



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

ឯកសារដើម
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TRANSCRIPT OF TRIAL PROCEEDINGS
PUBLIC
Case File N° 002/19-09-2007-ECCC/TC

14 March 2012
Trial Day 36

Before the Judges: NIL Nonn, Presiding
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. CHAN DARARASMEY	Khmer
MR. DE WILDE D'ESTMAEL	French
MR. IANUZZI	English
MR. KARNAVAS	English
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MS. SIMONNEAU-FORT	French

1

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 We would like to give the floor again to the Co-Prosecutors to
6 respond to the oral objections. You may proceed.

7 [09.03.13]

8 MR. ABDULHAK:

9 Good morning, Mr. President. And good morning, Your Honours,
10 Counsel. From the Co-Prosecutor's side, just a brief correction
11 to our submissions yesterday, before we continue.

12 We made reference to document D150, which is an interview record
13 of witness Youk Chhang, and we referred to that document as a
14 document which indicates that Democratic Kampuchea Commerce
15 records were deposited at the National Archives by officials from
16 the Renakse Front. And we checked our notes after the hearing and
17 we wish to make a correction for the record; we don't want to
18 mislead, obviously, the Court or anyone in the courtroom.

19 What the relevant documents are: Youk Chhang's statement D311/3
20 -- D311/3, and this is at Response A4, where Mr. Youk Chhang
21 indicates that all originals relating to the trade of Democratic
22 Kampuchea are held at the National Archives; and then a further
23 reference as to how documents came to be at the National Archives
24 is actually found in the article which Mr. Youk Chhang
25 co-authored with John Ciorciari, and this is D155.3 -- D155.3.

2

1 There's been a number of references to this document.

2 [09.05.00]

3 I'll just indicate, unfortunately the Khmer and French
4 translations are not, as yet, available, but there is further
5 information on the fact that Renakse Front deposited documents
6 discovered in Phnom Penh, in 1979, at the National Archives, and
7 the relevant references in English are at pages 226 and 228 of
8 the article; the relevant ERNs are 00291509 and 00291511.

9 [09.05.43]

10 For the record, I wish to also clarify that there isn't a
11 specific reference to Commerce records in that second document,
12 but I believe the point stands when these documents are examined
13 in their entirety.

14 And I will hand over to my colleague to continue with our
15 submissions. Thank you.

16 MR. DE WILDE D'ESTMAEL:

17 Thank you very much. Good morning, Mr. President, Your Honours.

18 Yesterday, I had begun and almost concluded my response to the
19 objections launched by the defence teams with respects to Annex
20 17, "International Communications". I stated that of the 147
21 documents that we are discussing during these proceedings, 68
22 come from the National Archives of the French Ministry of Foreign
23 Affairs. There's also a certain number that comes from the United
24 States.

25 I wish to conclude my discussion on the 11 documents that are

1 also part of this category. There are 11 documents that come from
2 Amnesty International. These documents were obtained by DC-Cam.
3 The Co-Prosecutors had requested the Co-Investigating Judges to
4 place them on the case file, which they had agreed to. These are
5 records of investigative acts under D84 and D313.

6 [09.07.34]

7 With respect to their relevance, there are three of these
8 documents that are addressed directly to Mr. Khieu Samphan, or
9 they make reference to the role played by Khieu Samphan in his
10 capacity as President of the State Presidium.

11 The final document refers to the role played by Mr. Ieng Sary in
12 his capacity as Minister of Foreign Affairs.

13 These documents also discuss the policies that were led by Khmer
14 Rouge leaders in their joint criminal enterprise and they make
15 specific mention of the fate reserved for enemies of the
16 revolution and the working conditions in certain labour camps and
17 work sites. These documents also deal with the demise that
18 awaited 26 Cambodian refugees who had fled Cambodia and
19 repatriated from Thailand to Paoy Paet on the 23rd of November
20 1976 and who were then declared as disappeared persons.

21 As regards indicia of reliability to allow prima facie
22 admissibility, there are four documents that date back to
23 1977-1978, which are contemporaneous with the events described
24 therein.

25 There are two documents that are for public consumption and bear

4

1 the very distinctive and well-recognized logo of Amnesty
2 International. The content of these four documents reflect the
3 objectives of this organization, which, as you are well aware,
4 has the mission of working for the liberation of incarcerated
5 persons or those who have been deprived of their liberty because
6 of their opinions, ethnicity, race or language. The substance of
7 these documents reflects the actions that were initiated
8 regularly by several countries in order to free these individuals
9 and to raise awareness amongst international public opinion.

10 [09.10.06]

11 These three documents -- that is to say D84.5 (sic) and
12 D313.2.330 (sic) --

13 MR. PRESIDENT:

14 Could you repeat the number of the document again? And please
15 slow down a bit.

16 MR. DE WILDE D'ESTMAEL:

17 Yes, of course, Mr. President. The first document was D84/8 --
18 2.5, rather, that is dated the 2nd (sic) of February 1977. The
19 second is D313/1.2.321 -- that dates back to the 3rd of March
20 1977. And the third document is D313/1.2.330. These three
21 documents all refer to one another and they all make reference to
22 letters that were sent to Mr. Khieu Samphan, specifically with
23 respect to the fate that awaited the 26 Cambodian refugees in
24 Thailand and who were sent back to Cambodia, as I mentioned just
25 now.

5

1 There are also documents that were obtained from the French
2 archives that corroborate these Amnesty International documents.
3 Those documents are the following: D199/26.2.78. This document is
4 a telegram that is signed by a certain André, who works at – who
5 worked at the Embassy of France in Bangkok, and sent on the 29th
6 of November 1976. It is addressed to the Ministry of Foreign
7 Affairs of France. It is entitled "Repatriation of Cambodian
8 Refugees to their Country of Origin". This document discusses the
9 forced repatriation that occurred on the 23rd of November. These
10 Cambodian refugees had fled Cambodia into Thailand one month
11 earlier. There are even more specific details. The refugees are
12 described as having been shackled, blindfolded while they were
13 crossing the border, and among those refugees were former
14 soldiers of the Khmer Republic as well as a child of 11 years of
15 age.

16 [09.13.27]

17 Of these documents that come from Amnesty International, we feel
18 that the indicia of reliability are very clearly present and
19 should be prima facie admitted.

20 There are two documents that come from the United Nations. Those
21 are, firstly, D56-Doc. 290. This particular document is a
22 provisional list of the delegations which attended the 39th
23 Session of the General Assembly. I believe that the authenticity
24 of this document is well established. It is an official document
25 of the United Nations. It contains a logo. It was included in the

1 Swedish collection that we have spoken extensively on and it is a
2 public document. It deals with the role of Mr. Khieu Samphan
3 after 1979.

4 There is a second document that emanates from the United Nations.
5 It is classified under D366/7.1.9, dated the 2nd of May 1978.
6 This document also bears the exact same and distinctive logos and
7 headings of the United Nations, as well as that of the Human
8 Rights Commission. It is a public document that is publicly
9 accessible. Therefore, the authenticity seems to be well
10 established. It is a document that was presented by the Canadian
11 Government to the United Nations with respect to the status -- on
12 a situation of human rights in Kampuchea -- Democratic Kampuchea.
13 The document deals with the forced evacuation of Phnom Penh, in
14 particular the evacuation of the wounded and the ill from
15 hospitals. This document is relevant. This document was obtained
16 from DC-Cam.

17 [09.15.53]

18 Lastly, there are three documents that come from the Vietnamese
19 Government, which are dated January and April 1978. The document
20 that is dated January 1978 bears the document number
21 D366/7.1.512, as well as an additional reference for the same
22 document, which is D108/43/8. It comes from the Ministry of
23 Foreign Affairs of Vietnam and, again, is a document that speaks
24 of the historical background of relations between Vietnam and
25 Cambodia, as well as the historical context of their armed

1 conflict.

2 This document is relevant to the events of April 1975 as well as
3 the historical background, which is very significant to this case
4 file.

5 These documents also contain passages from CPK letters addressed
6 to Vietnam, including letters and messages from the Central
7 Committee of the Communist Party of Kampuchea, including an
8 extract from a letter by Ieng Sary. This document therefore deals
9 with the external communications of the CPK as well as the role
10 of Mr. Ieng Sary.

11 [09.17.37]

12 The second document is D108/28.230. This text is a transcript of
13 the BBC Summary of World Reports. It includes a transcript of a
14 radio broadcast that was aired in Vietnam, concerning a press
15 conference held on the 7th of April 1978 by the Vietnamese
16 authorities, and deals with the historical background of the
17 drawing of the border between Vietnam and Cambodia since the
18 establishment of the Brévié Line in 1939 as well as during the
19 1960s to 1975. This document deals with the historical background
20 of relations between the two countries as well as that of
21 Cambodia. The document makes reference to the roles of Mr. Nuon
22 Chea, Ieng Sary, and Khieu Samphan.

23 Since this is a broadcast that was intercepted by the BBC Summary
24 of World Broadcasts, it would be rather difficult to assert that
25 this document is not authentic, and I also point out that this

1 document was used as material evidence in the Judgement for Case
2 001, E3/608.

3 [09.19.17]

4 Lastly, there is another document, D366/7.1.641, that is dated
5 7th of April 1978 and is an almost word-for-word verbatim account
6 of a radio broadcast that was intercepted and re-transcribed by
7 the BBC Summary of World Broadcasts. These are two documents that
8 have the same contents but may have different sources. Obviously,
9 these documents are propaganda material and their contents can
10 certainly be discussed, but that is a matter of probative value,
11 and not admissibility.

12 Lastly, I wish to raise your attention to a document that was
13 pointed out by the Ieng Sary defence yesterday; that is D56/290
14 (sic). This is the Royal Decree that grants a pardon to Mr. Ieng
15 Sary for the sentence of death provided for under the Law to
16 Outlaw the Democratic Kampuchea Group. Now, obviously, this
17 document belongs in another category. I believe that a decision
18 was already issued, but I do not believe that Mr. Karnavas could
19 in any way contest the authenticity of this document, since he
20 has made an attempt to have the Pardon and Amnesty reapplied and
21 has relied on the document.

