
7 '76, maybe '77, if I understood correctly. Was it before or after  
8 30 September 1977?

9 A. It was after 1977. I did not recall well. My memory does not  
10 serve me well. Perhaps it may have -- the meeting may have  
11 happened in 1976 or 1977. I am not so sure.

12 Q. And my last question, I think, on this subject, Mr. Civil  
13 Party, how many people were present, 100 or 1,000 or just a few?  
14 Do you remember?

15 A. I cannot recall well. There may have been around 500  
16 participants.

17 Q. Thank you very much, Mr. Civil Party.

18 With your leave, Mr. President, I would like now to show the 10  
19 minutes footage in which you, Mr. Civil Party, appear. Maybe you  
20 can just have a look at those 10 minutes and then, afterwards, I  
21 will ask you a few questions.

22 Mr. President, with your leave, I would like to show 10 minutes  
23 from the East German documentary, "Die Angkar". There is a German  
24 voiceover, but I believe at the background Khmer is still  
25 audible, but let's see how it goes.

1 [10.47.59]

2 MR. PICH ANG:

3 Mr. President, I want to make an observation. Yesterday, the  
4 civil party made it clear that he had poor eyesight, so it was --  
5 it is difficult for him to watch the film footage.

6 MR. PRESIDENT:

7 Your leave is granted. And AV Unit is instructed to project the  
8 footage on the screen as requested by the counsel for Mr. Nuon  
9 Chea.

10 And Mr. Chum Mey, please try your best to watch the footage so  
11 that you are able to answer the questions in relation to the  
12 footage shown to you.

13 [10.48.51]

14 (Audiovisual presentation)

15 [10.58.22]

16 BY MR. KOPPE:

17 Q. Mr. Civil Party, yesterday I asked you a few questions about  
18 the East German film crew. Yesterday, it was a bit difficult, and  
19 I understand that very well, to make a distinction between the  
20 photographer who came at one point and the film crew.

21 Now that you see -- now that you just saw the actual footage of  
22 the film, do you remember now being filmed in 1981?

23 MR. CHUM MEY:

24 A. In the film footage shot by the German, I have -- I did not  
25 see it before. What I can recall is that Ung Pech called me to

1 join the group photo. And after that, <I left, and> I went back  
2 to work.

3 As I said, I was working in the Public Works <and Transport> at  
4 the time. And Ung Pech was in charge of Tuol Sleng <> museum.

5 [10.59.59]

6 Q. I asked you that question yesterday as well, but now having  
7 seen this footage, do you maybe now remember whether there was  
8 ever a discussion between you or a conversation between you and  
9 Ung Pech as to why he only mentioned four people having been  
10 detained in S-21 before the People's Revolutionary Tribunal in  
11 1970 -- '79. Did -- did that come up when he approached you to  
12 join him to meet with the East German camera crew?

13 A. As I told you, Ung Pech called me to join the group photo <of  
14 seven people> at Tuol Sleng Museum. Back then, I knew only one  
15 individual; that is Ung Pech. Ung Pech had been arrested before  
16 my arrest, <and> he <worked> at the back <> and, at the time,  
17 <when I was taken to repair the sewing machines at the back, he>  
18 saw <me> and he waved his <hands> to <not> allow me to speak to  
19 him. I was not standing close to him, at the time, when I was in  
20 Tuol Sleng.

21 [11.01.35]

22 Q. In -- in the footage of the film, you see that the members of  
23 that group of seven, three or four of them, did their story --  
24 told their story to the -- to the camera or the filmmakers and  
25 you can also see their photos from S-21.

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1 I asked you yesterday if you knew why your photo was never found.  
2 Now, having seen this footage, do -- do you know how the others  
3 got into the possession of their S-21 photos?

4 A. I told you already; the photographer, who shot my photograph,  
5 collected <two or three> basket loads of photographs <to burn> at  
6 the <wooden> house in the East and that photographer's name was  
7 Nhem En and the photos left remain -- <remaining> <were the ones  
8 that were gathered for display>.

9 Q. Yesterday, I asked you that question and I -- I'm -- I'm  
10 asking it again. Now that you have seen the footage, do you know  
11 whether there was any reason for the East German filmmakers to  
12 tell -- to have Ung Pech and the others tell their story, but  
13 you, apparently, do not feature in the film? Was there a reason  
14 for them not to include you in the film; was that ever discussed  
15 at the time you were there?

16 [11.04.00]

17 A. I did not know about <that>. As I said, I joined in the <group  
18 photo> and then I returned to my workplace at the <Public Works  
19 and Transport>.

20 Q. Mr. Civil Party, my -- my very last question; it's a question  
21 that I -- I'm -- I have to ask you, so please do not be upset. We  
22 have doubts as to you being really an S-21 prisoner, so my  
23 question to you is: Were you really an S-21 prisoner?

24 MR. PRESIDENT:

25 Witness, please -- civil party, rather, please hold on and Deputy

1 Co-Prosecutor, you have the floor.

2 [11.04.58]

3 MR. DE WILDE D'ESTMAEL:

4 There is no basis, whatsoever, for this question, Mr. President,

5 which I find humiliating. To put this question to someone who

6 <survived> S-21 is humiliating.

7 We've given a list of prisoners on which Mr. Chum Mey's name as

8 well as the names of two other persons with whom he was arrested

9 figure. There is an S-21 confession. We have Duch's testimony

10 which absolutely does not call to question the <detention> of the

11 civil party at S-21. I don't see the basis of this question.

12 If it is based on the fact that we've not found his photograph,

13 <we have already heard his explanation;> if it is based on the

14 fact that he was not interrogated by a team that did video

15 footage of S-21 in 1981, an East German team, <certainly we will

16 not have an explanation for that.> <Frankly,> there is absolutely

17 no basis for this question<, and I think it should be thrown out.

18 It is inappropriate>.

19 MR. KOPPE:

20 Mr. President, these -- these are arguments which the Prosecution

21 should leave for their closing brief.

22 I -- I tried to ask my questions, to which the Defence is

23 entitled, as prudently as possible. We have to ask this question.

24 We -- we have to confront the civil party with our doubts.

25 And to just briefly respond, our main reason for doubt is the

1 fact that, as was read out yesterday, Ung Pech doesn't mention  
2 him at all when he gave testimony to the People's Revolutionary  
3 Tribunal. There are other issues which, in our view, need  
4 clarification, so I understand it's not an easy question, but I'm  
5 -- I have to ask this question and the civil party will -- is --  
6 is, I believe, very well capable of saying, "Counsel, you're  
7 absolutely wrong."

8 [11.07.34]

9 MS. GUIRAUD:

10 Thank you, Mr. President, just one remark. I'm not objecting to  
11 the question. I have a remark on what my colleague has said  
12 regarding the reasons why <he doubts that> this civil party was  
13 imprisoned at S-21. He says that the main document on which these  
14 doubts are based is the document he cited yesterday with regard  
15 to the testimony of Ung Pech before the 1979 Tribunal. We  
16 objected yesterday.

17 Ung Pech doesn't say in that document that there were only four  
18 survivors of S-21, but he says at the end of his testimony -- and  
19 I will quote what he said in English for purposes of clarity.

20 "Four survivors at the Tuol Sleng Prison are Ung Pech, Lep Chan,  
21 Nath, and < Ruy> Na Kong. We four presently work together at the  
22 1st Brigade, Phnom Penh."

23 It is, therefore, inaccurate to say that Ung Pech said, at the  
24 end of his testimony before the revolutionary tribunal, that only  
25 four survivors of S-21 do exist. So this is an interpretation of

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1 this document done by my colleague and it is not an  
2 interpretation of the question that was asked.

3 JUDGE FENZ:

4 Perhaps to shorten this after everybody has pleaded at length.  
5 You have the last word. It might be -- in a strange way, I don't  
6 think the question has to be asked. I don't think we agree with  
7 that, but it might be your way to close this chapter for you.  
8 Sir, have you been in S-21? Just answer yes or no.

9 MR. CHUM MEY:

10 Allow me to respond to Your Honours, question. I believe you are  
11 well aware of the investigations. Can you also -- you also know  
12 that Duch was asked whether I was detained there and, of course,  
13 he said that, yes, I was detained there. How come such a question  
14 is put to me repeatedly?

15 You can also refer to the -- my confessions there where I was  
16 forced by Seng to provide a thumbprint--

17 [11.10.13]

18 JUDGE FENZ:

19 I'm not doubting you. I'm giving you the last word. So you were  
20 in S-21; is this true? Yes?

21 MR. CHUM MEY:

22 Yes, I was detained there and if I were not detained there, I  
23 swear that I would be killed by a car on my way leaving the  
24 Court.

25 [11.10.57]

1 MR. PRESIDENT:

2 Let <us> finish this issue here. And the defence team for Khieu  
3 Samphan does not have questions for this civil party.

4 And Mr. Chum Mey, as you've been informed from the outset, that  
5 towards the end of your testimony you may make a victim's impact  
6 statement, if any, concerning the crimes that are alleged against  
7 the two Accused, Nuon Chea and Khieu Samphan, and harm inflicted  
8 upon you during the Democratic Kampuchea from 17 April 1975 to 6  
9 January <1979> resulting in your civil party application to claim  
10 collective and moral reparations for physical, material, or  
11 mental injuries as direct consequences of those crimes. And that  
12 is your right to make such a statement.

13 And also you may put questions to the Accused if you have any;  
14 however, the question has to go through -- through the Bench;  
15 that is, to me, the President of the Chamber.

16 And you may proceed with your impact statement, if you have any,  
17 and after that you can put questions to the Accused through the  
18 Bench.

19 And Mr. Chum Mey, please observe the microphone. You should only  
20 speak after the microphone is operational.

21 [11.12.49]

22 MR. CHUM MEY:

23 Allow me to greet, once again, to the President, the Chambers,  
24 and everyone.

25 The situation was so hard for me after I was arrested and



1 detained at Tuol Sleng. They lied to me that I would be sent to  
2 repair vehicles in Vietnam but, in fact, I was sent to a house to  
3 the east in Tuol Sleng, <and three of us were asked to sit down>,  
4 and <we> did not know that a group of them were hiding behind  
5 <us>. Then they <pulled my hands back and> handcuffed me, <and  
6 they used my own scarf to blindfold me>, and the three of us were  
7 blindfolded.

8 So, they walked us across the road into Tuol Sleng and I thought  
9 to myself that I may not live and I told that to <them, "Please  
10 help take care of my family."> They kicked <my waist, and I fell  
11 down> to the ground and they pulled my <hair> and scolded me  
12 that, <"You motherfucker, you still have any requests?" And they  
13 said that all of us> would be smashed by Angkar.

14 [11.13.56]

15 Then I was sent to a cell. I was ordered to stand straight and  
16 they measured my height and they photographed me. They took off  
17 my <shirt and my long> pants, <and I had only my shorts on>. They  
18 handcuffed my hands and blindfolded me and then they sent me into  
19 a cell which was about 1.5 by 2 <metres>. Then I was shackled and  
20 after that, they removed the <handcuffs> and the blindfold.

21 I was so thirsty, at the time, but I did not dare to ask for  
22 water and by 1 o'clock, I was taken to the south building; that  
23 is, Building A and I was <beaten and> interrogated on the upper  
24 floor.

25 Up there I was told -- I was shackled again, then they took off

1 the <handcuffs> and they -- and they took off the blindfold and I  
2 could see <everything> in the room. I saw a pool of blood to the  
3 right and a bunch of clubs near a table where a typewriter was  
4 sitting.

5 They interrogated me, <about> how many of us joined the CIA or  
6 the KGB and I told them that I <had> no clue about the CIA or KGB  
7 and I responded <to> them by using the word "comrade" and then  
8 they scolded me, <"You mother fucker! Why do you call me comrade?  
9 I am not your comrade! You are a traitor of the nation!"> And  
10 they beat me and <when I used my hand to cover myself,> my little  
11 finger got broken. Then my toe nail was pulled and they could not  
12 pull it out in one move, then they <pulled it out> very rapidly  
13 and it was so painful <that I almost passed out>. Then they use  
14 electrical wire to shock me in my ear. I became unconscious after  
15 that.

