



**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 - KAING GUEK EAV "DUCH"**

**PUBLIC**

Case File N° 001/18-07-2007-ECCC/TC

15 July 2009, 0903H

Trial Day 45

Before the Judges:

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**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE CARTWRIGHT	English
MR. HIM HUY	Khmer
MR. HONG KIMSUON	Khmer
MS. JACQUIN	French
MR. KANG SAM ONN	Khmer
MR. KAR SAVUTH	Khmer
JUDGE LAVERGNE	French
MR. MAM NAI	Khmer
MR. ROUX	French
MS. SE KOLVUTHY	Khmer
MR. SMITH	English
MS. STUDZINSKY	English
MR. TAN SENARONG	Khmer
THE ACCUSED	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. WERNER	French

1

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

2 [09.03.33]

3 (Judges enter courtroom)

4 MR. PRESIDENT:

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

6 We're going to continue hearing the testimony of witness Mam Nai.

7 According to the proceedings as of yesterday, we already finished

8 putting questions by the Judges of the Bench, so next the parties

9 will be given the floor. Before that, the greffier is advised to  
10 report the attendance of the parties to the proceedings today.

11 THE GREFFIER:

12 Mr. President, the parties to the proceedings today are all

13 present. Witness Mam Nai is here in the courtroom. Witness

14 KW-09, who will be testifying after this witness, is also

15 available at 10 a.m. The witness has already taken an oath and

16 the witness has no relationship to anyone here in the Court.

17 MR. PRESIDENT:

18 Next, the Chamber would like to give the floor to the

19 Co-Prosecutors to put questions to the witness. Please be

20 informed that the prosecutors have one hour, or 60 minutes, to

21 put questions. The floor is yours.

22 MR. TAN SENARONG:

23 Thank you, Mr. President, Your Honours. Good morning, Mr. Mam

24 Nai.

25 First, before the prosecutor puts questions to you: I, on behalf

2

1 of the prosecutors, would like to remind Mr. Mam Nai that, as the  
2 President has already reminded you when you arrived here to give  
3 your testimony, about Internal Rule 28 concerning the  
4 self-incrimination.

5 The prosecutors, however, would like to encourage the witness,  
6 Mr. Mam Nai, who are present today, to give your full testimony  
7 of your accounts you have heard, you witnessed, although those  
8 accounts would be linked to your self-incrimination. If you look  
9 at the ECCC laws, then there are only two kinds of people who  
10 would be prosecuted at the Court: the most senior Khmer Rouge  
11 leaders and also the most responsible people of the Khmer Rouge  
12 regime.

13 [09.08.27]

14 And regarding the witnesses, if we talk about the time, it has  
15 been already more than 30 years since the crimes were committed  
16 and the statute of limitation has already lapsed, and those  
17 peoples who are not included in the two groups of people are not  
18 going to be prosecuted.

19 Can the AV Unit be advised to put on the map of S-21 on display,  
20 please?

21 MR. PRESIDENT:

22 The AV Unit is advised to put that document on display, please.

23 QUESTIONING BY THE CO-PROSECUTORS

24 BY MR. TAN SENARONG:

25 Q.Mr. Mam Nai, this is an aerial photograph of the S-21 or Tuol

3

1 Sleng compound. You can see there are buildings with letters A,  
2 B, C, D and E, and I think you can read French.  
3 Can you tell me whether this is the location of the former prison  
4 that you are familiar with, and can you tell the Court in which  
5 section of this compound you once worked in?  
6 A.I think this is the compound of Tuol Sleng Prison and my  
7 interrogation house, the house I worked as interrogator, was to  
8 the east of the compound, next to the sewage canal.

9 [09.11.09]

10 Q.Thank you. Among the five buildings of Tuol Sleng Museum,  
11 which building did you carry out the interrogation in?

12 MR. PRESIDENT:

13 Mr. Mam Nai, could you please be reminded again that only when  
14 you see the red light is on the mic that you can start  
15 responding. Otherwise, your message cannot be communicated and  
16 that your voice cannot be also recorded in the transcript itself.  
17 And the national prosecutor is also advised to make sure that the  
18 mic is on before he speaks, although you have reminded the  
19 witness but, please, yourself be reminded too.

20 BY MR. TAN SENARONG:

21 Q.Mr. Mam Nai, could you please respond?

22 A.I went into the building once to meet my student who was  
23 arrested -- I sought permission from Duch -- and I did not know  
24 which building I was in. I went to actually Building C and there  
25 was a vacant room in which my student was brought in to meet me

4

1 and I asked him about his wellbeing. After that I left.

2 Q.Thank you.

3 [09.13.10]

4 MR. TAN SENARONG:

5 We would like to seek your permission to put ERN 00153573 be put  
6 on display, please.

7 MR. PRESIDENT:

8 The AV Unit, could you please put this document on display?

9 BY MR. TAN SENARONG:

10 Q.Mr. Mam Nai, if you look at this sketch drawn by Kaing Guek  
11 Eav, alias Duch, you can see letter B here is indicating the S-21  
12 location, and you see number 2, which refers to the houses for  
13 detention. And here you can see number 3, which would be the  
14 houses for also interrogation and questioning. There were  
15 offices labelled as number 5 and other numbers.

16 MR. PRESIDENT:

17 The lawyer, I notice you are on your feet. We are afraid that  
18 the lawyer's mic is not activated.

19 MR. KONG SAM ONN:

20 I would like to emphasize again that the letters written in this  
21 sketch is not very clear, so I think the witness may not be able  
22 to read or identify those numbers.

23 MR. TAN SENARONG:

24 With the President's permission, I would like to give the hard  
25 copy of the document to Mr. Mam Nai so that he can better read

5

1 it.

2 [09.15.57]

3 BY MR. TAN SENARONG:

4 Q.Do you remember these locations because numbers 4, 5, 6 here  
5 refer to the houses, and could you please indicate any particular  
6 location in this sketch so that you can tell us where would be  
7 the house you interrogated people?

8 A.I don't think I understand this sketch. If there is a sewer  
9 canal, then I would be able to tell where the interrogation house  
10 would locate because the house was located next to that sewage  
11 canal.

12 Q.Thank you. Since you cannot really tell us yet, I would like  
13 to proceed with other questions instead.

14 MR. TAN SENARONG:

15 With the President's leave, I would like ERN 00181427 be  
16 displayed, please.

17 MR. PRESIDENT:

18 The AV Unit is instructed to put this document up on display.

19 BY MR. TAN SENARONG:

20 Q.Mr. Mam Nai, have you seen this photo or are you able to read  
21 -- or to see people in the picture? Through your recollection,  
22 can you point to the photo of yourself in this photo?

23 A.I don't think I see this photo very clear, but I can see that  
24 the person behind the woman who is carrying a baby could be me,  
25 and the woman could be my wife.



6

1 [09.20.16]

2 Q.Could you please describe something about these people? Do  
3 you know the names of the people in the photo from left to right?

4 A.I don't remember that woman's name. This man maybe was Mon,  
5 and then this woman was the wife of Duch and I think her name was  
6 Rom. And here is Duch, and then another woman on the far right,  
7 and the man behind her -- I think I don't remember their names.  
8 That's all.

9 Q.Do you remember where the photo was taken?

10 A.I don't know. I can't recollect where the photo was taken.

11 Q.Thank you.

12 MR. TAN SENARONG:

13 With the Chamber's leave I would like document 00005254 be put on  
14 display, please.

15 MR. PRESIDENT:

16 The AV Unit is advised to display this photo.

17 BY MR. TAN SENARONG:

18 Q.Have you seen this photo? Do you know anyone here in the  
19 photo from left to right? Can you describe them, please?

20 MR. TAN SENARONG:

21 With Mr. President's leave, could the Court officer take this  
22 hard copy of the photo to Mam Nai?

23 A.Having looked at this photo, I don't think I remember who is  
24 who.

25 [09.23.17]

7

1 Q.Thank you, anyway. I would like to proceed further to the  
2 next question.

3 When Mr. Kaing Guek Eav was the Chairman of S-21, were you scared  
4 of him?

5 A.After he told me that an enemy implicated me in his confession  
6 and he stopped me from being an interrogator, I was scared.

7 Whenever he ordered me to go out of S-21 on my duty, I was afraid  
8 that he would trick me to go out to be arrested. And only when  
9 the Vietnamese troop came that my fear faded.

10 Q.Thank you. Next question.

11 Regarding the confession of former professor named Phung Ton.

12 MR. TAN SENARONG:

13 With the President's leave, I would like document 00188839 be put  
14 on display, please.

15 MR. PRESIDENT:

16 AV Unit is advised to put this document up on the screen.

17 BY MR. TENARONG:

18 Q.Mr. Mam Nai, are you familiar with the writing on this piece  
19 of paper? Is that yours?

20 A.Having looked at the writing, I think it is more similar to  
21 that of mine but I cannot remember whether I interrogated Phung  
22 Ton or not. But this writing is quite similar to my writing.

23 [09.26.09]

24 Q.If it is similar to your writing, can you recollect if you  
25 once interrogated this detainee?

8

1 A.I cannot think of it, but the writing is mine.

2 Q.Thank you. Next question.

3 MR. TAN SENARONG:

4 Could the Chamber please advise the AV Unit to put another piece  
5 of document on display?

6 The ERN number is 226555. My apology. Actually, we had some  
7 problem with the ERN number.

8 With Mr. President's leave, could this document please be  
9 distributed to the witness?

10 BY MR. TENARONG:

11 Q.Mr. Mam Nai, do you recognize this piece of writing in which  
12 you stated you made a request to release the detainee? This  
13 document was shown yesterday with the request of Judge Lavergne,  
14 but the prosecutor cannot really put the last page on display  
15 regarding the person, Chheav Sun Heng. Can you recall it?

16 A.The document I obtained here is, of course, the document  
17 written by me and with the annotation "Request for release".

18 Q.Was that detainee released upon your request?

19 A.I don't know. I was assigned to write down that the person  
20 would be released, but whether he was released or not, I don't  
21 know.

22 Q.Thank you.

23 On ERN 00026082, on the prisoner Vann Phiny on page 00026177.

24 Can you see the document displayed clearly on the screen, and can  
25 you confirm whether the writing on this document is your

9

1 handwriting?

2 A.This is my handwriting, Mr. Co-Prosecutor.

3 Q.Thank you. My next question.

4 Kroen Lien, alias Sum, on ERN00081842.

5 MR. PRESIDENT:

6 I notice the presence of the defence counsel. You take the  
7 floor.

8 [09.33.40]

9 MR. ROUX:

10 Mr. President, I am quite happy for the witness to be shown Khmer  
11 documents. I'm afraid I don't speak Khmer myself. I would like  
12 to know at least what the documents are about. The last document  
13 that has just been shown has no translation, at least we have not  
14 been provided with one so, I'm sorry, we have no idea what it is.  
15 So I would like at least that we be told what it is about.

16 MR. PRESIDENT:

17 The Co-Prosecutor, the Chamber has noted two points. One,  
18 regarding the presentation of such document, you should provide a  
19 hard copy to the witness so that he can read it clearly. This is  
20 also concerning his age. It's better for him to read the hard  
21 copy rather than to read it on the screen.

22 Also, the second point, you should mention the content of such  
23 document which is the basis for your questioning, so that each  
24 party can also understand, and it is also for the record of the  
25 transcript.

10

1 MR. TAN SENARONG:

2 Thank you, Mr. President. We would like to present through this  
3 document that Mr. Mam Nai during that time, he interrogated  
4 several prisoners, and this is in order to remind him to note on  
5 his handwriting for those confessions, and what the Co-Prosecutor  
6 wants is for him to acknowledge his writing of the confessions  
7 during his interrogation.

8 MR. PRESIDENT:

9 I understand that is the intention of the Co-Prosecutors, but  
10 other parties do not understand what you want to get from the  
11 presentation of these documents. It is your own understanding,  
12 what you have just said, but the rest does not understand.

