



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

**ឯកសារបកប្រែ**  
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

18 January 2012

Trial Day 17

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

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Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. ABDULHAK	English
MR. CHAN DARARASMEY	Khmer
MR. DE WILDE D'ESTMAEL	French
JUDGE FENZ	English
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MR. SON ARUN	Khmer
MR. VENG HUOT	Khmer
MR. VEN POV	Khmer
MS. SIMONNEAU-FORT	French
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1

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

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 I notice the defence counsel is on his feet. You may proceed.

6 MR. IANUZZI:

7 Thank you, Your Honour. Good morning. Just a quick point of  
8 clarification.

9 I'm referring to an email communication from the senior legal  
10 officer regarding the likely appearance of the DC-Cam  
11 representative on Monday. I would just like some clarification.  
12 Has the Chamber decided definitively whether that individual will  
13 be appearing on Monday? And could we know at the first  
14 opportunity, so that we can prepare ourselves accordingly? Thank  
15 you.

16 [09.06.02]

17 MR. PRESIDENT:

18 Thank you, Counsel, for your clarification. We shall inform you  
19 in due course.

20 Yesterday, the Chamber heard the objections to A2 annex by the  
21 three defence teams.

22 And this morning the Chamber will hear the arguments by the  
23 Prosecution and the representative of the Lead Co-Lawyers.

24 We now turn over to the Prosecution. You have 45 minutes to  
25 present your arguments. You may proceed.

2

1 [09.07.20]

2 MR. DE WILDE D'ESTMAEL:

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

4 Yesterday we heard the Defence's objections and we heard the  
5 objections made by the Defence for Ieng Sary and Nuon Chea that  
6 we find very vague. We have heard these arguments repeated since  
7 Monday morning.

8 We have repeatedly said that the Defence is mistaken in some of  
9 the legal principles that they have decided to invoke in this  
10 particular case. In fact, in Memorandum E/159 that was issued by  
11 Your Honourable Bench, paragraph 6 states that "issues of  
12 authenticity shall, therefore, be limited to those documents or  
13 categories which, in the Defence submission, manifestly lack  
14 reliability or relevance pursuant to internal Rule 87.3".

15 [09.08.30]

16 In order to satisfy the Chamber's requirements on authenticity,  
17 it is not up to -- it is up to the Co-Prosecutors to verify the  
18 authenticity of these documents. In fact, the Defence has  
19 repeated their only argument even if yesterday counsel Karnavas  
20 had objected to only three of the 86 documents that we cited.  
21 Nuon Chea and Ieng Sary defence teams had the responsibility to  
22 put forward arguments in order to challenge the reliability of  
23 some of the documents produced. They were remiss in doing so. As  
24 for the defence team for Khieu Samphan, the Chamber shall assess  
25 whether or not the objections raised yesterday are, indeed, new

1 objections that were not already raised previously that the  
2 Chamber has already prohibited.

3 [09.09.54[

4 Be that as it were, these objections only concern the chain of  
5 custody of these documents. We shall provide a brief explanation  
6 on the indicia of reliability for these categories of documents,  
7 be they internal or external characteristics.

8 Among some of the 86 documents, 54 are "Revolutionary Flags" or  
9 are documents of "Revolutionary Youth" publications. Of these 56  
10 (sic) documents, there are three additional documents that  
11 constitute new additions or new annexes to the "Revolutionary  
12 Flags" that were published prior to April 1975. These are  
13 documents D36/7.1.2.129 (sic), D366/7.153 (sic) and, lastly,  
14 D267/3.36.

15 [09.11.13]

16 As the Khieu Samphan defence counsel stated yesterday, these are  
17 two "Revolutionary Flags" as well as "Revolutionary Youth"  
18 publications which amount to 52 documents that we will rely upon  
19 significantly.

20 There are also 19 other publications in our annex that were  
21 published by the CPK. They comprise the statutes of the Communist  
22 Party of Kampuchea, the statutes of the youth branch, as well as  
23 a document pertaining to the third anniversary of the creation of  
24 cooperatives, as well as the four-year plan for the construction  
25 of socialism in all domains, a plan that spans 1977 to 1980.

4

1 Within this category, there are also eight documents that are CPK  
2 (sic) directives, including the notorious decision of the Central  
3 Committee dated 30th March 1976, as well as instructions  
4 emanating from Office 870. It bears the document number IS 77.80  
5 (sic). And to answer the question posed by the Nuon Chea defence  
6 yesterday; these refer to documents D200/2.12. In fact, it is the  
7 same as document IS 77.80 (sic) as identified by a witness  
8 previously.

9 [09.12.53]

10 Now, before handing the floor over to my colleague, I wish to  
11 make a few observations on the probative value as well as the  
12 relevance of these categories of documents.

13 All of these directives and publications that came from the  
14 Kampuchea -- the CPK, rather, were cited in the Closing Order and  
15 they speak to the historical context of the party, the  
16 administrative structure of the Central Committee or the Standing  
17 Committee, local structures, communications and communication  
18 channels with -- during the regime, the military structure during  
19 the DK period, roles and responsibilities and the forced transfer  
20 of the population.

21 [09.13.45]

22 These publications and directives are of significant relevance.  
23 They are contemporaneous documents and they now are part and  
24 parcel of the case file. You will be able to identify these  
25 specific points in the Closing Order that refer to our list of

5

1 documents in Annex 2.

2 I shall, therefore, now hand the floor over to my colleague to  
3 speak to you about the internal characteristics of all of these  
4 categories of documents.

5 I thank you, Your Honours.

6 [09.14.31]

7 MR. VENG HUOT:

8 Thank you, Mr. President. Good morning, Your Honours. Good  
9 morning, everyone.

10 Today I will respond to the objections raised by Nuon Chea  
11 defence as well as Ieng Sary and Khieu Samphan.

12 As Khieu Samphan defence raised, there is the Office of the  
13 Co-Prosecutors submitted 24 "Revolutionary Flag" publications,  
14 and indeed that is correct. Khieu Samphan defence team also  
15 raised that the "Revolutionary Youth" magazines are in total of  
16 28, and that is also correct, as we include them in Annex 2 of  
17 our OCP document list.

18 Let me now look at the "Revolutionary Flags".

19 So there should be a distinction between the "Revolutionary  
20 Flags" and the "Revolutionary Youth" magazines. There are 24  
21 "Revolutionary Flag" publications. The first one is dated August  
22 1975 and the last one is dated September 1978. All of these were  
23 published under the period under the Trial Chamber's temporal  
24 jurisdiction.

25 In order to make it clear to the Chamber, I'd like to seek your

6

1 authorization to use the PowerPoint presentation.

2 MR. PRESIDENT:

3 Yes, you may proceed.

4 [09.16.58]

5 MR. VENG HUOT:

6 The document to be shown is D243/2.1.6, which is dated August  
7 1976, and the cover page with the Khmer ERN 00063273. French ERN  
8 is 00538986, English ERN is 00486742.

9 Your Honour, you will note that the format is not an A4 format,  
10 but it is, in fact, a small booklet, two-sided print -- two-sided  
11 printing.

12 (Short pause)

13 [09.19.08]

14 The document is now on the screen, and for number 1 as indicated  
15 on the screen -- and I'd like to make it clear to the defence  
16 teams the flags that we see on the screen are actually red flags,  
17 and there are five red flags. They are not black and white.

18 Nuon Chea thought that after the 17 of April 1975 only one flag  
19 appeared on the cover. He was wrong about the date, but he was  
20 right to say that there was a time when the five red flags on the  
21 cover were replaced by a single red flag. This change began in  
22 September 1977. There were always five red flags, and only later,  
23 one flag was used on the cover.

24 So when he talks about the change, that is correct, but the  
25 timing or the period is incorrect.



7

1 I will also pinpoint the distinction in number 2, and under the  
2 five red flags is the name of the publication, that is,  
3 "Revolutionary Flag". And this name never changed during the DK  
4 regime, contrary to what the accused Nuon Chea said. He said was  
5 it "Red Flag".

6 According to our knowledge, there was no publication entitled  
7 "Red Flag". The name "Revolutionary Flag" always appears on the  
8 front page.

9 And now let me go through to number 3.

10 (Short pause)

11 [09.22.11]

12 I need to move on to the next number and then we can come back to  
13 point number 3 when time permits.

14 In the January issue, the number appeared at the bottom of the  
15 cover page, in a box. In these types of issue, the number of the  
16 issue corresponded to the month of the year it was published. For  
17 example, Issue 1 was published in January, and Issue 8 in August.  
18 And so the number is always consistent and there were no numbers  
19 on the cover of special issues.

20 [09.23.00]

21 And for number 4, it is easy to identify that it is in relation  
22 to the month and the year of the publication.

23 For number 5, when there was more than one article in the  
24 publication, there was an index in a box on page 2, so this is  
25 page 2 of the "Revolutionary Flag". Only a few of the 24

8

1 "Revolutionary Flag" publications have a single article and,  
2 therefore, no index. These articles are mainly long speeches by  
3 party representatives.

4 Let me now move on to number 6. On the same page, there was  
5 always a single red flag and the word "Revolutionary Flag" in the  
6 middle. Nuon Chea said the word "Red Flag". Of course, the word  
7 -- the flag is in red colour, but the word used is still  
8 "Revolutionary Flag".

9 [09.24.39]

10 Now I move to number 7. The term "internal party publication"  
11 always appeared on the top right corner and clearly indicated the  
12 source and author of the magazine, that is, it is the official  
13 publication of the CPK itself as well as the persons it was  
14 distributed to, that is, the CPK members.

15 And number 8. The term "published monthly" always appeared under  
16 "internal party publication" as shown on the screen. The  
17 "Revolutionary Flag" was supposed to be published monthly.

18 Among the 24 publications in Annex 2, 15 are January issues  
19 covering a single month, one is an ordinary issue coming through  
20 successive month, and nine are special issues covering one or two  
21 successive months.

22 [09.26.00]

23 Now I move on to number 9. It denotes the number of the issue,  
24 the month and the year, as they would always mention on page 2  
25 about the index.

1 Let me now look inside pages of the booklet, and that is number  
2 10 on the screen. The titles and main text were systematically  
3 typed. The typeface is consistent with the other "Revolutionary  
4 Flag" publications. This is also in line with Nuon Chea's  
5 testimony on 10 January 2012 that after April 1975 the  
6 publications were not handwritten any more, but typed and printed  
7 in a printing house.

8 Now we look at number 11, which is a hammer and sickle, which is  
9 a symbol of Communism. And this could be found under the title of  
10 each chapter in the publications.

11 [09.27.15]

12 Number 12. In each "Revolutionary Flag" there were typically a  
13 few photographs of workers in fields, in factories or at work  
14 sites, including one on the page before the last.

15 Then we move to number 13. The back page always contains a single  
16 flag with a hammer and sickle and the name "Revolutionary Flag."  
17 There is no circle around the "Revolutionary Flag". It is  
18 opposite the youth magazines.

19 [09.28.11]

20 And I also to corroborate on number 2; that is the "Revolutionary  
21 Youth" publications. There are 28 editions of the "Revolutionary  
22 Youth" on the OCP document list. So what has been said by Khieu  
23 Samphan's defence team is correct that there are 28 editions in  
24 the case file and the first issue being dated August-September  
25 1974 and the last one that we could find is dated November 1978.

10

1 Generally speaking, the external characteristics of the  
2 "Revolutionary Youth" are very similar to the "Revolutionary  
3 Flag," but I will show some particularities on a PowerPoint. This  
4 document is D243/2.1.25, dated August 1976. Khmer ERN is  
5 00064154, French ERN is 00593843, and the English ERN is  
6 00539849.

7 Let me look at the internal characteristics of the "Revolutionary  
8 Youth" publications. Since we could find those publications, that  
9 is, from August 1974 to November 1978, the internal  
10 characteristics never change over time.

11 [09.30.23]

12 Let me now look at the cover page. Number 1, two flags appeared  
13 on the cover of each of the 28 "Revolutionary Youth"  
14 publications.

15 And number 1, the name "Revolutionary Male and Female Youth"  
16 never change between 1974 and late 1978. It appears on cover  
17 page, on second page, and on the back page.

18 Number 3, ordinary issues had a number and the special issues did  
19 not.

20 And number 4; that is the month and the year of the publication.

21 On page 2, "Revolutionary Youth" publication always displayed,  
22 once again, on the top left corner, the name of the publication.

23 Six, on the top right corner, the term "Organization of

24 Propaganda and Education of the Communist Party -- Communist

25 Kampuchea Youth Association" was used so that only members of the

11

1 CPK Youth received the publication.

2 [09.32.12]

3 And similar -- last month, Mr. Long Norin admitted that he had  
4 seen the "Revolutionary Youth" publication.

5 MR. PRESIDENT:

6 Please, the prosecutor, please pause a bit.

7 MS. SIMONNEAU-FORT:

8 (No interpretation)

9 MR. PRESIDENT:

10 Thank you. The prosecutor, please be seated because the -- we  
11 would like to ask the court officer to check with the translation  
12 to make sure that the translation is going through. Thank you.

13 (Short pause)

14 [09.35.40]

15 We can now resume.

16 The Prosecutor, you may now proceed.

17 MR. VENG HUOT:

18 Mr. President, I would like to check with you whether I should  
19 start once again on the "Revolutionary Youth" publication or I  
20 should start from any particular point.

21 MR. PRESIDENT:

22 Yes, you may start from the "Revolutionary Youth" publication  
23 because there was no translation for French channel so it would  
24 be ideal if you could start from the "Revolutionary Youth"  
25 publications.

12

1 MR. VENG HUOT:

2 Thank you, Mr. President. I would like to start it again.

3 [09.36.42]

4 About the "Revolutionary Youth" publications, there are 28

5 editions of the "Revolutionary Youth" on the Office of

6 Co-Prosecutor document list, the first issue being dated

7 August–September 1974, and the last one, in November 1978.

8 The first part: cover page. Two flags appear on the cover of each

9 of the 28 "Revolutionary Youth" publications.

10 Two, the name "Revolutionary Male and Female Youth" never changed

11 between 1974 and late 1978. It appears on cover page, second

12 page, and back page.

13 Number 3, ordinary issues had a number. Special issues did not.

14 Four, as being displayed, these "Revolutionary Youth" publication

15 had the months and year.

16 Page 2 always displayed, once again, on the top left corner, the

17 name of the publication.

18 Six, on the top right corner, the term "Organization of

19 Propaganda and Education of the Communist Kampuchea Youth

20 Association" was used so that only members of the CPK Youth

21 received the publication.

22 And in connection to this, Mr. Long Norin informed the Chamber

23 that the "Youth" -- "Revolutionary Youth" publication, he had

24 seen it so far.

25 [09.38.48]

1 Seven, similarly to the "Revolutionary Flag," the "Revolutionary  
2 Youth" was published monthly, but 22 editions covered one month,  
3 while six others covered a two-month period.  
4 Eight, the number and months of publication was reproduced on the  
5 second page.  
6 Nine, the index was always framed.  
7 And inside the pages of the booklet and the back page - ten --  
8 similarly to the "Revolutionary Flag," there was a  
9 hammer-and-sickle, a symbol of communism. They were displayed  
10 under each chapter title.  
11 Eleven, "Revolutionary Youth" always ended with a nationalist  
12 poem which celebrated either the glorious party, the youth, rice  
13 production and scorned various categories of enemies.  
14 Twelve, five photos of workers or peasants at work were typically  
15 displayed in each "Revolutionary Youth".  
16 Thirteen, the back page was different to that of the  
17 "Revolutionary Flag" publication. As I mentioned, in the  
18 "Revolutionary Flag", there was no frame, but in this  
19 "Revolutionary Youth Flag", there was two frame covering the  
20 "Female Youth" - "Female and Male Youth". And it showed a symbol  
21 of a hammer-and-sickle in the double circle in the name of  
22 "Revolutionary Youth", inside.  
23 [09.41.16]  
24 And similarly to the "Revolutionary Flag," the "Revolutionary  
25 Youth" contained identical and consistent internal

14

1 characteristics throughout the DK regime, and the purpose was  
2 clearly the education and indoctrination of the youth members of  
3 the Party.