16 [11.16.19]

17 And now <on> one side my <ear> is damaged. I <can> hear the  
18 ringing in my ear when I lightly <knock> on my head and I also  
19 <am> hard <of> hearing <in> my other ear. <At the time,> I  
20 believed I would not survive because <I was unconscious>.  
21 They kept on interrogating me and I still said I did not know  
22 anything about the CIA or the KGB and they threatened me not to  
23 lie to Angkar as Angkar never <arrested> anyone <for no reason>.  
24 They kept on interrogating me for 12 days and nights about KGB  
25 and CIA and I was ordered not to say anything about Khmer Krom.

1 During the <period of> 12 days and nights, in the morning, I was  
2 only given a watery -- a ladle of -- rather a spoon<,> of watery  
3 gruel and in the afternoon, the same watery gruel was given to me  
4 in a spoon. <I was given only two spoonfuls of watery gruel per  
5 day.> I became so fatigued as the food was not sufficient. I was  
6 thinking to myself that I was given this watery gruel so that I  
7 could not gain my <strength> to resist their interrogation, <and  
8 if I was given steamed rice, I would gain my strength to resist  
9 them. That's what I was thinking to myself, Mr. President>.

10 [11.18.07]

11 During the 12 day and <12> night saga, I was <beaten and>  
12 interrogated and I saw an <ammunition box> in the room where I  
13 was ordered to relieve myself in, but because of the shackle on  
14 my ankles, the watery faeces could not all go into the container,  
15 so it spilled out and then I <was> ordered to lick it <until it  
16 became clean, and they scolded me that if I did not lick it, I  
17 would be beaten up>.

18 I was so afraid and my back was swollen during the 12 days <and  
19 nights> saga. I could not even move at night because if I <moved>  
20 and then the chain made sound, then I would be beaten again.

21 The situation was so miserable. I thought that <I> was being  
22 treated <worse> than a human being, <I was treated like an  
23 animal, like a dog>. A dog would be given <steamed rice> to eat,  
24 but for me, I was given only watery gruel.

25 And for what mistake I made? I did not make any mistake. I tried

1 my best to work for them day and night <repairing> sewing  
2 machines, but I was mistreated in such terrible <conditions>.  
3 And in the end, one of them named Suos Thy came to ask who was  
4 brought in from Ou Ruessei and I said yes and he said that  
5 tomorrow I would be allowed to work outside, but I was <warned>  
6 not to flee. And next morning, Suos Thy returned with some  
7 clothes for me to wear and he removed the shackle, but put  
8 <handcuffs> on my hands. I was asked to wear pants and a shirt;  
9 then they <sent> me to a back building to repair sewing machines.  
10 [11.20.28]  
11 I repaired about 10 sewing machines and then their typewriter was  
12 broken and a prisoner was asked to carry the typewriter to the  
13 back building for me to repair it. I was asked whether I could  
14 repair it and I said, "Allow me to see first." Because <when> I  
15 was in Ratanakiri, I used to <repair> <them>. And then I saw a  
16 spring <was> loose, then I re-hooked it and it worked again. So  
17 they brought me two more typewriters to fix and I -- thanks to  
18 the springs that I re-hooked, I was spared. <If I could not fix  
19 it, I would not survive. I was lucky because I could fix it, and  
20 they continued to keep me>.  
21 And that was the time the <Front> troops, along with the  
22 Vietnamese <troops>, came to the east part of Phsar Thmei, that  
23 is, the Central Market, and <after they learnt about that>, 18 of  
24 us were gathered up to be housed at a place where Vann Nath  
25 <painted pictures>.

1 [11.21.41]

2 <They threatened to shoot me because> I was the last one to join  
3 the group, and I saw them <standing close to the windows, and  
4 each of them> pulled the <pins> from their grenades <which> they  
5 were still holding in their hands and <I was thinking to myself>  
6 that <if the Front troops arrived there,> they would throw those  
7 grenades into the room and <then> we would be killed.

8 And at noon, <eight of us> were <gathered> to walk in a straight  
9 line, <and we were not shackled>, while having guns pointing at  
10 us, and we were allowed to wait outside the compound, <and they  
11 guarded us there>. And two of them came on a motorbike and I did  
12 not know what they would be doing when they came. And only later  
13 on, I learned that they actually came to slash the throats of the  
14 other 14 inmates in their <beds>. They did not dare <shoot> them  
15 -- to -- to shoot them<,> as the sounds might be heard by us, but  
16 they slashed their throats.

17 And when we were taken to Prey Sar, the female prisoners had been  
18 moved out and we stayed there for about two <or three> hours and  
19 we continued our journey <at dawn>. And then I met my wife at  
20 Angk Snuol, she was amongst the <group of around> 10 women there.  
21 And there were <men,> 18 of us from Tuol Sleng, <and> there were  
22 those soldiers, but I did not know how many of them there were. I  
23 asked the permission to carry my young baby and my wife told me  
24 to take a scarf to a woman who had just delivered a baby under a  
25 palm tree. I delivered the scarf and while crossing to the north

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1 part of the road, we were separated by a gunfire exchange between  
2 them and the <> Front and the Vietnamese troops, so <Vann> Nath,  
3 <Ung Pech and Ta Kong went backwards> while <myself, Bou Meng, Ta  
4 Tuon (phonetic) and others> headed <up> to Amleang. <At the time,  
5 they fled because they were scared of the Vietnamese troops.

6 Three of us were walking together, including Ta Eng, my wife and  
7 myself.> I did not dare to leave my wife behind since she could  
8 not move fast from the fact that she had just delivered the baby.

9 [11.24.10]

10 We reached <a pagoda> called Srah Thul near Amleang. We were so  
11 starving and I asked for rice from the people in <that place>.

12 And about 5 or 6 o'clock in the afternoon, I saw a group of Khmer  
13 Rouge and there were about 50 <> of them and I saw one of them,  
14 who was blind in one eye, named Comrade Sor (phonetic). They  
15 asked me about my native village and <if> I was from <the> East  
16 Zone and they said that I should stay <there and wait for a  
17 permission letter so that I would get> rice from Angkar. So we  
18 stayed there in <front of a> school or Sala (phonetic), <we slept  
19 on the ground> and then this Khmer Rouge group left.

20 [11.25.04]

21 However, there was a militiaman who came to look at our group and  
22 about 12 midnight, although this is just my guess since I did not  
23 have a watch to look at, and <I saw three men armed with AK  
24 rifles, and> they asked <the> militia <that, "Where are the three  
25 people who are supposed to be taken away to be killed?" And that

1 militiaman replied "Here, they are> sleeping in a bed". I woke up  
2 and then I woke my wife and <Ta> Eng up. They said that they now  
3 received a letter from Angkar and that my wife should walk first  
4 since she could not walk fast. So my wife walked first, then Ta  
5 Eng, and I was the last person.

6 We were about one kilometre from the pagoda when we were fired  
7 at. Then my wife shouted at me to run away because we were fired  
8 upon. <At the time, my baby cried loudly and> Ta Eng was shot <in  
9 front of me> and he <shouted> <at> me to run as well, so I ran  
10 away for about 10 metres. Then they actually turned their fire  
11 <on> me, and I did not know whether they ran out of bullets or  
12 whether because I was hiding myself behind a termite mound, <and  
13 they then fired at that termite mound because they thought that I  
14 was hiding behind it. In fact,> I crawled along the rice field  
15 dyke to escape. Then I ran into the forest to hide myself and  
16 about 7 or 8 o'clock at night, I ran for three days and <nights>  
17 from Srah <Thul> (phonetic) area.

18 Then I met <two> women who were carrying rice on their heads and  
19 I asked where Thmat Pong (phonetic) was. They were surprised and  
20 they said that Thmat Pong (phonetic) area was actually -- was  
21 behind, so I had to run back.

22 [11.27.04]

23 During this six <day and six night> saga, I had nothing to eat,  
24 no -- nothing to drink, <I was lost in the forest>, but I found  
25 some wild tree leaves <called Thnoeng (phonetic) leaves,> and I

1 ate <them>; I ate these <sour> leaves. Then I found Thmat Pong  
2 (phonetic) mountain and after that I returned to Phnom Penh.

3 MR. PRESIDENT:

4 If you conclude your statement, you may now put questions to the  
5 Accused through me, the President of the Bench. You may proceed.

6 And, again, Mr. Chum Mey, please observe the microphone. Of  
7 course, you have the chance to put questions to the Accused, but  
8 you should only speak after the phone is -- microphone is  
9 operational.

10 [11.28.15]

11 MR. CHUM MEY:

12 Through you, the President of the Chamber, I'd like to put  
13 questions to the Accused; that is, Nuon Chea, that in his  
14 capacity as the senior leader of the regime, did he know about  
15 Tuol Sleng Museum. Did you know -- did he know about the location  
16 <and the size> of Tuol Sleng and did <he> have -- he have any  
17 communication with Duch? That is my first question.

18 And here is my second question, again, to Nuon Chea. Did he  
19 participate in any mass meetings held at Borei Keila? Did he say  
20 that anyone who was not clear from the <imperialists>, then these  
21 people should tell the Party and they would be forgiven by the  
22 Party?

23 I also have a question for Khieu Samphan. My question is the  
24 following: Did he ever go to Ou Ruessei Market and if so, did he  
25 tell the women who cooked the rice that they should cook more



1 rice for the people who arrived from the East Zone<,> and did he  
2 go to distribute <that> rice to the people at the railway  
3 station, that is, those people who had been evacuated from Prey  
4 Veng and Svay Rieng? These are my questions, Mr. President.

5 [11.30.07]

6 MR. PRESIDENT:

7 Thank you, Mr. Chum Mey. We would like to inform you that  
8 pursuant to Internal Rule 21.1(d) of the ECCC, which states that,  
9 at all stages of the proceedings, the Chamber shall inform you of  
10 the right of the Accused to remain silent. On 8 January 2015, in  
11 response to the question of the Chamber, the Co-Accused  
12 reaffirmed their position to exercise their right to remain  
13 silent.

14 Also during the hearing -- the hearing, the Chamber noticed that  
15 the Co-Accused maintained their position to remain silent, unless  
16 and until such time the Chamber is informed otherwise by the  
17 Co-Accused or their counsels.

18 [11.31.02]

19 The Chamber also instructed the Co-Accused and-or their counsels  
20 to inform the Chamber in a timely and efficient manner so the  
21 Accused resolved to waive their rights to remain silent and be  
22 willing to respond to questions by the Bench or relevant parties  
23 at any stage of the proceedings.

24 As of today, the Chamber is not informed that the Co-Accused have  
25 changed their position and thus agreed to provide their responses

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1 to questions. And pursuant to national and international laws as  
2 well as international conventions, the Chamber cannot compel the  
3 Accused to respond to questions. So please be informed of that.  
4 Lead Co-Lawyer, you have the floor now.

5 MS. GUIRAUD:

6 Thank you, Mr. President. A very short point of clarification and  
7 I would like to provide this point of clarification, in the  
8 presence of Mr. Chum Mey, regarding the <East German> documentary  
9 shown by the Nuon Chea Defence. And we'd like to say that we have  
10 a German-speaking jurist in our team who listened to the excerpt  
11 in German and it's clear in this excerpt -- between 10.30.38 to  
12 10.31.27, it's clear in that excerpt that the East German  
13 documentary filmmakers say that they were seven survivors from  
14 S-21 including Chum Mey and, at that point, the photo of the  
15 seven is shown in the documentary, so it's quite clear from the  
16 voice over in the documentary that Mr. Chum Mey was, indeed,  
17 identified as one of the survivors in 1981. Thank you very much.

18 [11.33.31]

19 MR. PRESIDENT:

20 Thank you, Mr. Chum Mey. The hearing of your testimony in  
21 relation to your suffering as a civil party, <of> which you  
22 stated that you were <a> victim during Democratic Kampuchea, has  
23 now come to an end.  
24 Your testimony will contribute to the truth. You may now be  
25 excused. You may return to your <residence> or to any place you

1 wish to go. I wish you good health physically and mentally and  
2 also good luck and prosperity.

3 Court Officer, please work with the WESU Unit to send Mr. Chum  
4 Mey back to his <residence> or to any places he wishes to go.

5 [11.34.28]

6 In the afternoon, the Chamber will proceed to hear the oral  
7 arguments of parties in relation to the requests of Mr. Nuon  
8 Chea<'s defence counsels>, to seek the permission of -- from the  
9 Chamber to admit some documents in relation to 2-TCW-919. And  
10 also we, the Chamber, will hear the submission <of> arguments  
11 from the Co-Prosecutor in relation to Kong Sam Onn who used to be  
12 a duty counsel in the previous case. So the Chamber will first  
13 hear all those <submissions> before it proceeds to hear <the  
14 testimony of witness> 2-TCW-919.

