



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

23 May 2013  
Trial Day 183

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

The Accused: NUON Chea  
KHIEU Samphan

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Trial Chamber Greffiers/Legal Officers:

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I N D E X

MR. CHAU NY (TCCP-187) - RECALLED

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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. ABDULHAK	English
JUDGE CARTWRIGHT	English
MR. CHAU NY (TCCP-187)	Khmer
MR. KHIEU SAMPHAN	Khmer
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. MOHAN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. VERCKEN	French

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

2 (Court opens at 0901H)

3 MR. PRESIDENT:

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

5 This morning the Trial Chamber will hear the testimony of a civil  
6 party, Chau Ny. This is the additional testimony requested - by  
7 Khieu Samphan's request - that is, document E250 - and the  
8 decision of the TC - that is, document E267/3. The civil party  
9 actually testified already on the facts within Case 002/01 on the  
10 23/11/2012.

11 For that reason, parties are not allowed to put questions to this  
12 witness concerning the facts already testified by the civil  
13 party. New facts can be put to him. And, toward the conclusion of  
14 his last testimony, he was given the opportunity to make his  
15 statement of suffering and he raised a new fact at the time, but  
16 we did not conclude the proceedings regarding that new fact. And,  
17 due to the request, he's been recalled.

18 [09.04.32]

19 And the hearing of this civil party's testimony, the floor will  
20 be given first to Khieu Samphan's defence, and the entire  
21 testimony for this witness will last for this morning's session.  
22 Defence Counsel, you may proceed.

23 MR. VERCKEN:

24 Good morning, Mr. President. Good morning, Your Honours.

25 Indeed, I question the legitimacy of the order that you have just

2

1 laid out. Generally speaking, when it applies to a civil party,  
2 protocol is for the civil party lawyers to begin examination,  
3 followed by Prosecution, and then the Defence.

4 I would respectfully remind Your Honours that, yes, our team had  
5 requested the recall of this witness, however he is not our  
6 witness. We asked for his recall because, when this civil party  
7 spoke on his suffering, he spontaneously evoked a new fact. And  
8 during that particular hearing, we were not authorized to ask him  
9 any questions with respect to that fact. You recall that my  
10 learned friend, Counsel Anta Guissé, was barred from asking  
11 questions.

12 [09.06.18]

13 Therefore, it appears only natural that the regular sequencing of  
14 examination be respected. This will only facilitate proceedings.  
15 The civil party sent our team - the civil party lawyers had sent  
16 us - an email to us with respect to their questions, and once  
17 again it appears that new facts are surfacing and new issues are  
18 going to be raised, namely that the uncle of the civil party was  
19 called - or was mentioned on the radio.

20 Now, it would appear more straightforward for the civil parties  
21 to ask the questions that they deem necessary to their client,  
22 followed by the Prosecution, followed by the Defence. We would in  
23 - we would therefore be in a position to understand the precise  
24 contours of the new facts to be discussed and elaborated upon  
25 this morning.

3

1 We believe that everybody has been given due allocation of time.  
2 Therefore we respectfully request that the civil parties commence  
3 examination, followed by the Co-Prosecutors, followed by the  
4 Defence. Thank you, Your Honours.

5 [09.07.56]

6 MR. PRESIDENT:

7 Thank you, Counsel.

8 Now, the assigned lawyer for the Lead Co-Lawyers, you may  
9 proceed.

10 MR. MOHAN:

11 Thank you, Your Excellency.

12 We would prefer that the protocol or the procedure that has been  
13 prescribed by Your Honours be followed - that is, for the Defence  
14 to begin, followed by the Prosecution, and finally by the civil  
15 parties.

16 And the reasons we say this is for three reasons.

17 The first. As has been actually admitted by the Defence, the only  
18 reason the civil party is called here is not because of a general  
19 procedure; he has already given his evidence in chief previously,  
20 last year, in November. He's been called by the Defence to answer  
21 what they suggest is a new allegation of fact. And both the  
22 Prosecution and the civil parties have not objected to their  
23 request. It is their request to call this civil party to ask him  
24 about this question.

25 [09.09.00]

4

1 The second reason is that they have full opportunity to ask him  
2 anything that they would wish to within their allocated time. So,  
3 if they feel that in relation to this new allegation, they had  
4 additional questions to ask, they should lead by beginning to ask  
5 those questions, for example about the radio broadcast upon which  
6 they have now been put on notice.

7 And, third, Your Excellency, obviously, it's fully within your  
8 discretion to choose the procedure now that should be followed,  
9 and we have no objection to the procedure that you've put  
10 forward.

11 (Judges deliberate)

12 [09.10.10]

13 MR. PRESIDENT:

14 Thank you.

15 We will maintain our previous decision – that is, the requester  
16 will lead the questioning of this civil party before other  
17 parties.

18 Ms. Se Kolvuthy, could you report the attendance of the parties  
19 and individuals to today's proceedings?

20 THE GREFFIER:

21 Mr. President, for today's proceedings, all parties are present.  
22 As for Nuon Chea, he is present in the holding cell downstairs,  
23 as per the decision of the Trial Chamber, due to health concerns.  
24 TCCP-187 is in the waiting room, to be called by the Trial  
25 Chamber.

5

1 There is no reserve witness today.

2 MR. PRESIDENT:

3 Court Officer, could you invite the civil party into the  
4 courtroom?

5 (Civil Party Chau Ny enters the courtroom)

6 [09.12.35]

7 QUESTIONING BY THE PRESIDENT RESUMES:

8 Good morning.

9 Q. Is your name Chau Ny?

10 MR. CHAU NY:

11 A. My name is Chau Ny.

12 Q. Mr. Chau Ny, do you recall that you were summoned by the Trial  
13 Chamber to be - to testify? Do you recall the date of your  
14 testimony?

15 A. (Microphone not activated)

16 Q. Mr. Chau Ny, please observe a small pause until you see the  
17 red light on the tip of the microphone and on the console itself  
18 so that your voice will go through the system. In particular, it  
19 goes through to the interpretation system, as your voice will be  
20 interpreted into English and French simultaneously.

21 [09.13.40]

22 A. I testified before this Court on the 22nd November 2012 (sic).

23 MR. PRESIDENT:

24 Thank you.

25 As you already testified before this Trial Chamber and it is on



6

1 the transcript, there is no need for the Chamber to ask your  
2 personal background.

3 However, we still would like to remind you of your rights and  
4 obligations: that you're entitled to express your suffering that  
5 you suffered physically, mentally, and materially as a result of  
6 the crimes committed and which have been accused of the - on the  
7 two Accused here in this courtroom - that is, Nuon Chea and Khieu  
8 Samphan - for their acts during the Democratic Kampuchea regime.  
9 Previously, you were given the opportunity to make your statement  
10 of suffering. However, at that time, you raised a new fact, and  
11 for that reason you've been recalled and you will be given time  
12 to make your statement of suffering again.

13 The floor is now given to Khieu Samphan's defence to put  
14 questions to this civil party regarding all the facts considered  
15 new which were raised by this civil party and as requested by  
16 your team. You may proceed.

17 [09.16.10]

18 QUESTIONING BY MR. VERCKEN:

19 Thank you, Mr. President.

20 Good morning, Mr. Witness. My name is Arthur Vercken. I am one of  
21 the lawyers representing Mr. Khieu Samphan. I was not present at  
22 the hearing of the 23rd of November.