4 The topics discussed in both "Revolutionary Flag" and the  
5 "Revolutionary Youth" publications are known CPK discipline,  
6 strategic policy lines, economic production, security and  
7 military activities.

8 The "Revolutionary Youth" publications generally focused on  
9 simpler topics such as the agricultural production, the strength  
10 and happiness of the youth party members, and the discipline. The  
11 poems and slogans were clearly aimed at luring the youth.

12 Next, I would like to present some of the distinctive expressions  
13 used throughout the "Revolutionary Flag" and "Youth" publication  
14 associated with the CPK policies and obsessions such as the  
15 classes, the enemies, the rice production, the discipline, or the  
16 collectivization.

17 [09.42.56]

18 The expressions commonly spotted in these publications are  
19 "imperialist", "feudalist", "capitalist", "class struggle",  
20 "smash" or "eradicate enemies", "great leap forward", "eliminate  
21 private property", "CIA spies", "criticism" and "self-criticism",  
22 "three tons of rice per hectare", "all contemptible traitors".

23 [09.43.46]

24 Mr. President, now I would like to hand over to my colleague to  
25 talk about external characteristics of those two publications.



15

1 MR. PRESIDENT:

2 Thank you. Yes, the International Co-Prosecutor, you may now  
3 proceed.

4 MR. DE WILDE D'ESTMAEL:

5 Thank you. I'll try not to take up too much of everybody's time,  
6 but please be forbearing given that we had one or two technical  
7 problems. Let's come back, now, to the characteristics of these  
8 two publications.

9 [09.44.32]

10 Before the Co-Investigating Judges and witness TCW-338, the --  
11 both publications were published by the Propaganda Ministry using  
12 different printing offices which included K-25, K-26, and K-27.  
13 TCW-338 successively worked in those three offices and stated as  
14 follows -- and I quote: "In K-25, the work involved printing  
15 'Revolutionary Flag' and 'Revolutionary Youth'. K-26 printed  
16 newspapers while K-27 printed magazines." That's testimony  
17 D201/10. Witness P-65 confirmed this, and that is also D234/7.  
18 Other witnesses have also been heard; they provided details about  
19 the existence and contents and dissemination of the magazines to  
20 the cadres of the Party and the young members of the Party.  
21 I would quote the following witnesses that we will be hearing in  
22 trial -- this trial, TCW-797, testimony to D232/61, witness TCW  
23 -- in testimony 369/6, TCW-110 and testimony D123/3, and  
24 testimony D107/3 and TCW-487, testimony D369/7.

25 [09.46.56]

1 The statement of the accused Nuon Chea, since the start of these  
2 hearings, confirms the existence of a review called  
3 "Revolutionary Flag" published from the Geneva Accords to the  
4 termination of the regime, even if he says that the magazine may  
5 have changed name and cover at a later stage. When he was asked  
6 about the contents of different copies of the review by Judge  
7 Cartwright, he did not make any objection or require to see the  
8 originals. He only did that when the Co-Prosecutors began their  
9 questioning.

10 [09.47.42]

11 The accused Nuon Chea stated on the 15th of December 2011 that it  
12 was the Standing Committee that looked after the publication of  
13 "Revolutionary Flag" and, in particular, the Party Secretary and  
14 myself. "We drafted the contents of the review." It is true that  
15 thanks to the archives in the possession of DC-Cam that the  
16 prosecutors in the investigative phase were able to have access  
17 to the documents. According to DC-Cam, all of these copies, apart  
18 from four of the reviews, were taken from the Tuol Sleng archives  
19 in 1999; the others came from other sources.

20 Before the Investigating Judges, the DC-Cam staff identified two  
21 numbers of the magazine IS 11.10 and IS 11.11. There was a  
22 discussion on the circumstances of their discovery and he pointed  
23 out that DC-Cam was in possession of the originals.

24 Furthermore, another witness, TCW-110, in testimony D123/3,  
25 formerly identified copy number 7 of July 1977. The same witness

17

1 stated that "Revolutionary Flag" was, in fact, written by the  
2 members of the Central Committee including Pol Pot, Nuon Chea,  
3 and Ieng Sary. And this, in fact, echoes what Nuon Chea, himself,  
4 said in the hearing.

5 [09.49.36]

6 It is also worth pointing out that six copies of "Revolutionary  
7 Flag" and two of "Revolutionary Youth" were considered admissible  
8 by this Chamber in file number one and this interesting. Although  
9 we know that the current defence teams did not participate in  
10 Case Number 1, and the defence of Duch did not contest these  
11 documents, it does not, nevertheless, mean that the Judges of  
12 this Chamber have not very carefully studied the probative value  
13 of these -- of these documents or looked into any that were quite  
14 clearly not admissible.

15 As for the corroboration between these different publications,  
16 I'll come back to that in one moment. But let me say that -- let  
17 me refer to the summary of the different reviews mentioned by  
18 Khieu Samphan's defence yesterday or position -- on the position  
19 that the author should be heard in the course of the trial. We  
20 are talking about the author who's pseudonym is P-037 in the list  
21 of experts of the OCP and that list is E9/4.2. We believe that  
22 all of the evidence that has been gathered in trial number one  
23 could be used to corroborate the contents of those summaries.

24 [09.51.13]

25 Concerning the other publications of the CPK within this category

18

1 in Annex 2, let me very briefly say that there are 19 of them.

2 Most of those publications also have marks, signs, acronyms that  
3 are common to publications of the Party at the time and very  
4 often, as well, the hammer and sickle on the cover or within the  
5 text itself.

6 The language that is used is also typical of the documents  
7 published by the Party at the time and corresponds to the Party  
8 ideology. The objectives pursued seem to us to be very clear when  
9 you look at the documents. The aim is to disseminate policies and  
10 statutes within the Party, explanations thereon or plans such as  
11 the four-year plan. All areas being covered, the aim was to  
12 secure unified control of the Party message by the Party.

13 Concerning the other publications, I will refer you to paragraphs  
14 49 and 50 of our document E/158 in which there are other details  
15 set out.

16 [09.52.41]

17 As to the directives of the Communist Party of Kampuchea, there  
18 are eight documents under that category. There are two versions  
19 of two different documents that have been taken up; it is  
20 indicated that they either come from the Central Committee or  
21 from Office 870 for the greater part.

22 Those directives concern the identification and elimination of  
23 traitors that fight against enemies, "Yuon", and the obligation  
24 to regularly report to the Party Centre.

25 Once again, the terminology that's used here and the consistency

19

1 of the contents leaves absolutely no doubt whatsoever about the  
2 origin and reliability of these documents, some of which have  
3 been authenticated by witnesses and, there again, I refer you to  
4 paragraph 44 of our document E/158.

5 Two CPK directives were, in fact, accepted in Case Number 1.

6 [09.53.54]

7 My final comments will concern illustrations where you can see  
8 corroboration concerning all of the documents of Annex 2. Indeed,  
9 the contents of these documents is confirmed by other documents  
10 and other sources and those latter sources talk about the same  
11 events at the same time in history and the same individuals  
12 involved in such a case. We believe that the reliability of these  
13 sources, as a whole, which refer to the same event or the same  
14 context, are mutually reinforcing and I'll give you three  
15 examples of that.

16 First, an example concerning Annexes 2 and 3. There is a record  
17 of a visit of the Standing Committee to the Northwest Zone from  
18 the 20th to the 24th of August 1975. This is document IS 13.1 and  
19 I'd like to compare that with a Party publication entitled --  
20 it's a very long title "A Review of the Mastering Implementation  
21 of the Political Line of the Reconstruction of the Economy and  
22 the Building Up of the Country in All Spheres". That document is  
23 dated September 1975. It's D366/7.1.157.

24 [09.55.32]

25 In its report on that visit to the Northwest in August 1975, the

1 Standing Committee says the following:

2 "We don't have enough manpower. We need to add production forces;  
3 even if you add 300,000 or 400,000, it's not going to be enough.  
4 At the moment, our forces include 1 million people, but we have  
5 not yet achieved 50 percent of our objectives; we need another  
6 400 or 500,000."

7 In the Party document I quoted of September '75; in other words,  
8 a month after the visit of the Standing Committee to the  
9 Northwest Zone, you can see the same figures quoted by the  
10 Standing Committee. And you can see to what extent those two  
11 sources are complimentary.

12 [09.56.26]

13 In the document, it says the following:

14 "We have to distribute the population in accordance with  
15 production needs and we have to make sure that this tallies with  
16 requirements. We have to distribute people in a balanced way and  
17 avoid there being too much emphasis on one side or the other. In  
18 the Northwest Zone, there is a need to add 500,000 people to the  
19 manpower there."

20 To find that quote, it's ERN in French 00543766; in English,  
21 00523590; and in Khmer, 00072387 (sic).

22 You can see that these are the same facts emanating from  
23 different sources over the same period and they are mutually  
24 reinforcing in terms of the reliability of the documentary  
25 materials.

1 Khieu Samphan's defence in its document E131/1/6.2 on the second  
2 page points out that it was intending to submit the same document  
3 dated from September '75 -- the same publication -- to the  
4 Chamber in relation to the first witnesses.

5 [09.58.02]

6 The second example I'd like to quote is a CPK document entitled  
7 "Decisions of the Central Committee on a Certain Number of  
8 Problems", which has the reference E/312. It's IS 6.3 of the 30th  
9 of March 1976. And in that document, E3/12 on the first page, it  
10 says that it is necessary to select a model and achieve three  
11 tonnes per hectare to achieve the great leap recommendation. And  
12 this is a decision by the Central Committee for 1976.

13 Look at the 6th of June 1976 edition, which has D2-15.4 as its  
14 reference. And in that publication, it says that the Red Flag of  
15 Honour of 1976 was awarded by the Central Committee to three  
16 districts, including the district of Tram Kak.

17 The name of the flag has changed slightly, but the principle is  
18 entirely the same as the one that was described in the decision  
19 of March 1976.

20 The accused Nuon Chea himself, on the 15th of December 2011  
21 recognized the fact that this Red Flag of Honour was awarded to  
22 those in the party who distinguished themselves by improving the  
23 living standards of the population. And there were three  
24 different sources, but the same revolutionary practice is being  
25 described.

1 [09.59.57]

2 Turning to E3/12, in this document, Central Committee decisions  
3 include a certain number of commemorative days to commemorate  
4 historical events such as the anniversary of the party or the  
5 anniversary of the birth of the Revolutionary Army, the 10th of  
6 January 1978, or the anniversary of the birth of the Democratic  
7 Kampuchea Constitution, the 5th of January 1976.

8 All of those keys dates were corroborated by the Accused  
9 themselves in their testimony, in their statements and in their  
10 writings, indeed, in the recent book by Mr. Khieu Samphan, and in  
11 a number of the publications of the "Revolutionary Flag" or the  
12 "Revolutionary Youth".

13 In the same decision, E3/12, you have details under the title of  
14 "Decisions by State Bodies" of the functions of Comrade Nuon in  
15 the National Assemble, Comrade Hem, in other words, Khieu  
16 Samphan, as President of the presidium, and Comrade Van, Ieng  
17 Sary, as Deputy Prime Minister responsible for foreign affairs.

18 [10.01.19]

19 The contents of the decision are corroborated not only by the  
20 Accused themselves, but by other contemporaneous publications by  
21 the Kampuchea Communist Party.

22 There's a document in our Annex 3; it's the record of a meeting,  
23 a document concerning the first Congress of the first Legislature  
24 of the Representative Assembly of the People of Kampuchea, 11 to  
25 13 April 1976. It's IS 13.13.



1 This document, once again, details the roles of the Accused as  
2 identified during the meeting of the 13th of March 1976 as well  
3 as identifying other names of members of the government.  
4 These documents are complementary and this, once again,  
5 demonstrates that Nuon Chea, as President of the National  
6 Assembly who was newly elected as the President as contained in  
7 document IS 13.13, had drafted himself the press statement. That  
8 media release was disseminated on the radio airwaves as well as  
9 recorded in the Foreign Broadcast Information Service entitled  
10 "Hu Nim Releases a Communiqué de Presse on behalf of the National  
11 Assembly". This is in document D62.17, dated the 14th of April  
12 1976.  
13 [10.03.00]  
14 Moreover, in relation to that statement made by the President of  
15 the National Assembly for the People, the Standing Committee on  
16 the 8th of March 1976 in document IS 13.7 and 13.8 makes mention  
17 of some future activities. It also lays out strategies to  
18 disseminate propaganda. You will see that all of these  
19 publications, in fact, reinforce the reliability and authenticity  
20 of some of the documents that have been put before you.  
21 Mr. President, Your Honours, I wish to conclude by citing a third  
22 example. In the second and third issues of the "Revolutionary  
23 Flag" of 1976 -- this is document D362/1.3 (sic) entitled "To  
24 Apply the Strategic Political Line and the New Strategic Line of  
25 the Party" -- this document lays out the statutes of the CPK. The

24

1 statutes are caught or classified under D366/7.1 (sic).

2 [10.04.40]

3 Under the first heading in paragraph 3 of the statutes, there is  
4 a text that is lifted, verbatim, word-for-word, the issue of the  
5 "Revolutionary Flag" that I have just identified to you and that  
6 was destined to all members of the party.

7 Now based on those two documents, if these could not be reliable,  
8 then obviously they wouldn't be referring to each other. It would  
9 be illogical. In the CPK statutes, the "Revolutionary Flag" was,  
10 indeed, the official publication of the party and was of the  
11 exclusive purview of members of the party. It would be erroneous  
12 to think that these documents do not contain sufficient indicia  
13 of reliability.

14 [10.05.36]

15 As regards this category of documents in Annex 2, it is  
16 abundantly clear that all of these documents contain the  
17 appropriate threshold of indicia of reliability and that they  
18 should be admissible before your Chamber. These documents cannot  
19 be assessed separately or individually, but they must be compared  
20 and corroborated by complementary testimony and documents.

21 Obviously, the probative value to be accorded to these documents  
22 will be determined by Your Honours following discussion and once  
23 the testimony of civil party's experts and witnesses will have  
24 been heard.

25 I thank you, Your Honours.

25

1 MR. PRESIDENT:

2 Thank you, Co-Prosecutor.

3 [10.06.35]

4 We now hand over to the representative of the Lead Co-Lawyers as  
5 requested yesterday -- that is, counsel Ven Pov -- to present  
6 your arguments to the arguments raised by the defence teams. You  
7 have 15 minutes to present your arguments. You may proceed.

8 MR. VEN POV:

9 Thank you, Mr. President. Good morning, Your Honours. Good  
10 morning to the Prosecution, venerable monks, and everyone in and  
11 around the courtroom.

12 On behalf of the Lead Co-Lawyers, I fully support the arguments  
13 raised by the Prosecution. However, I have some observations to  
14 make regarding the publications and directive by the CPK as in  
15 Annex 2.

16 For the publications of the CPK, as we all know, the  
17 "Revolutionary Flag" as well as the "Revolutionary Youth"  
18 magazines, as they were made and published prior to 1975 and  
19 during the temporal jurisdiction until 1978 as stated by the  
20 Prosecution, those CPK publications are official and important  
21 regarding the statements of the policies and guidelines and the  
22 activities of the parties, the military movements, the production  
23 activities, including some photographs in the two magazines as  
24 stated by the Prosecution, that is, photos of farmers, etc.