15 It is now time -- <a> convenient time for <a> lunch break. The  
16 Chamber will take a lunch break from now until 1.30.

17 Security personnel are instructed to bring Mr. Khieu Samphan to  
18 the waiting room downstairs and have him returned into the  
19 courtroom in the afternoon before 1.30.

20 The Court is now in recess.

21 (Court recesses from 1135H to 1333H)

22 MR. PRESIDENT:

23 Please be seated. The Chamber is now back in session.

24 And this afternoon's session, the Chamber is going to hear the  
25 submission from parties on two requests: one from the defence

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1 counsel for Nuon Chea and another one from the Co-Prosecutors.  
2 Then the Chamber will hear the testimony of witness 2-TCW-919  
3 because the Chamber would like to hear the oral submission from  
4 parties first so that the Chamber will have sufficient grounds to  
5 issue its ruling.

6 [13.34.22]

7 First, the Chamber would like to hear the oral submission from  
8 parties on the first request by Nuon Chea's defence counsels who  
9 requested that the Chamber admit eight documents related to  
10 witness 2-TCW-919, who is scheduled to testify today, and that  
11 Witness 2-TCW-919 provide a copy of the book he authored and that  
12 book be admitted into evidence.

13 The Chamber gives the floor to Nuon Chea's defence counsels to  
14 brief us about their request. You may now have the floor.

15 MR. KOPPE:

16 Thank you, Mr. President. Good afternoon, Your Honours.

17 Yes, we would like the Chamber to admit eight documents in  
18 relation to TCW-919 (sic).

19 Very briefly, also for the benefit of the public, Mr. President,  
20 the first document is a report from OCIJ investigator Bernard  
21 Brun, and it relates his encounter with Witness 919 (sic).

22 The second document is a "Phnom Penh Post" article of 16 August  
23 2002 titled "Who Owns the Tuol Sleng Photos?" It's written by  
24 Patrick Falby.

25 [13.36.04]

1 Third document is also "Phnom Penh Post" article; it's called  
2 "Tuol Sleng Photographer Begins Building Khmer Rouge Museum,"  
3 written by Sam Rith.

4 Fourth is an article from the University of Minnesota which  
5 states that because the original negatives and photographs made  
6 by the Khmer Rouge were separated from S-21's dossiers,  
7 identifying individuals is quite difficult. It is a publication  
8 from The Center for Holocaust and Genocide Studies.

9 The fifth document is an article from the "Cambodia Daily", 6  
10 March 2015. It's called "S-21 Photographer's Book Sales Banned at  
11 Museum," written by Khuon Narim.

12 The sixth document of, most likely, photographs of TCW-919 (sic),  
13 we would like, at one point in time, to show the witness, indeed,  
14 the photos and ask him whether, indeed, that is the portrait of  
15 him.

16 [13.37.31]

17 Document 7 is a photo of S-21 guards. It is coming from Nic  
18 Dunlop's book, "The Lost Executioner".

19 And the eighth and final document, Mr. President, that we would  
20 request to have admitted to the case file is a photograph of Chin  
21 Met. It's a photo which is on display at the Tuol Sleng Museum  
22 and she testified that, at one point, she was detained at S-21,  
23 was subsequently sent to S-24, I believe. In any case, we'd like  
24 -- we'd like to confront the upcoming witness with this photo.

25 Some documents were available prior to the trial, so I will fully

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1 admit that we, in relation to certain documents, are a bit tardy.  
2 However, as discussed yesterday when the civil parties came with  
3 Chum Mey's book, of course, we were lenient and saw the relevance  
4 of that book being admitted, so I hope, at this stage, the  
5 parties on the other side -- opposite side of the -- of the  
6 Chamber will and if the courtroom will have the same leniency, I  
7 do have to say that it was only known to us that this particular  
8 witness would come testify; it was only known recently.  
9 But I -- I believe that all eight documents are in the interest  
10 of justice, so Mr. President, I would move that these documents  
11 <be> admitted to the case file. Thank you.

12 [13.39.38]

13 MR. PRESIDENT:

14 Thank you, Counsel Victor Koppe. Could you please let us know  
15 whether the book you -- you requested that is -- that was  
16 authored by Witness 2-TCW-919, <do you have that book with you  
17 right now? If not>, do you know whether the witness brought along  
18 the book with him <since your request was made while he was  
19 making the journey from his home to ECCC yesterday>?

20 MR. KOPPE:

21 Yes, Mr. President, I apologize for omitting that summarizing our  
22 request. We have tried -- we've attempted to -- to get a copy of  
23 that book, but we were unsuccessful and it's actually, I suppose,  
24 the same status as -- as the book that I just mentioned of Chum  
25 Mey written by the witness or -- or a civil party.

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1 We don't have it and we presume that he, himself, has a copy of  
2 his own book. We haven't been able to talk to him obviously. I'm  
3 not sure if WESU spoke to him beforehand. I don't know whether  
4 this request was communicated to him, but presuming that he will  
5 come back tomorrow. If he doesn't have it now then, hopefully, he  
6 will be in a position to bring the book with him tomorrow.

7 [13.41.07]

8 JUDGE FENZ:

9 Can I just ask a question? Are you asking to admit a book you  
10 haven't read? So you don't know what is in the book or -- because  
11 then how do you know it's relevant?

12 MR. KOPPE:

13 That -- that's -- that -- you're -- that's a very -- that's a  
14 very good question. We -- we need to -- we need to have a look at  
15 it first obviously. We presume it is relevant because it -- it  
16 seems to be about his experiences as S-21 photographer and we  
17 presume it's about his -- his trip to China and his other  
18 photographing activities. So I--

19 JUDGE FENZ:

20 What makes you presume that? I mean before leniency, but asking  
21 to admit a document you haven't read; how -- how would you  
22 argue--

23 [13.41.54]

24 MR. KOPPE:

25 Well, it's -- it's called "Nhem En's Personal Memoir at S-21." I

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1 presume it's not about his hobby of having dogs. The title, I  
2 would imagine, implies that it is about the segment that we're  
3 dealing with.

4 MR. PRESIDENT:

5 Thank you. Now the Chamber gives the floor to the Co-Prosecutors  
6 to provide <a> response <> to the request by defence counsel for  
7 Nuon Chea.

8 MR. LYSAK:

9 Thank you, Mr. President. I have a -- some general observations  
10 and perhaps one of the exhibits that we would object to.

11 Let me start by saying that it is a little odd that the reason  
12 offered for putting forth some of these documents is to show that  
13 this witness lacks credibility. This is a witness that the Nuon  
14 Chea defence has asked to be called, no other party to my  
15 knowledge, and, yet, now they wish to put forward documents to  
16 show that the witness that they've asked Your Honours to hear  
17 isn't credible.

18 [13.43.38]

19 That said, the documents still may have some relevance, so I'm  
20 not going to ask Your Honours to not consider the -- admitting  
21 the documents for that reason alone. I just observed that there  
22 is an oddity to this request.

23 Going through them, the first -- the report from the OCIJ  
24 investigator, we have no -- no objection to document number 1.

25 Number 2, "Phnom Penh Post" article, I'm not sure that the Nuon



1 Chea team is interpreting this article correctly. There are 6,000  
2 negatives, I understand, of photographs that do exist. There are  
3 also -- it is also true that there are a large number of  
4 prisoners who are recorded in lists for whom there have not been  
5 recovered photographs or negatives. That said, we have no  
6 objection to document number 2.

7 [13.44.49]

8 Similarly, document number 3, which is put forward to question  
9 the credibility of this witness, if the Nuon Chea team wishes to  
10 do that, we have no objection.

11 Document number 4 is -- I wouldn't say it's an article; it's a  
12 part of the website from the University of Minnesota that has a  
13 description of the -- an S-21 photo exhibit that was used in many  
14 places around the world called "Facing Death". I'm not sure it's  
15 particularly probative.

16 They do make the point -- there is a reference in here to the  
17 fact that, at the time, most of the photographs that had been  
18 recovered from S-21 could not be identified because they had  
19 separated from the biography files to which they were,  
20 apparently, originally attached.

21 [13.45.52]

22 I would note, just so Your Honours to bring everyone's attention  
23 to this, that there was an additional thousand photographs that  
24 were recovered by DC-Cam that do have identification information  
25 on them. They're either the -- either someone, presumably at

1 S-21, will need to ask witnesses about this, but someone at S-21  
2 either wrote the names and some of the entry information on the  
3 back of the photograph or they're photographs from 1978 when they  
4 began a -- a practice of using name signs that -- that included  
5 the name, date of entry, and some other information.  
6 So this is a -- it's approximately 1,000 photos. There is a list  
7 of them that has been admitted as E3/9214 by Your Honours. The  
8 photos were originally not available from DC-Cam because they  
9 were being used as an exhibition. They were submitted -- copies  
10 were provided by DC-Cam and a filing from, I believe, Monday of  
11 last week, 11th of April, those photographs that correspond to  
12 list E3/9214 are now part of the record as E3/94.1 to the motion  
13 that was filed on -- on Monday of last week.

14 [13.47.32]

15 I bring that to your attention because this is something we put  
16 on the interface and photographs or something probably all  
17 parties may want to use, at some point, whether with this witness  
18 or subsequent witnesses. But it is -- also it is not the case --  
19 it is the case now that there are a substantial number of  
20 photographs for which there are identification information.  
21 Returning to the -- the documents proposed by Nuon Chea, number 5  
22 -- number 5 is one, honestly, I'm not sure that this is of  
23 particular relevance or probative value. It's an article about  
24 the witness not being allowed to sell his book within the S-21  
25 compound. There are comments from a government official and from

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1 Chum Mey, who just appeared, that this witness is not a victim,  
2 but a cadre and, therefore, there was -- he shouldn't be allowed  
3 to be selling his book. I believe this is the book that -- that  
4 Mr. Koppe was hoping to obtain to sell his book on the S-21  
5 compound.

6 I'm not sure that this is -- is a matter that affects the  
7 credibility of -- of this witness, but it's -- it's not an  
8 article of great importance, but I -- I do think this is one that  
9 we probably don't view as having any probative value.

10 [13.49.04]

11 Number 6, the photographs of -- of the witness, we have no  
12 objection.

13 Number 7, photographs of S-21 guards, no objection.

14 Number 8, no objection, but I do note that counsel describes this  
15 as a photograph originating from S-21. In the very testimony that  
16 is cited, it was identified as, actually, a photograph taken at  
17 Prey Sar, S-24. It's unclear this civil party was unsure where  
18 she was initially detained, but she was admitted as a civil party  
19 in Case 001 because of her being detained at the Prey Sar S-24  
20 site.

21 That said, counsel's obviously entitled to show this to the -- to  
22 the witness and ask whether he knows whether it was taken at  
23 S-21, S-24 Prey Sar. So we have no objection to it. We just note  
24 that the -- some of the assertions in this filing, we do take  
25 issue with.

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1 [13.50.11]

2 With respect to the book, we have no objection if the witness is  
3 willing to provide his book. We have no objection to that  
4 becoming part of the record.

5 We -- we would object to any delay in the witness' testimony or  
6 to the witness being recalled later to be asked questions about  
7 this book. I think that if -- if the counsel wanted the book in  
8 advance of the witness appearing, then they needed to file this  
9 motion earlier.

10 We -- we don't take any issue based on 87.4; simply we don't want  
11 the fact that his book maybe later become part of the case file  
12 to be a reason for having to recall -- recall him. So if -- if  
13 the witness is willing to provide his book and the Chamber wishes  
14 to put it on the case file, that is something we have no -- no  
15 objection to.

16 MR. PRESIDENT:

17 Thank you.

18 What about the Lead Co-Lawyer for civil party, do you have any  
19 observations or <a>response?

20 [13.51.30]

21 MS. GUIRAUD:

22 Thank you, Mr. President. With regard to the totality of the  
23 documents, except for one, we will rely, as usual, on the  
24 Chamber's wisdom.