23 Q. On that day you spoke on your suffering, and on that same  
24 occasion you asked to put questions directly to Mr. Khieu  
25 Samphan. First and foremost, I wish to tell you that Mr. Khieu

7

1 Samphan will respond to you.

2 However, before that, I wish to ask you a few questions on what  
3 you stated on the 23rd of November.

4 You testified at the outset, prior to reading out what you said -  
5 I will ask you - I will begin with the question as to whether or  
6 not you were able to reread what you stated on the hearing of the  
7 23rd of November or if your civil party lawyer provided you the  
8 documents, the official transcript of what you said on the 23rd  
9 of November.

10 [09.17.33]

11 MR. CHAU NY:

12 A. No, I haven't read nor seen the document.

13 Q. Very well. Because everything that you utter in the microphone  
14 is transcribed, we have the record of your statements. There  
15 sometimes may be issues of translation, but we do have records in  
16 French, Khmer, and English of your words.

17 In document E1/146.1, in the transcript of the Court hearing of  
18 the 23rd of November, you said: "I wish to ask a question to Mr.  
19 Khieu Samphan. One of my uncles had a link with Mr. Khieu  
20 Samphan."

21 That is the first part of what you say.

22 Then ensues a dispute amongst the parties, with respect to your  
23 right to ask questions to Mr. Khieu Samphan. I will spare you of  
24 what happened.

25 [09.18.51]

8

1 You are then given the floor and you say the following:

2 "On the 17th of April 1975, on the day of liberation, Khieu  
3 Samphan wrote a letter inviting my uncle, Chau Sau, asking him to  
4 return to Phnom Penh. And I want to know, why did Khieu Samphan  
5 end up meeting my uncle? That is my first question.

6 "My second question is the following: Mr. Chau Sau's driver, in  
7 1979, I met him in Phnom Penh; he told me this: when Chau Sau was  
8 evacuated and when he arrived in Preaek Kdam, there were two  
9 soldiers who delivered a letter from Khieu Samphan to him. And  
10 the content of that letter stated that Mr. Chau Sau is required  
11 to return to Phnom Penh. However, Chau Sau refused. He said that  
12 he would only return to Phnom Penh when all the Phnom Penh  
13 residents were allowed to return.

14 And, subsequently, the two soldiers returned for a second time,  
15 inviting him to come to Phnom Penh again, and he still refused.

16 And from that time onward, Mr. Chau Sau has since disappeared. My  
17 question to Mr. Khieu Samphan is this: Where did he die? This is  
18 what I want to know; if I know where he died, I could at least  
19 try to find his remains so that I can carry out a proper  
20 religious ceremony for his soul." End of quote.

21 [09.20.45]

22 Mr. Witness, is what I just read out a reflection of your memory  
23 of what you stated on the 23rd of November 2012?

24 A. Yes, all the quotes that you just read out are correct.

25 Q. I'll be very brief in the following questions that I have to

1 put to you.

2 Firstly, can you please provide the Court the name of your  
3 uncle's driver?

4 A. My uncle's driver named Chhean. At that time, he was about 50  
5 years old. He was a little bit older than my uncle.

6 Q. And is that gentleman still alive? And if so, where does he  
7 live?

8 A. In 1979, I happened to meet him during a wedding celebration  
9 behind the Preah Put (phonetic) pagoda. And, of course, I never  
10 thought that this kind of tribunal would be established, and at  
11 the time I did not ask him much.

12 [09.22.44]

13 When I met with him, my wife and my mother-in-law was there, and  
14 he spoke about the events took place at Preaek Kdam. At the time,  
15 he said: while fleeing at Preaek Kdam, Chau Sau received a  
16 letter, as I described in my previous testimony; in the first  
17 letter, he refused to return to Phnom Penh until the people  
18 returned.

19 Q. Very well. I understood that. However, I asked you a very  
20 specific question, and we won't be able to proceed swiftly if you  
21 don't answer my questions directly. We've already visited that.  
22 But I just asked you now if that gentleman is still alive. And if  
23 so, where does your uncle's former driver reside? Do you know?  
24 That is my question.

25 A. That was the only time that I met him, and I do not know where

10

1 he lives or whether he's still living today.

2 Q. And do you know from which region he is from?

3 A. I did not ask him when I met him at the time. He said, when he  
4 left Chau Sau he went to look for his family, and I did not ask  
5 him further regarding where he went to.

6 [09.24.38]

7 Q. And in 1979, how long did your conversation with him last?

8 A. It was during a wedding ceremony, so we spoke briefly, not at  
9 length. We spoke for about 10 to 15 minutes.

10 Q. In your testimony that I've just read out, you provided a  
11 date. You referred to the 17th of April 1975: "The day of  
12 liberation, Khieu Samphan wrote a letter to my uncle, asking him  
13 to return to Phnom Penh."

14 Those were your exact words. Is that what the driver told you?  
15 Did the driver tell you the date, the exact date of the letter  
16 addressed from Khieu Samphan to your uncle?

17 A. No, it was not the 17 April 1975; it was about three days  
18 later when he arrived at Preaek Kdam and when he received the  
19 letter. It was not on the 17 April 1975.

20 [09.26.24]

21 Q. So why, on the 23rd of November 2012, when you were in the  
22 stand - why did you state that the letter was dated 17th of April  
23 1975?

24 A. No, it's not the 17 April 1975; it was three days after when  
25 Chau Sau fled to Preaek Kdam - that is, after he left his house

11

1 in Tuol Kork.

2 Q. Yes, I understood that. But it appears to me that you were  
3 correcting what you stated on the 23rd of November.

4 But my question is: Why, on the 23rd of November, did you cite  
5 the date of the 17th of April 1975 and today you're telling us  
6 that it occurred three days later? Are you saying that you were  
7 mistaken?

8 MR. PRESIDENT:

9 Civil Party, please observe a pause.

10 The Prosecution, you may proceed.

11 [09.27.47]

12 MR. ABDULHAK:

13 Your Honours, just a brief point of clarification.

14 My reading of that transcript is that the civil party indicated  
15 that he thought the letter was written on the 17th of April 1975,  
16 not that the letter reached Chau Sau at Preaek Kdam on the 17th  
17 of April 1975. So, my understanding of that reference is that it  
18 relates to, perhaps, the date of the letter, and I just want to  
19 make sure that we have that right so that the civil party is not  
20 confused.

21 BY MR. VERCKEN:

22 Thank you, Mr. President.

23 Q. Indeed, that was my reading and understanding of the witness's  
24 testimony. In fact, I read it a third time just to make sure that  
25 I fully understand the words and that I cannot be accused of

12

1     distorting them. And you state very clearly: "On the 17 April  
2     1975 – that is, "The Liberation", Khieu Samphan wrote a letter of  
3     invitation to my uncle – that is, Chau Sau – to return to Phnom  
4     Penh..."

5     [09.29.00]

6     And I wish to know, Mr. Witness, when you spoke with the driver  
7     in 1978 [says the speaker], if the driver told you if the letter  
8     was written on the day of the liberation – that is, on the 17th  
9     of April 1975, the date that was given to you by the driver?

10    MR. CHAU NY:

11    A. That was what he said at that time, but the letter was  
12    received later on. The letter was dated the 17th of April, and  
13    during that time we could hear on radio broadcast in which Cheng  
14    Heng, Sirik Matak, and Chau Sau were heard in the radio broadcast  
15    and that people appealed for them, looking after them – looking  
16    for them. And, indeed, the letter was sent – or, rather, was  
17    received at a later date.

18    Q. And did you hear that radio broadcast back then?

19    [09.30.39]

20    A. On the 17th of April 1975, immediately after the liberation of  
21    Phnom Penh, I still possessed a radio, and I and my mother-in-law  
22    and other relatives jointly listened to the radio broadcast and  
23    we heard these names mentioned in the broadcast.