25 [10.08.56]

1 And the content of the two publications also mentions about the  
2 national defence, about strengthening the parties, etc.  
3 Also contained in the two publications are information and  
4 messages for the cadres at all levels during the DK period.  
5 These documents were distributed to all level of cadres at  
6 cooperatives or the districts and sub-districts committees. They  
7 were aware of these publications. In fact, during the hearing on  
8 the 10th of January last week, even Nuon Chea himself  
9 acknowledged and confirmed that the CPK did publish the  
10 "Revolutionary Flag" magazine since 1975, and that is in document  
11 E1/24.1. ERN in Khmer is 00766622, 766605 in English.  
12 [10.10.22]  
13 Nuon Chea himself also confirms they were published after the 17  
14 April victory after they could find those people capable of  
15 printing these publications. The ERN in Khmer is 00766626, in  
16 English 00766611, and in French 00767495.  
17 So the publications of the two magazines were, indeed, made and  
18 published during the period and they were authentic and reliable  
19 and they are, of course, relevant. And the source of the  
20 magazines is clear and the articles in the publications are  
21 relevant, indeed, to the content of the Closing Order.  
22 Regarding various directives issued by the CPK as listed in the  
23 annex are the written instructions issued by the offices --  
24 various offices as well as Office 870 of the CPK operators that  
25 would refer to the Standing and the Central Committees, and they

27

1 had the effects to be implemented throughout the country during  
2 the DK period.

3 These directives also have the effect of enforcement for all the  
4 lower levels that they had to strictly abide by these  
5 instructions.

6 [10.12.13]

7 We are of the view that the directives by the CPK has the  
8 probative value, reliable and relevant, and they have a clear  
9 source.

10 I would also like to respond to one of the many points as raised  
11 repeatedly by the defence teams regarding the authenticity of  
12 documents, the origin of documents shall be examined.

13 Generally speaking, there is no measure or rule to accept a copy  
14 of the original document unless it is proven that it was copied  
15 from an unverified source or fabricated source. In our previous  
16 practices, in particular in dealing with a copy of the document  
17 and in various other tribunals -- international tribunals, they  
18 accept the copies of the documents in similar cases to what we  
19 are facing today.

20 I am grateful, Your Honour.

21 (Short pause)

22 [10.14.16]

23 MR. PRESIDENT:

24 Lead co-lawyer, you may proceed.

25 MR. PICH ANG:

28

1 Mr. President, I'd like to inform the Chamber that I found a  
2 piece of information on the UNESCO website, which is a cover page  
3 of the Revolutionary Flag, and it is in colour. And I seek your  
4 permission to present this information.

5 MR. PRESIDENT:

6 In fact, the Chamber gave the opportunities and time to all the  
7 parties and you should use your -- have used your time to find  
8 all your grounds for your arguments so that the Chamber can be  
9 fully informed of all the supporting arguments that you have  
10 found, and that is a typical approach for all the opposing  
11 parties. And only now it's that you ask the Chamber regarding  
12 this piece of information.

13 (Judges deliberate)

14 [10.16.48]

15 Khieu Samphan defence, do you have any other point you'd like to  
16 raise? What has been raised by the Lead Co-Lawyer is not  
17 necessary.

18 MR. KONG SAM ONN:

19 Your Honour, in view of the Chamber that it is not necessary,  
20 then I have nothing else to add.

21 MR. PRESIDENT:

22 We just heard the arguments raised by the Lead Co-Lawyer  
23 representatives regarding document A2. We will then continue to  
24 hear the objections on other documents, and we shall inform all  
25 parties regarding the scheduling and time allocation either

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1 through verbal -- verbal communication or through memorandum.

2 [10.18.07]

3 The time is now appropriate for a break. We shall have a  
4 20-minute break and we then resume.

5 (Court recesses from 1018H to 1048H)

6 MR. PRESIDENT:

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

8 Before we proceed to the objections by the three defence teams on  
9 the Annex 3, the Chamber wishes to respond to the request by Nuon  
10 Chea defence team regarding the email sent by the senior legal  
11 officer indicating the intention of the Chamber to hear witness  
12 from the Documentation Centre of Cambodia.

13 The Chamber wishes to advise the defence team for Nuon Chea and  
14 other parties, as well as the member of public, that due to the  
15 issue at hand and with the request from the defence teams and  
16 parties, the Chamber will summon witness TCW-766 to testify  
17 before the Chamber on Monday, the 23rd of January 2012.

18 [10.50.17]

19 And the purpose of hearing this witness is to hear the testimony  
20 of the various document received from the Documentation Centre of  
21 Cambodia which the party have objected over the past few days.

22 The hearing of testimony of TCW-766 will be questioned first by  
23 the Chamber and then followed by the Co-Prosecutor, then the  
24 civil party Lead Co-Lawyers and then the defence for Nuon Chea,  
25 followed by the defence of Ieng Sary and, lastly, the defence for

30

1 Khieu Samphan.

2 Yes, you may proceed.

3 [10.51.20]

4 MR. IANUZZI:

5 Thank you for that indication, Your Honour.

6 Perhaps, could we have a further indication as to if and when the  
7 Chamber plans to rule on our request to hear Mr. Youk Chhang?

8 MR. PRESIDENT:

9 The Chamber wishes to advise that since the witness TCW-766 is  
10 one of the senior management officer of the Documentation Centre  
11 of Cambodia, then this witness is also conducive to revealing any  
12 information concerning that. And as for the summoning of the  
13 Director of the Documentation Centre of Cambodia, the Chamber is  
14 going to do that at an appropriate time following the hearing of  
15 TCW-766.

16 [10.52.36]

17 You may now -- you may proceed, Lead Co-Lawyer.

18 MS. SIMONNEAU-FORT:

19 Thank you, Mr. President.

20 I simply wanted to point out to the Chamber that Philippine Sutz  
21 will be taking the floor for the civil parties on the subject of  
22 Annex 3. Thank you.

23 MR. PRESIDENT:

24 The request is granted.

25 Thank you for the delegation to the representative of the civil



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1 party lawyers.

2 [10.53.25]

3 Now we will continue the hearing of the objection of the defence  
4 teams on the document listed in Annex 3. We will listen to the  
5 objection to Annex 3 and 4 together if possible, but first we  
6 will begin with the objection in the document listed in annex A3  
7 first.

8 The two -- the three defence team have one hour to make their  
9 oral objection and the defence teams may wish to allocate time  
10 among themselves within one hour allotted. Unless a contrary  
11 agreement was reached, then each defence team has 20 minutes for  
12 their oral argument.

13 [10.54.28]

14 The Chamber now hand over the floor to Nuon Chea defence team if  
15 there is an objection to a document listed in Annex 3. You may  
16 proceed.

17 MR. SON ARUN:

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

19 After listening to the debate on Annexes 1 and 2, in Annex 3 I  
20 have some observation which I would like to display on the  
21 screen. Following listening to the debate and after reviewing  
22 Annex 3 in Khmer, we observe that all the documents in Khmer  
23 language were -- had some annotations on those pieces or items of  
24 evidence and those annotations were in -- sometimes in French, in  
25 English, or in Vietnamese.

1 [10.55.51]

2 In additions, there were some reduction or addition to that  
3 document. These addition or reduction arouses the suspicion on  
4 the veracity of such documents. That's why, as the Defence, we  
5 will have to make sure that these writing was not made following  
6 1979 or it was the original annotations with the original  
7 document.

8 In addition, a number of documents were inferior in term of  
9 qualities because certain document is completely illegible. In  
10 order to resolve this matter, the Defence wishes to reiterate our  
11 positions that we need to summons the person responsible at the  
12 Documentation Centre of Cambodia to clarify the annotation made  
13 on those documents and those peoples should be in the position to  
14 provide the original document to ascertain the authenticities of  
15 those documents. Once again, we reiterate our position of  
16 objection to the documentation retrieved from the Documentation  
17 Centre of Cambodia submitted by the Prosecution.

18 [10.57.24]

19 We are of the opinion that summoning the management of DC-Cam  
20 does not cause any inconvenience for them and there is no reason  
21 why they cannot appear before the Court. And yesterday, he  
22 responded to the Phnom Penh Post report that he was ready and he  
23 would abide by the direction of this Chamber.

24 [10.58.10]

25 Then I would like to enumerate documents which I can hardly

1 comprehend. Document IS 13.4, 13.5, document 13.6, they are all  
2 illegible, and I would like to ask -- would like to seek your  
3 permission to display them on the screen, document 13.6, so that  
4 the Chamber can view it.

5 MR. PRESIDENT:

6 Your request is granted.

7 [10.59.16]

8 MR. SON ARUN:

9 As can be seen, Your Honours, the written annotation is merely in  
10 French and illegible, and we do not know who made that  
11 annotation. It is in the red circle.

12 Also, there are other documents: D251/1, IS 13.8, D248/6.1.1,  
13 D13.10, IS 13.11, D248/6.1.3, IS 13.20, IS 13.21, IS 13.23, and  
14 D248/6.1.18. And I seek your permission to project this document.

15 MR. PRESIDENT:

16 Which document?

17 MR. SON ARUN:

18 It's D248/6.1.18, Your Honours.

19 MR. PRESIDENT:

20 Yes, you are allowed.

21 [11.01.35]

22 MR. SON ARUN:

23 The two documents that have been projected on the screen and as  
24 can be seen by Your Honours, they are illegible and the meaning  
25 cannot be verified. There also other four documents, that is, IS

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1 13.34, IS 13.39, IS 13.41 and D366/7.1.340.

2 Your Honours, due to the time limitation, I'd like only to show  
3 the two documents on the screens which are illegible and I  
4 submit, Your Honours, that my client, Nuon Chea, still insists  
5 for the original copies of the documents so that he is in a  
6 position to compare those original to the copies that we use in  
7 the Court so that we can authenticate the documents.

8 I am grateful, Your Honour.

9 MR. PRESIDENT:

10 Thank you, Defence Counsel.

11 MR. PESTMAN:

12 Just to be absolutely clear, my colleague, Arun Son, he only  
13 showed two documents which he explained contain paragraph  
14 extracts that are illegible as examples. All the documents listed  
15 by him, all the numbers given are referring to documents he could  
16 not read.

17 I'll be very brief. As you know, we have objected to documents  
18 coming from DC-Cam. We have taken the position, and we do that  
19 again, that those documents are inadmissible as long as we have  
20 not been able -- not been allowed to question Youk Chhang, the  
21 Director of DC-Cam. That position applies to all documents which  
22 will be presented to Court in whatever category.

23 [11.04.39]

24 One of the problems we encountered -- and I have a request. One  
25 of the problems we encounter is that we cannot reconstruct -- we

1 cannot make a list of documents which come from DC-Cam. We cannot  
2 make a comprehensive list of documents which were provided by  
3 DC-Cam to either the prosecutor or the Office of the  
4 Investigating Judges.

5 [11.05.11]

6 For us, it's very difficult to question the management of DC-Cam,  
7 any witness coming from DC-Cam, if we do not exactly know which  
8 documents they provided to either the prosecutor or the  
9 Investigating Judges.

10 We have gone through the filings and we have read, of course, the  
11 latest filing where they give indicia of reliability of the  
12 various documents and they have tried to reconstruct a list but,  
13 as I said, it is not complete. They did not give information on  
14 all the documents, on the provenance of all the documents that  
15 they intend to put before the Chamber.

16 So our request to you is, to this Trial Chamber, to order the  
17 prosecutor to make a list or to add to the list they've already  
18 provided a special column, another category indicating whether  
19 that document comes from DC-Cam or not. Otherwise, there's not  
20 much point hearing witness number 766 on Monday.

21 One other point I would like to make, I've gone through the list  
22 of witnesses, which is number E109/4.3, and I've compared it to  
23 the original list that was provided much earlier in April of last  
24 year -- not a list of witnesses, but the list of documents. And I  
25 noted that the original list of documents, which has been

1 labelled A3, is almost identical to the list relevant for this  
2 mini trial, according to the prosecutor. And it raises the  
3 question whether all these documents the prosecutor would like  
4 you to admit are equally relevant.

5 [11.07.12]

6 I've gone through the list, the more recent list given to us by  
7 the prosecutor, and I've read the justification given by the  
8 prosecutor for tendering those documents and I looked for  
9 references to either the evacuation of Phnom Penh, the evacuation  
10 of other cities in the pre-1975 period or to the movement of  
11 people covered by Phase 2 in the mini indictment, the movement of  
12 people in '75, '76 from the north -- or the south to the north.

13 [11.07.51]

14 And I can only -- and I only found three documents which,  
15 according to the prosecutor, are relevant to those facts, and  
16 those are the ones numbered 46. Excuse me, there's only two  
17 documents which are relevant, number 46 and number 1 on the  
18 latest list with number E109/4.3. Only two documents mention  
19 either the evacuation of the city or the movement of the people.  
20 Other documents are basically irrelevant for the first mini  
21 trial.

22 There are some documents which could be relevant for the  
23 hierarchy, the structure of the Communist Party. Number 2 could  
24 be relevant because it describes -- gives the tasks, the various  
25 responsibilities to the members of the Standing Committee. And

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1 there's another document which describe -- describes the  
2 responsibilities of the various Ministries also vis-à-vis the  
3 Standing Committee, which is interesting because it describes the  
4 relationship, the hierarchy between the Standing Committee and  
5 the Ministries. That's number 19.

6 Those are the only documents which I find I could understand to  
7 be relevant to the first mini trial. The rest is irrelevant,  
8 according to me.

9 [11.09.17]

10 And I reiterate, I would like to stress that all documents are  
11 relatively recent. The most recent -- the oldest documents  
12 provided in the list was dated August 1975, and that is more than  
13 four months after the liberation of Phnom Penh, the period we are  
14 actually supposed to discuss during this first mini trial.

15 The other documents are very interesting. They contain  
16 information about the rice production, about foreign relations,  
17 trade with China, the war with Vietnam, lots of information about  
18 Vietnam, the fighting of enemies, internal/external, about S-21,  
19 about work sites, etc., etc. All very interesting, but it's not  
20 the topic of this first mini trial.

21 [11.10.13]

22 There is a risk, a serious risk that your Trial Chamber will be  
23 flooded with information which is actually not very relevant,  
24 that you will be forced to read -- not only us, but you will be  
25 forced to read illegible documents which are not relevant for

1 establishing the guilt of my client.

2 [11.10.32]

3 And I would like to invite Your Honours, the Trial Chamber, to  
4 have a very close look not only at A3, but also at the other  
5 documents contained in A1, 2, 4, 5, 6 up to 19, I think. Have a  
6 very close look at those lists and look at the description given  
7 by the prosecutor and the reasons why they want to tender those  
8 documents and eliminate all those documents which, even according  
9 to the prosecutor, are not relevant -- not relevant for this  
10 first mini trial.

11 That's all I wanted to say and I donate the remaining time, if  
12 there is any, to the Ieng Sary team.

13 Thank you.

14 MR. PRESIDENT:

15 Thank you, Defence Counsel.

16 Ieng Sary's defence, you now have the floor to present your  
17 objections.

18 [11.11.35]

19 MR. KARNAVAS:

20 Good morning, Mr. President. Good morning, Your Honours. And good  
21 morning to everyone in and around the courtroom.

22 During the last presentation, I want to make an observation that  
23 I would have made but for the Trial Chamber's notation to the  
24 parties last week, and that is, if you may recall, about a week  
25 ago I objected to the prosecutor giving evidence concerning the



1 FBIS report wherein the prosecutor began to testify that, in  
2 this particular report, an entire speech by Pol Pot was  
3 delivered. This was an unusual situation; they normally didn't do  
4 this and so on and so forth, to which I objected on the grounds  
5 that the gentleman was testifying.

6 And Your Honours, after deliberating, concluded that my objection  
7 was noted and that observations made by the parties, that is,  
8 testifying as the Prosecution was doing, was not evidence. You  
9 being professional Judges -- now I'm reading into what I heard,  
10 but you being professional Judges certainly can sift through what  
11 is evidence and what is argument or commentary by the parties.

12 [11.13.00]

13 Now, I raise that because my remarks concerning the objections to  
14 Annex 3 are the same as they have been for Annexes 1 and 2. Of  
15 course, having listened to the prosecutor today -- well, and the  
16 civil parties, both of them, they find that we are not specific  
17 enough in our objections.

18 Well, first of all, we're talking about types of evidence; that's  
19 number one. And it was my understanding that it was not our -- we  
20 were not necessarily going to go through every single document  
21 and where we have a group of documents such as here we have the  
22 CPK minutes -- minutes of the meetings, we can lodge a global  
23 objection, as we have.