25 Now, with regard to the request regarding the book, this request

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1 seems premature insofar that neither the party at the source of  
2 this request, nor the other parties have been able to become  
3 apprised of this element; therefore, it seems difficult for the  
4 Chamber to rule on a document that no one knows anything about.  
5 I'd like to underscore that this situation is perfectly different  
6 from the situation that occurred yesterday with Chum Mey's book  
7 since we had made a request. And to support this request, we had  
8 presented the excerpts in all three languages <which we wanted to  
9 adduce as evidence,> and, therefore, all the other parties had  
10 the possibility of reading these excerpts and to decide on the  
11 relevance of admitting this book into evidence. So the situation  
12 is completely different from what is being presented to us today.  
13 [13.52.46]

14 The Defence is asking to admit into evidence a document that no  
15 one has seen; however, of course, we do not object to the fact  
16 that the question be put to the witness and if the witness brings  
17 this work willfully, well then, this issue may be re-examined  
18 <once> all parties become apprised of this book and to decide on  
19 admitting this book into evidence or not.

20 MR. PRESIDENT:

21 Last, the Chamber gives the floor to the defence counsel for  
22 Khieu Samphan to raise an observations or any response to the  
23 request by Nuon Chea defence counsel.

24 MR. KONG SAM ONN:

25 Mr. President, defence counsel for Khieu Samphan do not have any

1 objection to the request.

2 [13.53.50]

3 MR. PRESIDENT:

4 Mr. Koppe, do you have any responses to the observation or  
5 submission by <the Co-prosecutor and the Lead Co-lawyer for civil  
6 parties>? You may have -- you may now have the floor.

7 MR. KOPPE:

8 Thank you, Mr. President. Yes, very, very briefly -- that is, in  
9 response to the first point raised by the Prosecution and the  
10 last point raised by the Lead Co-Lawyer.

11 The big problem, obviously, for the Defence is that we are not  
12 allowed, from the -- since the very beginning of this case in  
13 2007, to do our own investigation or to speak to witnesses. We  
14 are fully dependent on whatever we find in the case file.

15 [13.54.39]

16 It is correct that we ask Nhem -- the next witness, excuse me, to  
17 -- to testify based on his original WRI in Case 002, but then he,  
18 subsequently, after we requested that he give another statement  
19 to the investigators, which made us also possibly want to see  
20 whether his credibility or reliability is, indeed, such that we  
21 should accept his testimony.

22 The same goes for his memoir. We cannot just simply go up to him  
23 and ask him please give us the book. We would be immediately  
24 reprimanded for doing so. So it's a very difficult position that  
25 we are in as -- as defence lawyers not being able to do our own

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1 investigation, at all, and not approach any -- any witness, so  
2 that's why we filed this, indeed, a little bit uncommon request  
3 to have the Chamber ask him to bring his own book. That's, I  
4 think, the only way that we could have done so.

5 And the same goes to the credibility issue. If we had had a  
6 chance to speak to him, maybe we might have never asked him and  
7 maybe it's also a good reminder that he wasn't our most important  
8 witness as it comes to what exactly happened within the  
9 photography unit. We originally requested the chief of the  
10 photographic unit or the photography unit. We believe that he has  
11 much more pertinent testimony to give, but the Chamber decided  
12 only to summons 919 and, hopefully, at one point in time, it will  
13 also summons the chief of the photography unit.

14 [13.56.42]

15 JUDGE FENZ:

16 May I just ask a question? It -- it's about the book; the  
17 memoirs, as you call it. Yes, I understand you couldn't call  
18 asking, but you could have asked the Chamber to -- to get the  
19 book and--

20 MR. KOPPE:

21 Well, we -- we filed--

22 JUDGE FENZ:

23 --and not bring it on the same day you actually--

24 MR. KOPPE:

25 We filed you--

1 JUDGE FENZ:

2 --you want to use it.

3 [13.57.04]

4 MR. KOPPE:

5 We filed -- we had the request ready on -- on the first day of  
6 Khmer New Year and then we -- we <sent> a courtesy copy yesterday  
7 morning, so I -- I would imagine, although it's -- the limit is  
8 -- is -- the time is limited that--

9 JUDGE FENZ:

10 Counsel, there was an official recess. The Chamber was in recess  
11 and recess means for a week, but I guess you couldn't even file.

12 MR. KOPPE:

13 No, so we sent it yesterday morning, so--

14 JUDGE FENZ:

15 Use it tomorrow.

16 MR. KOPPE:

17 --you -- you saw the request yesterday morning and you asked us  
18 yesterday to file submissions or to come with submissions, so in  
19 theory, the Chamber could have asked WESU to ask the witness to  
20 bring the book with him.

21 [13.57.49]

22 JUDGE FENZ:

23 We did within a day, yes?

24 MR. PRESIDENT:

25 Next, the Chamber would like to hear oral submissions from



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1 parties on the second request from the Co-Prosecutors about  
2 National Defence Counsel Kong Sam Onn <who used to be a duty  
3 counsel for> witnesses <in the previous case>.

4 Kong Sam Onn used to be a duty counsel <for witnesses> in <the>  
5 previous <case> and that's why the Co-Prosecutor filed a request  
6 related to this and now the Chamber gives the floor to the  
7 Co-Prosecutors to brief us about their request. The floor is  
8 yours now.

9 [13.58.50]

10 MR. LYSAK:

11 Thank you, Mr. President. I'll be brief as we've indicated our  
12 position in our filing E397.

13 At first, I want to make it very clear, we're -- we're in no way  
14 suggesting that -- that Kong Sam Onn should be removed because of  
15 this situation, but there are conflicts that are presented here.

16 This issue was initially raised by other parties. There was an  
17 email from the Senior Legal Officer about a suggested way of  
18 dealing with the conflicts and, in our view, there was two  
19 additional things that the Chamber -- we'd recommend that the  
20 Chamber do in order to protect everyone's interests here.

21 The Chamber intended to seek agreements or waivers from the  
22 witnesses that had been represented by Khieu Samphan's national  
23 counsel. We believe that a waiver or agreement should also be  
24 obtained from Mr. Khieu Samphan himself. Both -- both the  
25 witnesses and the current client have an interest here.

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1 [14.00.05]

2 The last thing in the world we would want to see is -- should  
3 this case not go his way and there be convictions -- that, on  
4 appeal, Mr. Khieu Samphan asserts some issue because his counsel  
5 used to represent some of the witnesses he should have been  
6 examining harder. That's the conflict that exists here and it is  
7 a conflict that can be fairly simply resolved, we believe, from  
8 agreements from the witnesses and from Mr. Khieu Samphan himself.  
9 Second, conflict ethics involve the appearance of propriety is an  
10 important part of that. Even with these agreements, we submit  
11 that it would be better for Mr. Kong Sam Onn not to be the one  
12 who questions these witnesses that he used to represent. That  
13 puts a little bit more of a burden on the international counsel,  
14 we recognize, but in this situation it seems to us that from an  
15 appearance standpoint it would be better and it's easy enough for  
16 him simply not to ask questions of these witnesses that he used  
17 to represent.

18 So for those -- those are the two additional steps that we have  
19 suggested in our filing in order to deal with this situation.

20 [14.01.58]

21 MR. PRESIDENT:

22 I'll now give the floor to the Lead Co-Lawyers for civil parties  
23 if you wish to make a response to the request made by the  
24 Co-Prosecutors.

25 MR. PICH ANG:

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1 Good afternoon, Your Honours.

2 In relation to the request by the Co-Prosecutors, we, the Lead  
3 Co-Lawyers, do not have any response to make and rely on Your  
4 Honours' wisdom.

5 MR. PRESIDENT:

6 Thank you. And I would like to give the floor now to the defence  
7 team for Nuon Chea if you wish to make a response to the request  
8 by the Co-Prosecutors.

9 [14.02.38]

10 MR. KOPPE:

11 Yes, very briefly, Mr. President. Obviously it's up to the Khieu  
12 Samphan team to properly respond to this motion. Allow me to make  
13 one or two remarks.

14 I find the position of the Prosecution quite remarkable. I might  
15 remind the Prosecution of the situation in appeal where at the  
16 advice, the incomprehensible advice, I might add, from the Chief  
17 of the Defence Office to appoint a standby counsel, the lawyer  
18 who should be really the last lawyer in Cambodia to be standby  
19 counsel. That was the lawyer of Ieng Thirith. The Chamber knows  
20 very well the enormous conflict of interest there was between  
21 Ieng Thirith and our client.

22 The initial suggestion for appointment by the Chief of the  
23 Defence was even Duch's national lawyer to be standby counsel in  
24 appeal. That to us was absolutely incomprehensible.

25 [14.04.00]

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1 The Prosecution never bothered to intervene, never said anything  
2 about this. So now all of a sudden it seems it is very concerned  
3 with a conflict of interest within the Khieu Samphan team. I  
4 believe the Khieu Samphan team is very well capable of deciding  
5 and judging whether there is indeed such conflict. We believe  
6 there is none.

7 I am also a bit surprised now that I am at it with the Lead  
8 Co-Lawyer for the civil parties. I would like to remind the  
9 Chamber of a discussion we had in relation to one of the civil  
10 party lawyers, Counsel Lyma Nguyen, in relation to a witness that  
11 we believed was a potential big conflict. She was representing  
12 not only a possible murderer of his own wife, but also the person  
13 who had told the story, the same story to her. So that's to us a  
14 clear situation of conflict or at least the appearance of. Let me  
15 be nuanced in this.

16 But now all of a sudden from that side hearing arguments as to  
17 conflicts of interest within the Khieu Samphan team, I find that  
18 proof of at least a certain double standard.

19 [14.05.36]

20 MR. PRESIDENT:

21 And, lastly, I'd like to give the floor to the defence team for  
22 Khieu Samphan to respond to the request by the Co-Prosecutors.  
23 Kong Sam Onn, you may proceed as this matter is directly related  
24 to you as well as your function here at this Court.

25 [14.06.05]

1 MR. KONG SAM ONN:

2 Thank you, Mr. President.

3 Good afternoon, Your Honours and good afternoon, all parties and  
4 everyone.

5 I'd like to summarize the issues.

6 We knew that certain witnesses were or had been summoned to  
7 testify <before the Chamber> in relation to S-21 Security Centre  
8 for 002/02 and I used to be a duty counsel <for witnesses> in  
9 Case 001 and there were four trial witnesses in fact, though I do  
10 not wish to mention their names now.

11 We notified the Chamber on 29 March about this matter and  
12 <yesterday> we received a written request by the Co-Prosecutor  
13 and we also have <heard> a summary of that request that is in  
14 relation to my prior witnesses that I represented.

15 [14.07.22]

16 The Deputy Co-Prosecutor raised the issue of the conflict of  
17 interest that my prior representation of those trial witnesses in  
18 Case 001 may <be a> conflict of interest in <this case,> that is,  
19 with <Mr.> Khieu Samphan.

20 This is a <huge confusion>. I provided my consultancy to trial  
21 witnesses and they are the witnesses of the Chamber and they are  
22 not the Accused <in the case; that's the first issue>.

23 Secondly, during those testimonies of the trial witnesses, there  
24 is no fact that alleged Khieu Samphan as their leader or as their  
25 supervisor <or that he ordered them to do certain tasks>; there

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1 is none. Therefore, there is no conflict of interest whatsoever  
2 between Khieu Samphan and those trial witnesses.

3 [14.08.35]

4 And the second point <in relation to the solutions> that <>  
5 included in our submission on the 29th of March to the Chamber,  
6 and <on the 8th of February,> through the Senior Legal Officer,  
7 the Chamber responded that I, in my capacity as legal  
8 representation of Khieu Samphan, should not question the four  
9 witnesses so that I can maintain the confidentiality between my  
10 client and myself and I believe this mechanism is sufficient to  
11 address the issue raised.

12 Third, it is my observation that the relationship of the  
13 communication between the client and the lawyer is not subject to  
14 the interference of the Office of the Co-Prosecutors. The Chamber  
15 has the authority to deal with such issues, as I said <> from the  
16 beginning that the four witnesses <for whom> I was duty counsel  
17 were the witnesses <for the Chamber> and they were not any of the  
18 accused, nor the accused that I represent at the moment in this  
19 case. <It was six years ago.>

20 [14.10.32]

21 Fourth, in relation to the request by the Co-Prosecutors that  
22 Khieu Samphan shall produce a written waiver in order to avoid  
23 the issue of conflict of interest, I believe that this is not  
24 necessary since Khieu Samphan has been aware of my duty counsel  
25 to the four trial witnesses before I became part of his case. And

1 his choice to have me to defend him is based on his awareness of  
2 my previous counsel to those witnesses.

3 Fifth, it is also my observation that the Co-Prosecutor alleges  
4 the issue of the conflict of interest of Khieu Samphan. I believe  
5 such <an> allegation is against the current facts and what we  
6 have.