24    Q. Can you remind us of what your uncle was doing back then –  
25    what was his occupation?

13

1 A. My uncle worked at the National Credit Bank.

2 Q. And the last time you saw him face to face, when was that?

3 A. "The last time", are you referring to 1975 or the recent time?

4 Q. Well, not recently, of course, otherwise you wouldn't be here.

5 I'm asking you when was the last time you saw your uncle, no

6 matter the moment.

7 A. I was very young and I was at Olympic location when my uncle

8 was in Tuol Kork. We did not meet very often, and I was young,

9 and he was holding senior position. And with that, I did not have

10 much time - or I did not meet him very often. And during the time

11 of the liberation, he brought his assets and belongings and have

12 them kept at my home, the home I rent at Olympic location.

13 [09.33.24]

14 And I met him - the last time I met him was during - prior to

15 1975 - the 17 of April 1975. It was three days before the 17th of

16 April.

17 Q. Fine. And the letter that the driver spoke to you about, that

18 was the first time you heard about that letter, in 1979; is that

19 the case?

20 A. Are you asking me about the letter in 1979? I think that's not

21 the case because I haven't received any letter in 1979. I think -

22 perhaps you repeat the question.

23 Q. Yes, of course. The letter that you - which, apparently, your

24 uncle received and which he apparently received a few days after

25 the liberation, did you see this letter or did you only hear



14

1 about this letter through the former driver of your uncle?

2 A. The letter was received by my uncle, and I was not with him  
3 because I was leaving Phnom Penh on National Road Number 2, when  
4 he was heading to National Road Number 5. But later on I received  
5 information from Mr. Chau Sau's driver about the letter and I do  
6 not even know the content of the letter. And there was a second  
7 letter also sent out through the driver when in the letter -  
8 because of that second letter, people were trying to locate Mr.  
9 Chau Sau's family and Chau Sau himself. But he - they were not  
10 located.

11 [09.36.32]

12 Q. So there were two letters; is that what you're telling us? Is  
13 that what I'm supposed to understand?

14 A. Yes, there was - the driver told me that there was two - there  
15 were two letters, because the first letter was sent to him, and  
16 then another letter also was sent, in which he asked the driver  
17 to return. That's - that's what we heard from the driver, who  
18 talked to us in detail about what Mr. Chau Sau talked to him.

19 Q. And, when you had this discussion, this 15-minute discussion  
20 with the driver in 1979, did he tell you who had signed this  
21 second letter and when this letter was drafted?

22 A. I did not ask him more about this. I only learned from him at  
23 that time; he said he left Mr. Chau Sau. He called him "Lok",  
24 which means "Mister". And he said that the second letter was sent  
25 to him, and two days after that, Mr. Chau Sau was nowhere to be

15

1 located.

2 [09.38.36]

3 MR. VERCKEN:

4 Mr. President, I have no further questions, but Mr. Khieu Samphan  
5 would like to speak to the civil party if possible.

6 MR. PRESIDENT:

7 Mr. Chau Sau – Chau Ny, you may ask questions to Mr. Khieu  
8 Samphan. Or Mr. Khieu Samphan can put questions to Mr. Chau Ny,  
9 but through the President of the Chamber.

10 MR. KONG SAM ONN:

11 Mr. President, I may wish to correct this version a little bit.  
12 Just now Mr. Khieu Samphan did not wish to speak with the civil  
13 party. But during his last time when he came to take the stand,  
14 he asked a question to Mr. Khieu Samphan to which he has not  
15 received the response, and perhaps this is the opportunity for  
16 Mr. Khieu Samphan to respond.

17 MR. PRESIDENT:

18 Mr. Civil Party, would you still wish to put your question you  
19 would like to ask Mr. Khieu Samphan a moment – a while ago? And  
20 that – during that time there was a technical difficulty that  
21 your question could not be conveyed to Mr. Khieu Samphan.

22 Now, may we ask whether you still wish to ask the same question?

23 [09.40.21]

24 MR. CHAU NY:

25 Thank you, Mr. President and Your Honours. I may wish to ask the

16

1 same question, but with additional information.

2 MR. PRESIDENT:

3 You may repeat that question, but one question at a time, and  
4 then we – the President of the Trial Chamber will convey your  
5 question to Mr. Khieu Samphan so that he can respond. But he  
6 appears to be ready to respond to your questions.

7 MR. CHAU NY:

8 I would like to repeat that question and I would like to also add  
9 a few words into that old question.

10 My question is: Mr. Khieu Samphan, what was the letter you sent  
11 to my uncle about? Because during the first time, he rejected to  
12 return to Phnom Penh unless all the people were allowed to return  
13 to Phnom Penh.

14 [09.41.28]

15 And, secondly, why did Mr. Chau Sau ask his driver to return and  
16 look for the driver's family? And that – why he asked his driver  
17 not to be involved with him again?

18 And why Mr. Chau Sau disappeared ever since?

19 If Mr. Khieu Samphan knows where Mr. Chau Sau died or disappeared  
20 – if so, can Mr. Khieu Samphan tell me, please, where he could  
21 have disappeared or died, so that we can find the place where he  
22 could have died and where we can hold a traditional ritual  
23 ceremony?

24 MR. PRESIDENT:

25 Mr. Chau Ny, you asked the questions, but the questions were

17

1 rather long already, but we would like to make sure that one  
2 question is put at a time. And now we understand that Mr. Khieu  
3 Samphan has listened to the questions and we would like to hand  
4 the floor over to him to respond.

5 MR. KHIEU SAMPHAN:

6 Thank you, Mr. President. Good morning, Your Honours. Good  
7 morning to everyone in this courtroom – my apology. Good morning  
8 to every fellow Cambodian citizen, and good morning to you, Mr.  
9 Chau Ny.

10 [09.43.38]

11 Allow me to inform you that I used to know Mr. Chau Sau during  
12 the 1960s. He was the president of a bank, the National Credit  
13 Bank.

14 I understand your feeling, your suffering, and how your family  
15 could have felt by trying to find out about your uncle's  
16 whereabouts and information and his fate. And you also emphasized  
17 that if Mr. Chau Sau were – passed away, you would like to bring  
18 his remains for Buddhist ritual ceremony.

19 Unfortunately, I have no information at all about the fate of  
20 your uncle and I did not have any information about him during  
21 the Democratic Kampuchea.

22 And you said somebody told you that I wrote letters to your  
23 uncle. Please be confirmed – please understand that I didn't do  
24 that. I've never written such letters. There was no soldier under  
25 my order or command so that I could send a letter to someone,

18

1 like you said.

2 [09.46.10]

3 And, as you already are aware, I was compelled to flee Phnom  
4 Penh. I had to leave behind my sick mother, who had been staying  
5 with me all along. I had to leave behind my younger siblings, who  
6 had been supported by me since 1967. From then on your uncle and  
7 I myself never had the opportunity to meet one another again. So,  
8 in conclusion, there was - there is no means for me to send any  
9 letter to your uncle.

10 On top of that, it was not possible that it was my intention to  
11 look for your uncle or to call him to return to Phnom Penh.

12 Today I may wish to also tell you that I fully appreciate the  
13 sufferings you and your family could have had. We - I fully  
14 understand that you have the sympathy with - towards your uncle.

15 And for this reason, I would like to take this opportunity to  
16 talk to you in person so that you understand my heart. I am  
17 talking this from the bottom of my heart so that everything is  
18 clear and that your mind is clear.