24 [11.13.59]

25 What the Prosecution did today in order to demonstrate that -- at

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1 least with Annex 2, and I suggest that they will do the same  
2 thing with Annex 3 -- is the following: they testified. They  
3 provided what they believe is the foundation for these particular  
4 documents to come in. They made what is known as an offer of  
5 proof, but normally a witness would make that offer of proof.  
6 Now, perhaps I'm mistaken. Perhaps, in the civil law system,  
7 prosecutors are above -- so far above the defence lawyers that  
8 they actually get to testify, and the judges rely on testimony  
9 for the prosecution instead of or in lieu of witnesses. So, for  
10 instance, where we cannot establish the credibility of a  
11 particular piece of evidence, all we need to do is have the  
12 prosecutor testify as to the validity.

13 [11.15.05]

14 I dare say that that is not my understanding of the civil law  
15 system, but that's what happened here today and that's the  
16 objection that we are -- that we raise, and that is, that is  
17 simply not enough to say this document has this logo. It has five  
18 flags; they're all red. There are certain similarities and,  
19 therefore, we have established the authenticity of these  
20 documents.

21 [11.15.35]

22 We submit, and we have submitted in our submissions, that the  
23 practice that is generally used in the international tribunals,  
24 but also in the domestic courts, is that you bring in a witness,  
25 someone who would have studied these particular documents and

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1 would be able to give evidence.

2 For example, you could bring in one of these so-called Cambodian  
3 experts who over the years have spent a lot of time sifting  
4 through documents, original documents, where they understand  
5 Khmer. And they spend a lot of time -- and they would be able to  
6 say, having spent so much time with these documents, we note that  
7 there is a particular trend. And because of this trend that runs  
8 through these documents, we can say with some degree of certainty  
9 that, in all likelihood, it is an authentic document. That is the  
10 way it's done.

11 [11.16.34]

12 It is not done, I submit, by way of a Prosecution pointing --  
13 going through the document itself and saying, see, this document  
14 is similar with this one and, therefore, they're identical.  
15 That's called testifying, and it's impermissible. And that was  
16 one of the reasons why, Your Honours, we had suggested that at  
17 some point they either have to bring in the witnesses or they can  
18 make an offer of proof that a witness will be coming.

19 [11.17.07]

20 Now, today we heard the one prosecutor, I believe it was the  
21 International Co-Prosecutor, who indicated that you will be  
22 hearing evidence from a witness who will say X, Y and Z. That's  
23 precisely my point.

24 If, indeed, they have witnesses that will lay a foundation, then  
25 they should notify the Trial Chamber and the parties, and if

1 those witnesses are not to appear in the immediate future, at  
2 least we are on notice that the authenticity and somewhat  
3 reliability of the document will be connected later on to other  
4 testimony.

5 We also object to this notion that somehow something happened in  
6 Duch. Well, during Duch, you may have had CPK minutes of  
7 meetings. They may have been introduced.

8 We made our point yesterday we were not there, we did not make  
9 objections. They had a different strategy, they had a different  
10 theory.

11 [11.18.20]

12 But to assume that the Trial Chamber itself did an analysis to  
13 show that the documents that it was relying on, subject to no  
14 objection, were authentic and reliable, in other words, that you,  
15 yourselves, during the deliberative process went through that,  
16 that process of deciding what documents were or were not  
17 authentic and reliable. Well, unless there's proof to that -- and  
18 we would submit even if there was, in this particular case we are  
19 entitled -- we are entitled to make our case and we are entitled  
20 to expect the Prosecution to demonstrate the -- why documents  
21 they want to rely on are authentic, reliable, and relevant.

22 [11.19.15]

23 We specifically filed a motion on adjudicated facts against the  
24 application of adjudicated facts. You may recall that. I took the  
25 pre-emptive -- we took the pre-emptive step of filing that motion

1 because of my experience in The Hague to suggest to the Trial  
2 Chamber what was obviously known in the rules, that adjudicated  
3 facts are not applicable in this case.

4 In other words, you cannot, as a Trial Chamber, say we made this  
5 finding in Duch and, therefore, we're just going to adopt it  
6 wholesale as if it's a proved fact and apply it in this  
7 particular case unless it is rebutted by the other side.

8 If you may recall, in fact, because I took this pre-emptive step  
9 and it wasn't in the rules, I was cautioned and, in fact, DSS was  
10 instructed to look into whether we should not be paid for that  
11 work that we had done.

12 [11.20.20]

13 But we did it for a particular purpose, and now we're seeing it.  
14 We did it because we didn't want Your Honours to introduce  
15 documents from the Duch Case on the basis that simply because  
16 they were used in Duch.

17 Let me give you an example because this notion of international  
18 standards and, in particular, of the Prlic Case has been throwing  
19 up by the parties on the other side. In the Prlic Case, there  
20 were some documents called the Presidential transcripts.

21 President Tudjman had a habit, like President Nixon, of tape  
22 recording all the meetings that he had. These were known as the  
23 Presidential transcripts. And while the recordings were not  
24 available, the actual transcriptions were available and had been  
25 introduced in previous cases, previous cases that were -- that

1 facts that were connected to the Prlic Case.

2 [11.21.26]

3 Irrespective of the fact that they had been admitted in other  
4 cases, the Trial Chamber was still required to make an analysis,  
5 and it did so not on its own, but it did so because the Defence  
6 insisted that the Prosecution establish the origin of the  
7 presidential transcripts and the authenticity, the reliability  
8 and the reliability and relevance did come into play. But  
9 nonetheless, they needed to make a showing.

10 Now, what we saw today is a perfect example of how it should be  
11 done, but through a witness. So, obviously, the Prosecution  
12 knows. We submit -- and this is what I find somewhat, if I could  
13 use this word, pernicious in this approach that the Prosecution  
14 is taking.

15 [11.22.26]

16 Their idea is, especially now that the trial -- that the case has  
17 been severed and the Prosecution is of the opinion that there  
18 will not be a trial number 2 or number 3, their idea is to simply  
19 say to you here are all the documents from the dossier, admit all  
20 of them. Whether they are linked at this point or not is  
21 irrelevant, whether they are tested by any witnesses, they're  
22 irrelevant. We say they're relevant, we say they're authentic.  
23 Admit all of them.

24 So then what happens is we don't have a trial with any viva voce  
25 testimony, or very limited viva voce testimony, but rather, it

1 becomes a trial by way of using documents that are untested. And  
2 that's how I see this.

3 [11.23.18]

4 And I will speak more tomorrow when we wrap up our remarks  
5 concerning how things are done at The Hague and, in particular,  
6 in the Prlic Case because some innovative techniques were used,  
7 but the onus was on the party who was proffering the evidence,  
8 the documents, to always demonstrate that the evidence was  
9 authentic and reliable.

10 It may be a low hurdle but, nonetheless, it is a hurdle, in and  
11 of itself. And simply pointing out that it bears the mark of a  
12 particular institution such as the United Nations or, for  
13 instance, the European Union monitors or European Community  
14 monitors -- so the EC monitors, for instance -- give you another  
15 example, during the war in Bosnia Herzegovina we're on the  
16 ground, EU monitors monitoring the situation, writing reports.  
17 And the reports will be written at the ground level and would go  
18 up to a certain -- various offices and then on to the  
19 headquarters where they would be bundled up and summarized.

20 [11.24.24]

21 Simply because you had the logo that said European Community  
22 Monitors, that, in and of itself, did not make the documents  
23 authentic, reliable, let alone relevant. What the Prosecution had  
24 to do, at the insistence of the Trial Chamber, was bring in at  
25 least a custodian to demonstrate how were these documents

1 prepared, by whom, what was the fashion in which they were  
2 prepared, how had they been collected, where have they been  
3 stored.

4 [11.24.57]

5 It is up to the parties, then, through the introduction of these  
6 documents, to challenge whether the content in the documents are  
7 reliable and relevant.

8 And so we are suggesting that simply because something says  
9 DC-Cam doesn't mean anything. And I don't want to pre-judge any  
10 evidence, but our position has been steadfastly consistent, and  
11 that is some demonstration has to be made, the Prosecution has to  
12 -- has to articulate with precision the exact documents it wishes  
13 to have before the Trial Chamber and for what reasons. And in  
14 doing so, they have to demonstrate that the documents are  
15 authentic, reliable, and relevant.

16 They are not doing that. To simply suggest that something comes  
17 from -- has a particular logo or certain phrases are in is not  
18 enough. They need to bring a witness who might be able to point  
19 that out, but for them to testify is totally unreasonable. And  
20 with that in mind, having said that, Your Honour, I will go back  
21 to my original refrain.

22 [11.26.10]

23 When it comes to CPK minutes of the meetings, our primary  
24 objection is as follows; that unless they can demonstrate through  
25 a witness, not by testifying -- not by testifying, through a



47

1 witness, how these documents were generated, by whom, under what  
2 conditions, how they have been kept, something that would give  
3 you, Your Honours, some confidence that these documents are what  
4 they purport to be.

5 [11.26.42]

6 The substance of the documents is another matter because then,  
7 obviously, once the document comes in, the parties are entitled  
8 to challenge one way or the other the substance. And if they wish  
9 to link it up, that's fine.

10 Now, if the Prosecution wishes to assist the Trial Chamber, as  
11 they seem to wish to have done so yesterday and perhaps even  
12 today -- but yesterday was a good example -- they can simply say,  
13 "We believe that these documents are connected and here's -- here  
14 are documents that are connected to -- for instance, document A  
15 is connected to document B to document C so for you to look at it  
16 and for the parties to look at it and to examine it".

17 But we submit -- we submit, as I said yesterday, you cannot give  
18 us the haystack, the proverbial needle in the haystack. Give us  
19 the needle.

20 We should not be expected to sift through all of these documents  
21 to figure out where the Prosecution is going if, indeed, the  
22 Prosecution has the burden of proof.

23 [11.27.49]

24 And finally, perhaps because we are here -- perhaps we are here,  
25 Your Honours, because, through no fault of the Prosecution, but

1 perhaps because they didn't foresee it and -- though they should  
2 have. The procedure that we have adopted in this Court because  
3 these are -- this is an Extraordinary Chamber and this is an  
4 extraordinary case, is slightly different than what normally  
5 would happen if we were in -- in the pure civil law French  
6 system, either Cambodia or France, because here you have this  
7 dossier -- and we agree that, you know, the dossier is the  
8 universe of the facts upon which you can draw from, you know.  
9 That's the universe of evidence, in a sense, unless some -- a  
10 party demonstrates otherwise from documents outside. So everybody  
11 has that.

12 [11.28.52]

13 But under the system that I understand it, the judges are  
14 supposed to read the entire dossier and the judges are actually  
15 leading the process whereas, here, we have taken a slight  
16 variation and that is asking the parties to identify what  
17 documents they believe are necessary to prove or disprove the  
18 case. That is based on the Closing Order.

19 [11.29.20]

20 And it might be because the Prosecution is no longer the captain  
21 of its own ship because they have a case, in a sense, but their  
22 case is not being presented in the fashion in which they wish to  
23 present it because the Trial Chamber is dictating the order of  
24 the witnesses. In an adversarial system or a party-driven system,  
25 the parties are the captain of their own ship. They determine the

49

1 course they wish to set, who the witnesses are, in which order,  
2 what documents with each witness, and what have you.

3 So we are in somewhat of a slight different situation. I'm not  
4 being critical of the Trial Chamber. It is what it is.

5 [11.30.10]

6 But be that as it may, we believe and we submit that in order to  
7 avoid future objections, it is best for the Prosecution to  
8 demonstrate through witnesses, not through their mouths, not by  
9 testifying, why they believe certain types of evidence, whether  
10 they be the Revolutionary Flag, CPK meetings, telegrams or what  
11 have you, why they believe these documents are authentic.

12 [11.30.42]

13 The methodology, it's not difficult. They know their case. They  
14 can identify those witnesses and I submit, Your Honours, they  
15 could be of assistance to not just the Trial Chamber, but also to  
16 the parties. And this may be something worth considering.

17 I thank you very, very much for your attention. And if there are  
18 any questions, I'll be happy to answer. Otherwise, I'll sit down.

19 Thank you very much.

20 [11.31.16]

21 MR. PRESIDENT:

22 Khieu Samphan's defence, now you have the floor to present your  
23 objections to document A3 in the annex.

24 MR. KONG SAM ONN:

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

1 morning, everyone.

2 Regarding Annex 3 of the OCP document, the Prosecution intends to  
3 show some relevancy in those documents.

4 [11.32.30]

5 There are only 27 documents that have been attempted by the  
6 Prosecution to show its -- to show their relevance. The rest of  
7 the documents have been categorized into like minutes of the  
8 meeting of the Standing Committee, minutes of the meeting of the  
9 Government of Democratic Kampuchea, minutes meeting of the  
10 Assembly, of the DK government, and, number 4, the minutes of the  
11 meeting of -- on other occasions.

12 In general, in this annex our objections are the same as those  
13 for annex A2. What has been stated by the Prosecution fails to  
14 prove the consistencies in the chains of custody or the  
15 authenticity and not the fabrication in any of those documents.

16 [11.34.04]

17 This does leads to doubt and, for that reason, we urge for the  
18 examination of those people who delivered the documents.

19 I'd like to touch upon the minute of the meeting of the Standing  
20 Committee. The minutes of the meeting of the Standing Committee  
21 mostly were found in the same circumstances where the decisions  
22 dated 30 March 1976 was found, that is, document D279/2 -- slash  
23 7, rather, point 2. And I already mentioned this document  
24 yesterday regarding the doubt or the unverifiable sources of how  
25 the document was obtained.

1 [11.35.35]

2 Secondly, regarding the minutes of meeting of the DK government,  
3 we have two documents in this category. They are the minutes of  
4 the meeting between the foreign delegation and the -- that is,  
5 the Chinese delegation with the Cambodian delegation.

6 What has been illustrated by the Prosecution regarding these two  
7 documents indicating the reliability is that, in the first  
8 document, the Prosecution indicated that it was obtained from the  
9 Prime Minister Hun Sen, who gave it to DC-Cam, and that was in  
10 1995.

11 So the relevancy here is that only when Hun Sen gave the document  
12 to the DC-Cam it would make the document reliable. Is that the  
13 case?

14 What we really want to know is that back in 1995 how the Prime  
15 Minister Hun Sen received that document and from whom and how.  
16 This is in order to verify whether it was an original copy or it  
17 was a copy of the original copy so that we can test its  
18 reliability.

19 [11.37.56]

20 The Prosecution also stated that the content of that document was  
21 verified by a witness, that is, witness TCW-583, before the  
22 Co-Investigating Judges. That limit of information cannot be  
23 assessed as the document is authentic or reliable.

24 The person who handed the document needs to be questioned as to  
25 how he received the document and when, and under what

1 circumstances.

2 For the second document, the Prosecution confirmed that it was  
3 collected from DC-Cam and DC-Cam received from the Tuol Sleng  
4 archives in 2002. They also provided another piece of  
5 information. I correct, the Prosecution did not provide any  
6 further information regarding how the document was maintained  
7 before it was in the hand of DC-Cam.

8 [11.40.06]

9 I apologize, Your Honour. Let me correct. It was not sure how the  
10 document was maintained before the Tuol Sleng archives received  
11 it, for example, how the document was found, by whom and how was  
12 it delivered to the National Archives.

13 These pieces of information could link and prove the source and  
14 the reliability of that document.

15 The third category of document: the minutes of the meeting of the  
16 People's Representative Assembly of the Democratic Kampuchea.

17 The Co-Prosecutor asserts that one of the documents that can be  
18 constituted the People's Representative Assembly meeting minutes  
19 is due to the fact that that document contains the specific  
20 words, "American imperialist", and these mere American  
21 imperialists were taken as an example that the prosecutor would  
22 have Your Honour believe that this document is the meeting  
23 minutes of the People's Representative Assembly and this will  
24 serve the ideology of the Democratic Kampuchea.