22 [09.21.03]

23 That concludes my remarks on Annex 17. I wish now to hand the
24 floor over to my esteemed colleague, who will speak on Annex 18
25 with respect to Tram Kak district archive documents. I thank you

1 very much, Your Honours.

2 MR. CHAN DARARASMEY:

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

5 I would like to make our replies to Annex 8, which is the Tram
6 Kak district records, introduction and relevance of the
7 documents.

8 In our submission, we address the legal criteria applicable to
9 the documents contained in Annex 8. The issue at hand is the
10 minimum threshold of relevance and reliability required for the
11 documents to be admissible.

12 On the face of it -- that is, prima facie, do the documents put
13 before you appear to be relevant and reliable? Your Honours, in
14 determining the admissibility of these documents, you must
15 consider the totality of the internal and external indicia of
16 reliability, and not merely whether the chain of custody can be
17 established. Pursuant to your own jurisprudence, the other issues
18 only deal with the probative value which ought to be attributed
19 to these documents during your examination of the elements of
20 proof.

21 [09.23.18]

22 I will explain why these documents are relevant to the first
23 phase of the trial. I will also address the reliability which we
24 believe is clearly established through both internal and external
25 characteristics.

1 Annex 8 contains 57 documents from Tram Kak district, also known
2 as District 105. District 105 was part of Sector 13 of the
3 Southwest Zone under the Democratic Kampuchea period. This Annex
4 8 is part of the list of documents pertaining to the first phase
5 of the trial, which was sent out by the Office of the
6 Co-Prosecutors on 22nd July 2011, which is document E109/4.
7 The previous Annex 8 of our April 2011 documents list -- that is,
8 document A9/31 -- dealt with Case 002 as a whole and contained
9 138 documents from Tram Kak district.

10 In July 2011, the Co-Prosecutors had therefore selected the
11 documents most relevant to the first phase of the trial, and I
12 would like to clarify certain points regarding the selection
13 process.

14 The E109/4 list, which contains a more limited number of
15 documents, was sent out by the OCP on 22nd July 2011, prior to
16 the issuance of the Severance Order -- document E124 -- by the
17 Trial Chamber on 22nd September 2011.

18 Therefore, in July 2011, the OCP was unaware that the Chamber
19 would place restrictions on the examination of the five
20 Democratic Kampuchea policies set out in the Closing Order.

21 According to the Chamber, originally, these policies should have
22 been part of what was known as the first phase of the trial.

23 [09.26.20]

24 Following the Severance Order, they are now part of the facts to
25 be examined during the hearings related to the first phase.

11

1 However, the scope of these examinations is now more limited than
2 before.

3 Your Honours, the policies are, according to paragraph 156 (sic)
4 of the Closing Order:

5 1) "The repeated movement of the population from towns and cities
6 to rural areas, as well as from one rural area to another";

7 2) "The establishment and operation of cooperatives and
8 worksites";

9 3) "The re-education of 'bad-elements' and killing of 'enemies',
10 both inside and outside the Party ranks";

11 4) "The targeting of specific groups, in particular the Cham,
12 Vietnamese, Buddhists and former officials of the Khmer Republic,
13 including both civil servants and former military personnel and
14 their families"; and

15 5) "The regulation of marriage".

16 [09.28.02]

17 Thus, in July 2011, it was unclear to the Co-Prosecutors that the
18 evidence to be presented regarding these policies, and in
19 particular regarding the targeting of specific groups, would be
20 restricted to evidence relevant to the elaboration of these
21 policies prior to 17 April 1975.

22 The Severance Order, document E124, states that "no cooperatives,
23 work sites, security centres, execution sites or facts relevant
24 to the third phase of population movements will be examined
25 during the first trial", whereas the Closing Order has a much

1 broader scope.

2 We would therefore like to clarify the following. When the 57
3 documents were chosen from the 138 documents related to the Tram
4 Kak district, the Co-Prosecutors took into account, in
5 determining relevance, whether or not the documents related to
6 the targeting of enemies of specific groups. This can be seen in
7 the points of the Indictment section of Annex 8, document E109/4.
8 Moreover, the Defence has argued that these documents relate to,
9 amongst others, the operation of the Kraing Ta Chan Security
10 Centre and of the Tram Kak district cooperatives, which were
11 excluded from the first mini-trial by the Chamber in its
12 September 2011 Severance Order.

13 [09.30.37]

14 Your Honours, I will now talk about the relevance as follows.

15 Nevertheless, all of these 57 documents remain utterly relevant
16 to the first phase of the first trial. Not only do they clarify
17 the communication structure that existed within a specific area
18 during the DK regime, they also shed light on the administrative
19 structure of District 105.

20 Regarding the nature of these 57 documents, essentially, they are
21 reports or written messages exchanged between the different
22 echelons of the District 105. They include:

- 23 1) Reports sent at regular intervals by the communes to the
24 District 105 office;
25 2) Reports sent by the leadership of Kraing Ta Chan Security

1 Centre to the District 105 office;
2 3) Messages or, more precisely, instructions sent by the office
3 of District 105, Tram Kak, most often from the secretary to the
4 eight district communes or to the Kraing Ta Chan Security Centre;
5 4) Reports from the communes to the Kraing Ta Chan Security
6 Centre;
7 5) Occasionally, reports from the cooperative chiefs to the
8 office of District 105; and
9 6) In one case, an order from the secretary of Sector 13 and the
10 secretary of District 105 to the secretary of Kraing Ta Chan
11 Security Centre.

12 [09.32.46]

13 In fact, this body of documents constitutes a unique example of
14 written communications exchanged at the local level within one
15 single district. The rest of the Case File 002 contains many
16 telegrams, reports, written messages or instructions, but for the
17 most part, they were exchanged between the sectors and the zones,
18 the zones and the Party Centre or the divisions and the Party
19 Centre.

20 And like in the rest of the country, in this instance, archives
21 from one particular district were found. Because of their
22 uniqueness, the importance and relevance of these archives cannot
23 be denied. The constant exchange of instructions, of reports on
24 specific questions, and in particular on the enemy situation,
25 followed by the issuance of new instructions or decisions from

14

1 the hierarchy is extremely informative; it reveals a lot about
2 the control exercised by the upper echelons of the district or
3 sector on the communes and cooperatives and on the security
4 centres which they were responsible for. This is perfectly in
5 line with the CPK statutes and the system of communications from
6 up to bottom set up by the Standing Committee of the Central
7 Committee of the CPK.

8 [09.34.46]

9 Your Honours, these documents are in particular relevant to the
10 paragraphs 64, 68 and 70 of the Closing Order, in relation with
11 the local administrative structure in paragraphs 83, 84 and 90 of
12 the section entitled "Communication Structure", which is
13 "Channels and Means of Communications".

14 [09.35.24]

15 Our goal in introducing these documents is not to elaborate on
16 their content; rather, we are seeking to show, through the
17 example of District 105, how the hierarchical links between the
18 different echelons of a local authority structure were organized
19 to form a vertical chain of command. We are also seeking to show
20 how the region's authority was effectively exercised through a
21 system of frequent communications between the different
22 hierarchical entities.

23 Your Honours, contrary to what Mr. Karnavas stated on Monday, the
24 fact that some of these documents are summaries of confessions
25 written by Ann, the security (sic) of Kraing Ta Chan Security

1 Centre, is irrelevant.

2 Once again, I stress that we are not seeking to rely on the
3 contents of these summaries as such for the purposes of the first
4 trial. We would like these summaries to be admitted into the case
5 file only because they were subsequently communicated by the
6 secretary of the local security centre to District 105. We merely
7 wish to highlight the existence of this flow of information and
8 of these communications regarding enemies and the fact that all
9 local authorities had to report back to District 105.

10 [09.37.28]

11 Mr. Karnavas and Mr. Son Arun referred to illegible documents,
12 yet all of these documents are perfectly legible and have been
13 translated into French and/or English, except one, which is
14 D157.86. For the most part, this document is difficult but not
15 impossible to read. We shall take up this matter with the
16 translation service to ensure the timely and effective
17 translation of this document.

18 Now, I would like to draw Your Honours' attention to examine the
19 internal and external reliability indicators of these 57
20 documents.

21 One, allow me to begin with their origin and the absence of the
22 originals. The original documents have indeed never been found.
23 This is in line with the statements made by Mr. Chhang Youk in
24 his OCIJ interview -- referring to document D40/2 -- and during
25 the 6th of February 2012 hearing -- document E1/39.1 at

1 ER00778176 through 00778177.

2 This issue is addressed over several pages of the OCIJ interview
3 and seems perfectly clear.

4 According to Chhang Youk, expert witness, TCE-38 informed him
5 that he obtained the originals near Takeo from Sou Phirin. Thus,
6 it is obvious that the originals existed.

7 Mr. Sou Phirin himself stated that the documents had initially
8 been gathered from the villages or communes and subsequently
9 obtained from the district office. According to Mr. Youk Chhang,
10 TCE-38 claimed that he copied the originals and then gave them
11 back to Mr. Sou Phirin. Since then, Mr. Sou Phirin has declared
12 on numerous occasions that the originals have disappeared. Mr.
13 Youk Chhang, based on the indication provided by TCE-38,
14 repeatedly tried to find these copies at the Tuol Sleng Genocide
15 Museum. He was finally able to locate part of these copies in the
16 museum's archives, where they had been left by TCE-38 several
17 years before. These documents may have been found under a
18 dresser. One or more copies were later found by Mr. Chhang Youk
19 in one of the closed rooms at Tuol Sleng.

20 [09.41.29]

21 Should he testify, we hope to be able to obtain additional
22 clarification from expert TCE-38 regarding how he obtained the
23 original District 105 records and the conditions under which
24 these records were then copied and deposited at Tuol Sleng.