19 I feel sorry that there is no way I can help you to entertain  
20 your request or to answer to your request, and I hope you  
21 understand me and my situation.

22 That's all. I thank you.

23 [09.49.17]

24 MR. PRESIDENT:

25 Next, Mr. Chau Sau, would you wish to - rather, Mr. Chau Ny,

19

1 would you wish to say anything else?

2 MR. CHAU NY:

3 Mr. President, I'm still not satisfied because Mr. Khieu Samphan  
4 and Mr. Chau Sau were very close because Mr. Khieu Samphan would  
5 come to eat at Mr. Chau Sau's home at Tuol Kork. I still feel  
6 that he has not told me all the truth. I don't really say that he  
7 has killed my uncle, but I just wish to get more truthful  
8 information from him.

9 MR. PRESIDENT:

10 Counsels for Mr. Khieu Samphan already asked you clearly about  
11 the source of information that makes you believe that Khieu  
12 Samphan was the one who sent the letters through the soldier to  
13 Mr. Chau Sau. But through the cross-examination you indicated  
14 that there was no strong source of information about this, and  
15 the connection regarding the sending of the letter and who sent  
16 the letter was already established during the examination.

17 [09.51.00]

18 Next we would like to hand over to the Co-Prosecutors to put some  
19 questions to the civil party regarding this new allegation of  
20 fact, if they would wish to do so.

21 QUESTIONING BY MR. ABDULHAK RESUMES:

22 Thank you, Mr. President and Your Honours. We'll be very brief by  
23 way of following up on my friend's questions.

24 Thank you for coming back, Mr. Chau Ny. We understand it's not  
25 easy for you to discuss these matters.

1 Q. If I can return to the discussion that you had with Chau Sau's  
2 driver about these letters, can I first ask you whether he told  
3 you that he saw this letter personally?

4 MR. CHAU NY:

5 A. At that time, when he told me, he said he was told by Chau Sau  
6 about the letters. However, what the letter was about was not  
7 communicated to me. And he said that there were two letters and  
8 that during the second time, when the second letter was delivered  
9 to Chau Sau, that person who delivered the letter was asked by  
10 Chau Sau to return.

11 [09.52.53]

12 Q. So, just to make sure we understand that correctly, it was  
13 Chau Sau that told Chhean, the driver, that he had received a  
14 letter from Khieu Samphan. Is that - have I got that correct?

15 A. Yes, it is.

16 Q. And do I understand correctly - or let me ask that question  
17 differently. When did Chau Sau say this to Chhean?

18 A. Regarding the first letter, upon receiving it, Mr. Chau Sau  
19 told two soldiers that he would not return. But for the second  
20 letter, he did not say anything, but he asked - he told Chhean to  
21 return to his family.

22 Q. I understand. My question is simply about the conversation -  
23 the first conversation between Chau Sau and Chhean when he told  
24 him about the first letter. Do you know when that conversation  
25 took place? Was that three days after evacuation? Was it sometime

1 after that?

2 A. It was a few days – two or three days after the 17th of April  
3 when he talked about this. And he received this information just  
4 two or three days after the 17th of April.

5 [09.55.08]

6 Q. Did Chhean tell you how long after the first letter it was  
7 that the second letter was received by Chau Sau?

8 A. The second letter was sent a few days after the first letter  
9 was sent. And again, as I told you, that – with the second  
10 letter, Mr. Chau Sau didn't tell anything to Mr. Chhean other  
11 than asking him to come back. So, Chhean only told me that Chau  
12 Sau told him to come back. And that's – that's the last time they  
13 met.

14 Q. I'm sorry if I'm insisting on a very specific point. If you  
15 don't know, just tell me so. The first letter: approximately  
16 three days after the 17th of April. The second letter: Do we know  
17 when that letter was apparently received?

18 A. I only say what Chhean told me. The first letter was sent, and  
19 then the second one was sent about two days after the first one.

20 [09.56.50]

21 Q. Thank you. Did Chau Sau tell Chhean what was written in that  
22 second letter?

23 A. Are you referring to the second letter?

24 Q. Yes, the second letter, if you know anything about – or if you  
25 were told anything about what was written in that second letter.



22

1 A. Chau Sau did not say anything at all about what's written in  
2 the second letter. He just told Chhean to come back to be with  
3 Chhean's family. That's all.

4 Q. I just want to clarify that last point. In the passage that my  
5 learned friend, counsel for Mr. Khieu Samphan, read to you – in  
6 that passage you mention that the second letter was also an  
7 invitation to return to Phnom Penh. Is that – is that correct, or  
8 are you not sure about the content of that second letter?

9 MR. PRESIDENT:

10 Mr. Civil Party, please hold on.

11 And, International Co-Counsel for Mr. Khieu Samphan, you may  
12 proceed.

13 [09.58.52]

14 MR. VERCKEN:

15 Yes, thank you, Mr. President. Simply for purposes of  
16 clarification for the witness as well as for the prosecutor, I  
17 read out to the witness what he had said on the 23rd of November,  
18 and on the 23rd of November he only spoke about one single  
19 letter. So, when the prosecutor claims that I read to the witness  
20 an excerpt referring to a second letter, that's not at all the  
21 case because on the 23rd of November the witness only spoke about  
22 one single letter. So I just want – I just want to make this  
23 clear so that we don't go off on a tangent.

24 MR. ABDULHAK:

25 Thank you, Counsel.

1 The reason I'm referring to the second instance - I'll read that  
2 quote for the record, and it's as follows - quote:

3 "And, subsequently, the two soldiers returned for the second  
4 time, inviting him" - that is Chau Sau - "to come to Phnom Penh  
5 again, and he still refused. And from that time onward, Mr. Chau  
6 Sau disappeared."

7 [10.00.15]

8 So, that's the - that's the passage I was - I was referring to.

9 So, with your permission, Mr. President, I'll ask the civil party  
10 one more time whether he knows anything about that content of the  
11 letter, because he seems to be - seems to have suggested on the  
12 23rd of November that there was another invitation, that there  
13 was a second invitation.

14 BY MR. ABDULHAK:

15 Q. So, can I ask you, Mr. Chau Ny - and if I did not understand  
16 that correctly, please do correct the record; this is important:  
17 Am I correct in understanding that when the soldiers returned for  
18 the second time, that was to ask Chau Sau again to return to  
19 Phnom Penh?

20 MR. CHAU NY:

21 A. Chhean told me that there was the first letter and the second  
22 letter, but it is my understanding that the second letter also is  
23 an invitation for him to return to Phnom Penh, but he refused  
24 because he would only go if people were to go. But the thing is,  
25 for the second letter, upon he received it, he asked Chhean to

24

1 return to his family. But I did not know what was the content of  
2 the second letter. And why he asked his driver to return to his  
3 family, it is beyond my understanding.

4 [10.02.03]

5 Q. Thank you very much for clarifying that.

6 You mentioned also that you believe that Khieu Samphan knew Chau  
7 Sau and had - I believe you may have said "visited him" in the  
8 1960s, and Mr. Khieu Samphan just confirmed, of course, that he  
9 left Phnom Penh in 1967. Can you tell the Court what you know  
10 about Chau Sau's activities - what he did - from late 1960s up to  
11 1975, whatever information you're able to give us?