13 [09.36.17]

14 MR. TAN SENARONG:

15 Thank you, Mr. President. What has shown by the Co-Prosecutor  
16 are those documents which the handwriting or annotation of Mam  
17 Nai, alias Chan, on those confessions, and sometimes some  
18 documents are the handwriting written by Mr. Mam Nai himself  
19 during the interrogations, and these are the points that the  
20 Co-Prosecutor would like to get to.

21 BY MR. TAN SENARONG:

22 Q. My next question is regarding the interrogation of the  
23 European prisoners; I do not mean the Vietnamese prisoners.  
24 The confession of James William Clark, ERN 00006979. I would  
25 like to get your confirmation whether you interrogated a

11

1 foreigner, this person, James William Clark. Can you read it on  
2 the screen?

3 A.I would like to remain silent.

4 Q.Thank you, Mr. Mam Nai.

5 MR. TAN SENARONG:

6 I would like now to give the floor to my colleague to put  
7 questions to the witness.

8 MR. PRESIDENT:

9 The international Co-Prosecutor, you take the floor.

10 [09.39.45]

11 MR. SMITH:

12 Good morning, Mr. President, Your Honours, counsel and Mr. Mam  
13 Nai.

14 BY MR. SMITH:

15 Q.Mr. Mam Nai, I'd like to now talk to you not about the types  
16 of people that you interrogated, but more about the numbers of  
17 people that you interrogated.

18 Yesterday, you said in Court that you interrogated between -- it  
19 was hard to think -- but you thought between 10 and 20 Vietnamese  
20 combatants. In your interview with the Co-Investigating Judges  
21 last year, at D22/16 000162917, you said you interviewed, you  
22 felt, less than 50 Vietnamese combatants.

23 So on the one hand, yesterday we have you saying 10 and then last  
24 year, less than 50. Bearing in mind you have been spoken to by  
25 the Chamber and reminded of your obligation to tell the truth in

12

1 this case, I would like to ask you some questions that allow you  
2 to re-evaluate more, to think back about the numbers of people  
3 you, in fact, did interrogate at S 21. In a way, I would like  
4 that you start afresh on this matter.

5 Is it fair to say that in relation to the Vietnamese -- and at  
6 the moment I'm talking about the Vietnamese combatants -- that  
7 you were the sole interrogator at S-21 of the Vietnamese because  
8 of your language skills?

9 A.From what I can recall yesterday, I said the number was  
10 between 20 to 30 persons. It's not 10 persons like you just  
11 stated. When I was interviewed by the investigators I said the  
12 number was less than 50, and when I said the number was between  
13 20 to 30 that was correct because it was less than 50.

14 Q.Thank you. My last question was -- do you agree that you were  
15 the sole interrogator, the only interrogator, of Vietnamese at  
16 S-21?

17 A.At S-21, I was the Vietnamese interrogator and I was assisted  
18 in interpreting by Comrade Chan from Hanoi.

19 Q.And you were also assisted by a Chea Seng. Is that correct?

20 A.Can you please repeat the name? I cannot catch it.

21 [09.43.50]

22 Q.The name is Chea Seng, C-H-E-A; last name, S-E-N-G. Chea  
23 Seng.

24 A.I have never heard the name Chea Seng. There was a person  
25 named Meng. He interrogated with me once, and Uncle Hor, in his

13

1 role as the deputy chairman, sometimes he joined in for a few  
2 words during my interrogation session and he left.

3 Q.Thank you. This was mentioned by the accused in his  
4 testimony, that there were three interrogators in relation to the  
5 Vietnamese. Brother Mam Nai, he managed overall; Pha Tha Chan,  
6 the interpreter from Hanoi who was detained at S-21; and Chea  
7 Seng, who was close to Brother Mam Nai, and he would just obey  
8 you.

9 That's at 10th of June, page 9 of the transcript. Does that  
10 refresh your memory?

11 MR. PRESIDENT:

12 I note the presence of the defence counsel. You take the floor.

13 MR. ROUX:

14 If my learned colleague would be so kind as to give us the  
15 reference of the transcript, because if you say the transcripts  
16 are the 10th of June, page 9, it's a little vague, Would you be  
17 so kind as to provide us with the reference? Thank you.

18 [09.46.12]

19 MR. SMITH:

20 The reference is the 10th of June, and it's page 9.

21 BY MR. SMITH:

22 Q.Does that refresh your memory, Mr. Mam Nai, that Chao Seng  
23 assisted you in interrogations?

24 A.Mr. Co-Prosecutor, I cannot recollect it. If you talk about  
25 Chao Seng, Chao Seng was my teacher. He was arrested and Comrade



14

1 Duch assigned me to interrogate him. That was all.

2 MR. PRESIDENT:

3 I notice the presence of the legal counsel for the witness. You  
4 take the floor.

5 MR. KONG SAM ONN:

6 Through the interpretation, I'm not sure if it's mistaken or not,  
7 I heard two names, Chea Seng and Chao Seng. I would like the  
8 Chamber to get it clarified. Which name is the one of the actual  
9 name -- Chao Seng or Chea Seng?

10 MR. SMITH:

11 Thank you, Your Honour. The name is Chao Seng -- C-H-A-O; last  
12 name, S-E-N-G.

13 BY MR. SMITH:

14 Q.Perhaps, Mr. Mam Nai, if we move on for a moment.

15 You stated that you were the only interrogator of Vietnamese. In  
16 relation to the evidence that the Trial Chamber has heard before  
17 them, they have heard that there were 122 detainees on the S-21  
18 records that were Vietnamese combatants, and that's at E68.28,  
19 the revised prisoner chart in relation to the Vietnamese.

20 [09.48.12]

21 Mr. Mam Nai, there were 122 known combatants at S-21. Didn't you  
22 interrogate them all?

23 A.I interrogated Vietnamese soldiers in less than 50 of them. I  
24 also interrogated the FULRO group and the Jarai group, and only  
25 later on I received instructions from the upper echelon that

15

1 actually they came to ask for our assistance in fighting back the  
2 Vietnamese and they were later on released.

3 There were a number of them, but I cannot recall the exact number  
4 of these groups, and this is my honest response to you.

5 Q.Thank you. You gave some evidence yesterday about  
6 interrogating one or two Vietnamese spies.

7 I would like to put the accused's statement to you, and this is  
8 at the 10th of June, page 10, and he was asked:

9 "And when those spies entered S-21, did you arrange for their  
10 interrogation?"

11 This is a question to the accused. And he responded:

12 "I would like to confirm that when the spies entered S-21, I  
13 ordered them to be interrogated by Brother Mam Nai. No other  
14 interrogator was allowed to interrogate them because he was  
15 trained to be able to speak the Vietnamese language and then be  
16 able to interrogate those Vietnamese people."

17 [09.50.16]

18 Mr. Mam Nai, do you have any comment about that, about the  
19 accuracy of that statement of the accused?

20 A.I would like to remain silent on this matter.

21 Q.Thank you. And the Trial Chamber has heard evidence before  
22 this Court that 144 detainees -- and that's E68.29 -- were spies,  
23 recorded as spies in the S-21 documentation. Did you interrogate  
24 around that number of spies, around 144 spies, whilst at S-21?

25 A.I just stated that I would like to remain silent on this

16

1 matter.

2 Q.Thank you, Mr. Mam Nai. I won't go further with this topic  
3 about your interrogation of Vietnamese.

4 And I would like to move to another topic and that relates to  
5 your knowledge of the organization of interrogators at S-21.

6 And, perhaps, if I can put your statement you made yesterday  
7 towards Judge Thou Mony, and you were asked what were the  
8 exclusive duties of the different S-21 units, you responded you  
9 had no knowledge, but you knew of the defence section,  
10 interrogation section and rice fields section. You further  
11 stated regarding the interrogation section, the duty was to  
12 interrogate but you didn't know the details of the organization.  
13 I would like to show you a document on the screen and we have a  
14 hard copy which we can present to you.

15 MR. SMITH:

16 It's D64, Khmer ERN 00079150 to 00079155, and in the English,  
17 00178176 and, unfortunately, I don't believe this is in the  
18 French language at this stage.

19 [09.53.01]

20 This document is dated the 1st of January 1977, and if I could  
21 ask Your Honour if the Court usher could hand Mr. Mam Nai a hard  
22 copy of the document.

23 Your Honours, this document is entitled, "A New Work Plan for  
24 Interrogation Branches for a Period of Three Months". It's an  
25 S-21 document.

17

1 BY MR. SMITH:

2 Q.Mr. Mam Nai, that's your handwriting, isn't it?

3 A.Mr. Co-Prosecutor, this is my handwriting and that is correct.

4 Q.And perhaps if I just summarize the document. It basically is  
5 a plan on how often interrogators should meet, the division of  
6 the interrogation workload, and the division of responsibilities.

7 If you look at the document, about two or three paragraphs down  
8 in the English, it states you were assigned to:

9 "... grasp hold of new and the remaining prisoners. Meng has a  
10 duty to grasp hold of daily documents and report in and out."

11 Do you see that? We have it on the screen as well, if that will  
12 help you.

13 A.Mr. Co-Prosecutor, yes, I read that document but I cannot  
14 recall what I wrote at the time. I saw my handwriting on the  
15 "grasp hold of the newcomers" and that I, myself, put my name in  
16 the bracket. I cannot recall at the moment.

17 [09.56.49]

18 Q.And if I can just briefly summarize the document.

19 This document divides the interrogators into 11 groups and groups  
20 them into three larger groups with Chairman Snuon responsible for  
21 five, six and eight -- this is at the bottom of the document -- a  
22 man who was responsible for seven, nine, 10 and 11; and Pon, who  
23 was responsible for one, two and three.

24 And also the document explains how often people should meet. It  
25 states that squads had to meet every three days, open work

18

1 experience once a month, party meeting every two weeks,  
2 livelihood meetings once a month, first two weeks spent on  
3 studying and making biographies of all interrogators, and once a  
4 month training for technical and scientific work.

5 Would you agree with me that, bearing in mind you wrote this  
6 document, at the time that you wrote the document at S-21, you  
7 completely knew the organization of the interrogation section  
8 and, in fact, you were one of the main co-ordinators of the  
9 interrogation section, not a person that was isolated in a house  
10 interrogating 10 to 20 Vietnamese combatants over a three-year  
11 period? Would you agree with me you were the co-ordinator, with  
12 Pon, of the interrogation unit?

13 A.Mr. Co-Prosecutor, I do not agree with you.

14 Q.Even though you wrote the document explaining how the unit was  
15 organized in groups and how often would meet, you still do not  
16 agree with me. Is that right?

17 A.I disagree because these people were the youth league and  
18 maybe this is the content of the meetings of the youth league at  
19 the time.

20 [10.00.12]

21 Q.Thank you. And you agree with me that the title of the  
22 document is, "A New Work Plan for Interrogation Branches for a  
23 Period of Three Months"? Do you agree that that is the title of  
24 the document?

25 A.I think the writing of this document is my handwriting. This

19

1 is my acknowledgment.

2 Q.Thank you.

3 Mr. Mam Nai, yesterday before you left the Court, you were given  
4 a red binder and it was a copy of a notebook or notebooks and it  
5 contained 396 pages, and the first page was entitled, "Learning  
6 in Office Document, 17th of December 1977".

7 MR. SMITH:

8 And, for the record, it's Introductory Submission Annex C, Number  
9 14.3, Khmer 00077661 to 00078056, with partial English  
10 translation at 00184579 to 00184618, and then partial English  
11 translation at 00242259 to 00242263. The first date of this  
12 document appears on the 17th of December 1977.

13 MR. PRESIDENT:

14 Mr. Prosecutor, could you please slow down a little bit when you  
15 read the ERN number for a good record, please?

16 MR. SMITH:

17 Yes, Your Honour.

18 BY MR. SMITH:

19 Q.This binder -- is this a copy of your notes that you made  
20 between 1975 and 1979 at S-21?

21 [10.02.55]

22 MR. PRESIDENT:

23 Could you please then repeat the ERN number? I got the notice  
24 from the interpreter that he cannot really render it?