7 Khieu Samphan, in his capacity as the State President of the  
8 Presidium <in Democratic Kampuchea regime>, had no relationship  
9 directly or indirectly with any of the four upcoming witnesses.  
10 For that reason, it is impossible that such <a> conflict of  
11 interest might arise in this case.

12 [14.12.22]

13 And lastly, I would like to remind everyone that it is my duty  
14 and responsibility to maintain the confidentiality of my client  
15 and because of that responsibility I raised an issue to the  
16 Chamber in relation to those four upcoming witnesses. Although  
17 they are not my clients, I provide -- I provided them with my  
18 representation for a short period of time in another case and it  
19 has nothing to do with this case.

20 And since 2009 I have no contact or whatever with those  
21 witnesses. For that reason there is no <grounds> that I may have  
22 any influence on those four witnesses.

23 To sum up, I agreed to the solution by the Trial Chamber that I  
24 shall not question those four witnesses and I believe that is a  
25 proper mechanism which is sufficient and there is no need for

1 another measure or mechanism.

2 Thank you, Your Honours.

3 [14.13.46]

4 JUDGE FENZ:

5 A quick question, counsel, before we go into an in-depth  
6 discussion about conflict of interest, just in case the Chamber  
7 thinks there might be one, are you basically or is your team  
8 willing to do two things? And you have basically answered the  
9 first one. You will not ask questions. Did I understand it  
10 correctly; you will not question this witness? This is what you  
11 offered, basically? Yes.

12 And the second one, would Mr. Khieu Samphan mind putting on  
13 record that he waives his right to raise the issue of a possible  
14 conflict of interest arising from this double representation and  
15 we can move ahead. We can do it now and put it on record.

16 MS. GUISSSE:

17 Let me clarify something to complete what my colleague has  
18 stated. <I would like to remind you that it is us,> the Khieu  
19 Samphan team, that raised the issue while explaining clearly that  
20 we are of the view that there was no conflict of interest and we  
21 are raising the issue simply for the purpose of making sure the  
22 <witnesses are> at ease and there would be no problem.

23 [14.15.19]

24 So let us be clear on this. From a legal standpoint there  
25 shouldn't be any conflict of interest <for the reasons my



1 colleague just stated>.  
2 What we <have> proposed is not in absolute terms< that my  
3 colleague Kong Sam Onn may not ask any questions,> but we just  
4 want to present the situation to the <witnesses> and it will be  
5 up to <them> to decide whether it would pose any problem if my  
6 colleague Kong Sam Onn were to put questions to <them.>  
7 So the first point is to inform the <witnesses> that Mr. Kong Sam  
8 Onn is part of the Khieu Samphan defence team, <so that the  
9 witnesses are aware of that.> And then the <witnesses> will be  
10 allowed to <say> whether <they see a problem, despite the  
11 confidentiality of their exchanges,> and <despite> the fact that  
12 we <consider> that there is no conflict of interest, we propose  
13 that I would be the only person as the international co-counsel  
14 to put questions to the <witnesses>, if <it were a problem for  
15 the witnesses>, and <it is also important to mention that> it  
16 will be up to the Prosecution to tell us what is the <answer to  
17 the real question here is, that is> -- what is the position of  
18 the <witnesses> and not <so much> that of the OCP<, but what is  
19 the position of the witnesses, who know exactly what they said,  
20 once again>.  
21 [14.16.31]  
22 <We> have the statements of <those witnesses in the case file>,  
23 we have the testimony of the witnesses <before this Chamber> --  
24 as part of Case 001 and <no one ever personally questioned> Mr.  
25 Khieu Samphan in any way, so I want to make it clear that our

1 position is that <there is no conflict of interest, but to be  
2 clear, our position is that> it is proper to inform the  
3 <witnesses> and the <witnesses> should be allowed to tell us  
4 whether <they are> at ease to be cross-examined by <my colleague>  
5 Kong Sam Onn.

6 As regards the position of Mr. Khieu Samphan, the principle is  
7 that he has designated Mr. Kong Sam Onn after he participated in  
8 Case 001/01 and he was of the view that there is no conflict of  
9 interest <and never had any problem with it>. So, the issue of<,  
10 I don't know how you translate "waiver" in French, but the issue  
11 of> exculpatory evidence doesn't arise. Mr. Khieu Samphan <has  
12 full confidence> in the <professional and> ethical qualities of  
13 his lawyer and so there shouldn't be any problem as far as  
14 conflict of interest is concerned<, so there is no need for a  
15 tempest in a teacup>.

16 [14.17.44]

17 JUDGE FENZ:

18 Why isn't your client willing to put on the case file that he  
19 will not raise on appeal a conflict of interest-related issue?  
20 Why is he not willing to give this declaration if everything is  
21 clear?

22 I think the Prosecution wants to avoid, if I understand it  
23 correctly, is that Khieu Samphan gets up and appeals it and says,  
24 "And I was represented by a lawyer who at least in one case when  
25 it came to -- or three cases -- had a conflict of interest with

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1 witnesses. The only thing Prosecution asks is to waive him this  
2 right to raise this ground of appeal.

3 MS. GUISSÉ:

4 Judge Fenz, maybe there was a problem of communication. We have  
5 never <said that> Mr. Khieu Samphan <refused> to make such a  
6 statement. <All> we said<, because we were asked for our  
7 opinion,> was that we were of the view that it wasn't  
8 necessary.<Now the Chamber will make the decision it sees fit,  
9 but we>, for our part, think it's not necessary.

10 [14.19.09]

11 JUDGE FENZ:

12 Is he willing to do it now so we can close this discussion,  
13 perhaps after having consulted with his lawyers?

14 MS. GUISSÉ:

15 The Court's indulgence. It is very difficult to discuss this  
16 issue with Mr. Khieu Samphan given his hearing problems in the  
17 courtroom. But if you want us to confirm his position, you will  
18 have to adjourn to give us five minutes so that we can discuss  
19 the matter with him <in a place where we don't have to shout for  
20 him to hear us.>

21 [14.20.09]

22 MR. KONG SAM ONN:

23 Thank you. I would like to get confirmation from the Chamber if  
24 the Chamber decides that Khieu Samphan shall make a written  
25 waiver or make an oral response right now about this, then Khieu

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1 Samphan is in a position to do so.  
2 However, in relation to the waiver not to appeal in relation to  
3 the issue of conflict of interest, it is not necessary. That is  
4 still our position. For that reason, we believe that there is no  
5 need for Khieu Samphan <> to make such a written waiver or to  
6 make an oral response now. However, if the Chamber deems that it  
7 is necessary for him to do it now then he can do it.

8 MR. PRESIDENT:

9 International Lead Co-Lawyer, you have the floor.

10 [14.21.21]

11 MS. GUIRAUD:

12 Thank you, Mr. President. Thank you for giving me the floor  
13 again. I would like to react to what my colleague Koppe has said  
14 regarding civil party lawyers, and specifically, Lyma Nguyen.  
15 <Our colleague has gotten us used to guesswork and  
16 misrepresentations of evidence and debates.> We are used <to this  
17 and it does not bother me.> <But> I am shocked at the manner in  
18 which what was discussed <at the hearing> has been relayed. We do  
19 not endorse the application made by the Co-Prosecutor on the  
20 issue of conflict of interest. My colleague Ang Pich <was very  
21 clear>. <We> relied on the Chamber's discretion to come back on  
22 this today and talk about <this incredibly grotesque> issue of <a  
23 potential> conflict of interest regarding our colleague, Lyma  
24 Nguyen. I find it ridiculous and completely unacceptable. <Either  
25 the Defence really has something to say about this matter, and

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1 they will do so in writing, but to>

2 [14.22.20]

3 come back and say that there was a problem and that we adopted a  
4 different position whereas we supported our colleague in an issue  
5 of conflict of interest is not correct. It's inaccurate and it is  
6 shocking.

7 <Will> our colleague <please> stop <this speculation, omissions,  
8 misrepresentations> of submissions and debates<?> <Because> it is  
9 really <getting> unacceptable<.>

10 MR. LYSAK:

11 I thank counsel for their clarification that he won't ask  
12 questions to this witness. We do think, for the reasons I stated,  
13 that it would be a good practice here for -- to obtain a waiver  
14 from Mr. Khieu Samphan, an acknowledgment that he will not assert  
15 any conflict of interest arising from his national counsel's  
16 representation of these witnesses. I don't see why that is an  
17 issue.

18 I take counsel's word at it that Mr. Khieu Samphan is happy with  
19 the representation. I am sure he is. They are doing an excellent  
20 job of representing him. Therefore, I assume there would be no  
21 problem with him doing this which, I think, is in the interest of  
22 this Court and also in the interest of Khieu Samphan's counsel.

23 [14.23.48]

24 There is nothing wrong with lawyers having conflicts of interest.

25 I don't want to get into a long discussion of it. I used to

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1 practice in a law firm of 600 lawyers. Every time we wanted to  
2 represent someone we would get a conflict of interest report  
3 about an inch thick and we would have to follow up, but with all  
4 former clients of the 600 lawyers in our firm.

5 It's a normal thing and it's good practice to get a written  
6 waiver from your client.

7 So I don't want to belabour the point. I hope this won't be an  
8 issue and that Mr. Khieu Samphan will acknowledge and waive any  
9 conflict of interest here.

10 I do want to just say one thing in response to Mr. Koppe's point  
11 about the standby counsel that was appointed in the Supreme Court  
12 proceedings. It's not an analogous situation at all. That lawyer  
13 never began representing Nuon Chea, first of all.

14 [14.24.47]

15 The Supreme Court gave strict instructions they would have no  
16 contact with Mr. Nuon Chea. It wasn't even clear to me whether  
17 this was an amicus lawyer that was going to protect the Court's  
18 interests or not.

19 Second of all, Mr. Koppe, Nuon Chea's counsel and Nuon Chea never  
20 objected. He makes a stink about it now. He never objected in the  
21 Supreme Court proceedings to the appointment of the standby  
22 counsel.

23 So I think it's a little bit of a red herring. It's not at all on  
24 point to the issue we are dealing with here.

25 MR. KOPPE:

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1 We did, just for the record, F2/10, Mr. President. That is our  
2 request for reconsideration to the Supreme Court to reconsider  
3 the decision of the summons of Heng Samrin and Robert Lemkin,  
4 paragraph 14, we discussed this matter of clear conflict of  
5 interest in the appeal proceedings.

6 [14.26.11]

7 JUDGE LAVERGNE:

8 Yes, thank you, Mr. President. I need some clarifications here  
9 because there may be interpretation problems here, particularly  
10 from what I believe I heard the Co-Prosecutor say. Mr. Kong Sam  
11 Onn <is not offering to refrain from questioning> witnesses <he  
12 assisted as witnesses in Case 001. He is offering to refrain from  
13 questioning them> if they are of the view that there is a  
14 conflict of interest and that they <would not be  
15 well->represented <when the time came for questioning>.

16 So this is not an open proposition. It is <> conditional on the  
17 position taken by <those witnesses>. I note that Mr. Khieu  
18 Samphan is present in this courtroom and he's heard all the  
19 remarks regarding the existence of a possible conflict of  
20 interest, and I believe that if he <wishes to> react he can do so  
21 at this stage we haven't taken note of any intention on his part  
22 to react.

23 [14.27.26]

24 MS. GUISSÉ:

25 I believe there was indeed a communication problem. In any case,

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1 I am from a jurisdiction in which I am used to speaking in the  
2 presence of my client and I make assertions regarding my  
3 client<'s position> and I <am not used to my word not being  
4 enough. Perhaps that was the sense with which I spoke, to say  
5 that we believed that the "waiver," whatever the French  
6 translation is, was not necessary.>  
7 <Now, I indeed share the view of Judge Lavergne, who says that  
8 if> Mr. Khieu Samphan has something to say that is different from  
9 what his counsel has to say he can do so. <I believe that is more  
10 than> sufficient and the Chamber can decide as it wishes. As far  
11 as I am concerned, the position of our client, bearing in mind  
12 the discussions we've had, is perfectly clear.

13 MR. PRESIDENT:

14 I believe we should end these issues now. It is a minor problem  
15 and it seems now it escalated to a larger scale.

16 (Judges deliberate)

17 [14.30.02]

18 MR. PRESIDENT:

19 The Chamber would like to thank the <parties for their>  
20 submissions and responses -- that is, in relation to the request  
21 by the defence team for Nuon Chea and the second one by the  
22 Co-Prosecutors.