25 We fully accept that we only have copies; this does not

1 necessarily mean that, *prima facie*, these copies are
2 inadmissible. Such is the position of this Chamber and it has
3 been reiterated on numerous occasions.

4 Number 2, I invite Your Honours to consider the internal
5 reliability of indicators – rather, the internal reliability
6 indicators.

7 These documents are consistent (unintelligible) -- and with the
8 region's policies, namely in relations to the Khmer Krom, to
9 soldiers and officials of the Khmer Republic, the Vietnamese and
10 the New People.

11 Once again, whilst we do not wish to enter into a detailed
12 examination of the contents of these documents, a limited
13 analysis, thereof, is required in order to demonstrate their
14 consistency within the framework of the vertical chain of
15 command. This consistency strengthens their reliability and
16 credibility.

17 [09.43.22]

18 Several lists on the Khmer Krom population were established by
19 the communes of Tram Kak district and sent to the District 105
20 office.

21 Document D108/26.293 lists 24 Khmer Krom from Popel commune.

22 D157.19 is a list of 54 Khmer Krom at the District 105 level.

23 D157.3, dated January through May 1977, contains commune reports
24 on Khmer Krom families, among others.

25 D175/8.39 and D157.49, dated the 29th April 1977, are two lists

1 of around 10 Khmer Krom from Kus commune in which the rank of
2 those who were former soldiers is specified.

3 Document IS 18.34, dated on the 30th April 1977, is a list of
4 eight Khmer Krom from Ang Ta Saom -- Ang Ta Saom commune.

5 [09.44.56]

6 Document D108.26.74, dated the 4th of May 1977, lists 73 Khmer
7 Krom from Trapeang Thom Cheung cooperative.

8 Moreover, many other reports from the communes or the Kraing Ta
9 Chan Security Centre are related to the arrests or smashing of
10 the Khmer Krom.

11 [09.45.34]

12 Documents D157.16, D157.35, D157.51, that is from Popel commune;
13 D157.56, from Kus commune; D157.58, report from Chorm to the
14 district; D157.76, report from Nheng Nhang and Trapeang Thom
15 Tboung communes; D157.101 or D215.10.

16 Therefore, we can see the effort made by several communes of
17 District 105 of Tram Kak to make lists of Khmer Krom. The
18 diligence with which the arrests of these individuals are
19 reported should also be emphasized. In our view, this reveals a
20 consistency in the application of policies toward the Khmer Krom
21 by the national and local leaders.

22 That many communes lists shows that we are not dealing with
23 isolated events but with a response to a request made by their
24 superiors, namely District 105 and Sector 13.

25 The second category of documents is even more important: 45 out

1 of the 57 documents refer to the arrest or smashing of former
2 Khmer Republic soldiers and officials or to their families. They
3 are lists sent from the communes to the District 105 and, more
4 importantly, information exchanges between the communes, Kraing
5 Ta Chan Security Centre, District 105, and Sector 13, regarding
6 this category of individuals.

7 [09.47.45]

8 For instance, document D157.3 is a list of Khmer Republic
9 soldiers, drafted by Nheng Nhang commune.

10 D157.31 contains reports from different communes about former
11 soldiers.

12 Document IS 18.33 contains reports from March to May 1977, with
13 statistics about the number of relatives of Khmer Republic
14 soldiers who were smashed.

15 Document IS 18.26, that is reports from Ang Ta Saom and Leay Bour
16 commune about the arrest of two Khmer Republic soldiers.

17 Document IS 18.27, dated 19th January 1977.

18 Document 157.46 is a report from Ang Ta Saom commune to the
19 district about the arrests Khmer Republic soldiers.

20 Document D157.56 is reports and letters from Kus cooperative
21 about the betrayal committed by the Khmer Republic soldiers.

22 Document D232/78.3 is an important document; it contains a report
23 from Kraing Ta Chan about the confession of a former soldier as
24 well as instructions from Kit, the district chief, to arrest
25 other Khmer Republic soldiers.

1 Similarly, document IS 16.65 contains instructions from the same
2 Kit to arrest other former soldiers as well as an order from the
3 secretary of Sector 13 to smash prisoners.

4 [09.49.54]

5 Once again, we see that an individual's position as a former
6 Khmer Republic official or soldier seems to be an important point
7 that is referred to frequently in those communications. In our
8 view, this renders these documents consistent (unintelligible)
9 and with the regime's policy.

10 In a similar vein, a certain number of documents refer to lists
11 or arrests of the Vietnamese or to displaced persons falling
12 under the New People or the 7 April People category. Such
13 references are in line with the policies deployed by the region.
14 Your Honours, may I draw your attention to other reliability
15 indicators.

16 As for the formats, these documents are often hand-written and do
17 not always follow a clear pattern of presentation. They
18 nonetheless have some similar characteristics.

19 Local authorities used the limited resources that existed in the
20 communes and the security centre and, in particular, often used
21 school books entitled "Table of Multiplication" to make their
22 reports.

23 [09.51.39]

24 The language used in these reports is also typical of the
25 Democratic Kampuchea period, and following terms -- the following

1 terms are frequently used: "Angkar", "enemies", "smashing",
2 "purges", "revolutionary vigilance", "brother comrade", "beloved
3 comrade", "New People", "the 17 April", "contemptible", "Yuon",
4 "traitor" or "re-education".

5 Several witnesses interviewed by the Investigating Judges
6 authenticated or corroborated certain reports, for example by
7 identifying local cadres or communes which made up District 105.
8 The names cited correspond with those found in District 105
9 reports. The witnesses: are TCW-680, OCIJ interview D232/93;
10 witness TCW-505, OCIJ interview D232/16 and D232/73; witness
11 TCW-518, OCIJ interview 232/78; and witness TCW-301, OCIJ
12 interview D232/46.

13 Your Honours, the points above that I raised ensure the
14 reliability and the relevance of the documents that we intend to
15 be put before the Chamber.

16 Some of these witnesses might be heard by the Chamber for the
17 purposes of the first phase, some may not. Therefore, Your
18 Honours may summons some witnesses which may serve these
19 purposes.

20 [09.54.19]

21 TCW-680 admitted to typing documents similar to D157.3, D157.19
22 or D157.103, informally authenticated "Ann", the chief of the
23 Kraing Ta Chan Security Centre's signature.

24 Witness TCW-505 is a former District 105 chief who was later
25 replaced by his brother, Kit. He provided substantial information

1 concerning the administrative structure of Sector 13 and of
2 District 105, in addition to authenticating document IS 18.33.
3 In short, it appears that these 57 documents selected from Annex
4 8 are relevant, as they address the local administrative
5 structure and, most importantly, the communications exchange
6 within a sector, a district, and between the different local
7 authorities, including authorities of communes, cooperatives, and
8 security centre. Although these documents are copies, and not
9 originals, it is undeniable that they are reliable, consistent,
10 and present some common characteristics such that their prima
11 facie admissibility is warranted.

12 This concludes my presentation. Thank you, Your Honours.

13 MR. PRESIDENT:

14 Thank you.

15 [09.56.15]

16 Yes, the International Co-Prosecutor, you may proceed.

17 MR. DE WILDE D'ESTMAEL:

18 Thank you, Mr. President. Before we break at 10.30, I would like
19 to say a few words about our Annex 18, which concerns
20 international press articles.

21 "Can international media articles be, in principle, accepted as
22 evidence, corroborative or otherwise, or should they be rejected
23 wholesale as the Ieng Sary defence argues?", "can the 370
24 documents set out in this annex by the Co-Prosecutors be
25 considered prima facie as satisfying the minimum standards

1 required in terms of reliability, and relevance, and authenticity
2 to consider them admissible here?", are the usual questions that,
3 once again, we will have to decide upon for this particular
4 category of documents.

5 Annex 18 is composed of different types of articles that have
6 been published in a good number of newspapers or filed by press
7 agencies known the world over, along with radio broadcast
8 transmissions by FBIS, of which there are five, and the BBC's
9 SWB, of which there are 20. There are 22 AFP dispatchers, eight
10 from the Associated Press, eight articles that came out in the
11 "Bangkok Post", 21 "Chicago Tribune" articles, 25 from the "Los
12 Angeles Times", 59 from "The New York Times", six from "The
13 Peking Review", eight "Reuters" dispatches. And there are others,
14 too, from "The Economist", "Time", the "Far Eastern Economic
15 Review", and another 38 from "The Washington Post", others from
16 "Le Monde", and others still.

17 [09.58.54]

18 Of these, 43 of the documents are cited as evidence in the
19 footnotes of one of several paragraphs of the Co-Investigating
20 Judges' Closing Order.

21 Seven documents have already been given E3 reference numbers in
22 accordance with Decision E162. This decision grants an assumption
23 of reliability and relevance to the documents that are cited in
24 the Closing Order. Those seven documents are E3/30, E3/31, E3/51,
25 E3/85, E3/118, E3/120, and E3/132.

1 Now, even if at this juncture 36 of these 43 documents cited in
2 the Closing Order have not yet received E3 numbers because the
3 paragraphs that they substantiate have not yet been read out
4 before this Chamber, we do nonetheless believe that those 36
5 documents should logically enjoy the same assumption of relevance
6 and reliability as the others.

7 I'm not going to read out the entire list of 36 documents, but if
8 the Chamber considers it to be useful, we could provide it to the
9 Chamber and, indeed, to the parties.

10 Let me also remind the Chamber and the parties that some
11 arguments have already been put by the Co-Prosecutors in their
12 written observations concerning the reliability indicia of 978
13 documents.

14 [10.01.07]

15 In a document filed on the 23rd of December 2011, that's document
16 E158-- And I would draw your attention to paragraphs 79 to 82 and
17 131 to 135 of that paper.