12 A. At that time, I was pretty young. When he met with Khieu  
13 Samphan, my mother was <also> there; she <was> in <another>  
14 wooden house behind Chau Sau's house, and <I was> told <> that  
15 today my uncle invited Khieu Samphan for <a> meal <together>, and  
16 then she <asked us> to go to the <other> wooden house at the  
17 back. <So> I did not know the depth of the <discussion> between  
18 <Uncle> Chau Sau and <Uncle> Khieu Samphan. <I didn't know what  
19 they could have discussed.> But at that time he frequently  
20 visited Chau Sau at his house <in Tuol Kork which was situated  
21 behind Sosten's house>.

22 Q. Do you know anything about positions that Chau Sau held from  
23 1970 to 1975 - or what he did, what his job was?

24 [10.04.10]

25 A. From 1970 to 1975, I only know that he was the president of a

25

1 bank. And later on he formed a political party - that is, a  
2 democratic political party. That's all I know.

3 Q. Thank you.

4 Because truth is very important, and it's important that the  
5 Court receives as accurate information as possible, I'm under a  
6 duty to ask you this following question. From my conversations  
7 with your lawyers, I understand that Chau Sau was your wife's  
8 uncle. And I'll ask you to just clarify that for us because it is  
9 important that we have that right. Was Chau Sau your uncle or was  
10 he your wife's uncle?

11 A. Chau Sau was my wife's uncle.

12 MR. ABDULHAK:

13 Thank you.

14 And I have no further question, Mr. President. Thank you for the  
15 time allocated to us.

16 [10.05.37]

17 MR. PRESIDENT:

18 Thank you.

19 The floor is now given to the Lead Co-Lawyers for civil parties  
20 to put additional questions to this civil party. You may proceed.

21 QUESTIONING BY MR. MOHAN RESUMES:

22 Thank you, Mr. President.

23 Mr. Chau, I'll have very few questions. You've been very brave in  
24 your answers today and in the questions that you have asked. I  
25 just want to have clarification on a few points that you made,

1 especially since they've been raised both by the Defence and by  
2 the Prosecution, and also ask you a little bit about Chau Sau.  
3 [10.06.20]

4 Q. For the benefit of the Court, could we know – you've mentioned  
5 earlier that Mr. Chau Sau, your wife's uncle and a person you  
6 refer to as "Uncle", was the Head of the National Credit Bank.  
7 Can you tell us a little bit more about his reputation in the  
8 1960s and the early 1970s amongst the Khmer Krom population in  
9 Cambodia?

10 MR. CHAU SAU:

11 A. Allow me to respond. Mr. Chau Sau was very famous to the  
12 people from Khmer Krom. He was a person of justice, he was not a  
13 corrupt person, he earned his living honestly, and he assisted  
14 Khmer Krom people in finding their employment and their place to  
15 live, so he was very famous amongst the Khmer Krom people in  
16 Phnom Penh.

17 Q. Thank you. And given that he was quite famous amongst the  
18 Khmer Krom people, were there many Khmer Krom who also worked  
19 with him at the National Credit Bank, where he was the managing  
20 director?

21 A. At that time, a lot of staff working at the National Credit  
22 Bank were Khmer Krom, namely: Ya (phonetic), who is still living,  
23 and Chau Saut (phonetic), my relative. But Chau Saut (phonetic)  
24 passed away during the Khmer Rouge regime. Yes, indeed, there  
25 were – the majority of the staff working in that bank were the

1 Khmer Krom. Chau Ban (phonetic), whose house I rent at Olympic  
2 during that time, also worked in that bank.

3 [10.08.46]

4 Q. Thank you. So, just to repeat, as you've mentioned to the  
5 Court previously, Chau Sau used to live in Tuol Kork during that  
6 period and he was well known to many Khmer Krom, and Chau Ban  
7 (phonetic), your cousin brother, whose house you lived in in  
8 Olympic Stadium was owned or - owned by Chau Ban (phonetic), who  
9 also worked for Chau Sau at the National Credit Bank. Is that  
10 correct?

11 A. Chau Ban (phonetic) worked differently from Chau Sau's place.  
12 It was known as SONAPRIM. That's the place where he worked, not  
13 at the bank. But a lot of people from Khmer Krom were supported  
14 by Chau Sau and later on they were employed in that bank.

15 Q. You mentioned earlier to the Court, Mr. Chau Ny, that you'd  
16 heard from your mother and from your other relatives that Chau  
17 Sau would have known Khieu Samphan very well and they had meals  
18 together. Is that correct?

19 A. My mother-in-law clearly told me that, because every time Chau  
20 Sau met a guest, then my mother-in-law would tell me, because  
21 they did not have their parents, as their parents passed away a  
22 long time ago, and there were only three siblings within the  
23 family and they loved each other very much.

24 [10.10.54]

25 Later on, in 1974, my mother-in-law fled to Khmer Krom. So,

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1 during the liberation, she did not live with Chau Sau, but in  
2 1979 she came looking for Chau Sau and looking for her relatives,  
3 but all disappeared. And she almost became mentally ill due to  
4 the loss of the relatives.

5 Q. Thank you. Mr. Chau Ny, you mentioned earlier about the radio  
6 broadcasts on the national radio that were going on in 1975,  
7 after the Khmer Rouge came into power, and you said that in this  
8 radio broadcast, you had also heard Chau Sau's name, Sisowath  
9 Sirik Matak's name, and Cheng Heng's name being called. Is that  
10 correct?

11 A. Yes, that is correct. On the 17 April 1975, Sirik Matak, Cheng  
12 Heng, and Chau Sau's names were heard on the radio broadcast. But  
13 the broadcasts including his name were only for about three days,  
14 and later on his name was not heard any more on the national  
15 broadcast.

16 [10.12.23]

17 Q. I see. So, just to clarify, when you heard the names of all  
18 these three people - my question is first: Were they being asked  
19 to come back to Phnom Penh? My first question, please.

20 A. If I am not mistaken, the broadcast was for those people to  
21 return to Phnom Penh, to return to their previous workplace.

22 Q. And I'm - I know the Court knows this - so, it has been  
23 mentioned in Court before - but from your understanding, who were  
24 these other two people? Who were Cheng Heng and Sisowath Sirik  
25 Matak - from your understanding?

29

1 A. These two individuals, between 1970 to 1975, they were the  
2 supreme leaders under the Lon Nol government.

3 Q. Okay. So, two high-level members of the Lon Nol government and  
4 Mr. Chau Sau, a very well-known, Khmer Krom, national banker,  
5 were asked to return to Phnom Penh soon after the Khmer Rouge  
6 came into power. That's your evidence. Why do you think that in  
7 following radio broadcasts, a few days later, Mr. Chau Sau's name  
8 was not included anymore, in your view?

9 [10.14.29]

10 A. After that, I could not understand it anymore because the high  
11 ranking leaders were called, but, to me, why Chau Sau was called  
12 to return? Because he was simply a banker. So, to me, I do not  
13 understand the reasons for the calling of these people, including  
14 Chau Sau. Or whether it's because of his origin as a Khmer Krom -  
15 that's why he was called? I do not know the real reason behind  
16 it.

17 Q. I just have two final questions, Mr. Chau Ny.

18 First question, if we could just go back very quickly to the  
19 second letter that you mentioned earlier. So, as you've told the  
20 Court, there were two times - from what you've heard from Mr.  
21 Chhean, the driver, there were two times that Mr. Chau Sau was  
22 met with by Khmer Rouge soldiers and two times that he was given  
23 a letter.

24 I'm referring now to the second time. The second time that the  
25 soldiers met Mr. Chau Sau and they gave him a letter, you've told



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1 the Court that Mr. Chau Sau asked his driver to return home to  
2 his family. And after that no one knows what happened to Mr. Chau  
3 Sau and he has never been found again. In your view, why do you  
4 think Mr. Chau Sau asked his driver to return home safely to his  
5 family and not to accompany him anymore?