25 [11.42.09]

1 As a matter of fact, the word "American imperialist" was a  
2 general word that has been widely used even before 1970, so by a  
3 mere use of words "American imperialist" was not by any way  
4 sufficient to say that that was the thing used in the Democratic  
5 Kampuchea.

6 In addition, there are two more documents in this category of  
7 documents which the Prosecution have asserted. According to the  
8 prosecutors, one of the documents, a person, TCE-38, gave it to  
9 the Documentation Centre of Cambodia in 1996.

10 The legitimate question arises here. We do not know the person  
11 named TCW-38 (sic) received this document. We did not know how he  
12 gathered this document in the first place and by whom he received  
13 the document from.

14 [11.44.06]

15 In addition, there were contradictory information regarding the  
16 provenance of the documents. There were other documents that did  
17 not corroborate with those documents submitted by the  
18 Prosecution.

19 Finally, Your Honours, I think the indicia of reliability  
20 presented by the Prosecution vis-à-vis the document they  
21 proffered are not reliable. Once again, I insist that the Chamber  
22 examines the indicia of reliability precisely. And there is means  
23 to do this objectively, that is, to summon the person who keeps  
24 the custody of the documents so that there is an opportunity for  
25 parties to cross-examine with such witness to establish the

54

1 reliabilities and authenticity of those documents.

2 Thank you, Your Honours.

3 MR. PRESIDENT:

4 Thank you, Counsel.

5 It is now time to take lunch adjournment. We will adjourn until

6 1.30, so the Chamber will resume at 1.30.

7 The security guards are instructed to bring Mr. Khieu Samphan to

8 the holding cell downstairs, and please bring him to this

9 courtroom by 1.30. Thank you.

10 (Court recesses from 1146H to 1335H)

11 MR. PRESIDENT:

12 The Court is now back in session.

13 Before the break, this morning, we heard the objections by the

14 three defence teams on Annex 3. For that reason, the floor is now

15 open for the Prosecution -- the Lead Co-Lawyers to present their

16 arguments to those objections.

17 Before I hand over to the Prosecution, I'd like to inquire with

18 the Co-Prosecutors to make their observations regarding the

19 request by Nuon Chea's defence that the Prosecution shall provide

20 the identification of all documents received from DC-Cam so that

21 it would assist them in their debates and in their questioning of

22 the witness, who is a representative of the DC-Cam management who

23 will be summoned early next week.

24 [13.38.25]

25 If you have any observations to make, the Prosecution may take



1 the floor.

2 MR. DE WILDE D'ESTMAEL:

3 On that preliminary matter, Mr. President, at first sight it  
4 seems that we have the elements that make it possible for us to  
5 say which documents come from DC-Cam. You would have seen in our  
6 document E/158 that each time we have information on papers that  
7 have been commented on in that document, we have provided them.  
8 To make a table of all of that information would take a certain  
9 amount of time, and we're not sure that we'll be able to do this  
10 by Monday's hearing. Thank you, Mr. President.

11 MR. PRESIDENT:

12 Thank you, Prosecutor.

13 [13.39.50]

14 The Chamber will now make some observations regarding the request  
15 by the defence team of Nuon Chea this morning.

16 The Chamber is of the opinion that there should be no issues  
17 regarding the statement made by the Prosecution this morning,  
18 concerning Rule 87.3, that the Chamber will hear the testimony of  
19 any witness or expert and we will also examine other evidentiary  
20 material before coming to a final conclusion.

21 And in order to clarify the matter further, I'd like to hand the  
22 floor to Judge Claudia Fenz, in English.

23 JUDGE FENZ:

24 I believe there was a problem in the English translation.

25 This actually pertains to a request from defence of Ieng Sary,

56

1 and I think it was abundantly clear the Chamber doesn't take  
2 issue with the way the Prosecution presented its arguments, and  
3 it will decide when or if it takes it up on its offers of proof.

4 MR. PRESIDENT:

5 Thank you.

6 [13.41.30]

7 Another matter that the Chamber would like to inquire from the  
8 parties regarding Case 002, in particular in the questioning time  
9 to two witnesses, TCW-766 and TCW-542. The Chamber does not need  
10 to get the confirmation of time at this stage, but we would  
11 insist to have your confirmation by tomorrow so that we can take  
12 that into account in our scheduling for the trial.

13 I notice the defence team is on his feet. You may proceed.

14 MR. PESTMAN:

15 Thank you very much.

16 [13.42.57]

17 We will be more than happy to provide you of an estimate of the  
18 time we think we need to question the DC-Cam witness.

19 Has he been invited for one day or is -- have more days been  
20 reserved to hear this particular witness? Can you give me any  
21 indication?

22 (Judges deliberate)

23 [13.44.49]

24 MR. PRESIDENT:

25 There are two issues at hand.

1 First, in the hearing of the testimony of the witness that will  
2 be summoned from the DC-Cam, the questioning will be in a general  
3 context regarding the general operation of DC-Cam. It is not a  
4 detailed proceeding of questioning the person on each piece of  
5 document.

6 Secondly, the Chamber wishes to know the estimated time by each  
7 party that they wish to take in questioning these two witnesses,  
8 that is TCW-766 and TCW-542.

9 After we have all the information at hand, we will issue our  
10 decision in due course and to allocate appropriate time for  
11 parties for questioning these two witnesses.

12 I believe the matter is now clear, so it is not proper when we  
13 put a question to parties and then you question us back.

14 You can make your preliminary estimation of time you need to  
15 question. We will gather all the information and the time that  
16 you request and then we would schedule it accordingly so that the  
17 trial is expeditious.

18 [13.46.52]

19 We now hand the floor to the Prosecution. You have 45 minutes to  
20 present your arguments in response to the objections raised by  
21 the three defence teams regarding the A3 annex.

22 MR. DE WILDE D'ESTMAEL:

23 Thank you, Mr. President.

24 [13.47.25]

25 Distinguished Judges, after the statements made by the Defence

1 this morning, I think it is wise to come back to the legal  
2 criteria that pertain to this Chamber. There are minimum  
3 standards of relevance and reliability according to your past  
4 jurisprudence and according to your first impression, do the  
5 documents submitted to you seem to you to be relevant and  
6 reliable, or are they plainly likely to be false or forged.  
7 We believe that the chain of reliability and this establishment  
8 is not one of your duties, contrary to what the Defence seems to  
9 pre-suppose. For the thousands of documents before you, it is not  
10 necessary for you to say who found it, who gave it to who, and in  
11 what circumstances because it is on the basis of an internal and  
12 external index of reliability that this works, and not only on  
13 the basis of the chain of preservation.  
14 [13.48.53]  
15 You have to see in your view, therefore, if the documents in  
16 Annex 3 seem to you to be reliable or pertinent.  
17 I heard what your -- the members of this Chamber have said about  
18 Rule 87.3, but I would like to answer what counsel Karnavas said  
19 just now. He requests that the prosecutors submit the proof of  
20 reliability and relevance and, at the same time, he reproaches us  
21 for testifying on this subject. He wishes to reduce the  
22 Prosecution to silence.  
23 And what we have been doing since the start of this portion of  
24 the hearing is not to testify, but to present our viewpoint on  
25 evidence which exists already in the files and which is already

1 in your possession. The Defence is entirely free to do the same  
2 thing.

3 Can we be reproached for highlighting the internal and external  
4 characters of each group or sub-group of documents? It's our role  
5 to do so. It's not only that; it's also our duty.

6 [13.50.18]

7 Among the 58 documents in the Annex 3 category, 27 were commented  
8 upon in our document E/158, and I will occasionally refer these  
9 to the Chamber. If 31 sets of minutes are not count, covered by  
10 these comments, it is because the comments themselves were  
11 limited to the 978 documents under consideration by the  
12 Co-Prosecutors as being connected with the eight first witnesses  
13 and civil parties.

14 In this category of minutes of meetings, you will find 23 from  
15 meetings of the Standing Committee, 26 from meetings of a  
16 military nature, six from Democratic Kampuchea government  
17 meetings, including two meetings of the Council of Ministers and  
18 two internal Ministerial meetings.

19 You will also find three sets of minutes from meetings connected  
20 with international trade, and there are also minutes of the  
21 People's Assembly of Democratic Kampuchea, and on that latter  
22 document I will refer to the example that I gave when I was  
23 talking about Annex 2 this morning.

24 [13.51.50]

25 Turning to the Nuon Chea defence team, let me say that concerning

60

1 the fact that some documents may be illegible -- let me say both  
2 to the Bench and to the public that they are easier to read on  
3 ZyLAB, that when they, than when they are put on the screen in  
4 this Chamber.

5 Yes, they can be difficult to read, but it does not seem to me  
6 that they are illegible because they have been translated into  
7 English and French and the translations are in the file. Even if  
8 it was established that a line or a paragraph of a document was  
9 not legible, that would not per se call into question the  
10 reliability of those parts of the document that are perfectly  
11 legible.

12 As to the question of the relevance of the 58 documents in  
13 connection with Case 1, the Nuon Chea defence seem to forget that  
14 the first part of the trial is not only connected with forced  
15 movement of persons, phase 1 and 2, but it is also connected with  
16 certain sections in the Closing Order, of which the Chamber has  
17 provided the detail, actually giving the numbers of the  
18 paragraphs concerned.

19 [13.53.20]

20 The minutes in Annex 3 are all directly pertinent as regards the  
21 central administrative structure and the structure of the  
22 Revolutionary Army of Kampuchea, certainly one or the other.

23 If you read the minutes of the Standing Committee meetings, you  
24 can see the composition of the committee. You can understand the  
25 hierarchy inside it and the role of the Accused also emerges. And

61

1 when you read them, you understand how the leaders of Democratic  
2 Kampuchea interacted among each other in what was a joint  
3 criminal enterprise and we understand how the regime worked,  
4 structurally speaking, who is taking the decisions and how they  
5 were referred downwards to the lower grades in the hierarchy.

6 If you look at the minutes of military meetings, you will  
7 understand the detailed military structure of the Revolutionary  
8 Army of Kampuchea and its prime missions. All of these sections  
9 of the Closing Order, whether the Defence likes it or not, are  
10 part of the file for this first trial. Others are directly  
11 connected with phases 1 and 2 and transfer of the population.

12 [13.55.10]

13 If I just take a couple of examples from my document E109/4.3  
14 concerning the first phase of the trial, you will see in the  
15 final column under the points in the Closing Order, all of the  
16 relevant points are entered in there alongside each one of the  
17 documents, IS 13.7, for example.

18 Now, that's a set of minutes of the Standing Committee which met  
19 on the 8th of March 1976, minutes of a meeting on propaganda, and  
20 it is relevant when talking about the Standing Committee, which  
21 belonged -- was part of the Central Committee.

22 [13.56.14]

23 This helps us understand how communication worked within the  
24 Central Committee, the way government radio was used and also how  
25 the Accused were working, whether they were in the Central

1 Committee or the Standing Committee.

2 Document IS 13.4 (sic) is a typical example of minutes of  
3 military meeting from the 9th of November 1976. It was a meeting  
4 of secretaries and deputy secretaries of the division.

5 This tells you a lot about the structure of the party; it tells  
6 you a lot about the military structures, the chiefs of staffs and  
7 how they communicated with each other and how they communicated  
8 with the divisions and with the central core of power.

9 [13.57.16]

10 There are two basic types of documents that I want to analyze.

11 Firstly, the minutes of the Standing Committee, and secondly, a  
12 certain number of military meeting minutes.

13 The CBK meeting minutes first, and that is to say, the minutes  
14 that are still extant.

15 The accused Khieu Samphan stated on the 23rd of November 2011  
16 before this Chamber that there were hundreds of thousands of  
17 pages in the file and he said:

18 "If you had read them, would you have dared claim I was a member  
19 of the Standing Committee of Kampuchea Communist Party? In fact,  
20 none of these documents designate me as a member of the Standing  
21 Committee and, in fact, you only have 19 copies of minutes of  
22 these meetings out of the 150 or 200 meetings that must have been  
23 held between 1975 and 1979."

24 [13.58.46]

25 He then went on to say:



1 "If you had read that file, would you have read it -- dared to  
2 suggest that I was implicated while, in fact, out of those 19  
3 sets of minutes, I attended 14 of the meetings, but I only spoke  
4 twice on subjects that I was empowered to discuss, but which had  
5 absolutely no rapport with the crimes that I am accused of."

6 [13.59.32]

7 And as you will have understood, Khieu Samphan was addressing  
8 himself particularly to the Co-Prosecutors in that statement.  
9 That's in the transcript of the hearing of the 23rd of November,  
10 which is E1/15.1. It's between 9:52 and 9:54 in the morning for  
11 those who want to look more closely.

12 I'm sure, Mr. President, you can perfectly well remember those  
13 things being said in the Chamber by the Accused, who, as we see  
14 it, was authenticating these 19 minutes. In fact, if you count  
15 them more carefully, there are 22 of these sets of minutes.

16 [14.00.28]

17 On the 19th of November 2007 during a confrontation before the  
18 Co-Investigating Judges, Khieu Samphan had also acknowledged that  
19 he had participated in several meetings of the Standing  
20 Committee. I quote the following:

21 "It's true that I had participated in several of these meetings,  
22 during which we discussed general problems such as national  
23 defence, national reconstruction, Vietnam, or the resignation of  
24 Norodom Sihanouk." End of quote.

25 I'm referring to document C25, page 6 of the English version. In

64

1 his publication of 2007, "My Considerations on the History of  
2 Cambodia", Khieu Samphan asserted that Pol Pot, Nuon Chea, and  
3 himself were present at the meeting of 14th of May 1976. You will  
4 find this statement under document ERN 00498263 to 64, in French  
5 00643868 to 69, and in Khmer 00380427 to 28.

6 Khieu Samphan also said in that very same passage that the  
7 minutes of another meeting that was held in 1976 focused on  
8 discussions of rice rations and he said that those minutes were  
9 only distributed to fewer than 10 people and that they bore the  
10 mark of a strictly confidential classification.

11 [14.02.29]

12 Based on what was said this morning, I gather that defence for  
13 Khieu Samphan has challenged the reliability of not only these  
14 military documents, but also on the minutes of the Standing  
15 Committee.

16 I therefore wonder how defence for Khieu Samphan can, indeed,  
17 challenge the reliability of these documents based on the grounds  
18 that the chain of custody of these documents has not been  
19 established, whereas Khieu Samphan has actually affirmed before  
20 this very Chamber that he did attend those meetings for which  
21 there are recorded minutes.

22 [14.03.22]

23 I would certainly hope that Khieu Samphan and his defence would  
24 be able to elaborate on their stance, or if indeed they have the  
25 mandate from their client to do so. This position means that they

1 have no problem in acknowledging the reliability of the existence  
2 of these minutes.

3 You will also see, in documents E61/6.2 (sic), the Khieu Samphan  
4 defence team has stated its intention to admit before this  
5 Chamber three sets of minutes of the Standing Committee. In those  
6 very documents -- or rather, we have no objections to the  
7 admission of those documents. Those are minutes of the Standing  
8 Committee meeting held on 9 October 1975, which bear the document  
9 number IS 13.2, reference IS 13.11 in addition to D279/7.2, at  
10 the conclusion of the meeting of 29th of April 1979 (sic), which  
11 is held under documents IS 13.14 and D270/7.1 (sic).

12 These three documents are not contested. They display the same  
13 internal and external characteristics, and if they have no  
14 challenge to those documents, then therefore, it cannot challenge  
15 the documents that we have identified.

16 [14.05.30]

17 We also contend that the defence for Ieng Sary and Nuon Chea,  
18 their clients had actually met with Khieu Samphan during those  
19 meetings.

20 Is there any doubt that hovers over some of the statements that  
21 were made by those participants and that these documents do  
22 present prima facie reliability and, therefore, be admitted into  
23 evidence.

24 The question has been asked and we certainly look forward to the  
25 reply of the Defence.

66

1 Those, Your Honours, are my comments on the meeting -- the  
2 minutes of the meetings of the CPK Standing Committee. I can  
3 further elaborate on the subject and tell you the following, Your  
4 Honours.