25 MR. SMITH:

20

1 Thank you. I apologize, Your Honour.

2 The Khmer ERN number is 00077661 to 00078056, with English  
3 translation partial 00184579 to 00184618. Another English ERN,  
4 00242259 to 00242263.

5 BY MR. SMITH:

6 Q.Mr. Mam Nai, do you agree that's a copy of your notebooks from  
7 that period at S-21?

8 A.This copied document contains my writing. I was not the one  
9 who prepared it. I was dictated according to the lecture by  
10 Duch.

11 Q.And in that document we have reviewed about 45 different dates  
12 over that period, and is it fair to say that when there's a new  
13 date, that's a new lecture or a new meeting for you to record the  
14 notes of those discussions? Do the new dates reflect new  
15 meetings or new lectures?

16 A.Of course, when the new date is different then the content of  
17 the discussion is different too.

18 [10.05.39]

19 MR. SMITH:

20 Mr. President, I just have five more minutes.

21 BY MR. SMITH:

22 Q.Mr. Mam Nai, in that document there are numerous references  
23 relating to the use of torture at S-21. Yesterday in Court, you  
24 were asked by Judge Thou Mony if Duch instructed you on the  
25 method of interrogation or torture. You answered:

21

1 "When I interrogated either Cambodian or Vietnamese, I was not  
2 instructed on methods of torture or interrogation."

3 As to whether the others were taught by Duch, you replied:

4 "I was only mindful of my duties. They were mindful of their  
5 own. It was beyond my knowledge."

6 Mr. Mam Nai, you have stated that you did not know of torture at  
7 S-21, and yet this document -- which references I will give the  
8 Trial Chamber later -- is full of references in relation to  
9 torture at S-21.

10 So, in fact, you were aware of the practice of torture at S-21  
11 because you and others were instructed to carry it out. Do you  
12 agree with that?

13 A. For me, personally, I was never instructed on how tortures  
14 were used, but in the annotation in that book -- or in the  
15 writings of that book, it was recorded in the meeting in which  
16 Duch gave lectures, and also based on other interrogations of  
17 other interrogators. I have no idea what other kind of practices  
18 applied by other interrogators.

19 [10.07.55]

20 Q. Mr. Mam Nai, is it the case that you are minimizing your role  
21 at S-21 in light of all the evidence that you have heard, and  
22 your knowledge of events at S-21 and the activities of people at  
23 S-21, because you want to isolate or remove yourself from the  
24 horrible criminality that occurred there?

25 Have you tried to do that? Have you tried to block your mind and



22

1 isolate yourself from the crimes at S-21?

2 A.Mr. Prosecutor, I have never had such idea. I am testifying  
3 based on the activities I have done.

4 MR. SMITH:

5 Thank you, Your Honour. I have no further questions.

6 MR. PRESIDENT:

7 We note that Mr. François Roux is on his feet. The floor is  
8 yours.

9 MR. ROUX:

10 Mr. President, just an observation from the defence at this level  
11 of the proceedings.

12 Mr. Mam Nai is a witness who was summoned by the prosecutor on  
13 the prosecutor's list.

14 [10.09.54]

15 MR. PRESIDENT:

16 Next, we would like to give the floor to the civil party lawyers  
17 to put questions to the witness. Please be reminded that civil  
18 party lawyers have 20 minutes for each group. The floor is  
19 yours.

20 MS. STUDZINSKY:

21 Good morning, Mr. President, Your Honours. Thank you.

22 I only want to inform the Chamber that the civil party lawyers  
23 took the following agreement. Group 4 will start and then the  
24 other groups, Group 3, Group 2 and Group 1, will follow and share  
25 the remaining time.

23

1 So I give now then the floor to Group 4 to start. Thank you.

2 MR. PRESIDENT:

3 Civil party lawyers, Group 4, you take the floor.

4 MR. HONG KIMSUON:

5 Thank you, Mr. President, Your Honours.

6 I would like to inform the Chamber that since we have 20 minutes,

7 but we would like to take this opportunity to combine another

8 group if we need more time in our -- during the time when we put

9 questions to Mr. Mam Nai.

10 [10.11.43]

11 QUESTIONING BY CIVIL PARTY COUNSEL

12 BY MR. HONG KIMSUON:

13 Q.Mr. Mam Nai, if you feel my questions are not clear, please

14 ask me to repeat them.

15 The first question is in relation to your notebook in which you

16 just responded to the prosecutor just now. You said that

17 notebook, which contains 396 pages, was not prepared by you. You

18 only dictated from the lectures given by Duch. Is that correct?

19 A.That's correct.

20 Q.Thank you.

21 Second question: You stated to the Chamber that you went into

22 S-21 Office, now known as Tuol Sleng, and you said you only went

23 there once and you met your student. Is that correct?

24 A.That's correct.

25 [10.13.19]

24

1 Q.Thank you.

2 The next question: Since many years have already passed and of  
3 course you said sometimes you can recollect the events, sometimes  
4 you can't, other than the student you said you met, what about  
5 other detainees including your former teachers, including Chao  
6 Seng; were they detained at S-21 too?

7 A.It is true that my teacher was detained at S-21 but he was  
8 detained in a house to the south of Ponhea Yat School.

9 Q.Thank you.

10 Next, as a staff member of S-21, and later on you were addressed  
11 by Duch as Brother Mam Nai, so it appears that you had a higher  
12 status than him, through my listening to the session. So in your  
13 notebook and that you said you only dictated the lectures given  
14 by Duch, were you there alone to dictate that kind of lecture or  
15 were there any other people involved?

16 A.Having reviewed the documents yesterday, I think at the  
17 beginning there was lectures by Nat, who was the chairperson, and  
18 later on Duch took turns to become the presenter in such  
19 sessions.

20 Q.Could you please simplify your expression when you said  
21 "otesinium" in Khmer, which means "presentation"; what was it  
22 meant to be?

23 A."Presentation" means to tell, to explain, to describe about  
24 the lectures, and to give lesson hand-outs. So this is part of  
25 that presentation which I referred to.

25

1 [10.16.12]

2 Q.Thank you.

3 So regarding the taking notes in that document, you only dictated  
4 the words from your superior during the study sessions. Is that  
5 correct?

6 A.That's correct.

7 Q.Thank you.

8 Next question: After Nat, who was the former chairman of S-21,  
9 left, in the document we found your name as the staff member of  
10 S-21 and you remained the staff member at S-21. Had you ever  
11 attended meetings or met Son Sen, who was Duch's superior?

12 A.Mr. Lawyer, once there was a livelihood meeting of the Party  
13 and, as I already told the Court earlier already, I think the  
14 meeting was conducted outside of the location of S-21 to the  
15 south of the train station, but I cannot remember where it was.

16 At that time Brother Son Sen attended in the meeting as the  
17 chairperson of the meeting, and that was a livelihood meeting. I  
18 want to be precise here.

19 Q.Thank you.

20 The last question: This document concerning the daily accounts  
21 of staff members and only you who made that record, had this  
22 document been reviewed by Son Sen?

23 A.He never requested that the book be reviewed by him.

24 [10.18.48]

25 Q.Did Nat, Duch or Comrade Hor ever review this notebook?

26

1 A.These three people had never reviewed my book.

2 MR. HONG KIMSUON:

3 Thank you, Mr. President. I would like to share this floor to my  
4 colleague and I have no further questions for the moment.

5 MR. PRESIDENT:

6 The other group lawyer take the floor now.

7 MS. JACQUIN:

8 Good morning, Mr. Mam Nai. Good morning, Mr. President. Good  
9 morning, Your Honours.

10 BY MS. JACQUIN:

11 Q.I'd like to put the following questions to you.

12 First of all, when you were at M-13, do you believe that the  
13 prisoners' living conditions in the pits were comparable to your  
14 detention conditions while you were imprisoned under the former  
15 regime?

16 [10.20.18]

17 A.The circumstances were different, so the detention of  
18 detainees were different also. The circumstances during the time  
19 when I was arrested, it was at peace: no war, no conflicts, no  
20 bombardments from the Americans. But during the time when the  
21 detainees were detained at M-13 during the revolutionary regime,  
22 the country was bombarded, so villages would be bombarded by  
23 bombs by the Americans.

24 So in order not to put these detainees in danger, then we had to  
25 put them in the pits. Even staff members of the offices had to

27

1 be taken refuge in the pits.

2 Q.When you were detained under the former regime did you imagine  
3 that you would be executed or did you think that you might be  
4 released one day?

5 A.At that time I never thought of that because I thought that  
6 when I was arrested I was in the hands of them, so whatever  
7 happened to me depends on how they treated me. And I also heard  
8 that the Free Khmer or Khmer Serei people were arrested and  
9 killed so I thought that it depends on my captors.

10 Q.Do you believe that the prisoners at M-13 ever considered that  
11 they might be released alive?

12 A.When I was at M-13 at the beginning I forgot that it was a  
13 security office, but then now I can recall that it was M-13 which  
14 was the security office. Back then I noticed that there were two  
15 people who were released and I witnessed the release. I have no  
16 idea whether other people would have been released too.

17 [10.23.19]

18 Q.Mr. Mam Nai, these prisoners at M-13 were enemies, as you  
19 said, but who were they? Were they Americans, Vietnamese or  
20 maybe others?

21 A.At M-13 there were no foreigners ever being detained, only  
22 Khmer detainees were there.

23 Q.Later on, you said that your wife joined you with your  
24 children and that she took charge of the kitchen at S-21. And  
25 you also said that you had a residence which was not your office.

28

1 So did you live in this residence with your wife and your  
2 children?

3 A.When we lived in Phnom Penh at S-21, I asked Comrade Duch so  
4 that my wife could join me because they had lived somewhere near  
5 the Monk Hospital. Then we lived in a residence all together  
6 with my family. At night when we did not work, so we stayed in  
7 that house. During the daytimes, I would go to work in a  
8 different area during the interrogation sessions.

9 Q.In the evening with your wife who therefore was working in the  
10 kitchen of S-21, did you ever talk to her about what was your  
11 workplace for both of you, that is to say, S-21? Did you ever  
12 talk about what you might have known about each other's work?

13 A.At S-21 my wife only focused on her work and I only was  
14 mindful of my business and I never shared or exchanged our  
15 matters at work among ourselves.

16 Q.You said that you learned to not hear anything, to not see  
17 anything, in order not to know anything. Why was it necessary  
18 not to know, or what was it necessary not to know?

19 A.Learning not to know, not to hear anything was consistent to  
20 the principle of the Party because we were supposed to be mindful  
21 of our own business and that we had to be not mindful of other  
22 people's business. I think Cambodian people had the tradition of  
23 not listening to others.

24 [10.27.24]

25 Q.You also said to us that you were afraid of asking questions

29

1 to Duch, but what were you afraid of?

2 A.I was not afraid of questioning Duch but when the enemy  
3 implicated me in their confession and that when Duch told me that  
4 I was implicated so, and he later on removed my interrogation  
5 task and I was so worried that probably Duch had no longer  
6 trusted me and that he would probably find some kind of pretext  
7 to arrest me. That's what I was feared of.

8 Q.But Mr. Mam Nai, why were you afraid of being arrested, since  
9 you were a deeply convinced Communist and you were honest and you  
10 worked with a lot of dedication?

11 So why would people mistrust you, and why would they have  
12 arrested you if maybe you noticed yourself among the prisoners  
13 that you interrogated some of them might have been in a similar  
14 situation as yours? Maybe you felt that their detention wasn't  
15 quite justified?

16 A.I was worried because he told me the enemy had implicated me.  
17 Especially during that period, if someone was implicated then  
18 that person would be in trouble, and that was my worry.