18 You will also doubtless recall that the Co-Prosecutors talked
19 about the origins, relevance, and reliability of certain
20 international media articles and transcriptions of FBIS and BBC
21 SWB broadcasts during hearings on Annex 1, the declarations of
22 the Accused, and Annex 5, KD - DK - excuse me - media. And I
23 shall refer you to the transcription of the 17th of January 2012,
24 pages 84 to 86, and the transcription of the 19th of January
25 2012. Excuse me [says the speaker], it's not pages 84 to 86, it's

1 paragraphs 84 to 86, and as regards the 19th of January 2012,
2 [the speaker corrects himself] it is, in fact, the pages in
3 English, and therefore, for the latter transcription, it's 38 to
4 49, which particularly concern FBIS and BBC SWB documents.

5 [10.02.49]

6 Before I pick up on the specific arguments that we have heard
7 from the Defence over the last couple of days, I would like to
8 look closer at what the relevance of this document, in the
9 framework of this first trial segment, is based on.

10 As I see it, you have to distinguish between the periods when
11 these articles, documents and re-transcriptions came out.

12 Thirty were published between the months of May 1970 and the 17
13 April 1975. Those articles are particularly relevant to the
14 historic context.

15 Some of them concern the roles and functions of the accused
16 during the regime -- or during the period of the Khmer Republic
17 regime, when they were fighting against that republic.

18 Two-hundred-and-forty-one articles were published during the time
19 when the Khmer Rouge were in power, between the 17th of April
20 1975 and the 7th of January 1979. These articles are relevant
21 because they concern either the historic context or the role of
22 the Accused before and after the 17th of April 1975, and also
23 they concern the administrative structure of the Centre and its
24 different bodies and hierarchies. They relate to the
25 communication systems used by the regime and the five policies

1 mentioned by the Investigating Judges as being part of the joint
2 criminal enterprise.

3 [10.04.59]

4 Moreover, 65 are -- concern phases 1 and 2 of forced movements of
5 population, in particular the evacuation of Phnom Penh, which
6 constitute criminal acts that are levelled against the Accused in
7 the framework of this first trial.

8 There are also 99 articles or dispatches that were published
9 after the 7th of January 1979; even if they were published after
10 that date, a certain number do nonetheless concern the role that
11 the Accused played during the period of Democratic Kampuchea --
12 at least 17. Others concern the administrative structure of the
13 Centre, and others still, the five policies that I mentioned just
14 now.

15 Some documents appear only to concern the accused Ieng Thirith,
16 and I shall defer to the wisdom of the Chamber for a decision on
17 what should be done with those documents.

18 Most of the international media articles that were published
19 after the 7th of January 1975 concern the role, actions and
20 behaviour of the Accused after the regime, but they do
21 nevertheless give us important information about the continuity
22 of the Accused's commitment within the Khmer Rouge and on their
23 personalities. I believe that these are useful aspects that will
24 enlighten this Chamber, and you will wish to take them into
25 account during your debates.

1 [10.07.09]

2 Another point concerning the relevance of these documents: in a
3 number of foreign press articles at the time, the mass crimes
4 suspected of having been committed under the Democratic regime --
5 Kampuchea regime and by the regime are denounced. It will be
6 demonstrated that the regime had access to the contents of these
7 articles via analysis and translation services in the Propaganda
8 Ministry or in the Foreign Ministry, or through foreign
9 representations.

10 And these articles are relevant as well because they help to show
11 that despite the crimes described in the foreign media being
12 denounced very often using testimony from refugees who had fled
13 the country, and despite the awareness of the accusations by the
14 leaders, they nonetheless continued their joint criminal
15 enterprise.

16 Turning now to the origin and sources of these documents, most of
17 the 370 documents in this category were obtained by the OCP or
18 the OCIJ through sources that are open to the public, for example
19 the official sites of the newspapers and media publications
20 concerned. The fact that these archives are available and open to
21 anybody through the Internet and that the media themselves make
22 their publications accessible make it easy to verify that the
23 articles are precisely what they claim to be and it guarantees
24 the authenticity of the articles and the documents.

25 [10.09.33]

1 The five FBIS reports that are in our Annex 18 list were obtained
2 by the Co-Investigating Judges from Harvard University Library
3 during their investigation.

4 Seventy-four documents belong to the Swedish collection. They
5 were obtained by the Co-Prosecutors or the Co-Investigating
6 Judges from DC-Cam. They're all documents which start with the
7 ERN reference "S". Witnesses Youk Chhang and Vanthan Peou Dara
8 explained the origins of the collection and the fact that the
9 originals are held in Sweden's Lund University collection, So I
10 won't come back to that.

11 I now wish to address some of the arguments raised by the Defence
12 with respect to what was advanced by counsel for Nuon Chea. It is
13 rather straightforward, since counsel Ianuzzi had declared that
14 this category of documents not be dismissed, nor should all the
15 documents contained in this category be dismissed in light of the
16 fact that their team has also proposed that a certain number of
17 those article clippings be admitted as evidence before this
18 Chamber.

19 [10.11.10]

20 With respect to some of the objections made by the defence team
21 for Mr. Ieng Sary, they have suggested that this category of
22 documents be dismissed wholesale, except perhaps for the FBIS
23 transcripts, if and when they are corroborated.

24 As regards international media articles, the Defence purports
25 that their content cannot be verified unless the authors appear.

1 I would recall once again before Your Honours that there is
2 absolutely no rule, with respect to evidence that is applicable
3 before the ECCC nor any other international or hybrid tribunal,
4 that calls for the exclusion, the wholesale exclusion of
5 international media articles that cannot be corroborated by other
6 articles or documents. This is the approach that Your Honours
7 confirmed in your Decision E162, in which you stated that press
8 articles may hold relevance and, as such, cannot be excluded as a
9 category of documents.

10 This was also the position you held in Case File 001, during
11 which, in excess of 200 articles, including 22 which figure in
12 our Annex 18, were admitted as evidentiary material.

13 On many occasions, we have recalled that it is not necessary for
14 each author of a newspaper article to take the stand and provide
15 testimony; the applicable law simply does not require this.

16 [10.13.20]

17 Counsel Guissé, who represents Mr. Khieu Samphan, mentioned that
18 certain articles-- and she cited six in particular -- were not
19 signed by the author and that this poses a problem.

20 Obviously-- And indeed this is the case for a very small number
21 of press articles. We take note that, among the documents that
22 have been challenged, there are several that were published and
23 are missing the exact name of the journalist or author.

24 For example, this applies to document D56-Doc. 001 as well as
25 document D56-Doc. 003 -- these articles come from "The New York

1 Times". This should be sufficient in identifying the articles.

2 As for document D366/7.1.242, according to what is written on the
3 document, is an article that was published in Stockholm in March
4 1975.

5 For the vast majority of the documents that are contained in
6 Annex 18, the events that are reported in these texts do not
7 mention the names of their authors, but they are also
8 corroborated by other documents, and it is exactly for this
9 reason that they should not be dismissed.

10 [10.15.12]

11 For example, let us take article D56-Doc. 012, which is dated at
12 the start of April 1974, entitled "Cambodian People's Forces
13 March On". The article reports a meeting that occurred between
14 Mao Zedong and a delegation of the FUNK and of the GRUNK, which
15 was comprised of Misters Khieu Samphan and Ieng Sary.

16 The name of participants is also mentioned in a telegram of the
17 American Embassy dated the 9th of April 1974, and which is
18 classified under D313/1.2.32 and that is included in our Annex
19 17. These events are also mentioned in a "New York Times" article
20 dated April 1st 1974 and referenced under D56-Doc. 013 and
21 figures in our Annex 18.

22 I'll return to a document that has already been mentioned,
23 document D366/7.1.242. It was published in the "Peking Review"
24 and deals with the Second National Congress of Kampuchea, that
25 was held in February 1975, during which Mr. Khieu Samphan had --

1 spoke of the abolition of the currency, the riel, in the
2 liberated zones and the country's future economic plans. As you
3 are well aware, this congress was a widely known event and
4 corroborated by other sources.

5 [10.17.24]

6 The defence of Khieu Samphan had also levelled an objection
7 relative to documents that are comprised of only passages of
8 articles and that do not include the whole version of the
9 article. As a general rule, the vast majority of these over 300
10 articles are presented in their original format, with typical
11 formatting and characteristics. They follow the conventional
12 structure of an international press article by mentioning the
13 date, the editor, the publisher or the name of the publication
14 and author.

15 Indeed, there are some articles that are not published in their
16 full version, but only in extracts. The reason why the original
17 and, perhaps, full version of these articles are not available is
18 because they were obtained from the archives of these
19 publications, which are also available online. Nevertheless, even
20 in this format, these extracts contain indicia and
21 characteristics such as the logo of the newspaper or publication,
22 the name of the editor, and details concerning the website of the
23 archives. Once again, I will bring to your attention that the
24 events described therein are very often corroborated by other
25 documents.

1 One last objection was also presented by the defence for Khieu
2 Samphan. Madame Guissé, if I understood her correctly, mentioned
3 that the translation of certain articles originally produced in
4 the Khmer language or by those questioned could not be verified.
5 As regards this, the defence for Mr. Khieu Samphan was unable to
6 expand on this, since she, herself, has submitted that certain
7 press articles be admitted and used as evidence before this
8 Chamber, in her document E109/1.1 dated July 2001, in particular
9 with respect to new documents.

10 [10.20.22]

11 In some of these articles, statements are being attributed to
12 Cambodian individuals who may have been questioned in the Khmer
13 language. The issue of translation cannot be verified, but I do
14 not believe that the Defence will present any objections to
15 documents that they have submitted themselves.

16 For example, there was an article that was published in
17 "Newsweek", entitled - quote -- "Cambodia: Two Views from
18 Inside". This article dates back to the 17th of May 1976. The
19 document number does not have an ECCC nor ERN number. However, it
20 is referenced by DC-Cam as D29270 and can be retrieved from the
21 shared materials drive.

22 There's another article from the "Times" that the defence team
23 wishes to submit as being relevant. That article is entitled
24 "Defecting Khmer Rouge Helicopter Pilot Tells of Life in Phnom
25 Penh". The article was published on the 4th of May 1976 and is,

1 again, indexed in the shared materials drive, under the DC-Cam
2 reference number D29261.