5 [14.06.38]

6 Eighteen of those 19 minutes of meetings contain the names of the  
7 participants of those meetings. According to these very  
8 documents, Nuon Chea was present at those meetings. Pol Pot had  
9 participated in 17 of the 18 meetings. Khieu Samphan had  
10 participated in 15 of the 18 meetings, and Ieng Sary had, in  
11 fact, participated in eight of those meetings -- or 10 of those  
12 meetings [corrects the interpreter].

13 All of these documents bear the same formatting and contain the  
14 same characteristics. The subjects that were addressed during  
15 those meetings as recorded in the minutes were obviously subjects  
16 that would have been discussed by the most senior echelons of the  
17 CPK and conform to other CPK documents.

18 Subjects that were discussed include national defence, foreign  
19 affairs, which were most frequently brought up in at least 15 of  
20 these minutes.

21 The conclusions of some of these minutes are also corroborated  
22 further by witnesses, including TCW-583, who had confirmed and  
23 corroborated the content of two of the minutes of those CPK  
24 meetings with respect to the trade and commerce matters that were  
25 conducted during the DK regime. He was also able to corroborate

1 information concerning the roles of several committees and  
2 branches within CPK.

3 [14.08.46]

4 In document D311/2, a witness had identified four of these  
5 meeting minutes and confirmed that DC-Cam had indeed been in  
6 possession of the original copies. I'm referring here to document  
7 IS 13.1, IS 13.24, and IS 13.25 (sic), and IS 13.2. Twenty of  
8 these 22 minutes of the meetings of the CPK Standing Committee  
9 were collected by DC-Cam by TCE-38.

10 Expert TCE-38 is in a position to confirm the exact circumstances  
11 in which he was able to gather these documents. An initial  
12 indication is set out in D67/5/1.25 (sic) on page 3, which is  
13 only available in the English language.

14 [14.10.07]

15 In the introduction of this document, the witness states under  
16 document IS 14.1 exactly how this document was obtained in  
17 addition to the minutes of these party meetings. He explains that  
18 these documents were given to him by another individual at the  
19 residence of Ieng Sary during the time of Democratic Kampuchea.  
20 Be that as it were, to the extent that Khieu Samphan has  
21 acknowledged the validity of these 19 minutes of meetings, the  
22 issue of the chain of custody obviously becomes much less  
23 significant. We have said that it is only one indicator of  
24 reliability that you can rely upon, Your Honours.

25 Two other meeting minutes were obtained by DC-Cam through the

68

1 Ministry of Foreign Affairs in 1996. Twenty-one of these 22  
2 meeting minutes were obtained by the Office of the Co-Prosecutors  
3 and identified in the introductory submission of July 2007. They  
4 were placed on the case file by the Co-Investigating Judges  
5 during the judicial investigation.

6 [14.11.42]

7 And lastly, 17 of these minutes have been admitted into evidence  
8 by Your Honours during Case File 001.

9 Very briefly, I would like to provide a few examples of external  
10 corroboration of the content and substance of these party meeting  
11 minutes. This will allow you, Your Honours, to fully understand  
12 that these decisions were acted upon. Allow me to give four  
13 examples.

14 Three of those party meetings had spoken of the necessity to  
15 mount a military structure. I refer to IS 14.1 (sic), document  
16 dated October 1975, IS 13.5, and IS 13.14 dated 19 April 1976.  
17 In these first two documents, it is stated that new locations  
18 were identified. They include the Kampong Chhnang Airport.

19 [14.13.18]

20 In the third set of meetings of the 3rd of April 1976, the CPK  
21 Standing Committee had, indeed, already decided upon the location  
22 of the construction of a new airport and it was indeed Kampong  
23 Chhnang.

24 We have a multitude of written testimonies of witnesses who were  
25 heard before and by the Co-Investigating Judges on the matter of

1 the construction of this new airport which did indeed begin at  
2 the very start of 1976 when the first construction crews were  
3 dispatched.

4 In document D66/110 (sic), witness P-243, on page 4, explains  
5 that he was sent to Kampong Chhnang on the 4th of February 1976  
6 with a certain number of other people in order to work the land,  
7 and ten Chinese people.

8 There are other testimonies which are contained in document  
9 D232/1 (sic) as well as D232/89, which are testimonies of those  
10 who worked in those -- at those work sites at the beginning of  
11 1976.

12 [14.15.10]

13 A second example concerns the meeting minutes classified under IS  
14 13.3.

15 In that document, there's a description of Ieng Sary's visit to  
16 Thailand. This event is corroborated by a media article that was  
17 published in the "New York Times", which announces the arrival of  
18 Ieng Sary in Thailand on the 28th of October 1975. This is a  
19 one-page media article that is classified under D66-Doc.049  
20 (sic).

21 In document IS 20 (sic) dated the 20th (sic) of May 1976, there  
22 is mention of his participation in the Colombo Conference of  
23 Non-Aligned Countries. This is further reinforced by two reports  
24 broadcast by Phnom Penh radio and that are repertoired in the  
25 Foreign Broadcast Information Service documents bearing the

1 document number D262.21.

2 [14.14.47]

3 In that very same document, but under the date August 16th 1976  
4 and in the days following, the activities of Khieu Samphan and  
5 Ieng Sary are laid out in detail. Their activities are the  
6 Colombo conference, that is.

7 On the 13th of March 1976, there was also discussion of the  
8 creation of a committee to examine and prepare merchandise to  
9 order and purchase. It identifies Hem, that is Khieu Samphan. It  
10 also identifies Van, Ieng Sary, as members of this committee or  
11 honorary members or consultants, if you will.

12 This document bears the number IS 13.11 or D279/7.2.

13 During adversarial proceedings, Khieu Samphan said that from  
14 office C25 he was the one responsible for setting out the rules.  
15 This is on page 4 of the French version.

16 [14.18.14]

17 Furthermore, you will see that on the case file there are many  
18 documents that were sent by Khieu Samphan. They deal with trade  
19 matters and other matters that he was directly responsible for,  
20 including material on the import and export of merchandise. And  
21 here I cite IS 13. - or rather, IS 18.18, and D276.1.48 (sic),  
22 which pertains to a list of materials that were imported from  
23 China overseas -- over sea, rather.

24 [14.19.11]

25 I will refer again to the military minutes that we have



71

1 identified in Annex 3 of our document list.

2 Of these 26 documents, there are at least 15 minutes of meetings  
3 of the deputy secretaries as well as secretaries of zones and  
4 regiments. There are also minutes of the meetings of the economic  
5 sections. These documents discuss a clear division and  
6 demarcation of branches and organs within CPK structure.

7 All of these documents were produced during a very specific time  
8 frame. You will note that all the participants are the same. They  
9 refer to Brother 89 -- that is Son Sen -- who presided over many  
10 of these meetings, or leaders of Division 306 (sic), which was  
11 led by Oeun, spelled O-E-U-N, division 450, (no interpretation),  
12 as well as division 103 (sic) that was led by Pin, and another  
13 division led by Met, division 90 (sic) led by Tal, division 164  
14 led by Mut, who were consistently present and who consistently  
15 were accountable and reporting to Son Sen.

16 [14.21.22]

17 There were occasions where Kaing Guek Eav, alias Duch, was also  
18 present. Generally speaking, Son Sen had forwarded final  
19 recommendations after having heard from the participants.

20 You will also see that there were other senior leaders who were  
21 present at these meetings, including Vorn Vet and Pol Pot.

22 There were some meetings that only summoned members of Office 730  
23 (sic) and S-21.

24 We believe that it is also worth pointing out that some of the  
25 items on the agenda of these meetings reinforced the mandate and

1 mission that was given to the RAK, as laid out in document IS  
2 9.2.

3 [14.22.21]

4 Article 19 of the Constitution defines the mission as the defence  
5 of principles, as the proper defence of the country, and the  
6 defence of the edification of the country.

7 The CPK statutes under IS 9.1 under article 27 confirm that, in  
8 effect, the army has the responsibility for domestic security as  
9 well as external security and that it also must participate  
10 actively in the edification and building of the country.

11 [14.23.06]

12 The Standing Committee meeting of the 30th of May 1976, reference  
13 IS 36.21 (sic), deals with the agricultural production of the  
14 army. This document confirms the role of the centre -- of the  
15 Standing Committee as well as that of the army.

16 The meeting of the 30th of May 1976 was followed immediately by  
17 regular meetings that are corroborated by the successive meetings  
18 and which continue to deal with agricultural production.

19 We can also note that at least 26 minutes of meetings there was  
20 discussion of rice production, agricultural production, the  
21 identification and elimination of enemies and traitors, conflict  
22 with Vietnam, and the need to reinforce the political education  
23 of soldiers working for the party.

24 [14.24.32]

25 While initially agricultural production seems to be a recurring

1 theme, it becomes obvious that the elimination of enemies and  
2 traitors becomes a more prevailing subject that dominates the  
3 agenda as the year goes on.

4 Again, one of -- all of these documents bear the same markings  
5 and same formatting. They contain the same terminology, the same  
6 -- and language. They use terms such as "socialist revolution",  
7 "smashing of the enemy", "smashing of the traitor",  
8 "revolutionary vigilance", "purge", "secrecy" or, as was  
9 mentioned by the Defence earlier on, "American imperialism."

10 Kaing Guek Eav, alias Duch, had himself identified in document  
11 D86.13 the very exact information that I have just presented to  
12 you.

13 [14.25.58]

14 Twenty minutes of military meetings have also been admitted by  
15 the Trial Chamber during Case File 001.

16 This brings me to my conclusion. I will not elaborate further on  
17 the remaining documents, since we have discussed them extensively  
18 since Monday. They are dealt with in document E/158.

19 In conclusion, Your Honours, it is our view that the elements  
20 that we have put before you today and in our written submission  
21 are such that the indicia of reliability and the external and  
22 internal characteristics do indeed meet the threshold of this  
23 Chamber to admit them into evidence by Your Honourable Chamber.

24 I thank you, Mr. President.

25 [14.27.03]

1 MR. PRESIDENT:

2 I now hand the floor -- hand over the floor to the Lead  
3 Co-Lawyers to respond to the objections by the defence teams to  
4 the Annex 3, so you have 15 minutes to make such submission.

5 MS. SUTZ:

6 Thank you, Mr. President. Good afternoon, members of the panel.  
7 Good afternoon to everybody.

8 I will not take up much of your time because the question of  
9 minutes of CPK meetings has been very amply covered by the  
10 Co-Prosecutors and because, in fact, we are talking about  
11 documents that have been proffered by the Prosecution. And we do  
12 not believe it is the primary role of the civil party lawyers to  
13 come up with technical responses to the objections of the  
14 Defence, insofar as we are dealings with technical ones.

15 [14.28.15]

16 I will limit myself, therefore, to some general and brief remarks  
17 on the nature and quantity of objections that have been raised by  
18 the Defence, in connection with the law as it applies. It has  
19 been repeated time and again over the last few days, and the  
20 Defence has accepted this -- admitted that the exceptions that  
21 they have raised are relatively general and pretty repetitive.  
22 The -- it seems as if the defence for Ieng Sary is copying and  
23 pasting the same objections about relevance and authenticity, and  
24 we are hearing time and again from the Nuon Chea team that we  
25 have absolutely to hear Mr. Youk Chhang.

75

1 I think, frankly, that a point has been missed here. The Defence  
2 seems to be wanting to have a debate, not about admissibility --  
3 a debate about probative value rather than advice about  
4 admissibility. And the Judges -- for the Judges, all evidence is  
5 admissible, and it is up to the Judges, the Bench, to evaluate  
6 the evidence as they see fit. It is worth bearing this particular  
7 principle of all evidence being admissible in mind, because it  
8 means that any form of proof is a priori admissible before this  
9 Chamber and that the value of evidence, the probative value of  
10 evidence is to be evaluated by yourselves at a later stage. There  
11 are, of course, exceptions to that principle, but the exceptions  
12 are only admissible in specific cases provided for in the  
13 Internal Rules which pertain to the nature of each and every --  
14 each document for the specific objection to be accepted by this  
15 Court.

16 [14.30.27]

17 If we apply the criteria of authenticity, reliability, and  
18 relevance under the civil law, I believe, as the Co-Prosecutor  
19 said, these should be interpreted in a very strict way. Which  
20 means, more precisely, that if a given document is not believed  
21 to be relevant because it concerns another period other than  
22 Democratic Kampuchea, it may not be considered reliable because  
23 prima facia it seems to be a forgery. In such cases, yes, there  
24 are exceptions.

25 [14.31.12]

76

1 That, as I see it, is the real sense of any kind of prima facia  
2 test of admissibility. Only if it seems perfectly obvious that  
3 the reliability, authenticity or relevance of a document has to  
4 be challenged for precise reasons should it, therefore, be  
5 rejected. Admissibility of evidence does -- is not, in itself, a  
6 criterion of the probative force of that document, subsequently,  
7 and that is where, as I said, the Defence seems to be picking up  
8 the wrong debate. We're not having a debate at this stage about  
9 the probative value. That will take place later.

10 I had a few remarks also to make about reliability and relevance  
11 of the meetings of the Standing Committee. However, the subject  
12 has been rather amply covered by my learned friend from the  
13 Co-Prosecution, so I will simply say that while the three Accused  
14 seem to be challenging the reliability of the minutes of the  
15 Central Committee meetings while, at the same time, it's been  
16 broadly proven that three -- two out of the three Accused are  
17 members of the Central Committee and the third attended a number  
18 of its meetings, who better than them to testify on the  
19 reliability of those minutes?

20 [14.32.53]

21 Thank you, Mr. President.

22 MR. PRESIDENT:

23 Thank you, Lead Co-Lawyer.

24 The time is now appropriate for a break. We shall take a  
25 20-minutes break and we resume after.

1 (Court recesses from 1433H to 1453H)

2 MR. PRESIDENT:

3 You may be seated. The Court is now back in session.

4 We will now continue to hear the objections to documents in A4  
5 annex. For these objections to A4 annex, each defence team has 40  
6 minutes to present their objections unless you agree to  
7 reallocate the time among yourself.

8 [14.54.59]

9 Nuon Chea's defence team now has the floor to present your  
10 objections.

11 MR. SON ARUN:

12 Good afternoon, Mr. President, Your Honours.

13 I still maintain my position in regard to the authenticity of  
14 Annex 4, which is the subject of our discussion this afternoon.  
15 My position is the same as that of the objections to Annex 3. The  
16 locating of these documents should not be that difficult, based  
17 on the records of interviews of the Office of Co-Investigating  
18 Judges and their investigators with the Director of DC-Cam.  
19 As reflected in document D204/4, a senior officer of DC-Cam  
20 informed the investigator of the OCIJ that he has all these types  
21 of the original documents. This is clearly a positive thing in  
22 order to assist the Prosecution in locating the original  
23 documents to be submitted before the Trial Chamber and if the  
24 witness -- if that witness can present the original documents to  
25 the Chamber.

1 [14.57.31]

2 I would also appeal to the Chamber to summon witnesses who  
3 provide the correspondence from the upper hierarchy to the lower  
4 hierarchy, including the telegrams in order to verify whether  
5 those telegrams are the actual telegrams used during the DK  
6 period.

7 [14.58.02]

8 In Annex 4, as I stated, is all want to say, but I would hand  
9 over the floor to my colleague.

10 MR. PRESIDENT:

11 The international defence counsel, you may proceed.

12 MR. PESTMAN:

13 Thank you very much, Mr. President. I won't need much time,  
14 certainly not the 40 allocated minutes. But before I start, I  
15 would just like to inform the Court that an hour ago, during the  
16 prosecutor's response to our objections, our client fell asleep.  
17 I understand that by now he is awake and he will strive to follow  
18 the procedures in the holding cell, but he hasn't been following  
19 all afternoon. He's been very weak. Following the trial even on a  
20 screen is very tiring. He has signed a waiver on Monday, also for  
21 today, and the remainder of the week so there's no problem to  
22 continue in his absence.