23 The Chamber will use <that> information as <a> basis for our  
24 decision and oral ruling will be issued after we return from the  
25 short break.



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1 We will now proceed to hear testimony of witness 2-TCW-919.

2 Court officer, please usher witness 2-TCW-919 into the courtroom.

3 (The witness enters courtroom)

4 [14.31.50]

5 QUESTIONING BY THE PRESIDENT:

6 Q. Good afternoon, Mr. Witness. What is your name?

7 MR. NHEM EN:

8 A. Mr. President, my name is Nhem En.

9 Q. Thank you, Mr. Nhem En. Can you tell the Chamber when were you  
10 born?

11 A. I was born on 9 September 1961.

12 Q. Where were you born?

13 A. I was born in Trapeang Meas village, Trangel sub-district,  
14 Kampong Leaeng district, Kampong Chhnang province.

15 Q. Thank you.

16 What about your current address?

17 A. I live in Thnal Keang village, Anlong Veang sub-district,  
18 Anlong Veang district, Siem Reap province. <However, now> I have  
19 two houses, <the other one is> in Siem Reap <province, that is,  
20 in Chonlong village, Sala Kamraeuk sub-district, Siem Reap town>,  
21 Siem Reap province.

22 [14.33.28]

23 Q. What is your current occupation?

24 A. In the past I was a District Deputy Chief of Anlong Veang  
25 district. Later on I resigned from the post but the government

1 <did not approve, and then I was> transferred <to work at> Oddar  
2 Meanchey <provincial government office>. But currently I have  
3 just resigned from the position.

4 Q. Could you please speak slowly because the interpreter needs to  
5 follow and interpret what you said from Khmer into <ECCC  
6 official> languages, <English and French>.

7 So if you have resigned from <your position as> government  
8 <official>, don't you have any job right now?

9 A. Nowadays I have a business. I cooperated with a Korean  
10 business partner. <And second, I have written a> book about my  
11 past story, <as a former photographer> at Tuol Sleng prison which  
12 focus on the period between 1975 to 1979, the period when I  
13 worked at the prison.

14 Q. Thank you. Did you bring along the book with you now?

15 A. I thought that you would ask for the book when I arrived here,  
16 but I do not have the book with me right now. I can bring the  
17 book tomorrow <for your Honours. There are about 20 copies of the  
18 book>.

19 [14.35.23]

20 Q. Thank you. What is your parents' names?

21 A. My father's name is Nhem Meas. He is already deceased. And my  
22 mother's name is Huon Chea, also deceased.

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

24 A. Related to my family, in 1980 I got married in the jungle,  
25 <and at the time, it was still under the control of the Khmer

1 Rouge regime because we still respected the Party flag>, and I  
2 had six children. And in <1995> I <> separated from my wife and  
3 then I got married with another woman and now we have one  
4 <daughter, and another adopted child>.

5 Q. What is your current wife's name?

6 A. Her name is Sou Bunnary. She is a <lecturer> at <two  
7 universities> in Siem Reap <province>.

8 [14.36.46]

9 Q. Thank you, Nhem En. And based on the report from the greffier  
10 this morning that, <to best of your knowledge,> you had no  
11 relationship, <by blood or by law, to any of the two> the  
12 Accused, that is, Nuon Chea and Khieu Samphan and to the <any>  
13 individuals who were -- who have been admitted <to be civil  
14 parties> into this <case>; is that report correct?

15 A. Yes, that is correct, but I worked with them.

16 Q. That is not related to the legal proceeding. The legal  
17 proceeding <pertains to relationship,> by blood or by law to <any  
18 of the> accused, <and Law defines that as the conflict of  
19 interest, and it is required to do a separate proceeding for  
20 that>.

21 Have you already made an oath before the Iron Statue before you  
22 came into this courtroom?

23 A. Yes, I already took an oath before the Iron Statue.

24 [14.38.06]

25 Q. Thank you, Mr. Nhem En. Now, we inform you about your rights

1 and obligations in front of this courtroom as a witness.

2 As a witness in the proceeding before the Chamber you may refuse  
3 to respond to any question or to make any comment which may  
4 incriminate you. That is your right against self-incrimination.  
5 This means that you may refuse to provide your response or make  
6 any comment that could lead you to being prosecuted.

7 Your obligations: As a witness in the proceedings before the  
8 Chamber you must respond to any questions by the Bench or  
9 relevant parties except where your response or comment to those  
10 questions may incriminate you as the Chamber had just informed  
11 you of your right as a witness.

12 You must tell the truth that you have known, heard, seen,  
13 remembered, experienced<, > or observed directly <regarding> an  
14 event or occurrence relevant to the questions that the Bench or  
15 parties pose to you.

16 [14.39.18]

17 Mr. Nhem En, have you ever given interviews to the investigators  
18 from the OCIJ office and if you have, how many times and where  
19 did those interviews take place?

20 A. In 2008 the <Chamber> invited me <once> to this Court and then  
21 I was interviewed another time in Siem Reap. So <it was> twice.  
22 But I was also interviewed by national and international  
23 newspapers, <including many worldwide TV channels, but except  
24 "CCN" TV channel. It can be said that Nhem En is known  
25 worldwide>.

1 Q. Thank you. We want to know about your interviews provided to  
2 the investigators from the OCIJ and based on the proceeding you  
3 have mentioned that you had provided two <statements, including  
4 your testimony before the Chamber in the previous Case 001>.

5 Before you came to this courtroom, <had> you already read the  
6 <statement> of your interview that you provided to the  
7 investigators <to refresh your memory>?

8 A. Yes. I have read two points. The first point, I met a  
9 journalist <in 1997, and another point was my statement in 2008,>  
10 and I also read something related to the law, <the> transparency  
11 and <I read my statement before the Chamber as well.>

12 [14.41.17]

13 Q. Based on your recollection of what you have read whether the  
14 statement you provided in the interviews corresponded with what  
15 you really told the interviewers, the investigators?

16 A. Based on my examination <regarding all the issues that  
17 happened> during the Democratic Kampuchea regime that lasted for  
18 three years, eight months <and twenty days>, I totally agree.

19 MR. PRESIDENT:

20 Judge Fenz has a number of questions that you may wish to put to  
21 Nhem En before the break time.

22 [14.42.18]

23 QUESTIONING BY JUDGE FENZ:

24 Q. Witness, the defence has asked for your book to be admitted  
25 into evidence but nobody has seen the book so far or read it, so

1 that's why I have a couple of questions which will help us to  
2 decide whether we allow this book to be used as evidence during  
3 proceedings. Please answer very short. First of all, what's the  
4 title of the book?

5 MR. NHEM EN:

6 A. Madam Judge, my book's title is "Nhem En: The <Former>  
7 Photographer of Tuol Sleng Prison in Democratic Kampuchea  
8 Regime".

9 Tomorrow, I will bring 50 books and will give <them> to Judges  
10 and parties in this courtroom.

11 Q. At the moment we are not distributing anything. At the moment  
12 I am just asking you questions about the book.

13 Who wrote this book?

14 [14.43.45]

15 A. I compiled this book long time ago. I compiled it by myself  
16 and I had <my sponsor and my> assistant <named Duong Dara>  
17 (phonetic)<>. He is a Cambodian American and <now> he is an  
18 advisor to Prime Minister Hun Sen.

19 <I love history, and I compiled history.> I would like to compile  
20 this book so that the <next> generations can study about  
21 Democratic Kampuchea. <Therefore, I think this story-->

22 Q. Short. We might get into details of this book later. Please  
23 now try short answers.

24 So you wrote the book. What exactly was the role of your -- I  
25 don't know. Was it the co-author or of the second person? Did he

1 also help you write the book or did he translate or did he  
2 publish or what was his role?

3 A. I wrote it myself but there was another assistant that I  
4 <sought> help from.

5 [14.44.57]

6 Q. Okay. This book is available in what languages?

7 A. The book is published in English but I have <plans to> have  
8 the book translated into 17 languages, in <French, English,  
9 Japanese,> Chinese--

10 Q. For the time being, the book exists in English? It doesn't  
11 exist in Khmer?

12 A. No Khmer version yet. There is only the English version.  
13 <About 5000 books were published>.

14 Q. When did you write the book?

15 A. After I resigned <as> the deputy chief of <Anlong Veang>  
16 district, I started writing the book <until the publishing date>.

17 Q. What year are you talking about? When was the book published?

18 A. The book became available on sale on the 1st of January 2015.

19 Q. Is this book fact or fiction or both?

20 Do you understand the question?

21 A. I told about my true story in this book. <It was a true story  
22 that happened 30 years ago>. It's about my true experience that I  
23 had during Democratic Kampuchea Regime, <particularly in Tuol  
24 Sleng prison>.

25 [14.47.10]

1 Q. That partly answers my last question. What is the book about?

2 A. The book is about the time when I started working in Tuol

3 Sleng <prison> in 1976. It's about the overall experience and

4 work as a photographer in the prison and I described it at length

5 for about 80 <or 90> pages.

6 Q. And my last question, why did you decide in 2015 to write this

7 book? This is 40 years after the event.

8 A. I love history. I have a passion in history. I have very good

9 memory of events <from 1971 to 2016, and I can recall all the

10 months of the events, but not the days. However,> I have the

11 experience of being cheated by foreigners who came to interview

12 me and then just <went> back without any returns. <Now I have

13 enough resources to do business myself>.

14 JUDGE FENZ:

15 Thank you. I have no further questions at this moment.

16 MR. PRESIDENT:

17 Thank you, Mr. Nhem En.

18 We just introduced you into the courtroom in your capacity as a

19 witness but it is now appropriate time for a short afternoon

20 break.

21 Court officer, please bring Mr. Nhem En to the room reserved for

22 him and please bring him back into the courtroom at 3.10.

23 The Court is now in recess.

24 (Court recesses from 1449H to 1513H)

25 MR. PRESIDENT:



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

2 Before the Chamber hands the floor to the defence team for Nuon  
3 Chea to put questions to Witness Nhem En, the Chamber <will>  
4 issue a short ruling in relation to the two requests that were  
5 discussed before the break.

6 The Chamber issues our decision on the request by Nuon Chea to  
7 accept -- to admit certain documents as evidence. After having  
8 heard the submissions and responses of the parties before the  
9 break, the Chamber is of the view that seven of the eight  
10 documents are related to Case 002 and may assist in seeking the  
11 truth in this case. For that reason, seven of these documents are  
12 admitted as part of the evidence in Case 002, except an article  
13 from "Cambodia Daily"<, > which is rejected.

14 [15.15.27]

15 As for the book authored by Nhem En, the Chamber will make a  
16 separate ruling on that after it sees and reads that book first.  
17 Parties should also do that. And that ruling will be issued in  
18 due course.

19 Secondly, in relation to the request by the Co-Prosecutors on the  
20 issue of the possible conflict of interest of Counsel Kong Sam  
21 Onn, the defence counsel for Khieu Samphan, is deferred as it is  
22 not an urgent matter. The decision will be issued when  
23 appropriate.

24 The Chamber now hands the floor to the defence team for Nuon Chea  
25 to put questions to this witness before other parties since this

1 is the Defence's witness, and the combined time for the defence  
2 teams for Nuon Chea and Khieu Samphan is two sessions.  
3 However, usually the Khieu Samphan defence will put the questions  
4 last to witnesses as a common practice here. So the two defence  
5 teams may discuss among yourselves regarding the allotted  
6 combined time.

7 You may proceed, counsel.

8 [15.17.08]

9 QUESTIONING BY MR. KOPPE:

10 Thank you, Mr. President.

11 Q. Good afternoon, Mr. Witness. I would like to ask you some  
12 questions today and probably also tomorrow. Before I will ask you  
13 some questions about the period between 1975 and 1979, let me  
14 start first with a follow-up question of the President and that  
15 is in relation to your date of birth.

16 You said before the break that you were born in 1959. However, in  
17 another WRI you said that you were born on the 9th of September  
18 1961. Can you tell us which of the two dates is your date of  
19 birth?

20 MR. NEHM EN:

21 A. Thank you for the question, counsel.

22 In relation to my date of birth, I was pretty sure that I was  
23 born in 1961. However, my wife put it as 1959. However, I changed  
24 my identity card <so it matches my Bachelor degree and my  
25 Registrar's Certificate>, and that is 9 September 1961. And allow

1 me to confirm that it was a mistake made by my wife that I was  
2 born in 1959.