3 Three other articles that comprise the 370 documents in Annex 18
4 have also been proposed by Mr. Khieu Samphan's defence team. For
5 your information, I will identify them as D366/7.1.289. This is
6 an article by Chanda Nayan that was published in the "Far Eastern
7 Economic Review" on October 14th (sic) 1977.

8 There is also a radio broadcast that is re-transcribed by FBIS,
9 and I'll also signal your attention to the fact that the Defence
10 has contested the admission of FBIS documents, and yet this
11 document is entitled "Chen Yung-Kuei's Cambodia Visit Reported"
12 -- it is dated 22nd of December 1977, under reference D367.3
13 (sic).

14 [10.22.59]

15 Lastly, the Defence submits that an article of the "Cambodia
16 Daily" published on January 8th 1999 be submitted. This document
17 does not figure on our list, but it is classified under
18 D312.2.12.

19 This nearly brings me to my conclusion. I simply want to make a
20 few more comments with respect to the FBIS reports and the BBC
21 Summary World Broadcasts. The defence for Ieng Sary has raised
22 some objections with respect to the FBIS reports. According to
23 Ieng Sary counsel, these reports must be systematically
24 corroborated.

25 I am of the view that the Defence can simply not deny that these

1 FBIS transcripts, just like the BBC SWB documents which figure in
2 Annex 18 and in other annexes, simply are reproductions, are
3 transcripts of what was broadcast over national airwaves, over
4 Phnom Penh radio and other southeast Asian radio stations or over
5 Chinese airwaves or even Japanese airwaves. We have established
6 this during previous hearings. The transcripts of FBIS and BBC
7 SWB have already been used on numerous occasions as
8 illustrations, before this very Chamber, by the Co-Prosecutors,
9 and we believe that we have persuaded you of their reliability
10 and of their probative weight.

11 [10.24.45]

12 We have established that these transcripts are word-for-word
13 reproductions of speeches given by Democratic Kampuchea leaders
14 as well as word-for-word re-publications of internal propaganda
15 used by the Communist Party of Kampuchea. These transcripts also
16 describe other events that the CPK's official documents set out
17 in great detail and which were also used as tools of propaganda.
18 Therefore, we are of the conclusion -- we are of the opinion
19 that, in conclusion, all documents, all FBIS and BBC SW
20 documents, and not only those that may be corroborated, should be
21 considered as highly reliable and relevant.

22 I would conclude by saying and submitting that all of these
23 dispatches and all of the documents be admitted as prima facie
24 admissible given their consistency, their relevance, and their
25 reliability.

1 I thank you, Your Honours, Mr. President.

2 I believe that, prior to making our comments on another annex, I
3 just want to confirm whether you wish to call for a break at this
4 stage.

5 Thank you very much.

6 MR. PRESIDENT:

7 Thank you very much, International Co-Prosecutor.

8 Now the time is appropriate for a break; we will take a 20-minute
9 break and we shall resume after that.

10 Defence Counsel, you may proceed.

11 [10.26.42]

12 MR. ANG UDOM:

13 Thank you, Mr. President. Good morning, Your Honours. Due to his
14 health, Mr. Ieng Sary would like to waive his right to
15 participate directly in today's proceeding. Instead, he would
16 like to follow the proceeding in the waiting room, downstairs,
17 and we would seek your permission, Your Honours.

18 MR. PRESIDENT:

19 Having heard the request by Mr. Ieng Sary through his defence
20 counsel not to directly participate in today's proceeding -- that
21 is for both this morning's session and the afternoon session --
22 and instead to follow the proceeding in the waiting room,
23 downstairs, due to his health, the Chamber agrees to the request
24 by the accused Ieng Sary through his defence counsel to waive his
25 right to participate directly and instead to follow the

1 proceeding in the waiting room, downstairs.

2 Defence counsel, you are required to deliver immediately the
3 letter to waive his right either with his signature or his
4 thumbprint.

5 The IT, you are instructed to link the proceeding to the waiting
6 room downstairs.

7 [10.28.26]

8 Security guards, you are instructed to bring Ieng Sary to the
9 waiting room, downstairs, so that he can follow the proceeding
10 from that room.

11 THE GREFFIER:

12 All rise.

13 (Judges exit courtroom)

14 (Court recesses from 1028H to 1049H)

15 (Judges enter courtroom)

16 MR. PRESIDENT:

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

18 Before we hand over the floor to the Prosecution, the Chairman
19 would like to inquire with the Prosecution as to how much time
20 you need in your remaining response.

21 MR. LYSAK:

22 Yes. Good morning, Mr. President. I have five annexes to cover. A
23 couple of them I will have to spend a lot more time on than the
24 others, so my best estimate at this time is, I would use the rest
25 of the morning and some of the afternoon. I'll give the Trial

1 Chamber an update as to where I am when we finish, at lunch. But
2 if I had to estimate now, I would probably say, the rest of the
3 time this morning and between half an hour and an hour after
4 lunch.

5 [10.51.13]

6 MR. PRESIDENT:

7 Thank you very much. And you may proceed.

8 MR. LYSAK:

9 Thank you, Mr. President.

10 I have five - five remaining annexes to address, and as I
11 indicated, some of them will require a little more time than
12 others, based on either the nature of the documents or the number
13 of objections that have been made.

14 The first annex that I will address this morning is Annex 6,
15 which is our collection -- submitted collection of DK
16 biographies.

17 There are three different types of biographies that are included
18 in this annex, and I will deal with each of those types
19 separately and endeavour to respond to the various objections
20 that have been raised by counsel for the Accused in relation to
21 each of those categories of documents.

22 [10.52.27]

23 The first category of biographies that I will address are
24 biographies that were prepared by S-21 prisoners. And this type
25 of biography is quite easy to identify in our annex because we

1 have, as best as we could, endeavoured to indicate in the
2 description column whether the biography pertained to someone who
3 had been arrested. But in addition to that, the biographies are
4 quite easily identified because they are only one page in length,
5 while the other two types of biographies that I will address
6 later are substantially longer.

7 And I'd like to start by first demonstrating what these types of
8 biographies look like by putting on the screen one example, if I
9 may have permission to do so, Mr. President.

10 MR. PRESIDENT:

11 Yes, you may proceed.

12 [10.53.40]

13 MR. LYSAK:

14 Thank you.

15 The biography I'd like to put up on the screen right now is-- I
16 think it's the other one. The example I wanted to put on the
17 screen now is document D2-15.33, which is the S-21 biography of a
18 female prisoner, Choek Yan.

19 Now, I note that this is one of a group of documents that the
20 Khieu Samphan defence objected to on the grounds that they could
21 not determine where the document came from, and thus there was no
22 basis to admit it. In fact, there is extensive information in the
23 case file about these S-21 biographies of prisoners, biographies
24 that typically included a photograph, as you will see in the
25 example on the screen. And for anyone who has ever visited Tuol

1 Sleng, these photographs will be hauntingly familiar. In terms of
2 where they came from, I would also note that the biographies
3 include hand-written identification letters and numbers from
4 DC-Cam in the upper right hand corner, which also give us
5 information as to who and how the document was collected. And
6 this applies to all four of a group of S-21 biographies that were
7 objected to by the Khieu Samphan defence on the same basis.

8 [10.55.32]

9 Now, the prima facie authenticity of these S-21 biographies is
10 confirmed by the format of the documents itself. Most are
11 standard, one-page, typed form, in which the responsible S-21
12 cadre would hand-write a personal, biographical and background
13 information when prisoners would first arrive at S-21. And after
14 that biographical information had been written down, the prisoner
15 would then be photographed, and the photo attached to the form.
16 And you can see that in the example that we just showed.

17 Let me show a second example, which is document D2-15.37, which
18 is the S-21 biography of Nou Sovann. And you'll see that the
19 format of this biography is identical to the one we previously
20 saw. And this consistent format itself is something that gives us
21 an indicia of reliability.

22 [10.56.56]

23 But we also know how these documents were prepared from the
24 testimony of OCP proposed witness TCW-698. This person was the
25 S-21 cadre who was responsible for documenting the entry of

1 prisoners into S-21 and maintaining prisoner lists. And in his
2 OCIJ interview, which is case file document D22/9, this witness
3 explained the procedure by which he completed these biographies
4 upon the arrival of each prisoner at S-21.

5 And that leads me to a second objection that has been made
6 regarding this category of documents by the Nuon Chea team, an
7 unsupported and unsubstantiated assertion that all biographies
8 submitted by our office were made under torture and thus should
9 be excluded.

10 In response to that, I would first note that only the first
11 category of biographies that I am addressing are biographies that
12 came from prisoners. That is not the case with the second two
13 categories.

14 [10.58.20]

15 And, second, as is made clear from the testimony of TCW-698,
16 these one-page biographies were prepared when the prisoners first
17 arrived at S-21, well before they were sent for interrogation and
18 subjected to torture, indeed even before they were assigned a
19 prison cell. TCW-698 has also testified that, in completing these
20 forms, he did not question the prisoners about matters such as
21 the conduct they were accused of, potential moral offences --
22 those types of issues. And we can see from these forms itself
23 that the information obtained from the prisoners was very basic,
24 personal background information identifying the individual, such
25 as their name, their age, sex, place of birth, address, position,

1 and identity of their parents, spouses, and children. The forms
2 also indicate the date and place of arrest, which of course is
3 information that also would be known by the security cadres who
4 had conducted their arrest and were responsible for them being
5 brought to S-21.

6 [10.59.46]

7 My point here is that the assertion that these biographies were
8 obtained by torture is not only inconsistent with the evidence in
9 the case file that was provided by TCW-698, but also that the
10 nature of this information itself is not the type of information
11 one would reasonably expect that torture would be needed to
12 obtain. These are fairly straight-forward biographical background
13 forms.

14 And I would also note that our proposed use of these S-21
15 biographies is a fairly limited one, and one that would not
16 violate the Torture Convention in any event, which is simply to
17 use these documents to identify the persons who were arrested and
18 subject to detention at S-21.