6 [10.16.47]

7 A. It is my understanding that there will be problems for Chau  
8 Sau in the second letter. For that reason, he asked Chhean, the  
9 driver, to return to his family. It is likely, in my view, that  
10 at the time the Democratic Kampuchea considered Chau Sau as a  
11 Khmer Krom, and for that reason he would be executed immediately.  
12 This is just my understanding.

13 Q. And my final question is more of a question for you to – it's  
14 more of a personal question, Mr. Chau Ny. You've had now this  
15 opportunity to be in Court twice and, on this occasion, answer  
16 questions regarding this issue, regarding Mr. Chau Sau. Can you  
17 explain to the Court, perhaps, why it has been so important for  
18 you to find out the truth about your relative and your wife's  
19 late uncle, Mr. Chau Sau? Please let the Court know – in your own  
20 feelings.

21 A. Allow me to respond. And why do I need to find the relatives  
22 or the remaining of Mr. Chau Sau? We were born in Khmer Krom; but  
23 when I was about five or six years old, I was brought to Phnom  
24 Penh to live and be raised by Chau Sau. And he did not only help  
25 my family, but also other Khmer Krom people in Phnom Penh. In

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1 Cambodia, everybody knew he was a good-hearted person; he would  
2 help and give support to any Khmer Krom who came to seek help in  
3 Phnom Penh. So, to me, it is a great loss for Chau Sau.

4 [10.19.18]

5 MR. MOHAN:

6 Thank you, Mr. Chau Ny.

7 Mr. President, I'm just going to hand it over to my learned  
8 senior, Mr. Ang Pich.

9 QUESTIONING BY MR. PICH ANG:

10 Good morning, Mr. President, Your Honours. Good morning,  
11 everyone, and good morning, Mr. Chau Ny. I have some questions  
12 for you, in addition to the questions that have - already put to  
13 you.

14 Q. First of all, I'd like to ask you about the personality of the  
15 driver - that is, Mr. Chhean. Did you meet Chhean prior to 17  
16 April 1975? If so, what was he like?

17 MR. CHAU NY:

18 A. I did not meet Chhean before 17 April 1975, but my wife - my  
19 wife had lived with Chhean.

20 Q. What did your wife think of Chhean? Did she ever talk to you  
21 about Chhean? Was he the person of a truthful nature?

22 [10.21.04]

23 A. My wife told me that before my uncle, Chau Sau, selected a  
24 driver, he had to understand the feeling and the mentality of  
25 that driver very well. Chhean was a strict mannered person.

1 MR. PRESIDENT:

2 Counsel, you need to use the time effectively and put the  
3 questions to the facts before us, and not the indirect evidence  
4 that you're trying to get to or a rumour or hearsay, because this  
5 kind of things will not contribute to ascertaining the truth at  
6 all.

7 BY MR. PICH ANG:

8 Mr. President, what I'm trying to get to-

9 MR. PRESIDENT:

10 Please use your methodology to try to get to the actual facts  
11 before us so that we can also consider those facts, rather than  
12 use questions relying on hearsay, for instance, or indirect  
13 evidence, which is not appropriate for the time before this  
14 Court.

15 [10.22.38]

16 BY MR. PICH ANG:

17 Q. Mr. Chau Ny, when you met with Chhean in 1979 - and you stated  
18 that you met him in the presence of your wife and your  
19 mother-in-law - did the three of you form the view that what was  
20 told by Chhean was truthful?

21 MR. CHAU NY:

22 A. I knew that Chhean told me the truth because Chhean was a  
23 driver for Chau Sau since the time that he became the President  
24 of the National Credit Bank. So it is my opinion that he did not  
25 tell us a lie.

33

1 Q. In the information given to you by Chhean, did he tell you  
2 about the two soldiers – where they belonged to, for instance?

3 A. He did not tell us who they were, but he said that the  
4 soldiers wore black uniforms and had a scarf, or krama, on their  
5 neck. So they were the soldiers of the Liberation Armed Forces,  
6 because at that time the country was already liberated.

7 [10.24.28]

8 Q. I have two more questions for you.

9 Among the Khmer Rouge leaders, in your opinion, who had the  
10 closest contact or relationship with your uncle? Can you  
11 entertain the Court?

12 A. The person who had the contact – the closest contact with my  
13 uncle, Chau Sau, is the only one – that is, Mr. Khieu Samphan.

14 MR. PICH ANG:

15 I will skip my last question and I'd like now to conclude my  
16 questioning time.

17 And I thank you, Mr. President and Mr. Civil Party, for your  
18 effort in trying to answer our questions. Thank you.

19 MR. PRESIDENT:

20 Defence Counsel for Khieu Samphan, do you wish to add anything  
21 else?

22 [10.26.10]

23 MR. VERCKEN:

24 No, Mr. President.

25 MR. PRESIDENT:

1 Thank you.

2 Mr. Chau Ny, the Chamber already informed you that you will be  
3 given the opportunity, as a civil party, to exercise your right  
4 to express your statement of suffering and the harms inflicted  
5 upon you physically, mentally, and materially, which are the  
6 direct consequences of the crimes which are being alleged against  
7 the Accused and that happened during the Democratic Kampuchea  
8 regime. If you wish to do so, you may proceed.

9 MR. CHAU NY:

10 The suffering that I went through - the Democratic Kampuchea  
11 regime could not be described in words. However, the loss of my  
12 family and relatives and the pain that I suffered until today  
13 remain with me. I try to forget it since 1979 until 1985 or '86,  
14 and I try not to recall my past, and until the establishment of  
15 this Court by the government, which is of its hybrid nature with  
16 the United Nations. And that triggered my pain, the pain that I  
17 suffered during the Democratic Kampuchea regime.

18 [10.28.14]

19 My relatives, my uncles, they were all the people who had  
20 acquired a senior position in the previous government; but after  
21 the 17 April 1975, I lost them all. I lost everyone. And the pain  
22 and the suffering was unbearable. It remains with me the rest of  
23 my life.

24 And now I have the opportunity to appear before Your Honours, and  
25 the only thing that I want to ask is ask for the whereabouts of

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1 my late uncle so that I can find his skeleton remains so that we  
2 can have a religious ritual ceremony for him. But now my hope  
3 disappears, and only the pain remains.

4 Two of my elder siblings and my wife also died, together with  
5 Chau Sau, my nieces and nephews also died, my uncle in Pursat  
6 also died three days after the liberation. So, for all those  
7 people who were Khmer Krom origins, they all died. I do not know  
8 the reason why they took revenge against the Khmer Krom people.  
9 Even the children, the innocent children, were also killed  
10 because of their Khmer Krom origins.

11 [10.30.01]

12 And, of course, Mr. Khieu Samphan should understand that, because  
13 you used to have meals with the Khmer Krom people. And why, among  
14 the Khmer Rouge people - why they hated the Khmer Krom so much,  
15 you should have known that.

16 Khmer Krom people-

17 [10.30.24]

18 MR. PRESIDENT:

19 Mr. Civil Party, please try to make your statement directly  
20 related to the suffering and not to raise any new fact. Please  
21 mention the actual suffering that you have, which is the time  
22 that you are given the opportunity by this Chamber. And do not  
23 raise any new fact; only state your statement of suffering  
24 related to the crimes alleged against the Accused, because,  
25 otherwise, you will have to be recalled again and again. Thank

1 you.