3 [15.18.58]

4 MR. PRESIDENT:

5 Mr. Nhem En, please, slow your pace. When I raise my hand like  
6 that it means that you should not speak yet until the microphone  
7 is operational. And when I put my palm face- down it means that  
8 please slow down so that your response can be interpreted into  
9 the official languages of the Court.

10 And Counsel Koppe, you can proceed.

11 [15.19.32]

12 BY MR. KOPPE:

13 Thank you Mr. President.

14 Q. Mr. Witness, just to follow up, I have here a photo which is  
15 probably of you.

16 The photo, Mr. President, that was just admitted by the Chamber,  
17 I would like to show that photo to the witness also because it  
18 has a date on it and an age on that date. So with your leave, I  
19 would like to show that photo to the witness and ask him to  
20 confirm whether that, indeed, is he on the photo and whether the  
21 age "16" on the 27th of September 1976 was his age.

22 JUDGE FENZ:

23 Counsel, just the references of all the documents you are  
24 mentioning, please.

25 MR. KOPPE:

1 Well, I don't have an E3 number yet, but it is referenced in our  
2 motion and it has D108/3/15.1 on it, and the English ERN is  
3 00162874.

4 [15.20.50]

5 MR. PRESIDENT:

6 You may proceed.

7 BY MR. KOPPE:

8 Q. Mr. Witness, is that you on the photo? And, if yes, can you  
9 read what's below the photo?

10 MR. NHEM EN:

11 A. Thank you, counsel. This is a photo of me that was taken on 7  
12 September 1976. Actually, I brought with me some documents but I  
13 was not allowed to bring it into the courtroom.

14 Actually, I took this photo myself with <a Leica camera made in  
15 Germany, and a Rollei camera made in Japan. Those cameras could  
16 take automatic self-portraits>. It was not a modern machine <like  
17 what we have today,> but <I could take a self-portrait. It is  
18 real, not fake>.

19 MR. PRESIDENT:

20 The counsel <asked> you to read that document. Could you kindly  
21 do that?

22 [15.22.30]

23 MR. NHEM EN:

24 The letter that I typed on the photo reads, "<On the 7th day of  
25 the> month of September, <in the> year 1976 <>, age 16 years

1 old".

2 BY MR. KOPPE:

3 Q. Thank you, Mr. Witness. That would suggest that you are either  
4 born in 1960 or '61. Would that be correct?

5 MR. NHEM EN:

6 A. Yes, that is correct.

7 Q. Well, you can only be born once, so it is either 1960 or 1961  
8 on a specific date.

9 With that photo, potentially jogging your memory, can you tell us  
10 what exactly the date of your birth is?

11 MR. LYSAK:

12 Mr. President, I don't want to belabour this, but if we're going  
13 to quibble, he couldn't have been born in 1961 under -- if he was  
14 16 as of September 1976. So it would have either been 1959 or  
15 1960 if you want to quibble about his age. Not that that's a big  
16 issue.

17 [15.24.04]

18 BY MR. KOPPE:

19 I was never very good at math, Mr. President.

20 Q. So, Mr. Witness, seeing this photo, like I said potentially  
21 jogging your memory, what was your date of birth exactly?

22 MR. NHEM EN:

23 A. I recall it clearly. My date of birth was in 1961. Since my  
24 father was also a school principal and he noted that for me  
25 clearly.

1 Q. Thank you, Mr. Witness.

2 Now, let me turn to the period between 1975 and '79. You have  
3 stated in your record of interview that you were sent to China to  
4 study photography. Is that correct?

5 A. Yes, that is correct.

6 [15.25.16]

7 Q. And when did you go to China?

8 A. It's a long way, but allow me to summarize it. In 1975, I  
9 returned from Kampong Chhnang <district> to Phnom Penh, and that  
10 was in May 1975.

11 And by early 1976, I was selected by Angkar to go to China. Son  
12 Sen, at the time, was the minister of defence -- national defence  
13 -- and was also in charge of security, and Excellency Nath was in  
14 charge of the general staff of the army of the Democratic  
15 Kampuchea, <and Excellency Pin was> in charge of Division 703. I  
16 had <a> good background. I was part of the revolutionary movement  
17 and I had good discipline and I met the 12 moral criteria, and  
18 for that reason I was selected to go and study in China.

19 [15.26.42]

20 MR. PRESIDENT:

21 Mr. Nhem En, please listen to the question carefully and respond  
22 directly to what was asked. You were asked which year did you go  
23 to study in China, so you should only respond with a year.

24 As for the reason you were selected, could be put in the  
25 subsequent questions. And, in fact, you have answered quite in

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1 detail, but not to the point raised in the question. Although you  
2 said that you went to study in China, you failed to mention the  
3 year that you were sent to China.

4 Please respond briefly if that is what is asked of you and if the  
5 question needs your long response, then you can do so, but if it  
6 is a short question that needs your short response, please do so,  
7 so that we don't waste time.

8 And, <> you will have <hundreds of> questions to answer during  
9 your course of testifying in this Court.

10 And, Counsel Koppe, you may continue.

11 [15.27.52]

12 BY MR. KOPPE:

13 Thank you, Mr. President.

14 Q. Mr. Witness, when did you go to China and how long did you  
15 stay in China?

16 MR. NHEM EN:

17 A. I went to China in 1976, that is, in January, <and I stayed  
18 there for six months> and I returned in June of that year.

19 Q. And where in China did you go?

20 A. At that time, we boarded a ship and we stayed along Yangtze  
21 River in Shanghai, but I cannot recall the particular village<,  
22 commune, district> that I stayed although it was part of  
23 Shanghai.

24 [15.28.56]

25 Q. Do you have any evidence of your trip, photos maybe, anything

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1 that could show that you were really in China studying  
2 photography?

3 A. At that time, we did not have the facility to develop <photos>  
4 and I was sent by <Commander in Chief His Excellency> Son Sen to  
5 study <only the technical skills, and I studied> six subjects.1)   
6 it was filming, <2)> <film projection>, <3) photography, 4)>  
7 photo <development>, <5)> map drawing. So I studied <five  
8 subjects> for six months in China, <and then I returned>.

9 Although there is no evidence, I have my own <notebook> about the  
10 techniques that I learned in China. <However, I have not kept it,  
11 I sent that notebook to Australia. I used to testify before the  
12 Chamber about that notebook. I had the notebook, but I did not  
13 have any pictures; however, I had some pictures when I came back  
14 to Cambodia >.

15 MR. PRESIDENT:

16 Witness, you are reminded again, please, respond only to the  
17 limit of the question, otherwise it may lead to more questions to  
18 be put to you. You should only respond to the question.

19 BY MR. KOPPE:

20 Thank you, Mr. President.

21 Q. Mr. Witness, I ask you this question because in your WRI,  
22 E3/68; English, ERN 00401819; Khmer, 00162837; and French,  
23 00195658; you said that you had photos of your training and also  
24 of Ta Nath's visit in China.

25 Is that correct, did you say that? And do you have these photos?



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1 [15.31.19]

2 MR. NHEM EN:

3 A. I do not have Ta Nath's photo in China, but I have Ta Nath's  
4 photo in Cambodia, <that's his photo with Chinese expert/s at a  
5 petroleum factory in Kampong Som>.

6 Q. Well, the reason I'm asking you the question whether you had  
7 any evidence or proof of your stay in China is that Duch, when  
8 testifying in Court here -- Mr. President, E3/7468, that's his  
9 testimony on the 4th of August on 16.11 -- Duch said that you  
10 were never sent to study photography in China, but that it was  
11 rather Pol Pot's nephew, Theng, who went to study photography in  
12 China.

13 Could you please give a reaction to what Duch said about your  
14 trip to China?

15 A. I knew Duch in 1976, in mid-1976, so he was not aware of me  
16 before that. He started to know me only when I began my work at  
17 Tuol Sleng and there were six photographers over there. But for  
18 the testimony, <whether or not> he objected <to> something about  
19 me, <that's his right>.

20 [15.33.08]

21 Q. Very well. Thank you, Mr. Witness.

22 Can you tell the Chamber what did you do after you came back from  
23 those six months in China?

24 A. There are many things to tell you about this. After I came  
25 back from China, I started to make films and <take> photos and

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1 there were about 400 cameras that I used<, including> many  
2 varieties of of camera <such as Rollei, Leica, Canon, Nikon and  
3 so on.> I cannot recall all of them.

4 And I <started taking> photos of the activities of <some  
5 soldiers. However, the most hectic time was when I came to work  
6 at> Tuol Sleng prison; <that was a core work of Angkar. It was my  
7 main task. As for my secondary work,> I also took photos <in the  
8 whole country,> in all the five or six zones.

9 Q. Indeed, you gave testimony about that. Do you recall, for  
10 instance, going to the Northwest Zone, more particularly to the  
11 Trapeang Thma Dam worksite, to take photos of zone leaders,  
12 Chinese officials, etc.?

13 A. I remember it clearly that I went to Trapeang Thma <reservoir>  
14 worksite and <Kamping> Pouy <reservoir,> and <regarding the> 1st  
15 January <and 30 September Dams, I recall it clearly>, and there  
16 were Chinese delegates <and the ambassador Sun Hav,> who went <to  
17 see Trapeang Thma reservoir>. And Yeay Chaem, who was the  
18 district secretary over there, also participated.

19 [15.35.21]

20 Q. Do you remember making photos also of the zone leader, Ros  
21 Nhim?

22 A. Yes, I took tens of thousands of photos that I cannot recall  
23 all of them, but I believe that I <have Ros Nhim's photo, and I  
24 also have> photos <> of the <> secretaries <of those five or six  
25 zones>. <Now I have about five> thousand photos. <However, I

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1 cannot describe all of them, there were millions of photos>.

2 MR. PRESIDENT:

3 Court officer, please adjust the tip of the microphone to make  
4 sure that the -- it directed to the right position for the  
5 witness.

6 BY MR. KOPPE:

7 Q. I'm particularly interested, Mr. Witness, in a photo of Ros  
8 Nhim. We are searching for years already for a photo of Ros Nhim.  
9 Do you have one in your collection?

10 MR. NHEM EN:

11 A. I have <a> photo of Ros Nhim. Ros Nhim was the secretary of  
12 the Northwest Zone and I also <have> <a> photo <of Ta Sy, the  
13 secretary of the West Zone, and Ke Pauk was the secretary> of  
14 <Central> Zone and <So Phim, the secretary of> the <East> Zone.  
15 So I have many photos of <almost all of the zones> throughout the  
16 Democratic Kampuchea regime.

17 [15.37.15]

18 Q. Would you be willing, Mr. Witness, to provide the Chamber and  
19 the parties with Ros Nhim's photo?

20 A. I can send them to you, but some of the photos I haven't  
21 brought with me <because there are many photos>. I brought only  
22 the <photos and> documents that are relevant for this court<, but  
23 I was not allowed to bring them into this courtroom>. So <> I  
24 left <them in a room downstairs>.

25 Q. Besides making photos in various zones as you said, was there

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1 anything else that you did after your return from China and  
2 before you went to S-21, or Tuol Sleng?

3 A. During that time, I -- my time was busy. Angkar gave me the  
4 core <work> and beside my core <work,> I grew vegetables and  
5 <did> other additional tasks including preparing the <negatives,  
6 and other technical work. I did those tasks carefully>.

7 And at that time during the Khmer Rouge regime, it's widely known  
8 that we have -- we just <minded> our own business. We did not  
9 mind other business. <So we had to pay more attention to our  
10 work.>

11 [15.39.14]

12 Q. In your WRI, Mr. Witness, E3/68, you said that you had a small  
13 publishing shop to publish newspapers and magazines near the  
14 hospital. You said also that you were moving around to take  
15 photos at the office of the general staff and also that you said  
16 -- you also said that you were a messenger between Monivong  
17 Hospital and Takhmau Prison, but I believe that was before you  
18 went to China. But are these things that you did after China?

19 A. I <had> worked <> before I went to China. <At the time, I was  
20 a messenger, and> I rode <a> bicycle from the psychiatric  
21 hospital <called Ta Morm (phonetic) psychiatric hospital>. It was  
22 also a big prison. I worked as a messenger and rode <a> bicycle  
23 to deliver the letters <to Monivong hospital every day>. So it  
24 was true that I was a messenger.

25 Q. So you did in '75-'76 many things. You went to China, held

1 those positions afterwards. Wasn't that a big responsibility for  
2 a 16 year-old?