19 And I will address the issues regarding S-21 confessions and the
20 Torture Convention a little more in one of my later annexes.

21 [11.00.48]

22 But at the time, in terms of the relevancy of these S-21
23 biographies in the current case, Case 002/1, this information
24 remains relevant in this case because both the S-21 biographies
25 and S-21 prisoner lists, which is the next annex I will discuss,

1 they are both key sources of evidence that help establish the
2 structure of the Democratic Kampuchea regime, both how it was
3 organized in terms of ministries, districts, offices, and the
4 identity of who was who in the regime.

5 So, for example, the S-21 biographies that are on Annex 6 include
6 cadres from ministries such as the Ministry of Foreign Affairs,
7 the Ministry of Social Affairs, including a number of hospitals,
8 the Ministry of Commerce, as well as cadres from various K
9 offices -- these were offices that formed Office 870, an issue
10 that is part of the upcoming administrative structure segment of
11 this trial. The -- there are also biographies from cadres from
12 regional organizations such as the East Zone, Sector 105, which
13 was the Mondulkiri area, and biographies of cadres from military
14 divisions. So these documents are one of the sources that help us
15 put together the complete picture of how the democratic regime
16 was structured and who held what positions.

17 [11.02.38]

18 And I would add here, as there has been a specific objection to
19 documents from the Ministry of Social Affairs-- And certainly,
20 with Ieng Thirith now severed from this case, these documents
21 have a different significance now, but they remain relevant for
22 that same purpose, and a limited purpose, but to show how the
23 Democratic Kampuchea government was structured, including its
24 ministries, one of which was the Ministry of Social Affairs.
25 I'm now going to move on to the other two categories of

1 biographies, whose content is a little more substantive and of
2 more import, I think, to the issues before this Chamber.

3 But before I do so, I have to briefly address one of the
4 objections that was made by the Ieng Sary defence, who questioned
5 the professional ethics of our office, asserting that we were
6 trying to "sneak in" witness statements as biographies and
7 demanding an explanation from us as to why these documents had
8 been listed as biographies.

9 And the first example that was cited by counsel Karnavas -- the
10 first example was -- to support this assertion that we were
11 trying to "sneak in" witness statements as biographies was IS
12 19.46, which is the biography of an individual known as Heng
13 Phally. But if you look at the OCP's Annex 6 of biographies,
14 which is document E109/4.6, this document is number 6 in that
15 annex. And when you look at our annex, you will see very clearly
16 that what we have identified as the biography is a single page
17 from this document, a single page -- Khmer ERN 00051643, English
18 ERN 00337756 and French ERN 00593511. That page consists of the
19 biography of this individual. Now, there is a witness statement
20 for this person, which is also part of case file document IS
21 19.46, and that witness statement was separately listed by us in
22 our Annex 12, which was our annex for witness statements. And
23 that is document E109/4.12. And if you look at Annex 12, document
24 number 263 in that annex is the interview of Heng Phally that was
25 conducted by DC-Cam.

1 [11.06.17]

2 This exact same scenario applies for the second example that Mr.
3 Karnavas gave of how our office was purportedly trying to "sneak
4 in" witness statements as biographies. His second example was IS
5 19.157 -- IS 19.157. And again, if you look at our Annex 6 of
6 biographies, you will find identified as document number 27 the
7 pages from that document that correspond to the biography of this
8 individual, a person named Ruoh Aem. And once again the witness
9 statement for this person is separately identified in our annex
10 of witness statements, Annex 12, as document number 963.

11 The third and final example given by Ieng Sary's counsel, which
12 was IS 3.5, does not even include any witness statement; this is
13 rather a biography of a person which is followed by a number of
14 photographs of the detainee and her husband.

15 So I bring this up because it is troublesome to us that the Ieng
16 Sary defence would accuse our office of breaching professional
17 ethics and then cite examples that are demonstrably unfounded. It
18 is quite clear that, if counsel had made an effort to read our
19 document annexes before making these rather reckless accusations,
20 he would have seen that we had separately identified biographies
21 in Annex 6 and witness statements in Annex 12.

22 [11.08.29]

23 And I don't want to belabour this point any further, other than
24 to say that our office takes its professional responsibilities
25 extremely serious, both our responsibilities to the victims of

1 this country and our obligations to ensure that the rule of law
2 is followed and that the legitimate rights of the Accused are
3 respected.

4 And I understand that Defence will take issue with positions of
5 ours, that we are here to have a trial on facts and law, and that
6 they will vigorously challenge us, but I hope that in the future
7 we will stick to legitimate advocacy and avoid this type of
8 behaviour, of making, I think, reckless and unwarranted
9 assertions regarding ethics.

10 That said, I'd like now to move on to the second category of
11 biographies that are included in Annex 6, and these are what are
12 titled as "Revolutionary Biographies".

13 [11.09.57]

14 And Annex 6 includes a number of biographies -- revolutionary
15 biographies, of cadres from various ministries, zones, and other
16 DK organizations, including three revolutionary biographies of
17 cadres from Sector 105, which are documents numbers 10, 26, and
18 39 on Annex 6 -- that's documents 10, 26, and 39. There are
19 examples of these forms for cadres from both the Ministry of
20 Commerce and the Ministry of Social Affairs -- those are
21 documents 28 and 35 on Annex 6. And there's also a revolutionary
22 biography of a messenger who worked at S-21, which is document 27
23 on the annex.

24 And to be very clear, these documents are not biographies that
25 were prepared when cadres were arrested; they are a what is

1 clearly a standard form that cadres were required to complete
2 and, we would submit, one of the principle means by which the
3 Communist Party of Kampuchea monitored the class backgrounds and
4 connections of persons to ascertain whether they were loyal to
5 the Party or whether they had background issues that made them
6 suspect.

7 [11.11.34]

8 These documents are relevant to Case 002/01, not only as part of
9 the general evidence that establishes how the Democratic -
10 Democratic Kampuchea regime functioned, but also because
11 biographies were one of the means by which former officials and
12 soldiers of the Lol Nol regime and their relatives and contacts
13 were identified. This is a key issue in this case for reasons I
14 will discuss in more detail in my discussion of the next annex.
15 Now, in regards to the authenticity of this category of
16 biographies, the Khieu Samphan defence has objected to some of
17 these documents, in particular the three biographies from Sector
18 105 cadres, asserting that the testimony of a witness who had
19 testified regarding these biographies, which was TCW-457-- The
20 Khieu Samphan team asserts that the testimony of that witness is
21 insufficient because he merely identified who the people were,
22 and thus the reliability of these documents is still in question.

23 [11.13.09]

24 First, I would dispute counsel's characterization of that
25 testimony. TCW-457 does more than just identify the persons who

1 wrote the biographies; he confirms the accuracy of significant
2 information in the biographies, such as the names and aliases of
3 spouses and the positions held by the individuals who wrote the
4 biographies. And for the record, the case file number of the
5 statement of this witness is D125/138.

6 But in addition to the testimony of this witness which
7 corroborates the authenticity of these documents-- And I would
8 remind the Chamber that the prima facie standards for
9 admissibility have already been laid out, and there's absolutely
10 no indication here that these biographies are forgeries. To the
11 contrary, it is quite interesting to put all these biographies
12 together and see that they have a common format and structure
13 that applies to all the organizations. And I will get into that
14 in a little more detail in a moment. But suffice it to say that
15 there is a common format to these revolutionary biographies, and
16 virtually identical questions in each of them, whether they are a
17 form that came from Sector 105, a form that came from the
18 Ministry of Commerce or a form that came from cadres who worked
19 at S-21. And that tells us something. When you see a similar form
20 used across different organizations, from different parts of the
21 country, it is clear that this form was the result of a
22 centralized effort to monitor the backgrounds of people who
23 worked in the Democratic Kampuchean regime.

24 [11.16.05]

25 What specifically am I referring to? Well, each of these

1 revolutionary biographies has the identical structure, and first
2 of all in terms of the sections.
3 They start with a series of questions, usually up to 16 questions
4 related to: the person, the cadre who is filling the form,
5 personal data applicable to that cadre; there's a second section
6 of questions about their spouse, which is not as many questions,
7 up to about 10 questions; there is a third section about --
8 asking questions about their children; a fourth section asking
9 questions about their biological parents; a fifth section with
10 questions about parents-in-law, a sixth section with questions
11 about biological siblings; and, finally, a last section which is
12 typically titled "Close Friends and Circle Affiliations Outside
13 the Revolutionary Organization".
14 And the questions in each of these sections are almost always the
15 same. In that last section, one of the things that's striking is
16 that the first question is: "1. How many close friends do you
17 have?" And I must tell the Chamber that, in each of the
18 biographies I've looked at, the answer has always been the same,
19 "none".
20 [11.18.04]
21 Now, I will - I will go through a few of these questions, but I
22 turn now to explain briefly the relevance of these category --
23 this category of biographies, the revolutionary biographies.
24 And the relevance, we would submit, with these documents is as
25 much in the questions that are being asked, and maybe more so in

1 the questions that are asked, than are in the answers because the
2 questions that are part of the standard form show how the Party
3 controlled its members and, more specifically, how they
4 identified people who were suspect because of their class
5 background, relatives or other connections or links that they may
6 have, including persons who may have connections to the Lol Nol
7 regime.

8 The biography forms include, as standard questions, the persons
9 occupation and class before joining the revolution, a question
10 that obviously, if truthfully answered, would require people to
11 identify any positions prior to the Democratic Kampuchea regime
12 that made them part of the class enemies or if they held the
13 positions associated with the Lol Nol regime.

14 There is a series of questions, in each of these biographies,
15 that ask when they were -- when they joined the revolution, who
16 introduced them, and what the reason was for joining. And they
17 ask separate questions as to when they joined the revolution,
18 when they joined the youth league, and when they joined the Party
19 organization, as these were different steps in the process that
20 that person had to go through in order to become a member of the
21 Communist Party of Kampuchea.