2 MR. CHAU NY:

3 The great sufferings I have had is nothing other than the loss of  
4 my parents and my uncle and relatives. That's all, Mr. President  
5 and Your Honours. I thank you very much indeed for this  
6 opportunity.

7 (Judges deliberate)

8 [10.32.12]

9 MR. PRESIDENT:

10 Thank you, Mr. Chau Ny. The additional testimony that you gave to  
11 the Chamber – and the session has now come to an end. You are now  
12 excused and your testimony will help ascertain the truth. We wish  
13 you all the very best.

14 Court officer is now directed to assist with the WESU unit to  
15 ensure that Mr. Chau Ny is returned safe and sound.

16 The hearing today comes to an end, and it is because the Chamber  
17 has not scheduled to hear additional civil party or witness for  
18 today's session.

19 The Chamber still has other pending issues to deal with, and for  
20 that reason the Chamber may adjourn now.

21 And we note that the International Co-Prosecutor is on his feet.

22 You may proceed.

23 [10.33.35]

24 MR. ABDULHAK:

25 Mr. President, I do apologise for delaying the conclusion of

1 proceedings; I'll be extremely brief. I'm on my feet simply out  
2 of abundance of caution.

3 We didn't have notice prior to this morning's hearing that Khieu  
4 Samphan will be answering questions. And of course, as you have  
5 indicated, Mr. President, on prior occasions, he has not  
6 exercised his right to remain silent.

7 The reason I'm on my feet is because I want to make sure that in  
8 future proceedings the allegation is not made that the  
9 Prosecution has waived its right to examine the Accused. Under  
10 Rule 90, of course, the Chamber has a duty to examine the  
11 Accused, and the prosecutors and other parties have a right to  
12 question the Accused, and I am on my feet to make sure that  
13 everybody is informed, the Prosecution insist on being afforded  
14 that right, and to respectfully ask the Chamber, if possible, to  
15 take this into account in your scheduling in these final stages  
16 of the trial.

17 [10.34.46]

18 If possible, we are of the view that it would be helpful to give  
19 as much notice to the Accused, as well as to other parties, of  
20 when his questioning needs to be scheduled so that we can all be  
21 prepared and the proceedings can unfold in an orderly manner.

22 That is my application.

23 MR. PRESIDENT:

24 Mr. Chau Ny, you may now leave the courtroom, please.

25 (Civil Party Chau Ny exits the courtroom)



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1 [10.35.18]

2 Parties to the proceedings, if you wish to make any observation  
3 regarding this application by the Co-Prosecutor you may now do  
4 so.

5 Mr. Pich Ang, Lead Co-Lawyer for the civil parties, you may  
6 proceed first.

7 MR. PICH ANG:

8 Good morning, again, Mr. President and Your Honours.

9 For the civil parties, when the question was put by a civil party  
10 to the Accused, that question was made in the first place because  
11 we were - we are convinced that any response by the Accused to  
12 the question would help heal the psychological wound the civil  
13 party has had. Nonetheless, Lead Co-Lawyers for the civil parties  
14 share the position by the Co-Prosecutor that if the Accused would  
15 like to respond to any of the questions, parties should be  
16 offered the opportunity to question him.

17 [10.36.51]

18 And it is true that a civil party will mention - speak about  
19 these sufferings - express the statement of sufferings. And with  
20 that, the civil party should be allowed to speak to the best of  
21 his or her knowledge about the suffering because things about the  
22 suffering fall very well within the scope of this jurisdiction.

23 MR. PRESIDENT:

24 Mr. Khieu Samphan's Counsel, you may now proceed.

25 MR. VERCKEN:

1 I didn't understand what my colleague was proposing; I am willing  
2 to answer the other questions, of course.

3 MR. PRESIDENT:

4 Not only you have problem understanding the statement by Lead  
5 Co-Lawyer for the civil party, I believe that the Bench itself is  
6 not properly informed. So, we would like counsel to restate the  
7 statement again.

8 [10.38.24]

9 MR. PICH ANG:

10 Thank you, Mr. President; I will make myself clearer this time.  
11 Civil party expressed the statement of suffering and this civil  
12 party did the same. And in his statement, normally when it comes  
13 to suffering, the suffering will have to be connected to the  
14 facts: the facts may include the old and the new facts, and it is  
15 normal. And this is the observation by Lead Co-Lawyers for the  
16 civil parties. And that during such expression of suffering, if a  
17 new allegation of fact is raised; the Chamber should not say that  
18 it is the error on the part of the civil party who raises such a  
19 new fact, which invokes another call for an additional hearing  
20 for that new fact. So, I believe that my humble request is now  
21 clearly conveyed to the Chamber and the parties to the  
22 proceedings. And if it is still not clear, I may wish to also add  
23 few more words.

24 [10.39.46]

25 MR. PRESIDENT:

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1 As the President of the Chamber, I am entitled - and it is my  
2 discretion - to direct any party to the proceedings regarding how  
3 the statement the civil party is making falls within the scope of  
4 this proceedings. And the Chamber is trying it best to ensure  
5 that no new allegation of fact is made or brought about in the  
6 statement of suffering. Because by doing so, the Chamber will  
7 have to revisit it and schedule another session for that. And  
8 with that, the Chamber has already instructed counsel to also  
9 discuss this with their clients so that the suffering statements  
10 will be confined to only the old facts.

11 And it saves the Court a lot of time by not making it schedule  
12 another hearing, because the new fact keeps occurring every time  
13 a civil party is expressing his or her statement of suffering,  
14 and we do this because we would like to make sure that time is  
15 not wasted.

16 And with that, we would like to hand over to counsel for Mr.  
17 Khieu Samphan.

18 [10.41.25]

19 MR. VERCKEN:

20 Thank you, Mr. President.

21 I believe that we are dealing here with fundamental matters. This  
22 is why since the beginning of this week I brought this up. In our  
23 opinion, it is necessary to have a trial for an accused person to  
24 be tried, acquitted or sentenced. In our opinion, it is necessary  
25 to have a trial for a civil party, a complainant, to become a

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1 victim, or at least a victim in legal terms.

2 And what my colleague, Pich Ang, has just said, underlines  
3 specifically the difficulty that I brought up at the beginning of  
4 this week – that is to say, next week, your Chamber summoned  
5 civil parties who would only speak about their suffering. And in  
6 our eyes, in the Defence team, this is some kind of leap in time  
7 – that is to say, suddenly with people who will come next week,  
8 we would be able to economize on the trial. These people are  
9 considered de facto victims-

10 [10.43.00]

11 MR. PRESIDENT:

12 Counsel, your response will not be relevant because Co-Prosecutor  
13 just submitted an application about the rights of the Accused to  
14 remain silent or to respond to questions on condition, because  
15 Accused may choose to respond to only some questions when he may  
16 not wish to respond to other. That was the part of – that is part  
17 of the application made by the Co-Prosecutor. And now you are  
18 responding to the observation by the Lead Co-Lawyer, who is in  
19 support of the previous submission by the Co-Prosecutor. Indeed,  
20 these have already been dealt with because Lead Co-Lawyer was  
21 mentioning about the civil party whom need to be allowed to  
22 express the statement of suffering by way of, perhaps, going into  
23 new facts.

24 And – but all in all, Lead Co-Lawyer is in support of the  
25 submission made earlier on by the Co-Prosecutor. Now, the

1 opportunity given to you now is to respond to that submission by  
2 the Co-Prosecutor.

3 So, may we hear from you straightforward to the application by  
4 the Co-Prosecutor regarding the right to remain silent by the  
5 accused person, other than responding to the Lead Co-Lawyer for  
6 the civil parties?