19 [10.29.44]

20 Q.But Mr. Mam Nai, what happened to the person who was  
21 incriminated? Was this person interrogated? Was this person  
22 detained? What happened to this person? Why were you so afraid?

23 A.When someone was implicated that person had to be worried  
24 because if we were to make a wrong move or a mistake then we  
25 would be arrested.



30

1 Q.And if a person was arrested, what happened to the person? Do  
2 you have no idea what happened to your former teacher whom you  
3 had met?

4 A.Regarding my teacher, I did not learn of his fate. But Duch  
5 assigned me to interrogate him so I did that. I handed a piece  
6 of paper to him and I told him, "Teacher, whatever mistakes you  
7 made, you just write down on the paper". And after it was  
8 complete, I read the confession and I sent it to Duch.

9 Q.Mr. Mam Nai, why were you yourself so frightened if it is true  
10 that a person, when arrested, was given a piece of paper to make  
11 a confession? You were revolutionary. You were ready to  
12 sacrifice your life. You have been in prison for two years. Why  
13 were you afraid of these confessions?

14 A.Could you please rephrase your question?

15 Q.As in the case of your previous teacher, if being arrested  
16 meant that you were summoned by an interrogator who asked you to  
17 write down your mistakes as you did with your teacher, it  
18 wouldn't be such a difficult thing to do. So I fail to see how  
19 you, a courageous revolutionary, would be afraid to provide a  
20 confession in such conditions.

21 A.I still do not understand your questions so I would like to  
22 exercise my rights to be silent.

23 [10.33.35]

24 MR. PRESIDENT:

25 I notice the presence of the legal counsel for the witness.

31

1 MR. KONG SAM ONN:

2 I am not sure. Maybe there is a misunderstanding or a  
3 confession. This is not a confession. It is an implication from  
4 one person to this witness during that period. So if we are  
5 talking about the confession then the confession does not have  
6 anything to do with this witness.

7 Thank you.

8 MR. PRESIDENT:

9 The witness just reserved his right to be silent. So the civil  
10 party lawyer, you proceed with another question.

11 MS. JACQUIN:

12 Thank you, Mr. President.

13 BY MS. JACQUIN:

14 Q. When you were interrogating the Vietnamese detainees you were  
15 faced with soldiers and these soldiers could be privy to  
16 information that your army needed. As you said, it was a time of  
17 war. If these soldiers simply refused to provide information  
18 they had did you stop the interrogation? What did you do?

19 A. If they did not provide the confessions then we had to find  
20 out the reasons and to explain to them, because regarding the  
21 situation at the battlefield it was not that difficult so they  
22 should not conceal that information.

23 [10.35.48]

24 Q. Mr. Mam Nai, in your notebook, page 72, you wrote, for  
25 example, "An enemy does not respond". This concerns the method

32

1 of the interrogator. So if a soldier refuses to respond you do  
2 not try to convince him that he really must answer even if  
3 perhaps it involves the use of more robust methods?

4 A. When they were stubborn then I would use the chewing method.  
5 That means to constantly asking them repetitive questions and  
6 later on I would allow them to retreat to think for two or three  
7 days.

8 Q. Were your offices not in Street 360 in the primary school  
9 building just near the place where there was water -- what you  
10 say, that we refer to as ponds?

11 A. The house where I interrogated the prisoners was near the  
12 sewage canal.

13 Q. Did you not see cars or trucks passing in front of your house  
14 carrying people, going to or returning from S-21?

15 A. The street which the trucks used was on the south. It was a  
16 few blocks away and toward the Tuol Sleng Prison it was also at  
17 quite a distance. So I never saw any car or truck driving or  
18 passing by the road in front of the house.

19 [10.38.51]

20 Q. Before the 7th of January, 1979 did you believe that the  
21 Vietnamese would succeed in overrunning Phnom Penh?

22 A. Could you please repeat your question?

23 Q. Did you think that before Phnom Penh was taken on the 7th of  
24 January, 1979 that the Vietnamese would be able to beat the  
25 revolutionary army and take Phnom Penh?

33

1 MR. PRESIDENT:

2 I notice the presence of the legal counsel. You take the floor.

3 MR. KONG SAM ONN:

4 I have listened to some questions posed by the civil party  
5 lawyers and some of the questions seem to focus on the thinking  
6 or the conclusions to be made by the witness. If the witness has  
7 to provide his conclusions then it's not related to the facts.

8 So the questions sort of point to the responses which are the  
9 facts related to the events that occurred and if the questions  
10 seem to want to get the thinking or the conclusions of the  
11 witness then it cannot be used as evidence.

12 Thank you.

13 MR. PRESIDENT:

14 Thank you, the defence counsel.

15 [10.40.49]

16 I would like to remind you that you as assigned by the WESU unit  
17 is to provide your assistance to the witness.

18 To counsels, the questions or request for his statements that you  
19 consider that if he responds to those questions that would make  
20 him guilty. And regarding the proceedings of how to question the  
21 witness, it's none of your concern. This person is summoned  
22 before this Chamber as a witness, not as an accused. So you are  
23 reminded on this matter and you should only provide your  
24 assistance to your client if his response would lead to  
25 self-incrimination or would make him guilty because of such a

34

1 response.

2 The civil party lawyer, you may proceed.

3 MS. JACQUIN:

4 Thank you, Mr. President. I shall now ask one last question and  
5 give the floor to my colleague.

6 BY MS. JACQUIN:

7 Q.Mr. Mam Nai, I shall frame the question differently.

8 In all the political meetings that you had, did you consider  
9 around the end of 1978 that you should envisage a retreat because  
10 the Vietnamese might win the battle with the Cambodian army and  
11 take Phnom Penh?

12 [10.42.58]

13 A.At that time, we did not know anything regarding the  
14 situation. We didn't know how far the Vietnamese troops had  
15 reached, and suddenly we heard the gun explosions and we realized  
16 that Vietnamese troops already arrived. So we rushed to flee,  
17 and that was all.

18 MS. JACQUIN:

19 Thank you, Mr. President. My colleague will now take the floor.

20 MR. PRESIDENT:

21 The 20 minutes for group 3 runs out except another group would  
22 share their time, however, for group 3 the 20 minutes has already  
23 gone.

24 Now it is time for a break. The Chamber will take an 18-minute  
25 break until 11 a.m. when it will resume the proceedings.

35

1 Court officer, provide necessary refreshments to this witness.

2 (Judges exit courtroom)

3 (Court recesses from 1044H to 1104H)

4 (Judges enter courtroom)

5 [11.03.53]

6 MR. PRESIDENT:

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

8 We continue to hear testimony of Mr. Mam Nai, the witness. We

9 would like to give the floor to the civil party lawyers group 2.

10 The floor is yours.

11 MS. STUDZINSKY:

12 Thank you, Mr. President.

13 BY MS. STUDZINSKY:

14 Q. Good morning, Mr. Mam Nai. My name is Silke Studzinsky. I am

15 the lawyer for civil parties.

16 [11.04.39]

17 I would like to ask you some questions.

18 Do you recall if the prisoners who were assigned to be

19 interrogated by you, if Duch sent these prisoners to you and, if

20 so, how did he send these prisoners to you?

21 A. Before responding to your question, I would like Mr.

22 President's leave to identify the statement that the lawyer said.

23 I indicated that I did not respond. So please, with Mr.

24 President's leave, could you please do it?

25 MR. PRESIDENT:

36

1 The Chamber allows it.

2 THE WITNESS:

3 The reason that I did not respond to the lawyer had no other

4 reason behind it other than I don't understand her question.

5 And regarding your last question, could you please repeat it so

6 that I can respond fully?

7 BY MS. STUDZINSKY:

8 Q.I'm not sure about what I heard in English, but if you want

9 that I repeat the question, I can do so and make it very simple.

10 Did the accused send the prisoners for interrogation to you?

11 A.So far as I know, he perhaps ordered or instructed Uncle Hor

12 to send the prisoners to me, but I'm not sure.

13 [11.07.35]

14 Q.To clarify, he did not talk to you and inform you, "I will

15 send now this or that prisoner to you." Is this right?

16 A.He never talked about this regarding the detainees, but

17 regarding the Vietnamese detainees he would tell me that the

18 Vietnamese soldiers were arrested from the battlefields and that

19 I had to interrogate them.

20 Q.Did you ever interrogate important prisoners?

21 A.I never interrogated any detainees who were important cadres.

22 Q.What were the criteria to classify prisoners in important or

23 not important prisoners?

24 A.Could you please repeat your question?

25 Q.I would like to know the criteria. Who was considered as an

37

1 important prisoner and who was not an important prisoner?

2 A.The important detainees were the senior cadres.

3 Q.What about high-ranking intellectuals?

4 A.No one was regarded as intellectual or not. In the rank of  
5 the party, when a person was a high-ranking cadre, then he or she  
6 was regarded as an important prisoner or detainee when they were  
7 arrested.

8 [11.10.54]

9 So these people included those who got the rank above the  
10 district governor or secretary .

11 Q.Did you know, at the time and when you worked in S-21, did you  
12 know the name of Mr. Phung Ton?

13 A.I saw him in the former regime and I knew him, but at S-21 I  
14 don't remember whether I interrogated him, although I observed  
15 the handwriting of mine with the name of Mr. Phung Ton, but I  
16 cannot recollect it.

17 Q.What did you know about him at this time? What did you know  
18 about his doing in the former regime?

19 A.During the former regime I learned that -- I cannot find the  
20 right terms to fit even the Khmer or the French version.  
21 Actually, it's during the time when lecturers gathered to conduct  
22 a conference, then we would see him. It is the pedagogy  
23 conference and that there were two people in the debates,  
24 including Son Sen and Mr. Phung Ton, so we could hear their  
25 debates in such conference.



38

1 Q. Is it correct to say that you attended a conference where Mr.  
2 Phung Ton had a debate with Mr. Son Sen. Is this what you wanted  
3 to say?

4 A. It's correct to say that.

5 [11.13.53]

6 Q. How many times did you attend such conferences with the  
7 presence of Mr. Phung Ton?

8 A. I only attended such conference once, so far as I remember.

9 Q. You know the position of Mr. Phung Ton at this time?

10 A. I did not know for sure what title he earned back then. I  
11 knew he was a professor and maybe he was the Secretary of State  
12 of the Ministry of Education. I might be wrong.

13 MS. STUDZINSKY:

14 I would like to ask the President to direct the AV to put this  
15 photo on screen. This is a photo of Mr. Phung Ton.

16 MR. PRESIDENT:

17 Could you please give the ERN reference number?

18 MS. STUDZINSKY:

19 (Microphone not activated) Sorry, I was wrong. Put it on the  
20 screen -- to put it on the screen, not for the AV.

21 [11.16.50]

22 BY MS. STUDZINSKY:

23 Q. Mr. Mam Nai, this is a photo taken in Tuol Sleng when he  
24 entered Tuol Sleng. Do you recognize him?

25 A. I think I recognize him but I cannot recall the time -- his

39

1 physical appearance during the time when he was at S-21, but with  
2 this photo I can confirm that it is a photo of Mr. Phung Ton.

3 MS. STUDZINSKY:

4 Could you remove the photo, please, from the screen?

5 BY MS. STUDZINSKY:

6 Q. My next question. So, Mr. Mam Nai, could you recall now after  
7 you have seen his photo, in which health situation he was  
8 interrogated through you?

9 A. I don't remember.

10 MS. STUDZINSKY:

11 Mr. President, could you please direct the AV to put on the  
12 screen the document that the prosecutors already have asked for.  
13 This is ERN number 00188839 through 00188843.

14 MR. PRESIDENT:

15 The AV Unit is instructed to put this document with ERN, as  
16 requested by Lawyer Studzinsky, up on the screen from 00188839 to  
17 43.

18 [11.19.38]

19 MS. STUDZINSKY:

20 I would also like to give the summary -- not the summary, the  
21 translation of this document in English, which is the ERN number  
22 00239011 through 00239012, and in French, 00188844 to 46.