23 I had a few short remarks with regard to the documents presented  
24 in Annex number 4. But first of all, to be absolutely clear, I  
25 would like to repeat what we have said about the other



1 categories, all DC-Cam documents. It is our position cannot be  
2 admitted unless the DC-Cam director, Youk Chhang, is going to be  
3 heard in Court, and we are given the opportunity to question him  
4 on all the documents DC-Cam has provided to the prosecutor and  
5 the Office of the Co-Investigating Judges.

6 [14.59.55]

7 Again, it is for us very difficult to find out or to establish  
8 which documents exactly in Annex 4 were given, handed over by  
9 DC-Cam, and that is why we would like to repeat our request to  
10 provide us with a list indicating which documents the prosecutor  
11 or the Office of the Co-Investigating Judges received from  
12 DC-Cam. I understand now that it is possible to make such a list,  
13 but that it might take more time than envisaged. But even so, we  
14 would like to receive such a list, if not on Monday maybe it's  
15 possible to produce that on Tuesday while we are still, as I  
16 understand, hearing witness number 766.

17 [15.00.46]

18 Of course, as I said earlier this morning, we are not only  
19 objecting to those documents on the basis of their reliability,  
20 their lack of authenticity.

21 We also object to those documents, at least in some cases,  
22 because they lack the necessary relevance for the first mini  
23 trial. I will not go through the entire list because the list is  
24 very long, as you know, 78 pages.

25 I just want to give some examples of documents which, according

80

1 to the prosecutor, were relevant for the first phase of the  
2 trial, the first mini trial. And I am really puzzled to  
3 understand what the prosecutor intends to prove with these  
4 particular documents. I want to give a few random examples.  
5 document number 165 on the list, for example, is a document dated  
6 30 April 1977. It's a telegram, number 16, from Ke Pauk to the  
7 chief of Office 870 describing the military situation along the  
8 Thai border and describing orders to undertake political and  
9 consciousness work. I have no idea what the prosecutor intends to  
10 prove with that document.

11 Another document number 212 on the list, dated 17 June 1977, more  
12 than two months after the liberation of Phnom Penh; it's a report  
13 regarding radar sightings at Bokor and Pochentong Airport,  
14 including airplane speed, time and direction, copied to Son Sen,  
15 alias Khieu, alias 47, and office. No idea why that is relevant  
16 for the first mini trial.

17 [15.02.40]

18 Another document, number 354, dated 30 March 1978; it's a report  
19 from Phea to comrade Rit, K-51, on behalf of the Ministry of  
20 Social Affairs, request to Van Rit for purchase of medical  
21 products including intravenous needles for infants. No idea why  
22 the prosecutor wants to present that document in court and what  
23 the prosecutor wants to prove with that document.

24 [15.03.11]

25 Document 359 -- I'm giving random examples -- 4 April 1978,

1 almost three years after the liberation of Phnom Penh. It's a  
2 report from Mut to Brother Number 89, entitled "Confidential  
3 Telephone Message of 4 April 1978", and it's a report about a  
4 ship hitting a mine, which caused damage to a ship and some  
5 people, including a Chinese -- relevant, according to the  
6 prosecutor.

7 Document 365, dated 9 April 1978; another telegram from 46 to  
8 Office 870, a report on the destruction of two boats, fuel and  
9 tools due to fire; explains the arrest of two men for lighting a  
10 lamp which caused a fire, as well as Lean, who sets the  
11 assignments which resulted in the fire.

12 And finally -- it's a complete random selection of documents --  
13 document numbered 403, dated July 1978, more than three years  
14 after the liberation of Phnom Penh; it's called "A Report on the  
15 Expertise of Midwives" of July 1978, and it describes the  
16 functioning of a hospital and the work of midwives within that  
17 hospital, detailing positive points and shortcomings and also  
18 state of political consciousness of the midwives. I'm curious to  
19 know what the document -- what the prosecutor intends to prove  
20 with that particular document.

21 Not all documents seem equally pertinent. I again, like I did  
22 this morning, invite the Trial Chamber to have a very good look  
23 at those documents and discard all those documents --not allow  
24 the admission of all those documents which are not relevant in  
25 the first mini trial. And I repeat, the first mini trial is only

82

1 about phase one and phase two of the movement of population.

2 [15.05.26]

3 All irrelevant documents should not be allowed to blur the  
4 picture. There is a serious risk, as I said this morning, that we  
5 are going to drown, not only the Defence, but also the Trial  
6 Chamber, is going to drown in a huge lake of irrelevant  
7 information and we won't be able see the forest through the  
8 trees.

9 Thank you very much.

10 [15.05.54]

11 MR. PRESIDENT:

12 Thank you, Counsel. Ieng Sary's defence, now you may take the  
13 floor.

14 MR. KARNAVAS:

15 Good afternoon, Mr. President. Good afternoon, Your Honours and  
16 good afternoon to everyone in and around the courtroom. And  
17 before I go into my presentation, I just want to pick up where  
18 the Nuon Chea team just left off, which is echoing what I  
19 indicated earlier. And that is by attempting to have the Trial  
20 Chamber admit all sorts of documents that are not related --  
21 strictly related to case -- to the first -- the first trial.  
22 Effectively what the Prosecution is attempting to do is have  
23 within its possession the documents, even if they -- or the  
24 evidence available so in some sort of a closing brief, they can  
25 argue the rest of the entire case, that is the entire Closing

1 Order, should there not be a case 2 or 3. That's the purpose, we  
2 submit.

3 So if the Trial Chamber saw it fit to limit or to -- I should say  
4 to sever the case in a way to have several different trials; and  
5 since the Trial Chamber has saw fit to limit the testimony to the  
6 first trial, then the documents being submitted should be limited  
7 to the first trial and then we would have to go through this  
8 entire exercise for the second trial and the third trial. But to  
9 simply say, as the civil parties have said, here are some 4,000  
10 documents, this is everything that we wanted for the entire  
11 Closing Order, is inappropriate.

12 [15.07.55]

13 More specific to Annex 4. Of course, we've cut and pasted our  
14 remarks and, I should say Your Honours, that the procedure in  
15 Prlic, since that seems to be sort of the high mark of whether  
16 something should be admitted or not, this was the procedure that  
17 was used. We were informed to provide reasons why documents  
18 should not come in and both the Prosecution and the Defence would  
19 use the same technique that was used in the Ieng Sary defence in  
20 responding to all of the documents.

21 [15.08.31]

22 So -- and the reason for that is most of the time, in many of  
23 these tribunals, we're talking about types of documents, such as  
24 telegrams, such as minutes of meetings. And so normally you would  
25 have a particular argument with respect -- a general argument

84

1 with respect to a particular type of document, such as telegrams.  
2 And, if we're talking about, for instance, the ICTY procedure  
3 with respect to documentary evidence similar to telegrams, if I  
4 could give an example, in the Srebrenica Case, and I happen to  
5 try one of those, we had what was known as radio operators who  
6 were intercepting messages from various sides. And they were  
7 taking handwritten notes. For the Prosecution, in order to  
8 introduce those intercepts, the operator himself would have to  
9 come in. In the event that operator wasn't available, but  
10 nonetheless they wanted to bring in certain documents related to  
11 intercepts, at the very minimum, they had to have a witness  
12 testify the procedure, as to the procedure. How were these  
13 intercept operators operating, what were the modalities for  
14 contemporaneously taking down and recording what they were  
15 hearing, how they were identifying people's names, and so on and  
16 so forth.

17 [15.10.20]

18 So, in other words, what I'm suggesting, Your Honour, is nothing  
19 that I haven't suggested here earlier, and that is for certain  
20 types of evidence, some witnesses will have to come in and lay a  
21 basic foundation.

22 And so -- now dealing with communications, which is the -- in  
23 Annex 4, I just want to draw a couple of -- for examples, for  
24 instance, where I believe, or we believe the Trial Chamber should  
25 be very cautious.

1 15.10.50]

2 The first one deals with torture or torture-tainted evidence,  
3 which is D108, stroke - we would say slash, but I hear they're  
4 saying it's stroke - 26.282 [D108/26.282]. If we look at this  
5 document, it would appear that it contains data derived from  
6 confessions. It is our position, and we believe we are correct on  
7 the law, that confessions contain torture-tainted material and  
8 such material, under all its forms, should not be admitted except  
9 where -- against the person who's accused of actually committing  
10 the torture.

11 That's our position. So we believe, in this instance, the Trial  
12 Chamber should be very careful not to allow these sorts of  
13 material -- should not have it admitted. And we direct your  
14 attention to our submission, Ieng Sary's objection to the  
15 admissibility of certain categories of documents dated 6  
16 September 2011, and it's E114, paragraphs 1, paragraphs 2 to 5,  
17 paragraphs 7 to 9, 10, and paragraph 17.

18 Another example, dealing with telegrams, and I understand we will  
19 be hearing some -- some witnesses and that's why I -- we maintain  
20 that our position has never been a categorical one in a sense  
21 that nothing should be admitted. Our position has always been  
22 subject to, unless the Prosecution does X, Y or Z. That has been  
23 our position recognizing that we're dealing with the free  
24 evaluation of evidence.

25 [15.12.54]

1 If we look at IS 21.14, this is a telegram. And it purports to be  
2 -- have been authored by a certain Hang, H-A-N-G. It's signed  
3 Hang; that's what we have. Now we object to the admission of such  
4 documents where you simply have somebody's signature or name  
5 underneath, unless the Prosecution can sufficiently demonstrate  
6 its authenticity, reliability, and relevance. Of course, the  
7 relevance can be discerned from the content of the telegram, so  
8 that may be rather easy. But as far as the authenticity, we leave  
9 it up to the Prosecution to determine what they're going to do in  
10 demonstrating that. At the very least, however, we --we submit  
11 the Prosecution must demonstrate who is responsible for the  
12 content of the document. In other words, the author's identity  
13 must be verified. Who is the author? And some sort of a  
14 foundation should be laid showing that the author could  
15 reasonably have authored this particular document. Now that's our  
16 position.

17 [15.14.19]

18 Now we understand that there's a low threshold; that to admit  
19 telegrams with just names without having some sort of testimony  
20 as to who this person was, whether they actually existed, what  
21 was their capacity, we believe puts us at a great disadvantage  
22 when it comes to confronting such evidence. How do you confront a  
23 document with a name, you don't know who the person is, and that  
24 no one ever comes in to talk about the document itself. It's just  
25 simply admitted so then later on it can be commented upon by the



1 Prosecution in their closing argument.

2 So we suggest and we submit that where such – that when -- or if  
3 and when such documents are admitted, and if we don't have the  
4 opportunity to confront the authors, that you take this into  
5 consideration when it comes to ascribing the amount of weight  
6 that you would give to such documents. Of course subject to, as  
7 I've indicated yesterday, if you have other independent indicia  
8 as to the reliability of the content, obviously that is a sort of  
9 information and evidence that you would factor in.

10 [15.15.47]

11 We would also submit that if a document, such as a telegram, has  
12 our client's name to it, we would submit simply having the name  
13 to a document does not in and of itself demonstrate that our  
14 client would have received that particular document. In other  
15 words, if he's copied, if it says cc, some sort of proof must be  
16 shown. We submit that our client actually received the document  
17 and that the mere copy -- putting his name down to be copied, is  
18 not merely some sort of a proforma approach that was used at the  
19 time.

20 [15.16.39]

21 Of course, these are the sort of arguments that we will be making  
22 at the conclusion after we hear all the evidence, but  
23 nonetheless, I'm merely sharing with the Trial Chamber our  
24 concerns with respect to these sorts of documents.

25 Let me give you another example on telegrams. D366/7.1.793. This

88

1 is a document where the author is purported to be Brother Nhim.  
2 Now who is Brother Nhim? Will Brother Nhim come and testify? Is  
3 there a witness that will testify as to Brother Nhim and whether  
4 he was in some sort of a capacity handling telegrams?  
5 We believe and we submit that we have an obligation in  
6 representing our client in pursuing this sort of information and  
7 in demanding that to the extent possible, the Prosecution produce  
8 evidence that would sufficiently demonstrate the authenticity and  
9 reliability of this document. And as I've indicated earlier, the  
10 identity of this individual and some sort of a foundation, it  
11 need not be that much, but some sort of a foundation must be laid  
12 showing that this individual, Brother Nhim, could have reasonably  
13 authored this particular document. And of course, with the same  
14 caveat that I've indicated earlier, if we are not afforded the  
15 opportunity to cross-examine Brother Nhim or someone who might be  
16 able to speak about this particular document, that little or no  
17 weight be given to it unless there's other independent indicia,  
18 and again, simply because the document claims to have been copied  
19 to our client, unless there is proof, we submit that the Trial  
20 Chamber be very cautious before ascribing weight to that  
21 particular document when it comes to our particular client.  
22 [15.18.56]  
23 Another document, this is a report -- again, I'm just merely  
24 highlighting some documents where we think make our point as to  
25 why we believe certain evidence must be produced by the

1 Prosecution, especially since they recognize, as they should,  
2 that they have the burden of proof.

3 [15.19.23]

4 D108/26.81. Now, this document purports to be authored by a  
5 certain Chan - C-H-A-N, C-H-A-N -- and for the same reasons,  
6 because I don't want to take up your time and there's no need for  
7 me to be repetitive, for the same reasons, we believe a certain  
8 amount of evidence must be produced by the Prosecution to  
9 demonstrate its authenticity. And this can be done by at the very  
10 least demonstrating that the author of this report -- you know,  
11 his identity, and of course that he could have reasonably  
12 authored this particular document.

13 The last example that I wish to give is a postcard, is a  
14 postcard, and it's D199/14.2. And here the Prosecution contends  
15 that this document is authored by a Mr. Ouk Ket. This is Annex 4,  
16 item 155. And for the very same reasons we object to the  
17 admission of this type of a document, unless there is some  
18 foundation laid by the Prosecution, as I've indicated before, and  
19 there's no need for me to repeat, again, Your Honours, it is our  
20 -- just to make sure that our position is very clear, we're not  
21 suggesting that no documents can come in. That is not our -- and  
22 we're not suggesting that nothing is authentic or nothing is  
23 reliable, but what we are suggesting is at some point the  
24 Prosecution, and it need not be at the very outset but at some  
25 point, when you are about to deliberate on all of this evidence,

90

1 you will need to have some foundational information that would  
2 give you some comfort that the documents are authentic, are  
3 reliable, and of course with respect to relevance, I think that  
4 would be rather -- that will become rather clear towards the end  
5 of the case.

6 I have nothing further, Your Honours, and I thank you for your  
7 attention.

8 MR. PRESIDENT:

9 Thank you. Now I hand over to the defence for Khieu Samphan.

10 [15.22.22]

11 MR. KONG SAM ONN:

12 Good afternoon, Mr. President. Good afternoon, Your Honours.

13 For Annex 4, relating to the Democratic Kampuchea communication,  
14 the Chamber indicated 394 documents, and the prosecutor has tried  
15 to have you believe that these documents are relevant and  
16 reliable. And only 99 out of these 394 documents the  
17 Co-Prosecutor have tried to indicate its -- their reliability.

18 However, of those 99 documents, we have not had enough  
19 foundational information to ensure the reliability of these  
20 documents. Particularly, there is no clear indication of the  
21 proper chain of custody of these documents before it was actually  
22 transferred to the Documentation Centre of Cambodia.

23 [15.24.20]

24 According to the various documents placed before Your Honours, it  
25 is clear that these documents were gathered from various sources

1 by the Documentation Centre of Cambodia, and there is no clear  
2 indication as to when those documents were given or obtained and  
3 how those documents were obtained either.

4 There were apparently four sources of the document, one of which  
5 is the National Archive of Tuol Sleng, Ministry of Interior, and  
6 from individual donation, particularly from TCE-038.

7 My position regarding this annex is not in any way different from  
8 the previous arguments with the other annex. The custody of  
9 evidence as well as the identification of the persons who offered  
10 those documents have not been identified very clearly. And the  
11 prosecutors have failed to indicate as to when those documents  
12 were received or obtained and the subsequent chain of custody of  
13 those documents.