7 [10.44.50]

8 MR. VERCKEN:

9 What I simply want to say, Mr. President, is that we are speaking  
10 about suffering without facts grounding the suffering, and this,  
11 indeed, is what my civil party colleague has acknowledged.

12 Now, regarding - I don't, in fact, really understand whether we  
13 are speaking here about a request or an opportunity for the  
14 Co-Prosecutor to state his wishes, meaning that he does not  
15 renounce putting questions to Khieu Samphan; there are several  
16 layers in his application, it seems; first of all, his final  
17 statement focusing on the necessity for the Prosecution to  
18 organise itself.

19 We asked for a trial management meeting and up until today, my  
20 colleague, myself - my colleagues, all parties here are  
21 completely unaware of your Chamber's schedule, except for next  
22 week. We don't know where we are going; we don't know how many  
23 witnesses will come testify, and we don't know when this trial  
24 will end.

25 There are rumours, of course. I have no information. We asked for

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1 a trial management meeting to deal with these issues for us to  
2 have visibility. So there are pending requests with no answers  
3 coming from parties. For example, my colleague is making a semi  
4 request today, and I am making a request as well. And I would  
5 like to know where we are, and-

6 [10.46.43]

7 MR. PRESIDENT:

8 Counsel, please limit your response to that - to the  
9 Co-Prosecutor's application or request or what raised by the  
10 Co-Prosecutor regarding the rights to remain silent by your  
11 client or the right to respond to some questions and then the  
12 right to remain silent again. So, please confine these comments  
13 only on that particular relevant request.

14 Today, we have just heard from you that you have not been  
15 informed regarding how the Trial Chamber apprised parties to the  
16 proceedings of the scheduling of the proceedings. It is today  
17 that we learned from you, but we will set this aside and we will  
18 deal with this issue at a later date.

19 Now, the Chamber wishes to know from you, your position regarding  
20 your response to the submission by the Co-Prosecutor. And if -  
21 then we have to address your other issue, then we may continue  
22 the hearing today until we have all problems solved.

23 [10.48.26]

24 MR. VERCKEN:

25 Thank you, Mr. President.

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1 Now, regarding this application, I didn't understand my -  
2 Prosecution's application as a request, so I apologize for not  
3 being able to answer because I just feel that he just wanted to  
4 state the fact that he does not renounce or waive his right to  
5 put questions to Khieu Samphan. So, I don't have any particular  
6 reaction in relation to this; I'm just taking note of the -

7 (Judges deliberate)

8 [10.54.32]

9 MR. PRESIDENT:

10 We would like to now hand over to Judge Silvia Cartwright to  
11 respond to parties to the proceedings on this.

12 Judge Cartwright, you may now proceed.

13 JUDGE CARTWRIGHT:

14 Yes, there are two matters that the President has asked me to  
15 comment on; they are interlinked. The first is the matter raised  
16 by the Co-Prosecutors, which leaves the Chamber with the specific  
17 question for the accused Nuon Chea and Khieu Samphan: do they  
18 intend to elect to retain their right to remain silent or will  
19 they answer questions?

20 Now, Mr. Khieu Samphan may well be in a position to confirm that  
21 now; Mr. Nuon Chea may need a little more time, and counsel can  
22 advise the Chamber how much time they need to answer that  
23 question.

24 [10.55.53]

25 That then gives rise to the management issues. Contrary to what

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1 Mr. Vercken has indicated, the Trial Chamber is planning a trial  
2 management meeting. It takes time to plan the agenda and the  
3 Chamber also needs to know basic information, such as those  
4 questions that have just been asked. It is intended to have such  
5 a trial management meeting within the next few weeks and counsel  
6 and the parties will be informed of the agenda as soon as we have  
7 had time to meet to clarify it.

8 During that trial management meeting, should the Accused elect to  
9 answer questions, the Chamber will be asking the other parties  
10 how much time they estimate that they will need to put questions  
11 to the two Accused.

12 And finally, it should be emphasized that, Khieu Samphan and Nuon  
13 Chea will both have the opportunity during the submissions to  
14 make statements. This is a separate issue altogether.

15 Now, do the parties understand now?

16 And Mr. Khieu Samphan, are you able now to tell the Chamber  
17 whether you wish to speak as you – whether you wish to answer  
18 questions as you have indicated previously? Or whether you wish  
19 to retain your right to remain silent?

20 Mr. Khieu Samphan?

21 I did ask Mr. Khieu Samphan, Mr. Vercken.

22 [10.58.00]

23 MR. VERCKEN:

24 I am aware of this; I know. Simply, I don't know why we could not  
25 discuss this important issue. I understand that you put this



1 question to Khieu Samphan, but, however, I mean, things are going  
2 both ways. We do not know who the remaining witnesses are and we  
3 do – and you are telling us that Mr. Khieu Samphan is the one  
4 obstructing-

5 JUDGE CARTWRIGHT:

6 Mr. Vercken, that was not the question that was asked.

7 As part of the planning for the final stages of the trial, it is  
8 necessary to find out whether the Accused intend to exercise  
9 their right to remain silent, and time will then be allocated if  
10 they choose to answer questions. This is part and parcel of every  
11 day trial management, including remaining witnesses. And you will  
12 be informed as soon as we are in a position to give you that  
13 final information.

14 [10.59.19]

15 Now, Mr. Khieu Samphan, I will be very grateful if you can  
16 indicate to the Chamber whether you are prepared to answer  
17 questions. Of course, the Chamber will accommodate your needs if  
18 you feel you can't speak for a very long time or any matters like  
19 that, we will certainly take that into account. But we do need  
20 this basic information now, and I am sure you understand that.  
21 Thank you.

22 MR. KHIEU SMAPHAN:

23 Good morning, Madam Judge. Good morning, Your Honours.

24 This matter is the matter of me being prosecuted, and the  
25 allegations against me are of a serious nature. And personally, I

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1 am not fully familiar with all the legal aspects of this Court.

2 For that reason, I seek permission from Your Honour to consult  
3 with my counsel first.

4 This morning I responded to Chau Ny's request because of my true  
5 feeling toward his pain and suffering, and I took the opportunity  
6 in the presence of Mr. Chau Ny to do that.

7 That is all, Your Honour.

8 (Judges deliberate)

9 [11.01.45]

10 JUDGE CARTWRIGHT:

11 Yes, thank you, President.

12 The – we note what you have said, Mr. Khieu Samphan. Of course,  
13 you may have the opportunity to ask your legal advisers about the  
14 court processes. We are agreed that both you and Nuon Chea will  
15 have until Monday morning at 9 a.m. to inform the Trial Chamber  
16 of your decisions.

17 Mr. Koppe, is that acceptable also to you?

18 MR. KOPPE:

19 I think so.

20 MR. PRESIDENT:

21 Thank you, Judge Cartwright.

22 The proceeding today is adjourned, and we will resume on Monday,  
23 the 27th of May 2013, starting from 9 a.m.

24 [11.02.52]

25 On Monday, we will hear some civil parties' testimonies who will

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1 make their statement of sufferings and statement of harms under  
2 the Democratic Kampuchea regime. May all the parties and the  
3 public be informed.

4 Security guards, you are instructed to take the two Accused back  
5 to the detention facility and have them returned to the courtroom  
6 on Monday, 27 May 2013, before 9 a.m. As for Nuon Chea, bring him  
7 to the holding cell downstairs, which is equipped with  
8 audio-video equipment for him to follow the proceedings.

9 The Court is now adjourned.

10 (Court adjourns at 1103H)

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