23 MR. PRESIDENT:

24 The AV Unit is instructed again to put this document with ERN in  
25 Khmer 00188839 through 00188843 on the screen, please.

40

1 BY MS. STUDZINSKY:

2 Q.My question to Mr. Mam Nai is, if you look on the first page,

3 I would also like to hand out you -- if you can read it better

4 than the hard copy.

5 Mr. Mam Nai, could you look on the first page, this little piece

6 of paper, the first page please.

7 My question is, is this your handwriting?

8 A. I was the one who wrote Phung Ton's confession. It's my

9 handwriting.

10 Q.Maybe there was a misunderstanding. I asked you to look on

11 the first page not of the confession but where there is a little

12 piece of paper on the first page with P376, the title, and then

13 some words in Khmer and also in Latin.

14 Could you please tell us if this also is your handwriting?

15 A.It's not my handwriting.

16 [11.23.33]

17 Q.Do you know who wrote this?

18 A.I don't know.

19 MS. STUDZINSKY:

20 Could the AV Unit please be directed to scroll until the end of

21 the document and to ask the greffier to read out the last

22 paragraph starting in the English version with "Through the

23 interrogator" and so on? Could it be read out in Khmer?

24 MR. PRESIDENT:

25 We seem to find it difficult to find the right paragraph because

41

1 here we only see the part of the writing which says, "The true  
2 elements of the interrogators". I don't know whether we are now  
3 starting from here?

4 MS. STUDZINSKY:

5 Yes, this is a part, as far as I can read it in the Khmer  
6 document, from 1 to 5, these points and with the title of this  
7 paragraph at the end of the document.

8 MR. PRESIDENT:

9 The Greffier is instructed to read the last six lines.

10 THE GREFFIER:

11 "Through the interrogator, social justice equals happiness for  
12 all, prosperity, protecting the country at all costs and the  
13 Khmer style of Communism. And Phung Ton was determined to be  
14 Communist because he loved those above things."

15 [11.26.06]

16 BY MS. STUDZINSKY:

17 Q.Mr. Mam Nai, is this your conclusion of the confession of Mr.  
18 Phung Ton?

19 A.Of course this is my conclusion.

20 Q.Could you tell us what should have followed from this  
21 conclusion?

22 A.I cannot make any conclusion now regarding the fates of Mr.  
23 Phung Ton. What I concluded here was based on his testimony or  
24 his confession. That's all.

25 Q.Does this determination comply with the party line of the CPK?

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1 A.I don't understand it, but I only analyzed based on the true  
2 situation at that time.

3 Q.Would this determination lead to the conclusion that he is  
4 considered as an enemy of the revolution?

5 A.It is my conclusion that the content was exactly what I wrote  
6 in the confession.

7 Q.Mr. Mam Nai, perhaps you have remarked or you are aware that  
8 here in the courtroom the relatives, the wife of Mr. Phung Ton  
9 and the daughter are sitting here in this room to know more about  
10 the fate of the father or husband.

11 [11.29.09]

12 It would be really helpful if you would contribute to find the  
13 truth for the relatives of Mr. Phung Ton and if you could  
14 elaborate on the question that I asked you.

15 A.I would like, of course, to provide more information very  
16 much, but what I said was to the limit of my knowledge and beyond  
17 that I could not say it because I do not have knowledge of it.

18 Q.Thank you, Mr. Mam Nai.

19 MS. STUDZINSKY:

20 I give now the floor to my colleagues who have still 24 minutes  
21 from group 1. Thank you.

22 MR. PRESIDENT:

23 Alain Werner, you take the floor.

24 MR. WERNER:

25 Thank you, Mr. President.

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1 BY MR. WERNER:

2 Q. Good morning, sir. My name is Alain Werner. I and my  
3 colleague Ty Srinna, who is beside me, represent civil parties  
4 and we have a few questions to put to you.

5 The first thing I would like to do is to show you a document.

6 MR. WERNER:

7 I have distributed a copy of the document to the prosecution, to  
8 the counsel for the witness, the accused's counsel as well. This  
9 is ERN 00279916 to 00279917. This document was put before the  
10 Court last Monday when the civil party was giving testimony on  
11 the 6th of July 2009.

12 [11.31.33]

13 The accused said that this document was prepared by the witness.

14 I am not to going to talk about the content of the document. I  
15 just wish to show the document to the witness to confirm that the  
16 witness in fact wrote the document.

17 If the Court officer could please help to provide a copy of the  
18 document to the witness.

19 MR. PRESIDENT:

20 Court officer, can you take the document from the lawyer and  
21 present it to Mr. Mam Nai?

22 BY MR. WERNER:

23 Q. If you could please look at this document, sir, and confirm or  
24 deny whether this is in fact your handwriting on the document.

25 A. The handwriting of this confession is my handwriting.

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1 However, at the request section it is not my handwriting.

2 Q.Thank you, sir.

3 The Court officer can take the document back from the witness.

4 What I would like to do with you, sir, is to read a number of  
5 statements you made to the Co-Investigating Judges and I would  
6 like to know whether you did indeed make these statements and, if

7 so, whether you can confirm the veracity of the statements. I

8 shall start with a statement which you made to the

9 Co-Investigating Judges. For my colleagues the reference is

10 D22.16 and the ERN, in French, is 00165022 to 00165023.

11 I am going to make sure that I read out the question that was put  
12 and your answer. This interview was conducted in 2007 on the 7th  
13 of November. The question put to you was, as follows:

14 "After Duch looked at the confessions before providing an  
15 opinion on those confessions, did Duch have to ask the upper  
16 echelon before making notations on the confessions?"

17 And this is your answer:

18 "From what I observed, probably after he looked at the responses  
19 he analyzed the responses to see if they had to be further  
20 interrogated or if the responses could be sent on up, and if they  
21 had to be re-interrogated Duch made the notations to  
22 re-interrogate."

23 [11.35.55]

24 Question:

25 "In general how many days did Duch take to respond to the

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1 confession?"

2 Answer:

3 "Sometimes a long time. Sometimes quickly, but no longer than  
4 one week."

5 Question:

6 "In what cases would Duch send a confession to the upper  
7 echelon?"

8 Answer:

9 "From what I knew probably only after Duch thought it was  
10 sufficient and the confession was proper then he would send it to  
11 the upper echelon."

12 Sir, do you remember making these statements before the  
13 Co-Investigating Judges?

14 A.Yes, I can remember it.

15 Q.Was what you stated the truth, sir?

16 A.What I said before the investigators of the Office of the  
17 Co-Investigating Judges is, from my understanding, through based  
18 on my own analysis, as I did not know the facts but it is my  
19 analysis.

20 [11.37.52]

21 Q.Thank you, sir.

22 I would like to present to you another excerpt of a statement you  
23 made. This is at D52, in French ERN 00164397. This was another  
24 interview on the 14th of February, 2008 and you stated as  
25 follows:



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1 "I understood that Duch reported every matter to the upper  
2 echelon in writing and when the upper level telephoned he would  
3 then respond by telephone. I knew that the lists of all the  
4 prisoners were sent to the Centre who were the people who made  
5 the decisions and those lists were made by the interrogators. I  
6 assume that according to the law the Centre sent the confessions  
7 to the bases; the bases followed up and then arrested prisoners.  
8 Sometimes the bases brought them in, sometimes S-21 went to get  
9 them."

10 And my question is the same here, do you recall making that  
11 statement before the Co-Investigating Judges in regard to the  
12 list of prisoners?

13 A.What I said is the truth, the list of the prisoners made by  
14 interrogators were the names of those people who were implicated  
15 in the confessions.

16 Q.If you could recall, how many times did this happen?

17 A.I cannot recall how many times it happened.

18 [11.40:33]

19 Q.To the best of your recollection, was it more than once?

20 A.I cannot recall how many times.

21 Q.I want to put to you another statement you made to the  
22 Co-Investigating Judges. I return to your statement of the 7th  
23 of November, 2007. This is document D22/16 and the French ERN is  
24 00165033 and 00165034.

25 I shall now go to the question and answer. Question:

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1 "So there were arrests made at S-21, as suggested by Duch and  
2 authorized by the upper level?"

3 Answer:

4 "It had to be like that to be done."

5 Question:

6 "As for the people you wanted to help was there anyone you  
7 wanted to help but could not?"

8 Answer:

9 "Other than those in the unit, those who joined the revolution  
10 with me, whenever Duch let me know, I could protect them because  
11 Duch would listen to my opinions. And if someone had not made  
12 revolution with me, I would not dare defend him.

13 Question: The last time you talked about seeing one of your  
14 students get into trouble and you could not help, how was that?

15 Answer: My student, whom I did not dare help, had been arrested  
16 by the base and sent. I met him. I did not dare because he had  
17 already been arrested. If I had known before and they had told  
18 me that this person was in trouble, I could have guaranteed that  
19 he was a student of mine."

20 Do you remember making that statement before the Co-Investigating  
21 Judges, sir?

22 [11.43.02]

23 A.I responded so, and the reason that I wanted to defend those  
24 people, because I loved justice and those people were innocent.

25 So then, in order to defend the justice and because they were the

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1 people whom I know, then I would do so. And for those people  
2 whom I did not know, then I would not be able to provide them  
3 with anything.

4 Q. Could you please confirm that what I have read out to you is  
5 the truth?

6 A. It is the truth.

7 Q. I shall now move on.

8 Immediately after, that is immediately following the excerpt I've  
9 just read out, to continue -- and you go on to say after the last  
10 sentence I read out -- you say:

11 "It is like Chhay Kim Huor, alias Hok, talking about oil, saying  
12 that American oil was better than Chinese oil. Duch told me that  
13 he reported this to the Central Committee. How many other people  
14 implicated him? I don't know, but I imagine that was probably in  
15 combination with him having been implicated before they made the  
16 decision to arrest him.

17 Question: So at that time, did Duch have the right to propose to  
18 upper Angkar to arrest people outside S-21?

19 Answer: Duch could report in cases which he personally knew.

20 [11.44.57]

21 Question: How did it happen that Duch knew Hok had talked about  
22 oil?

23 Answer: Duch had gone to visit Hok's house. Hok was bold and  
24 spoke frankly with those who knew him. Duch was quick to report,  
25 as in my case when only one regimental cadre had implicated me

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1 saying that I had visited his uncle's house and that uncle had  
2 accused me of being a Khmer Serei. Just that and Duch wanted to  
3 report to the centre. Duch was very quick to make reports."

4 Did you make that statement before the Co-Investigating Judges?

5 A.Yes, I did say that.

6 Q.Is this consistent with the truth, sir?

7 A.When Comrade Duch reported about me that the enemy implicated  
8 me, and when he reported that Comrade Hok talking about the  
9 Chinese oil, which was less superior than the American oil, it  
10 was the truth. His intention was for the upper echelon to  
11 analyze the situation; and whether other prisoners implicated  
12 Comrade Hok in other confessions, that is beyond my knowledge.

13 Q.When you stated that Duch was very quick to make reports,  
14 would that be the truth, sir?

15 A.From my understanding, it is the truth. He was quick.

16 [11.47.34]

17 Q.Thank you, sir.

18 Three months ago, in reference to M-13, Judge Lavergne put a  
19 question to the accused, and I would like to read Judge  
20 Lavergne's question and the accused's answer, and the French ERN  
21 is 00315691. This was about M-13, as I said. The question:  
22 "The guards had weapons, so when someone escaped then the guards  
23 had to fire at the escapee. Is that correct?"

24 The accused's response:

25 "The guards had weapons, so when someone escaped, the guards had

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1 to fire at the escapee who was fleeing. I would like to recall  
2 an event that occurred when someone escaped, and the guard shot  
3 at the escapee. At the time, I was not at the detention centre.  
4 It is Mam Nai who chased after the escapee and tried to shoot at  
5 him. Sarun, the guard, was a good shot and then he shot once and  
6 accidentally his bullet hit Brother Mam Nai. So this is an  
7 example of a mistake. The guard mistook Mam Nai for a fleeing  
8 detainee. So it was the rule to shoot on those who were actually  
9 attempting to escape, and I can tell you that Brother Mam Nai did  
10 not attempt to avenge this act."