3 A. I was a poor peasant child. <I was proud since Angkar had  
4 given me work to do, and as I said> I loved my work that was  
5 assigned by Angkar, but at that time we could not refuse the  
6 assigned work. If we refused, we would be in trouble, <we would  
7 be dead,> so we had no choice but to do what was assigned to us.  
8 [15.41.38]

9 Q. Were you, at one point in time, part of Division 703?

10 A. I did not work in Division 703, but <at one particular point  
11 in time, there were more than> 2,000 children <trained in>  
12 military techniques <at> Division 703, <behind the Krapeu Ha  
13 pagoda and along the Praek Tnaot (phonetic) river. The training  
14 techniques included> <military> techniques in infantry, air  
15 force,<> navy <and fighting techniques. Those more than 2,000  
16 children were taken from Kampong Chhnang province, called Sector  
17 31, and also from Kandal province. I was not in that division. In  
18 fact, the division was trained by> Division <703 that was the  
19 former Division 12 which had fought along the lower part of  
20 Mekong river. I was not in> this division, <but I was trained  
21 there>. And they taught us about the military techniques.

22 Q. So, is it fair to say when I summarize that you were trained  
23 by members of Division 703 or by Division 703, but you, yourself,  
24 were not a member of the division?

25 A. Yes, that is correct because at that time, after the war

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1 ended, Angkar trained us to prepare ourselves for any possible  
2 future war.

3 [15.43.26]

4 Q. And is that also the reason that in your WRI you speak about  
5 Nath and Pin being chiefs of Division 703 and people that you say  
6 that you know? Is that the reason you talk about Nath and Pin?

7 A. It's correct. Angkar brought children from <two> provinces  
8 <only>, from Kampong Chhnang <called Sector 31>, and from Kandal  
9 province <called Sector 25>, so children were brought in only  
10 from the two provinces to be trained <at> Division <703 which was  
11 the former Division 12>, and <at the time>, I knew His Excellency  
12 Nath, and His Excellency Pin <and hundreds of other trainers>.

13 Q. You said that Nath travelled to China with you - or, rather,  
14 that Nath was in China while you were there as well.

15 Do you know any other names of Nath? Do you know an alias that  
16 Nath used?

17 A. I am not familiar much with his biography, but people called  
18 him Ta Nath, so I also address him accordingly, Ta Nath.

19 He -- as for his detailed biography, I do not know much but I  
20 just know that he used to be the commander of <the former>  
21 Division 12 <which had fought along the lower part of Mekong  
22 river>.

23 [15.45.16]

24 Q. Have you ever heard the name Sem (phonetic) or Brother 3?

25 A. Related to names, I cannot recall well, but at Regiment 43,

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1 Regiment 43 was a <very> strong <> force <of Khmer Rouge posted  
2 at a special battlefield, and they fought the South> Vietnamese  
3 soldiers <along the Mekong river. I'm not sure whether the name  
4 is Sem or not. What I can recall clearly is that the Regiment 43  
5 was a very special regiment posted at> the lower <part of the>  
6 Mekong.

7 Q. In his testimony before the Trial Chamber in Case 001 -- that  
8 is, Mr. President, E3/5794, his testimony on 28 April 2009 at  
9 around 10.07 -- Duch said, and I quote:

10 "The comrades, the photographers, and the photographic  
11 instruments were all the legacy of the Division 703. The  
12 photographers also came from the Division 703, and the  
13 typewriters also came from Division 703. Also, writing papers,  
14 books, medications, envelopes." End of quote.

15 Is that statement of Duch correct in your recollection?

16 A. It's correct. In S-21, 50 per cent of the staff came from  
17 Division 703 and also <half of them were> children from Sector  
18 31, <Kampong Chhnang province, and some of them were from Takeo  
19 province, and Kandal province or Sector 25>.

20 I knew <most of them such, for instance, the typists,> the  
21 interrogators <for serious offences, the interrogators for light  
22 offences, and the interrogators for medium offences> and the  
23 murderers, <most> of them came from Division 703.

24 [15.47.51]

25 Q. Is it correct to your recollection -- I'll move quickly to

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1 S-21 but then I'll go back -- that Suos Thy, Prak Khan, Him Huy,  
2 Hor, that they were all members of 703?

3 A. Yes, that is correct. Ta Hor was the former member of the  
4 regiment, Division 12, <Regiment 43 >. Suos Thy <was in Sector  
5 25>, Prak Khan, Ta Huy, were all members, and Suos Thy, the one  
6 who <held> the list of the prisoners in S-21. And, as I told you  
7 earlier, many members of the S-21 staff came from Division 703,  
8 but many of them <died>.

9 Q. Was Duch himself also a member of Division 703 or its  
10 predecessor, Division 12?

11 A. I remember some of the history. Ta Duch used to be prison  
12 chief at Aoral Mountain, the place called Ta Baes (phonetic).  
13 [15.49.45]

14 Q. Let me ask you differently. Have you ever heard that Duch was  
15 involved in the liberation of Phnom Penh in fighting in 1975 with  
16 Division 12?

17 A. At that time, we divided our force <by> direction. For  
18 example, the southwest <was called the special zone> and the  
19 <west zone consisted of Kampong Speu, Kampong Chhnang and Koh  
20 Kong. So, Ta Duch did not have anything to do with the Southwest  
21 zone. In fact, he was actually in Amleang, Trapaeng Chong, Aoral.  
22 He was part of the security for a long time. In the past, I heard  
23 that place was called Ta Baes (phonetic), and it was a killing  
24 place, but I do not know who was in charge of that place.  
25 However, I knew that Ta Baes was Duch's place at Aoral>.



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1 Q. Mr. President, I will be referring to -- with my next question  
2 to document E3/2117. That's a DC-Cam book on Division 703, more  
3 particularly, English, ERN 00081318; in Khmer, 00192958 and 59.  
4 The author of this book has talked to what he calls "a veteran of  
5 the 704th Special Forces Battalion", a Meng Hak, and he says the  
6 following about Meng Hak:

7 "While gathering food, Meng Hak, a combatant in the 117th  
8 Battalion of the 12th Division's 267th Regiment, saw the forces  
9 of Duch (Kaing Guek Eav) surrounding a colonel's house. A soldier  
10 called out to Meng to help guard the house saying, 'Don't let  
11 anyone come down'. Instead, Meng continued gathering food, not  
12 realizing that the colonel had slipped away. A moment later, Duch  
13 arrived, leading a force to capture the colonel." And it goes on  
14 a bit.

15 Have you ever heard this story from Meng Hak about Duch?

16 [15.52.48]

17 MR. NHEM EN:

18 A. Meng Hak, I know him <well>. He is <kind of heavysset>. But  
19 related to this story, it took place before I started my work in  
20 Democratic Kampuchea regime, but I am clear that Ta Duch was not  
21 part of the military but he was part of the security. <He was  
22 actually part of the security because> he was with Ta Mok <and  
23 other Khmer Rouge leaders since '68 or '69 onward>. But <as far  
24 as> military affairs, I cannot <talk> about him.

25 Q. Is it correct to say, Mr. Witness, that Division 703 was in

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1 charge Choeung Ek, the rice fields of Choeung Ek, and the rice  
2 fields of Prey Sar; that Division 703 was in control of the rice  
3 farming in Choeung Ek and Prey Sar?

4 A. I am aware of this. It was at Preaek Hour, at <Boeng> Choeung  
5 Ek, at Boeng Tumpun. There were 10 divisions under the general  
6 staff. There were <Division 502, Division 310, Division 120; it  
7 was all over the place> in Phnom Penh, but for Choeung Ek and  
8 <Takhmau>, it was under Division 703, <and later on, most of them  
9 were moved to the battlefields along the Vietnam border> and the  
10 headquarters of the division was at Boeng Trabaek <high school>.  
11 [15.54.53]

12 Q. Is it correct, or do you know rather, whether Division 703 was  
13 involved in ordering the arrests of Division 310 soldiers? And  
14 that 703 was also involved in the arrest of Koy Thuon?

15 A. Yes, I know. I know a lot about this because Division 703, if  
16 we talk about divisions in the Khmer Rouge -- in the Democratic  
17 Kampuchea regime, this division was a special division under <Son  
18 Sen,> Pol Pot, Nuon Chea, so <it might be true because the orders  
19 from> this division <were> really strong and powerful. <I knew it  
20 clearly because I was there since '75.>

21 Q. Was Division 703 also responsible for security matters? For  
22 instance, were they responsible for the security in the Olympic  
23 Stadium when there were mass meetings of cadres?

24 A. Regarding the security at Olympic Stadium <during the  
25 Democratic Kampuchea regime> and the security provided for

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1 foreign delegations, it was the responsibility of Division 703  
2 and Division 502.

3 [15.56.43]

4 Q. And my last question about 703, Mr. Witness. What was, in your  
5 recollection, the relation between Division 703 and the  
6 autonomous Regiment 21, or the autonomous division, whatever you  
7 would like to call it? What was the relation between 703 and 21?

8 A. I know that Division 703 was under the general staff <in Phnom  
9 Penh> and it was also <responsible for protecting the Angkar, and  
10 it was a part of national security related to> S-21.

11 Q. Can you say that again? Are you saying that 703 was in  
12 hierarchy higher than the soldiers of 21?

13 A. Yes, that is correct because Divisions 703 was formerly  
14 Division 12, so the commander of the division was Ta Nath, <and  
15 the commanders of Regiment 43 were Ta Pin and Ta Hor>.

16 And the <> work of this division was considered the most  
17 important in the country. <In Phnom Penh city, most of them were  
18 former forces of Division 703, and> 50 per cent of staff in S-21  
19 originated from this division.

20 [15.58.39]

21 Q. Now, let us move to your work at S-21 and possibly also Prey  
22 Sar.

23 Can you tell us when you started working in the photography unit  
24 in S-21?

25 A. I began my work at Tuol Sleng <prison> in June and there were

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1 six photographers. One is myself, Nhem En; two <was A Ry>, 3) <A  
2 Sam>, <4) Bang Nith, 5) Bang Song and 6)> Sreang. So there were  
3 six photographers at Tuol Sleng <prison>.

4 And Angkar had specific schedule for staff. At 6.30, it was time  
5 <to have porridge or snack. At 7.00, we started working>. At  
6 11.00, <it was> time for a break, and then at 1.00, we resumed  
7 our work again.

8 Q. I apologize for interrupting, Mr. Witness. Let's first get a  
9 few points out of the way.

10 Do you remember when it was exactly that you first arrived at  
11 S-21 to start your work?

12 A. I began my work at S-21 in <late> July; <I can say it was in  
13 July> 1976.

14 Q. Are you sure about that, Mr. Witness, because I believe in an  
15 earlier statement you said that you started working in early  
16 1977?

17 A. No, it would not be in '77, but it was around June or July <or  
18 August>. So the difference could be one or two <months>.

19 [16.01.16]

20 Q. You just mentioned the names of members of the photography  
21 unit. What was exactly your position in this group?

22 A. I was in charge of a squad. I mean, I was in charge of Ry and  
23 Sam. Sreang was in charge of Nith and <Song>. So amongst the  
24 photographers, we divided ourselves into two squads or "pouk"  
25 (phonetic) in the Khmer <Rouge> language. <It was called squad

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1 chief, not group chief.>

2 MR. KOPPE:

3 Mr. President, this might be an appropriate time to break.

4 MR. PRESIDENT:

5 The time is appropriate for today's adjournment. The Chamber will  
6 adjourn now and resume tomorrow -- that is, 20 April 2016,  
7 commencing from 9 o'clock in the morning.

8 Tomorrow, the Chamber <will> continue to hear testimony <from>  
9 Witness Nhem En, and after that we <will> begin hearing testimony  
10 <from> another witness -- that is, 2-TCW-865. We also have a  
11 reserve witness tomorrow -- that is, 2-TCW-898.

12 [16.02.50]

13 And Mr. Nhem En, the hearing of your testimony today is not yet  
14 concluded and you are invited to return tomorrow commencing from  
15 9 o'clock in the morning.

16 Court officer, please work with WESU to return Mr. Nhem En to his  
17 accommodation and return him to the courtroom tomorrow at 9  
18 o'clock.

19 Security personnel, you are instructed to take the two accused to  
20 the detention facility and have them returned to attend the  
21 proceeding tomorrow before 9 o'clock in the morning.

22 The Court is now adjourned.

23 (Court adjourns at 1603H)

24

25