14 [15.26.35]

15 For this reason, I am of the opinion that there has been a  
16 contradiction because the prosecutors believe -- have the Chamber  
17 believe that it is the responsibility of the Defence to  
18 specifically object to any specific documents. However, our  
19 position is that the Co-Prosecutors have failed to indicate the  
20 authenticity as well as the reliability of those documents before  
21 those documents are placed before the Chamber.

22 In this respect, if we examine those documents by ourselves,  
23 apparently it seems that we bear the responsibility to ensure the  
24 reliability or authenticity of those documents. There were  
25 actually one or two documents that have already been told the

1 authenticity or reliability of those documents, but as you may  
2 have seen, there are hundreds of documents of this types that  
3 need to be shown the reliability and authenticity as well.

4 [15.28.36]

5 There are some discrepancies as well, for example with regard to  
6 the time and individuals who found or discovered the document and  
7 the person or institution obtained those documents, and we have  
8 to analyze the various circumstances of which the document was  
9 obtained and maintained. And these lead to a lot of suspicion.  
10 It is therefore imperative that we identify the person who  
11 discovered those documents and who obtained the document and how  
12 the document was maintained. Unless we found the person who  
13 actually discovered those documents, we remain doubtful of the  
14 authenticity of the document because the document that was  
15 covered -- discovered by someone, it does not necessarily mean  
16 that that document was reliable.

17 If the document was in one particular place that we believe that  
18 it is a neutral organization, then we -- it is likely that we can  
19 trust the source. However, if that organization is perceived to  
20 be biased, then it is a different issue. That's why we insist  
21 that we discover the source of the evidence as well as the chain  
22 of the custody of the evidence to ensure its reliability.

23 [15.30.27]

24 Only when we proceed with a debate on the relevancy and  
25 connection between the documents and those concerned individuals,

1 then we can prove the source and its reliability. And that should  
2 only be done before this very Chamber, so that it can be proved  
3 beyond a reasonable doubt of its authenticity or reliability.  
4 Once again, Your Honour, I appeal to the Bench to closely examine  
5 the availability of summoning the concerned individuals so that  
6 parties can put questions to them before this very Chamber. I am  
7 grateful, Your Honour.

8 [15.31.34]

9 MR. PRESIDENT:

10 Thank you, Counsel.

11 We now hand over to the co-prosecution so that you're able to  
12 have the opportunity to respond to the objections. You may  
13 proceed.

14 MR. CHAN DARARASMEY:

15 Thank you, Mr. President. Good afternoon, Your Honours. Good  
16 afternoon, everyone in and around the courtroom.

17 [15.32.14]

18 On behalf of the Prosecution, I'd like to make the presentation  
19 to respond to the objections raised by the defence teams in  
20 regards to Annex 4, which is entitled "DK Communications", and it  
21 is comprised of the following groups of documents: the DK  
22 reports, DK letters, DK telegrams, DK notes, and other DK orders.  
23 The Defence has raised four distinct types of objections in  
24 relation to documents contained in Annex 4 of the document list.  
25 I note that each type of objection is repeated in the same terms

1 in relation to large groups of documents on the annex and does  
2 not raise specific issues with individual documents. In order to  
3 address these objections, I will first briefly reiterate the  
4 relevant legal standards,  
5 as they apply to the four objections raised in relation to this  
6 group of documents.

7 [15.33.56]

8 I'd like to make the following points regarding this matter.

9 The legal test for admissibility that is generally the starting  
10 point of analysis for determining admissibility of documents is  
11 the presumption of admissibility contained in ECCC Internal  
12 Rules. Rule 87.1 states that "all the evidence is admissible  
13 subject to Rule 87.3, which sets out a limited list of specific  
14 groups upon which evidence can be excluded".

15 [15.34.45]

16 Regarding the issue of relevance and reliability, the Trial  
17 Chamber has interpreted the effect of Rule 87.3 as requiring  
18 evidence to satisfy certain conditions of relevance and probative  
19 value and minimum standards of relevance and reliability to be  
20 admitted.

21 In order to be considered relevant, the evidence proffered must  
22 be prima facie material to the issues and tend to establish the  
23 party's position.

24 I note that no specific point has been raised by -- in the  
25 Defence objections challenging the relevance of documents



1 contained on Annex 4, although objections purport to relate also  
2 to relevance generally.

3 [15.35.58]

4 Should this first criterion be satisfied, the inquiry turns to  
5 the reliability of the evidence.

6 Your Honours, the material factor for admissibility in the  
7 present instance is therefore the reliability of this group of  
8 documents. The standard of reliability required at the  
9 admissibility stage is that evidence must be prima facie  
10 credible. The criteria for such assessment depend on the  
11 particular circumstances of each case and include a range of  
12 factors.

13 There is no requirement for authenticity of a document to be  
14 definitely established, as suggested by the Defence in this case,  
15 prior to its admission in evidence. Proof of the origin of the  
16 document is relevant in considering whether a document has  
17 sufficient indicia of reliability, but it is not a prerequisite  
18 for admission.

19 Your Honour, in regards to the admissibility versus weight, I'd  
20 like to make the following observation.

21 [15.37.32]

22 The probative value of a piece of evidence at the admissibility  
23 stage can be satisfied by showing indicia of relevance and  
24 reliability. On the other hand, the actual probative value or  
25 weight to be afforded to the evidence is assessed by the Trial

1 Chamber once all the evidence has been heard.  
2 The burden on the party seeking to introduce evidence is to  
3 demonstrate minimum levels of relevance and reliability. As has  
4 been noted by the Trial Chamber and by other international  
5 criminal tribunals, the assessment of the actual probative value  
6 or weight to be assigned to a piece of evidence is a separate  
7 inquiry that will take place later for the purpose of determining  
8 whether it tends to prove or disprove the allegations in the  
9 case.

10 [15.38.48]

11 This minimum standard for admissibility is appropriate in  
12 proceedings before the ECCC, where the evidence is collected or  
13 reviewed by the impartial and independent investigative charge,  
14 and the triers of fact are experienced, professional judges, and  
15 not a jury of lay persons.

16 Mr. President, I'd like now to make response in regards to the  
17 statements made under torture.

18 [15.39.30]

19 Although relevance and reliability are the primary considerations  
20 in the admission of documents, Rule 87.3 also specifically  
21 prohibits evidence that is not allowed under the law. One  
22 category of evidence which falls under this broad prohibition is  
23 statements made under torture.

24 The test under Article 15 of the Convention Against Torture -  
25 CAT, for short -- and Article 38 of the Cambodian Constitution

1 prohibit statements induced by torture or physical threat  
2 thereof.

3 In Case 001, the Trial Chamber confirmed that this prohibition  
4 means statements made under torture cannot be admitted for the  
5 truth of their contents but can still be admitted as evidence of  
6 the fact that the statement was made and that it was made under  
7 torture.

8 [15.40.50]

9 Consequently, prior to making a determination on the  
10 admissibility of statements or any other associated secondary  
11 documents, it is crucial to determine the purpose for which the  
12 documents are being introduced, and Defence objections are only  
13 valid if material is in fact introduced to prove the truth of  
14 torture-induced information.

15 For example, general objections as to documents or material  
16 relating to S-21 confessions are not sufficed.

17 The exclusionary rule set out in Article 15 of the CAT relates  
18 only to statements established to have been made under torture.

19 It specifically permits the use of such statements against a  
20 person accused of torture as evidence that the statement was  
21 made.

22 [15.42.05]

23 In order for the prohibition to apply, the statement itself must,  
24 firstly, be shown to have been obtained under torture, and  
25 secondly, its use must be prohibited by the Convention. The broad

1 and weak phrase "torture-tainted" used by the Defence in their  
2 objections does not accurately reflect this legal standard.  
3 Keeping in mind the elements of the CAT standard for  
4 admissibility, it is important to distinguish between the various  
5 types of evidentiary materials at issue in the present case and  
6 between the uses for which these various types of documents are  
7 being introduced into evidence.

8 [15.43.03]

9 In addition to confessions signed by the detainee, the confession  
10 files on the case file commonly include summaries and reports  
11 made by the interrogators, noting the identity of the prisoner,  
12 date, and location of arrest, and description of the kind of  
13 coercion or torture used against the prisoner.

14 Annex 4 documents constitute internal DK memoranda containing  
15 information recorded by third parties not subject to torture,  
16 through other party members or their superiors, and thus they do  
17 not fall under the exclusionary rule. They can be used to prove  
18 the identity of individuals arrested, detained, and tortured and  
19 the details of the arrest, detention, and torture.

20 [15.44.27]

21 The summaries and reports often include lists of other cadres or  
22 persons implicated by the detainee. This list can be used to  
23 demonstrate the common criminal plan of identifying and  
24 eliminating perceived opponents of the regime through the  
25 systematic use of torture.

1 Apart from third party information contained on such documents,  
2 information obtained as a result of torture that may be recorded  
3 in the documents can also be used to prove the fact that torture  
4 took place, including the identity of the prisoner, the dates of  
5 arrest and detention, and the methods of the torture.

6 [15.45.38]

7 In the DK reports category discussed by my colleague, documents  
8 contain reports on the use of torture and extraction of  
9 confessions.

10 Your Honours, together with other materials, the confessions can  
11 demonstrate that information obtained from detainees was used as  
12 the basis for future arrests and purges. There is no suggestion  
13 that the information contained in a confession will be relied  
14 upon by the Co-Prosecutors to establish the truth of its contents  
15 -- for example, the other prisoner or anybody named by him or her  
16 was a spy or enemy -- or in ways going beyond the standard set by  
17 the Trial Chamber in Case 001.

18 [15.46.50]

19 In order for any particular document on the Co-Prosecutor's  
20 document list to be deemed inadmissible -- that is, by virtue of  
21 Article 15 of CAT -- it has to be demonstrated that the document  
22 contains statements made under torture and that its proposed use  
23 falls outside the recognized exception.

24 The general objections submitted to date by Khieu Samphan and  
25 Ieng Sary fail to achieve or even attempt to achieve this

100

1 standard.

2 [15.47.38]

3 Your Honours, in regards to the Defence objections, that is the  
4 first and most common objection rests in relation to Annex 4  
5 document, is that documents should be excluded unless OCP can  
6 sufficiently demonstrate the authenticity, reliability, and  
7 relevance of this document by demonstrating who is responsible  
8 for the content of this document. This objection is raised in its  
9 general form in relation to 81 DK telegrams, four DK notes, 105  
10 DK reports, nine DK orders, and seven DK letters.

11 [15.48.34]

12 The Defence have isolated this indicator of reliability and  
13 appear to suggest the failure to prove the author of documents is  
14 in itself fatal to the admissibility of documents. Within this  
15 objection, the Defence also submits that such documents, if  
16 admitted, should be of minimum weight if the Defence is not  
17 afforded the opportunity to confront the author, unless the  
18 content of the document can be verified or supported through  
19 independent indicia.

20 As already argued and established by the OCP, there is no  
21 requirement, at ECCC, that evidence be presented through witness  
22 evidence, nor is the establishment of the author of documents a  
23 singular requirement of the test for reliability or authenticity  
24 at the admissibility stage.

25 [15.50.12]

101

1 These combined factors may be taken into account along with the  
2 myriad of indicia applicable in these inquiries.  
3 Your Honours, the weight to be assigned to any given document is  
4 also not an issue under consideration at this stage. In this  
5 regard, issues such as whether or not a given telegram addressed  
6 to Mr. Ieng Sary was in fact received by him – there is an  
7 objection raised in relation to 44 telegrams and one report --  
8 would be considered by the Chamber in the context of the evidence  
9 as a whole and may not, in fact, be the material issue being  
10 established by the document in any event.

11 [15.51.20]

12 The second substantive objection relates to the exclusion of  
13 material tainted by torture. This objection raised by the Defence  
14 is also repeated in very general terms, with no attempt to  
15 isolate factors of specific concern in relation to any particular  
16 documents in Annex 4.

17 The Defence, once again, erroneously states the test for  
18 exclusion of material obtained through torture and raises this  
19 objection in relation to one DK note, seven DK reports, and four  
20 DK orders.

21 [15.52.16]

22 The articulation of this purported rule in the Defence objections  
23 is as follows:

24 "Torture-tainted material is, under all its forms and in every  
25 circumstances, except against a person accused of torture as

1 evidence that a statement was made, inadmissible in judicial  
2 proceedings before the ECCC."

3 As already demonstrated, the torture exclusion rule has a far  
4 more stringent application than that argued for by the Defence.

5 Information contained in orders, reports, and notes that describe  
6 torture or its circumstances are clearly not obtained as a result  
7 of torture or induced under threat of physical harm.

8 Where information obtained through a torture-induced confession  
9 is contained in such reports, the OCP does not in any way seek to  
10 rely on the truth of that information.

11 Thirdly, the Defence has argued that certain documents in Annex 4  
12 are new and cannot be admitted in evidence unless it is  
13 established that these documents were not available before the  
14 opening of the trial, pursuant to Rule 87.4. In fact, these  
15 documents do not fall under that provision, as they were filed in  
16 the Co-Prosecutor's Rule 80 list on 19 April 2011 -- that is  
17 document E9/31 -- prior to the start of the trial.

18 [15.54.42]

19 Your Honours, lastly, the Defence objects to the admission of  
20 certain documents pending English translation being provided.

21 These documents have been placed on the case file, and a good  
22 faith effort has been made to obtain translations. The time and  
23 resource constraints affecting the translation of all documents  
24 has meant translations are not yet available, and 16 out of those  
25 documents in Annex 4, that is, those documents in Khmer, have not



103

1 yet been translated into English.

2 [15.55.40]

3 These are our arguments to the objections raised by the Defence  
4 teams.

5 And I now conclude my presentation. And I'd like to hand the  
6 floor over to my colleague.

7 MR. PRESIDENT:

8 Thank you, Co-Prosecutor.

9 I'd like to inquire with the International Co-Prosecutor how much  
10 time that you may take to finish off your presentation.

11 [15.56.08]

12 MR. ABDULHAK:

13 Your Honour, I believe we're allocated one hour, which would  
14 leave about another 35 minutes, and I'd like to use that time, if  
15 possible. There's quite a few different objections from our  
16 friends on the other side.

17 I'm quite happy to commence either tonight or tomorrow, whichever  
18 Your Honours deem more appropriate.

19 MR. PRESIDENT:

20 Thank you for indicating the time that you intend to use.

21 As you have been allocated one hour and only half an hour has  
22 been used, you still have another 30 minutes in your response to  
23 the objections raised by the defence teams. However, the time for  
24 this afternoon's session comes to an end.

25 The hearing today is adjourned, and we shall resume tomorrow

104

1 morning, starting from 9 a.m.

2 I notice the defence counsel is on his feet. You may proceed.

3 [15.57.32]

4 MR. IANUZZI:

5 Thank you, Your Honour. I'll be extremely brief. Perhaps I should  
6 have mentioned this this morning, but I just wanted to note for  
7 the record that we are very pleased -- very pleased --that Judge  
8 Fenz was able to make the transition from reserve Judge to full  
9 rights Member of the Bench without any political interference  
10 from the Royal Government of Cambodia. That situation, of course,  
11 is in sharp contrast to the situation prevailing in other  
12 corridors of this tribunal. And we would just like to also  
13 register our support for the international reserve  
14 Co-Investigating Judge. Thank you.

15 [15.58.12]

16 MR. PRESIDENT:

17 I think it cannot just be as please as you like. It depends on  
18 the applicable law here.

19 And, in fact, the Chamber already informed parties and the public  
20 that Judge Fenz is replacing or substituting Judge Cartwright  
21 during the time of her unavailability, so she will be in Judge  
22 Cartwright's place until Judge Cartwright is available to  
23 continue her position.

24 Security guards, you are instructed to take the three Accused  
25 back to the detention facility and bring them back here tomorrow

105

1 morning, before 9 a.m. And for Nuon Chea and Ieng Sary, bring  
2 them to the holding cells downstairs so that they can follow the  
3 proceeding. And for Khieu Samphan, bring him to this courtroom.

4 The Court is now adjourned.

5 (Court adjourns at 1559H)

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