11 Do you remember the event? Is this consistent with the truth?  
12 There's no need to go into detail about the event.

13 A.It is the truth. I was shot by a person who was running  
14 behind me. I was running faster than those younger guards, and I  
15 used a short-cut and the person behind me shot at me and I was  
16 hit four times.

17 [11.49.52]

18 MR. WERNER:

19 Thank you, sir.

20 Just one more subject and I will be through, Mr. President.

21 BY MR. WERNER:

22 Q.This is a matter that has been brought up on several  
23 occasions, and I would like to put to you something that you said  
24 before the Co-Investigating Judges, amongst others.

25 You and others participated in a reconstruction. You returned to

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1 Tuol Sleng at the behest of the Co-Investigating Judges. And I  
2 am referring to the record of the reconstruction, which starts at  
3 ERN French, 00181347, and I'm referring particularly to page  
4 number 00181353.

5 And there were at least 20 people with you, according to the  
6 record of the proceedings. There were the Co-Investigating  
7 Judges, there were members of the Office of the Co-Prosecutors,  
8 there was the accused and his lawyers, and several people spoke  
9 publicly that day. And there was a transcript made in this  
10 document; the document to which I am referring now.

11 [11.51.16]

12 During this re-enactment, you and the other participants went  
13 into the third room on the ground floor of Building D, and this  
14 contained instruments of torture that had been displayed. While  
15 there, the accused explained that the choice of instruments of  
16 torture was solely the choice of the interrogators, and a witness  
17 took the floor and what is written is this, after that:

18 "Witness Mam Nai said that he only used whips and electric  
19 wires."

20 That is my last question, sir.

21 Is it not true that before the prosecution and the  
22 Co-Investigating Judges and the defence in Room Number 3 on the  
23 ground floor of Building 3, you weren't telling the truth on that  
24 day?

25 A.I would like to exercise my rights to remain silent on this

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1 matter.

2 Q.Thank you for answering some of my questions.

3 MR. WERNER:

4 I have nothing further.

5 [11.53.00]

6 MR. PRESIDENT:

7 Now the time for the civil party lawyers to question the witness  
8 has come to an end and it's only a few minutes before the break.  
9 Therefore, the Chamber will adjourn for lunch and it will resume  
10 this afternoon starting from 1.30 p.m.

11 Court officer, can you make necessary arrangements for the  
12 witness for his lunch in the waiting room?

13 Security guards, take the accused back to the detention facility  
14 and bring him back before 1.30.

15 The Court is adjourned.

16 (Judges exit courtroom)

17 (Court recesses from 1154H to 1331)

18 (Judges enter courtroom)

19 MR. PRESIDENT:

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

21 We will continue to hear the testimony of the witness Mam Nai,  
22 alias Chan.

23 I would like now to give the floor to the defence counsels if you  
24 have questions to be put to this witness.

25 MR. KAR SAVUTH:

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

2 QUESTIONING BY DEFENCE COUNSEL

3 BY MR. KAR SAVUTH:

4 Q. Mr. Mam Nai, at M-13 you said you had two duties: one, to  
5 plant potatoes; two, to listen to Duch interrogations to learn  
6 his techniques. So how many prisoners did you interrogate? Can  
7 you provide an estimation?

8 A. At M-13 I interrogated about 10 prisoners.

9 [13.33.26]

10 Q. Thank you.

11 This morning, when asked about M-13, you said two prisoners were  
12 released. Do you know the names of those two prisoners?

13 A. From my recollection one was Sok and the other prisoner, who  
14 I'm not really sure on the name, was probably Heng.

15 Q. Did you know after their release and why were they released?

16 A. I did not know the reasons. It's the duty exclusively under  
17 Comrade Duch.

18 Q. At M-13 it was divided into two, M-13A and M-13B respectively.

19 Did you ever visit M-13B?

20 A. Previously I did not know there were M-13A and M-13B. Only  
21 later I learned that. Before I went to Amleang I went for a  
22 quick visit to M-13B. Then I continued my trip to Amleang.

23 Q. At M-13B you did not know what the prisoners were asked to do.

24 Is this correct?

25 A. I did not know what they were asked to do.



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1 [13.35.52]

2 Q.At M-13, when François Bizot was released, did you know when  
3 he was released and were you there at the time?

4 A.Bizot was released and at that time I was not yet at that  
5 location. I did not stay there yet and I was not aware that  
6 Bizot was detained there.

7 Q.Regarding armed conflict, you stated to the Chamber that Yuon  
8 or Vietnamese who were arrested and sent to S-21, you regarded  
9 them as the territorial invaders. Is this correct?

10 A.That is the truth.

11 Q.What about the Democratic Kampuchea soldiers who entered the  
12 Vietnamese territory? Did you know that?

13 A.At that time I was not aware of that but it's my conclusion  
14 the fighting back and forth would lead into another one's  
15 territory.

16 Q.At S-21 and at Choeung Ek did you know S-21 medics or medical  
17 staff?

18 A.At S-21 for the medical staff I did not know them well. I  
19 heard the name Try. That's all.

20 [13.38.20]

21 Q.If you did not know them well did you know if there were any  
22 female medical staff at S-21?

23 A.No, I was not sure on that.

24 Q.You were an interrogator. Did you know the existence of the  
25 10 security or Santebal rules?

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1 A.I did not see it.

2 Q.Can you verify clearly, on the confession of Professor Phung  
3 Ton, did he make the confession personally from his heart or was  
4 he forced to make his confession and when -- and did you  
5 summarize his confession and send it to Duch?

6 A.Regarding the interrogation of Phung Ton, I did the  
7 interrogation. There was no -- he was not forced to confess. It  
8 was in the same situation as of my Professor Chao Seng. They  
9 spoke from their own heart.

10 Q.At S-21 the method of organization and supervision under In  
11 Lorn, or alias Nat, and when Duch rose to be the Chairman, did  
12 the style of management change or was it the same?

13 A.It is through my analysis that the style of management was  
14 almost the same.

15 [13.41.06]

16 MR. KAR SAVUTH:

17 Mr. President, I do not have more questions for this witness and  
18 I would like to give the floor to my international counterpart.

19 MR. PRESIDENT:

20 The international defence counsel, you take the floor.

21 MR. ROUX:

22 Thank you, Mr. President.

23 BY MR. ROUX:

24 Q.Good afternoon, Mr. Mam Nai. I am François Roux. I am Duch's  
25 second lawyer and I would like to put to you a few questions.

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1     However, I wish to be frank with you, as Maître Werner reminded  
2     you yesterday, when you answer you are obliged to say the truth,  
3     but if you wish not to answer, you have the right to remain  
4     silent, as you did this morning.  
5     However, in order to be frank with you again, I must tell you  
6     that you shouldn't believe the Co-Prosecutors when they tell you  
7     that they cannot prosecute you. The defence has just received,  
8     during the lunch break, a document titled "The Written Answers of  
9     the Co-Prosecutors to the Preliminary Exception Raised by the  
10    Defence" and through which it challenges the applicability of the  
11    1956 Cambodian Criminal Code.  
12    In paragraph 21 of this document the Co-Prosecutors write down by  
13    signing the Convention against the torture Cambodia has  
14    subscribed to the absolute obligation of prosecuting any person  
15    who is presumed of being responsible for acts of torture. So  
16    what was told to you orally is not the same thing as what has  
17    been written by the Co-Prosecutors.  
18    [13.44.01]  
19    So as far as I am concerned, Mr. Mam Nai, I just have a few  
20    questions that regard you more directly.  
21    You explained to the Chamber ---  
22    MR. PRESIDENT:  
23    I notice the presence of the international Co-Prosecutor. You  
24    take the floor.  
25    MR. SMITH:

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1 Your Honour, as I reminded our learned counsel yesterday, matters  
2 such as these in relation to Rule 28(8) should be discussed in  
3 camera and this is the second time that the defence counsel has  
4 gone into this in detail not in camera.

5 And secondly, there may well be a translation issue, but that  
6 certainly wasn't the position put forward by the prosecution  
7 yesterday that no prosecution may be possible at all. It was put  
8 forward that it is very remote. That certainly wasn't the  
9 position put forward.

10 I would ask that if counsel would like to raise these matters,  
11 these delicate matters, they be done in the appropriate manner  
12 under Rule 28(8) and otherwise he just put questions to the  
13 witness rather than raise this issue inappropriately.

14 MR. PRESIDENT:

15 Thank you, Mr. Co-Prosecutor, for your remark.

16 [13.45.45]

17 The Chamber would like to remind the defence counsel that you are  
18 given the floor in order to put questions regarding the fact  
19 alleged on your client. You are not given the floor to make  
20 another statement besides putting questions to the witness.

21 Secondly, regarding the rights and obligations, it is the  
22 Chamber's responsibility to inform the witness and it has done  
23 so. It is not the duty of the counsel to remind or to provide a  
24 clue to the witness. The Chamber has already assigned a legal  
25 counsel to provide assistance regarding questions or statements

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1 which may be made by the witness and which could lead to  
2 self-incrimination.

3 Therefore, you are given the floor so that you are entitled to  
4 put questions to the witness in order to ascertain the truth, and  
5 it's not for you to make any other statement during this time.

6 MR. ROUX:

7 Thank you, Mr. President.

8 I would like to respectfully remind the Chamber that the national  
9 prosecutor began with this issue this morning by indicating to  
10 the witness that he does not risk anything.

11 MR. PRESIDENT:

12 I would give the floor to you to put questions to the witness and  
13 if you do not have any questions to be put to this question  
14 (sic), then the Chamber would invite another witness to appear  
15 before the Chamber.

16 [13.48.21]

17 BY MR. ROUX:

18 Q.I was getting to this before being interrupted by my colleague  
19 and I indicated to the witness you stated to the Chamber in the  
20 context through which you joined the revolution. I would like  
21 you to explain to the Chamber what were your personal reasons to  
22 join the revolution.

23 A.I joined the revolution first because when I studied in Year 3  
24 I studied the history of the Soviet Union and China and I learned  
25 about the Communists, and I loved the communism which supports

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1 the proletarian class, the poor peasant class. That's the reason  
2 of my joining the revolution.

3 Q.Once you joined the revolution you said to the Chamber "We  
4 were told to reconstruct ourselves according to the political  
5 line".

6 What did this mean for you to reconstruct yourself? What did "to  
7 reconstruct yourself" mean specifically? You were already a  
8 dedicated Communist on the basis of what you told us so what did  
9 reconstructing yourself mean for you?

10 A.Determined to rebuild myself, I was to rebuild my psychology,  
11 my stance and my view to be one of the proletarian class; that is  
12 to have only bare hands and not attached to any property; that is  
13 just to have enough to survive.

14 [13.51.32]

15 Q.Do you believe that you were successful at reconstructing  
16 yourself?

17 A.I believed so because what I had done in the building myself,  
18 I was a former professor. I was in the bourgeoisie class and  
19 then I rebuilt myself to adapt myself into the proletarian class,  
20 into the workers class, and I achieved that. And that is the  
21 reason why the revolution allowed me to be a member of the Party.

22 Q.During the livelihood sessions, which are also called  
23 self-criticism sessions, what were the shortcomings that you  
24 found in yourself?

25 A.In the livelihood meetings I observed that I, myself, had

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1 certain shortcomings, that I still had some remnants of the old  
2 regime.

3 Q.Today, Mr. Mam Nai -- that is to say 30 years later -- how do  
4 you perceive this period in your life?

5 A.Could you please specify your question? Are you talking about  
6 my view on the current regime or the past regime?

7 [13.54.24]

8 Q.I'm asking about what you think today about the regime of  
9 Democratic Kampuchea. What do you think today about the regime  
10 of Democratic Kampuchea?