22 [11.20.33]

23 They ask what their education was in the old regime. They ask:
24 "How often has your revolutionary biography and self-criticism
25 been examined?" And, as a result, there is discussion, in each of

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1 these forms, about the self-criticism process which is another
2 issue that is part of the upcoming segment.

3 And I would also direct the Chamber-- Some of the questions
4 relating to relationships with spouses and children are also very
5 telling. There is a question, in each of these forms, that asks
6 in relation to the individual spouse - quote -- "In human nature,
7 how does he or she love, hate, and affiliate him or self with you
8 as husband or wife?", and also a question that asks "How much
9 does the spouse have a political, economical or sentimental
10 influence and power on you?".

11 [11.21.58]

12 And, again, both the questions and the answers that you will see
13 in these documents are quite telling as to the expectations of
14 the Communist Party of Kampuchea for people who were part of its
15 organization and the expectation that there would be no other
16 loyalties.

17 You Honours, I'll now go to the third and last category of
18 biographies that are included in Annex 6, which are three
19 biographies that were written by cadres from the Ministry of
20 Foreign Affairs, all apparently around the same time, December
21 1976. You will find these documents in Annex 6, as documents
22 number 12, 37, and 40. And they are not forms -- forms like the
23 revolutionary biography documents that I've just discussed, but
24 these are lengthier documents written in a narrative style,
25 providing a detailed history of the individual.

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1 The Trial Chamber has in fact previously seen a -- one such
2 document, which was the biography written by Long Norin. The -
3 the number of that document which is before the Chamber is
4 E3/128; and the Chamber will recall that Ieng Sary requested Long
5 Norin to write this biography after inquiring whether he was CIA.
6 And the three biographies that I just referenced, that are part
7 of Annex 6, are very similar to that of Long Norin.

8 One of the cadres, a Ministry of Foreign Affairs cadre, is a
9 witness who is scheduled to appear before the Chamber, TCW-724.
10 His testimony, in his OCIJ statement, provides a very similar
11 account to Long Norin as to the circumstances that led him to
12 write the biography.

13 [11.24.48]

14 Specifically, in his statement, which is case file document
15 D199/20, TCW-724 testified as follows -- quote:

16 "Question: Why were you asked to write your autobiography?

17 "Answer: Because I was accused of being a KGB and CIA agent. One
18 had to justify one's past by revealing it.

19 "Question: Who asked you to write your autobiography?

20 "Answer: Ieng Sary himself. I believe he received the order from
21 above. But I am not positive about this. The autobiography was
22 written in December 1976. So it came as a result of accusations.

23 "Question: Did you have to answer specific prepared questions?

24 "Answer: Yes, and I also had to talk about the things I had done
25 in the past. Ieng Sary had suggested I should do this well, in

1 other words, fill in the form correctly. By this he meant that my
2 answers should reflect the spirit of the questions. I therefore
3 wrote that my grand-father, who was prime minister in three
4 governments, was a traitor. The Khmer Rouge were fond of this
5 sort of thing.

6 "Question: Your first wife was French [and I'll omit the name
7 reference]. Was that a problem?

8 "Answer: The Khmer Rouge were somewhat suspicious. But I was
9 never directly [asked] -- taken to task by the Khmer Rouge
10 because my wife was French.

11 "Question: Who were the autobiographies intended for?

12 "Answer: I handed it over to Ieng Sary. You would need to ask him
13 if he sent it to somebody. I do not know."

14 [11.27.05]

15 Now, Your Honours, this testimony itself is more than sufficient
16 to confirm the authenticity of the biography, which, I note, is
17 document -- case file document D366/7.1.831 -- that's
18 D366/7.1.831. And, combined with the testimony of Long Norin and
19 the biography we've seen from him, this is more than adequate
20 assurance to the Trial Chamber that these biographies from
21 Ministry of Foreign Affairs cadres are not forgeries. And I would
22 add to that that, consistent with the testimony that I just read
23 from witness TCW-724, the first page of his biography contains
24 the following description of his grandfather -- quote: "My
25 grand-father's name: [which I will omit for now], feudal class

1 and a reactionary traitor serving the French colonist."

2 This corroboration further demonstrates the authenticity and
3 reliability of this document as confirmed by TCW-724.

4 Now, these documents are relevant in this case in a number of
5 ways.

6 [11.28.55]

7 First, the biographies of the Ministry of Foreign Affairs cadres,
8 including the mere fact that they were requested to write these
9 documents, evidences Ieng Sary's role in security matters and it
10 also reflects the political education of cadres. The political
11 education of cadres is an issue that is part of the upcoming
12 segment of this trial. The segment that will follow that relates
13 to military issues and the - and the roles of the Accused in
14 relation to military or security issues. So these are part of the
15 foundational issues that my colleague discussed yesterday, that
16 are going to provide the foundation for future trials or possibly
17 additional crimes that may be added in this trial.

18 And a few examples of how these biographies are relevant to those
19 issues, starting by going right back to the biography of TCW-724,
20 who, again, testified that he wrote this after being accused of
21 being a KGB or CIA agent. And, again, this document, which is
22 D366/7.1.831, contains the following statement at the very outset
23 of the biography -- quote:

24 "Our comrade in charge has reported that our class enemy has
25 brought accusations on me. I would like to sincerely and

1 wholeheartedly present my autobiography to the party as follows..."

2 [11.30.58]

3 So, from the very start of this document, it evidences Ieng

4 Sary's involvement and role in security matters and in monitoring

5 his responsibility to monitor the cadres in his organization.

6 One of the two other biographies of Ministry of Foreign Affairs

7 cadres is document D366/7.1.829. And I do not believe this

8 witness has been -- this individual has been listed as a witness

9 by any party, but he is a person -- even if he has not been

10 listed, he is a person that, at some time, the Trial Chamber may

11 want to consider hearing. So I will refrain from reading his name

12 into the record at this time. But he is someone that, at least as

13 of November 2009, was still alive, at which time he gave a

14 statement to the Office of Co-Investigating Judges, which you

15 will find as document D233/11.

16 [11.32.24]

17 And his biography-- This is a -- one of the intellectuals who

18 studied in France and joined the Front after the March 1970 coup,

19 and he describes in his biography how Ieng Sary, who is referred

20 to as "'Bang' special envoy representing [...] Angkar", educated

21 student from Paris who came to Beijing and provided them with

22 "documents to disseminate".

23 His biography also states that, after he returned to Cambodia

24 during the Democratic Kampuchea regime, he was sent by Angkar to

25 be re-educated in a cooperative in Sector 103, where - quote: "I

1 was so excited and got my brain washed and [...] became even more
2 proud of the Party..."

3 The third biography of a Ministry of Foreign Affairs cadre is
4 that of Ok Sakun, a person whose name has come up a number of
5 times during the historical background segment of this trial, and
6 this is document D366/7.1.830. And his biography describes how he
7 was - quote "converted from being a revisionist" - end of quote
8 -- partially due to education he received in 1971 from Ieng Sary,
9 who was identified by his alias, Van.

10 [11.34.26]

11 And Ok Sakun also noticed -- notes that from 1970 on he received
12 education from Ieng Sary every year. And as a result of the
13 education that he received, he goes on to describe his then
14 current view on revisionism -- quote:

15 "I now believe revisionism to be the number one enemy of our
16 socialist revolution and number one enemy of the Communist Party
17 of Kampuchea at present and into the future. As a matter of life
18 and death, we need to continue our struggle against revisionism,
19 especially the Vietnamese revisionists, until they are completely
20 gone."

21 Continuing on, at the conclusion of his biography, to state --
22 quote: "I have clearly identified the life and death enemies;
23 they are revisionism and the view and standpoint of capitalism
24 and privatism."

25 So these documents are fairly telling evidence that shows, in

1 this case, the role of Ieng Sary in political education of
2 cadres, but also, in general, the process by which cadres who
3 were part of the Communist Party of Kampuchea were educated, and
4 trained, and made to comply with the Party's policies and
5 directives.

6 [11.36.24]

7 These biographies also show us, in some cases, who were the
8 groups and classes that were targeted by the CPK, as the cadres
9 had to explain their contacts and connections with persons from
10 various groups or classes. And one such targeted group were
11 officials and soldiers from the former regime, and the
12 biographies reflect how cadres had to explain their relationships
13 or contacts with such persons.

14 So, for example, in the biography of the second Ministry of
15 Foreign Affairs cadre, D366/7.1.829, he identifies the class
16 background of his parents and siblings, including the fact that
17 one of his sisters was married to a soldier who had - quote --
18 "ranked Chief Corporal in the Royal Army" and - quote --
19 "belonged to a special class serving as a tool of the ruling
20 class".

21 He also goes on in his biography to reveal how, when he was in
22 France in 1969, he went on a camping trip with a group that
23 included A Long Keng, who was the "traitorous [...] Lon Nol's
24 nephew", and also a French man who was - quote -- "an agent of
25 the French imperialists".

1 [11.38.17]

2 So, again, these biographies reflect who it was that the CPK
3 considered enemies of the Party, for whom cadres had to explain
4 their contacts, and in this case, that the particular enemies
5 were people associated with the Lon Nol regime, in fact, the fact
6 that this cadre had had a camping trip in France with Lon Nol's
7 nephew. And this is also, I think, a concrete example of the very
8 invasive structure that was implemented by the CPK, in which no
9 detail of a person's current or past life was private and no
10 stone was left unturned in their search for potential enemies.
11 The biographies also contain miscellaneous other facts that are
12 relevant to issues before the Chamber in this case, including
13 historical background facts and, in some cases, the force
14 movements.

15 [11.39.38]

16 For example, the biography of TCW-724, which, to repeat, is
17 document D366/7.1.831, contains the following statement in its
18 concluding section -- quote:

19 "Before returning back to the country in late 1975, I did not
20 notice that 17 April 1975 was the end of the People's Democratic
21 Revolution. I did not realize that currency abolition and people
22 evacuation had been practised in terms of class struggle in order
23 to continue the Socialist Revolution and to establish a socialist
24 country. Then I realised that they were very important acts that
25 needed to be done after exhausting war. [...] They were just the

1 necessary measures."