11 A.During that period the living condition was one which had  
12 insufficient food and it was the result of the war. However,  
13 there was one positive point; that is, self-independence and  
14 self-mastery, according to the norms of the Buddhist disciplines  
15 -- that is, self-reliance -- and that is the view, which is a  
16 positive view.

17 Q.Do you know, Mr. Mam Nai, how many people were killed at S-21?

18 A.I do not have a duty or a position to know this matter.

19 Q.Do you know, Mr. Mam Nai, how many people died in Cambodia  
20 during the Democratic Kampuchea regime?

21 A.Also on this matter I am even more illiterate. I don't know  
22 it.

23 Q.Do you have any regrets about having been an interrogator at  
24 S-21?

25 A.I don't really understand this matter. Can you elaborate a

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1 bit further on your question?

2 [13.57.53]

3 Q.Do you have any regrets today for having been an interrogator  
4 at S-21?

5 A.Having regret? Yes, I do have some regrets, I have to say.

6 Q.Can you expand on this, please?

7 A.I believe that there were some good people and there were some  
8 people who commit wrongdoings and, through my observation, there  
9 were less good people than the bad people. So I am regretful for  
10 those small groups of good people.

11 Q.Does this mean that you have no regrets for what you put into  
12 the category of the people who were less good and who were  
13 smashed? Is this what I must understand?

14 A.I'm very regretful for those good people who died and those  
15 people who are less good but did die, but I've never been  
16 regretful for those bad people who died.

17 Q.Thank you witness.

18 MR. ROUX:

19 Mr. Prosecutor, I'd like to thank you. If you have other  
20 witnesses like this one, please do not hesitate to call them.

21 MR. PRESIDENT:

22 Testimony of Mam Nai, alias Chan, has been heard completely  
23 already and the defence counsel still has plenty of time to put  
24 questions to the witness, but they have decided to stop putting  
25 more questions.



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1 [14.01.33]

2 So the Chamber would like actually to thank you, Mr. Mam Nai, for  
3 taking much of your time to give testimony to the Chamber and to  
4 the parties.

5 Since we have already practised so far in the proceedings that,  
6 finally, the accused is given an opportunity to give observations  
7 after the testimony of the witness or the civil party is heard  
8 and ideas have been well given, the Chamber would like to give  
9 the opportunity to the accused to make his observations  
10 concerning the testimony of Mr. Mam Nai. The floor is yours.

11 THE ACCUSED:

12 Mr. President, first of all, I would like to give my impression  
13 concerning my private life regarding -- comparable to that of  
14 Brother Mam Nai and Comrade Pon.

15 I am more favourable toward Comrade Pon than to him. I would  
16 like to give you two examples.

17 [14.04.35]

18 Before I got married with my wife, I consulted with Comrade Pon  
19 but I did not consult Brother Mam Nai. After the 17th of April,  
20 a little while later, I asked that I can get married. Comrade  
21 Rom said that she would like some more time. So then we  
22 discussed this among my to-be fiancée.

23 Brother Mam Nai did not talk anything to me, but Comrade Pon came  
24 to me and talked to me and even criticized me, and he asked me to  
25 look at the situation, then he said that a lot of people left for

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1 Phnom Penh already. So if Sister Rom got married with me then if  
2 I died, for example, what would happen to her? She would become  
3 a widow. That's why I said that Pon had better relation to me  
4 than Brother Mam Nai.

5 Regarding my house, the hometown of mine was close to that of  
6 Comrade Pon's hometown or house, and we joined the revolution  
7 together to Sector 105 in S'ang Koh Thom, and we had been working  
8 hard together.

9 When M-13 was initially established, we worked together with  
10 Comrade Pon and Pon worked his best to listen to me whatever I  
11 wanted him to do. And Brother Mam Nai told the Court already  
12 that only in 1973 that he started working at M-13, and I observed  
13 that he was rather slow compared that of Pon. So it is true that  
14 I am more favourable toward Pon rather than to Brother Mam Nai.  
15 Pon and his family and children died and Brother Mam Nai also  
16 lost his wife and children, I think. This is another story, but  
17 I would like to share this to Your Honours that I did like  
18 Comrade Pon rather than Brother Mam Nai.

19 [14.07.30]

20 I would touch upon the documents left over and recorded by Mam  
21 Nai. On one page of the documents with ERN 00078012, it was  
22 about the session I and Brother Mam Nai attended at the stadium  
23 while Son Sen gave lecture. So having seen this writing, I  
24 changed my impression and I had to stick to the document I  
25 obtained because the document is so obvious.

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1 Having read the document by Brother Mam Nai, I can really refresh  
2 myself to recall the accounts of what happened, and our  
3 activities because the political lines and what we had been  
4 trained by superior Son Sen contains in the book. So the  
5 document itself reflects our actual work.  
6 And this morning, Brother said that the document contains your  
7 writing entirely, but in another page there were some writing of  
8 Nat's in page 0077978, and also my writing could be found in that  
9 piece of document. Later on, when I saw your writing of Huy Sre  
10 or Pon or Hor, and I do accept that the document belongs to S-21.  
11 So I think when you stated that the writing is similar to your  
12 writing, it's not really a good account. Please, please don't be  
13 afraid you die. Just tell the truth. Because if you say  
14 something like with your speculation, it is not good, so as me,  
15 you see, I am responsible for everything, all the crimes  
16 committed at S-21. Now we before the history.  
17 You cannot really use a basket to cover the dead elephant. So  
18 that's it. Don't even attempt to do that. And I think -- saying  
19 I am ready to accept or be accountable for all the crimes I have  
20 committed. I would want you to do the same.  
21 [14.10.32]  
22 Of course, when it comes to the humanitarian spirit, we have to  
23 be reconstructed again regarding this matter because more than 1.  
24 million (sic) people died. So, of course, those people have been  
25 perished in the hands of the CPK. And who were in the CPK? I

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1 was part of the CPK and you yourself have not admitted that you  
2 were part of the CPK.

3 So here, emotionally, we have to be accountable for the crimes  
4 committed and we have no rights, actually, to say that the  
5 political line is wrong actually. We had to follow the political  
6 line and if we compare what would have been the policy of the CPK  
7 back then and compare with the humanitarian aspect, then we can  
8 see it's completely different.

9 And I do admit that your memory is weaker than that of mine.

10 Now, when we come to Chao Seng, I asked Hor to take him to work  
11 with you at the interrogation place. I'm very sure and I would  
12 like to give you an example, and I remember that one day I missed  
13 Chao Seng and I paid him a visit and he talked about Norodom  
14 Sihanouk, who could speak French but he could speak French less  
15 than the king of Arabie saoudite because Chao Seng talked about  
16 this and then you, Brother, you talked and criticized Chao Seng  
17 about this. I just recall this event to refresh your memory that  
18 Chao Seng was left to be with you, although I got the order from  
19 the upper echelon to have him smashed.

20 So when it comes to Professor Phung Ton, we both admit that he  
21 was our teacher. I don't want to elaborate further that why I  
22 liked the professor, but I'm here to talk right before the civil  
23 parties, the daughter of my teacher, I already said once. But  
24 here we are now trying to tell the truth of what happened to him,  
25 for example, the victim, because now the world and like the

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1 Cambodian people are looking forward to hearing the truth. So I  
2 think it is the best opportunity for us to put together the piece  
3 and puzzle of this matter.

4 [14.13.50]

5 So please be reminded that civil parties are here with us and  
6 they want to know where our professor died, and they just want to  
7 even know where he died and where his ashes would have been  
8 buried. So I think it is good that we should help them to locate  
9 that place. So I think Communism should not be in our spirit or  
10 blocking our views to talk the truth.

11 So this Court is not tolerating us anyway, although the Communist  
12 Party would be in favourable of our stance back then, but please  
13 be ready to tell the truth, and that's all my submission.

14 MR. PRESIDENT:

15 I note the lawyer is on her feet. You take the floor.

16 MS. STUDZINSKY:

17 Thank you, Mr. President.

18 I would like to take the speech of the accused now to ask the  
19 Chamber to grant the witness again the opportunity not to respond  
20 but to take the words of the accused and maybe the civil parties  
21 who are here, and the daughter and the wife of Mr. Phung Ton.  
22 Maybe the witness has changed a little bit and opened his mind  
23 and would like to elaborate further on the fate of Mr. Phung Ton  
24 than he did before. This is a unique opportunity to use here  
25 before this Court and therefore I ask the Chamber to give the

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1 witness again this floor, if he would like to elaborate on this  
2 more.

3 Thank you very much.

4 [14.16.15]

5 MR. PRESIDENT:

6 Mr. Mam Nai, after having observed the remarks and the statements  
7 by the accused just now, do you think you would like to add  
8 something else regarding the general facts at S-21 which you  
9 probably have missed to put through the course of your testimony,  
10 especially concerning the Professor Phung Ton. And during these  
11 sessions we seem to focus more on this individual person, the  
12 Professor Phung Ton, so if you would like to add some more, the  
13 floor is yours.

14 MR. MAM NAI:

15 Mr. President, I would like to make the following comments.

16 I would like to express my regretfulness to the family of  
17 Professor Phung Ton. So far as I know, the family of Phung Ton  
18 -- his wife is the god-daughter of my grandfather, Grandfather  
19 Tuy.

20 MR. PRESIDENT:

21 We note the counsel for the witness is on his feet.

22 MR. KONG SAM ONN:

23 Could you please allow the witness to have a break and collect  
24 himself?

25 MR. PRESIDENT:

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1 The Chamber is now, of course, on hold because we are now waiting  
2 to see if Mr. Mam Nai can continue. Of course he is very  
3 emotional now but we would like to give him some moments to  
4 collect himself.

5 [14.19.28]

6 MR. MAM NAI:

7 Could the President allow me to continue, please?

8 I have been very remorseful. That's one point. And another, I  
9 am very remorseful because even my brothers or relatives died. I  
10 mean my brothers suffered during the regime and my wife, my  
11 children, also had the same experience. They died. I think it  
12 was a chaotic situation and we have nothing other than being very  
13 regretful, and we could not do anything else.

14 And the general population of Cambodia, at least many of them,  
15 have been perished during the regime and everyone is very  
16 regretful. And I think if we talk in the eyes of our religion,  
17 it is more about our karma. That's it. I am now trying to  
18 relieve myself by considering the karma and the religious belief,  
19 and of course I have been very regretful, and through this Court  
20 I think the family of Professor Phung Ton is informed of my  
21 impression.

22 MR. PRESIDENT:

23 So far as I have observed during the sessions, the question is  
24 whether you, Mr. Mam Nai, have more information to add to the  
25 Court, especially regarding Mr. Phung Ton, or maybe you are

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1 knowledgeable of what happened to him at S-21.  
2 I mean something you know more than what you have already told  
3 the Court during the sessions, because we would like to know  
4 whether you were not able to express it expressly in the Court  
5 during the time when you were being asked; and that, at this  
6 moment, after having heard the statements from the accused, and  
7 that you are ready to express further concerning this individual,  
8 or do you think that you have nothing more than that?

9 MR. MAM NAI:

10 Mr. President, I think in my previous conclusion I hope that I  
11 have done my best already to express my understanding concerning  
12 the effort to find justice for the family. But I think if I am  
13 asked to bring further information, I think it is impossible  
14 because it's more like shooting something in a dark night.

15 [14.23.31]

16 MR. PRESIDENT:

17 Thank you, Mr. Mam Nai, once again. And we are really grateful  
18 to your time to spend in giving your testimony to the Chamber.  
19 The Chamber is very aware that it is very difficult for you to  
20 give such testimony because you had to respond to several  
21 questions by the Chamber and by the parties. And also, since the  
22 events happened more than 30 years ago, it is really difficult to  
23 recollect it. And our memory, human-being memory is limited  
24 because sometimes even something happened a few hours ago and  
25 that we have to refresh that event.



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1 It can be seen as difficult already and now you are 70 years old,  
2 so when people are aging their memory normally tends to be  
3 weaker. So we appreciate your time for coming here to give the  
4 testimony to the Court.

5 The session to hear your testimony comes to an end already. You  
6 can now go home.

7 And the Court officer is directed to make sure that Mr. Mam Nai  
8 is taken to his residence and make sure that he can go back home  
9 safe and sound.

10 (Witness exits courtroom)

11 MR. PRESIDENT:

12 And please bring Witness Him Huy into the courtroom.

13 (Witness enters courtroom)

14 MR. PRESIDENT:

15 We note that the Co-Prosecutor is on his feet. The floor is  
16 yours.

17 [14.26.13]

18 MR. SMITH:

19 Thank you, Mr. President. I just thought I would take this  
20 opportunity, whilst the witnesses are in transition, just to make  
21 a brief statement.

22 What perhaps might leave the public a little bit confused about  
23 the procedure at the ECCC; the defence stated earlier that it's  
24 the prosecution in these proceedings that calls witnesses. As  
25 Your Honours are aware but maybe the public may not be, the

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1 prosecution doesn't call witnesses, but it's the Trial Chamber  
2 that calls witnesses. And the Trial Chamber only calls witnesses  
3 under Rule 80 bis, if it considers that their appearance would be  
4 for the good administration of justice.

5 This is not the common law system. This is based on the civil  
6 law, and I think my friend well understands that it's the Trial  
7 Chamber's decision as whether who is to be called. I just think  
8 for the general public it's important for them to understand  
9 that. Obviously, we understand that in the courtroom, but they  
10 may not.

11 MR. PRESIDENT:

12 Thank you very much for the observation of the international  
13 Co-Prosecutor.

14 We note that Mr. François Roux is on his feet. You take the  
15 floor.

16 MR. ROUX:

17 Thank you, Mr. President, to provide further information.

18 Because the Office of the Co-Prosecutors wishes to provide  
19 information to the public, Mr. Prosecutor, you should add that  
20 the Chamber calls the witnesses, summons the witnesses upon  
21 proposal of each of the parties. You prepared a list of  
22 witnesses that you submitted to the Chamber. The defence  
23 prepared a list of witnesses that it submitted to the Chamber.

24 [14.28.13]

25 It is correct to say that on the basis of the proposals made by

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1 each party, it is the Chamber that summons the witness, but you  
2 are the one who proposed the prosecution witness list, in  
3 particular, that witness who has just appeared. That is to  
4 provide an answer.

5 Mr. President, since we are between two witnesses, I would like  
6 to express my continued concern by the information that the  
7 witnesses that will come hereafter -- with the information that  
8 these witnesses will be provided. I think I'd like to raise the  
9 problem of self-incrimination not so much that -- that is  
10 self-incrimination -- as joint criminal enterprise. And it seems  
11 to me that it is really difficult when witnesses are not informed  
12 of such a situation.

13 So the Chamber will determine this matter as it pleases, but the  
14 defence would like to assume its responsibilities and submits  
15 that witnesses should be warned. And what my colleague, the  
16 national prosecutor, said this morning should be corrected. It  
17 is not correct to say that the facts are prescribed as such. It  
18 is not true! You cannot allow doubt to continue on matters such  
19 as this, and you cannot say two things at the same time.

20 MR. SMITH:  
21 (Microphone not activated)

22 MR. PRESIDENT:  
23 The Chamber is in fact having this time to hear the testimony of  
24 a witness not for the parties to confront each other.

25 [14.30.14]

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1 In a case where a party wishes to have its clear observation or  
2 request regarding a particular witness, that party shall submit  
3 beforehand their submissions to the Chamber so that the Chamber  
4 will decide how to proceed regarding the Rule 28, so that we will  
5 be able to consider any proceedings that need to be taken to hear  
6 the testimony of a witness.

7 We have noticed that each counsel wants to benefit himself or  
8 herself, and if you want clear and true information from a  
9 witness, there is no need to raise the same issue again and again  
10 on self-incrimination. This is contradictory. If the witness  
11 reserves his right to remain silent by fear of being  
12 self-incriminated, then it is even difficult for us to get to the  
13 bottom of the truth.

14 So now the witness has not yet even appeared in the Chamber, so a  
15 party which concerns this matter can make their submission to the  
16 Chamber.

17 But so far none of the parties make any submissions to the  
18 Chamber. That shall be done beforehand not during the  
19 proceedings, and before the audience, the public audience, to  
20 hear all these technical issues of the proceedings.

21 And the Chamber wants to know whether the Co-Prosecutors and the  
22 defence counsel still wish to proceed again regarding this  
23 matter, or you just want to exploit the proceedings for your own  
24 gain? Can you clearly state it?

25 MR. SMITH:

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1 Your Honour, the very thing that you are concerned about is the  
2 same concern of the Co-Prosecutors, namely, that if these issues  
3 are to be raised or needed to be raised, they should be raised  
4 under the Rule 28(8) which means that it should be raised in  
5 camera.

6 [14.33.07]

7 It was inappropriate for the defence counsel to raise it for the  
8 third time this week, and I would just submit that if it's to be  
9 done, it should be done in camera.

10 MR. PRESIDENT:

11 The defence counsel, do you have anything else to add right now  
12 because I don't want to be interrupted again? We do not only  
13 listen to this one witness, we have more witnesses to come.

14 MR. ROUX:

15 Mr. President, I said what I had to say. I noted that the  
16 national prosecutor expressed himself publicly this morning and I  
17 answered also publicly, but if the Chamber wishes, well, the  
18 defence is willing to participate in an in camera debate because  
19 this is a serious issue that depends on the prosecutors'  
20 position.

21 Do you, yes or no, maintain JCE, joint criminal enterprise?

22 MR. SMITH:

23 Again, Your Honours, the defence, confusing and misleading.

24 JCE has got nothing to do whatsoever with the right to

25 self-incrimination, and obviously we maintain our position on

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1 that.

2 [14.36.14]

3 MR. PRESIDENT:

4 The Chamber will adjourn 20 minutes until five to three when it  
5 will resume, and we will hear the testimony of KW-09.

6 Court officer, do not bring the witness in yet, you have to wait  
7 for my instruction.

8 (Judges exit courtroom)

9 (Court recesses from 1436H to 1509H)

10 (Judges enter courtroom)

11 MR. PRESIDENT:

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

13 We are now going to hear the testimony of witness KW-09, Him Huy.

14 Before the witness is called into the courtroom, the Chamber  
15 would like to inform to the parties and the public that regarding  
16 the issues discussed, and that the guarantee by the national  
17 Co-Prosecutor this morning is not appropriate because his  
18 assurance has not been done in the correct circumstance. And  
19 that there has not been any request by the witness or by the  
20 Chamber to the Co-Prosecutor to provide any assurance to the  
21 witness who was about to give his testimony yet.

22 [15.11.30]

23 And regarding the response by the defence counsel regarding the  
24 comments made by the Co-Prosecutor, the national Co-Prosecutor,  
25 is not considered as appropriate either because the international

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1 defence counsel tends to repeat the application of the Joint  
2 Criminal Enterprise before we heard the testimony of that  
3 witness. So the Chamber would like to remind the parties that  
4 this matter shall not be raised again during the course of the  
5 testimony of this next witness.

6 The third point regarding the testimony of Mr. Mam Nai, the  
7 Chamber would like to inform the public that this witness has  
8 been called by the Chamber to give his testimony. So he is not  
9 the witness of any particular party to the proceedings, other  
10 than the witness called by the Chamber.

11 The Court official is now directed to bring witness Him Huy into  
12 the courtroom.

13 [15.17.35]

14 QUESTIONING BY THE BENCH

15 BY MR. PRESIDENT:

16 Q.Mr. Witness, what is your name?

17 A.I am Him Huy.

18 Q.Him Huy or Hum Huy?

19 Could you please be reminded that -- please wait until you see  
20 the red light before you can speak otherwise your message cannot  
21 be communicated.

22 Is your name Hum Huy or Him Huy?

23 A.I'm Him Huy.

24 Q.Do you have an alias name?

25 A.Before I used the name -- correction -- You Huy.

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1 Q.Yu Huy, is that correct?

2 A.That's correct.

3 Q.How old are you?

4 A.I am 54 years old.

5 Q.Where do you live now and what do you do for a living?

6 A.I live in Anlong San, Prek Sdei, Koh Thom. I am a farmer.

7 Q.According to the report of the court -- that you have no  
8 connection or relationship in blood to the accused and that you  
9 have taken an oath before the genie already. Is that correct?

10 A.That's correct.

11 Q.In the proceedings in which we are going to hear your  
12 testimony, the testimony before the Extraordinary Chambers in the  
13 Court of Cambodia, Mr. Him Huy, you shall speak only the truth  
14 about what you witnessed, what you heard and on what you saw and  
15 know, and you can reject some questions or you can remain silent  
16 and you are entitled with the rights of self-incrimination.  
17 So if you feel that any responses of yours resulted in your  
18 self-incrimination, then you are entitled to remain silent. Do  
19 you understand this right?

20 A.I do, Mr. President.

21 Q.In Rule 28(9), it states that if an issue of  
22 self-incrimination arises in the course of the proceedings, then  
23 the witness can request for a legal assistance.

24 The question here is, do you think you need legal assistance to  
25 consult before you can provide your testimony because you are



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1 afraid that your testimony can self-incriminate you?

2 A. Could Your Honour please repeat it?

3 Q. According to the Rule, if an issue of self-incrimination

4 arises -- I mean, if your testimony responses are

5 self-incriminating yourself, then you can request for a lawyer to

6 be of your assistance.

7 [15.23.00]

8 So the question here is that whether you would want to have a

9 legal counsel or have you had one already before you can give

10 your testimony here?

11 A. I don't have any legal counsel for me at the moment yet.

12 Q. Do you want to have a lawyer to provide you legal assistance

13 during the course of your testimony in which the parties or the

14 Chamber are putting questions to you during today and tomorrow?

15 A. I would like to consult my legal counsel before I can give

16 testimony.

17 Q. So you now have not got the legal counsel, and that you would

18 like the Chamber to find a lawyer for you during the course of

19 your testimony. Is that correct?

20 A. Yes, that is.

21 [15.25.03]

22 Q. I have received information from our Judges.

23 So far, you have already consulted a lawyer when you learned that

24 the Chamber has called you to give testimony. Is that correct?

25 Have you consulted with the lawyer, and what is your lawyer's

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1 name, and when did you meet the lawyer?

2 A. I met with the lawyer, Mr. Kong Sam Onn. I met him very  
3 briefly.

4 Q. So it is fair to say that you already met lawyer Kong Sam Onn,  
5 and did you actually ask him to assist you during the course of  
6 your testimony before the Chamber?

7 A. I cannot talk now.

8 Q. What is your request then?

9 A. I would like to make sure I can contact him first.

10 MR. PRESIDENT:

11 The schedule of our today's session is, of course, planned and  
12 that we are going to hear the testimony of witness Him Huy.

13 [15.27.27]

14 However, Him Huy stated that he would like a lawyer to assist him  
15 and that he met him very briefly; that he had not had an  
16 opportunity to discuss this matter in detail, and he made a  
17 humble request that he would need to meet this lawyer first  
18 before he could give his testimony.

19 So the Chamber cannot proceed with the proceedings as scheduled  
20 and that we are adjourning now.

21 The hearing is resumed tomorrow at 9 a.m.

22 The Court official is directed to co-ordinate with this witness  
23 so that he can contact his lawyer whose name he mentioned  
24 earlier, and so that he can discuss with the lawyer to be  
25 prepared and that he is ready tomorrow for the testimony.

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1 The security personnel are directed to take the accused back to  
2 the detention facility and return him to the courtroom by 9 a.m.

3 The Court is adjourned.

4 (Judges exit courtroom)

5 (Court adjourns at 1529H)

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