2 The biography of this individual also provides a lot of useful
3 information on the pre-1975 period as this person was a minister
4 in the GRUNK.

5 Before I move on to the next annex, there were a couple of
6 miscellaneous objections, just to briefly respond to, relating to
7 these documents.

8 The Ieng Sary defence have objected that the biography of TCW-724
9 should be treated like a witness statement and only admitted if
10 and when that witness testifies. Now, as I've indicated, that
11 witness is on the Trial Chamber's schedule for the next segment,
12 but we strongly disagree with the assertion -- the attempt to
13 characterize a biography prepared in 1976 as a witness statement.

14 [11.42.00]

15 Witness statements are subject to a different criteria because
16 they are intended-- What is covered by that concept is statements
17 that were provided either specifically for litigation proceedings
18 or in anticipation that they could be used as part of some
19 disputed legal proceeding.

20 These biographies are living and breathing contemporaneous
21 documents from the Democratic Kampuchea regime that are relevant
22 merely by the fact that they were written. This is not -- these
23 are not submitted as testimony of a witness. As I have explained,
24 the very fact that they had to write these biographies, the fact
25 they had to explain all of these contacts with individuals who

1 are identified as "contemptible"-- No one is asserting that these
2 people actually were contemptible or traitors. It is the mere
3 fact that they had been called upon by the Party to explain all
4 the contacts with all these groups of persons that is relevant.
5 So this is -- these are far, far from witness statements. And my
6 colleague has, I think, talked about that issue in general, but
7 contemporaneous documents are not witness statements; they are an
8 important source of evidence; they are a way for evidence to be
9 put before the Court in a more economical manner. And the reason
10 documents are admitted is because they are considered to have a
11 reliability in terms -- related to the relevance that allows the
12 Court to assess information without having to hear testimony.

13 [11.44.02]

14 The Ieng Sary defence also identified one biography on our list
15 that did not have translations, which was D2/15.36, and I would
16 simply say that, of the 41 documents on this annex, there are
17 only a small number left -- four, I believe -- that do not yet
18 have translations in all three languages, though requests for
19 those translations are in process. So we do expect that in the
20 near future all of the documents on this annex will have complete
21 translations, and obviously, as many people have commented, this
22 is an issue and problem that all parties face, and we certainly
23 have done everything we can -- and we'll continue to do so -- to
24 make sure that the documents that we present are translated in
25 all three languages.

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1 And the last objection, just a quick comment on it. The Khieu
2 Samphan team had objected to some of the biographies on the
3 grounds that a chain of custody had not been established.

4 [11.45.23]

5 And, again, I think that this is a general issue that has been
6 dealt with before, but I'll simply note that chain of custody is
7 just one way to authenticate documents; with these biographies,
8 you have heard already this morning that there is a wide variety
9 of means by which these are authenticated, both the testimony of
10 some of these individuals who are still alive, testimony of
11 people who were involved in the preparation of these documents
12 and the form and structure of these documents, which has -- where
13 there is a consistent form that allows the Trial Chamber to look
14 and go and make a prima face determination that these are
15 authentic.

16 The second annex that I will address is Annex 9, which is an
17 annex of S-21 prisoner records. And just so we are clear, these
18 are different documents than confessions. There were very few
19 objections stated to this annex during the hearings the last few
20 days, so I hopefully can cover this annex relatively quickly.

21 [11.46.55]

22 First, just to describe the documents here, this annex consists
23 of lists that were maintained by the same S-21 cadre who I
24 mentioned earlier, TCW-698, who was responsible for identifying
25 prisoners who entered S-21 and keeping lists of the prisoners who

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1 were there, as well as lists or logs kept of detainees who were
2 being interrogated and lists of detainees who had been executed.
3 So you will see that there is -- we've endeavoured to identify
4 these documents either as a S-21 prisoner list, an interrogation
5 log or an execution log.

6 And there's no question regarding the authenticity of these
7 contemporaneous records that were maintained as part of S-21's
8 operations. In his statement to the Co-Investigating Judges,
9 TCW-698 was shown and authenticated a number of examples of these
10 documents and certainly, if necessary, he could be called to
11 testify and do so here, though I would also note that next week
12 we will be hearing from the Chairman of S-21, who certainly also
13 is in position to confirm that these were records maintained by
14 S-21, to the extent anyone actually disputes that.

15 [11.48.51]

16 Now, in regards to relevance, as with the S-21 biographies that I
17 discussed earlier, the general relevance of the prisoner lists in
18 Case 002/1 is, again, simply to assist in identifying the
19 organizational structure of the Democratic Kampuchea regime and
20 the identity of cadres who held significant positions. Because
21 S-21 was used to purge cadres from all DK organizations across
22 the country, one can identify, going through these prisoner
23 lists, the names of K offices that formed 870, the names of
24 districts within particular sectors and zones, the organizational
25 structure of the military, the ministries that were in existence

1 and staffed by cadres, and of course the identity of leading
2 cadres from those organizations who were purged.
3 So the primary use-- And as my colleague pointed out yesterday,
4 these lists were submitted at a time when -- prior to the
5 severance of the case. Nonetheless, there were - there was an
6 effort to identify documents relevant to the -- these first phase
7 issues, and these S-21 prisoner lists remain relevant for this
8 contextual background issue of helping to identify what were the
9 various organizations within Democratic Kampuchea and who the
10 individuals were who were - who were from those organizations.

11 [11.50.46]

12 But in addition to that general use, some of the S-21 prisoner
13 records are also relevant to show that the CPK, in fact, did
14 target former officials and soldiers of the Lon Nol regime. This
15 is a critical issue in Case 002/1, as the Accused are charged
16 with using the evacuation of Phnom Penh as a strategy and means
17 to remove enemies from the base, their cities, and to identify
18 and execute or eliminate those enemies as part of the evacuation.
19 This included executions of Lon Nol soldiers and officials who
20 were identified at checkpoints outside Phnom Penh, and the
21 targeting of this group continued, of course, after people had
22 been removed from the cities, placed in cooperatives, and
23 required to submit biographies discussing their background. And
24 the plan to identify and eliminate officials and soldiers of the
25 former regime is reflected in a number of S-21 prisoner lists

1 from 1976.

2 The best example of this is an S-21 execution log for March 1976,
3 which is case file document IS 7.2. And this document lists 159
4 former Lon Nol soldiers, officials or relatives who died at S-21
5 that month, March 1976, including 153 who were executed and six
6 who died from illness. Within that group, this list includes at
7 least 13 persons who are identified as relatives or family
8 members of Long Boret. Their execution is recorded in numbers 44
9 to 50, 135 to 136, 149, and entries 153 through 155 of this
10 execution log.

11 [11.53.31]

12 The Chamber will recall that Long Boret, of course, was the Prime
13 Minister of the Khmer Republic and he was one of the seven super
14 traitors whose execution was ordered in a statement issued by
15 Khieu Samphan in late February 1975. This document from S-21
16 shows the ongoing effort to eliminate relatives of Mr. Long
17 Boret.

18 And, also, the very last entry on this S-21 log, number 159,
19 records that, on the 30th of March 1976, the four children of
20 Thach Chea were executed. And, again, Your Honours may recall
21 that Thach Chea was a high-ranking official in the Ministry of
22 Education in the prior regime.

23 Long Norin has testified in these proceedings that he was accused
24 of being CIA and directed by Ieng Sary to prepare a biography
25 explaining his past relationship with Thach Chea. And you have

1 seen the biography that he prepared, referring to Thach Chea as
2 "the contemptible" one.

3 Now, while Long Norin survived and was able to testify in these
4 proceedings, the relatives of Thach Chea did not. In addition to
5 the four children whose execution is recorded in IS 7.2, Duch has
6 testified that the wife of Thach Chea was killed in the most
7 horrific of ways, through live medical experimentation.

8 [11.55.43]

9 Other examples of S-21 prisoner records that are relevant to
10 establish the CPK policy targeting Lon Nol soldiers and officials
11 are D312.1.46 -- D312.1.46 -- which is a 22 March 1976 list
12 recording the execution of 47 former soldiers from the previous
13 regime, and also D108/26.16 -- that's D108/26.16 -- which is a
14 list of six S-21 prisoners from 1976 identified as former
15 government officials, including one person who was a palace clerk
16 who is recorded as having been executed.

17 Now, the only specific objection made by the Accused to any
18 documents on Annex 9 was the Ieng Sary defence's objection to a
19 single document, D108/26.135 -- D108/26.135 -- which they contend
20 is only relevant to Ieng Thirith and, hence, no longer relevant
21 given her severance. This document is a list of four cadres from
22 the Ministry of Social Affairs who were imprisoned and
23 interrogated or executed at S-21.

24 And the issue with this S-21 prisoner list is the same as the
25 S-21 biographies for Ministry of Social Affairs' witnesses.

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1 Specifically for purposes of this case, the relevance is limited
2 to demonstrating the administrative structure of the ministries
3 that constituted the Democratic Kampuchea government, including
4 the Ministry of Social Affairs. That is a fairly limited
5 relevance, and unless -- until one gets to the case that includes
6 S-21 as part of the crime base, at which time, of course, these
7 documents would have a greater relevance. But at this time, as I
8 have indicated, all these documents have a general relevance to
9 show how the regime was structured.

10 [11.59.01]

11 Now, I can break at this time, Mr. President. I have three
12 annexes left to cover, but I believe I certainly will take no
13 longer than an hour, possibly as short as half an hour, probably
14 sometime -- somewhere in between half an hour and an hour to
15 finish the other three annexes.

16 MR. PRESIDENT:

17 Thank you, International Co-Prosecutor, for your information
18 about the time that you will need after the lunch break.

19 It is now appropriate for the Court to adjourn for lunch break.

20 We will be back at 1.30.

21 Security guards are instructed to bring the accused persons, Nuon
22 Chea and Khieu Samphan, to the holding cells, downstairs.

23 I note Mr. Ianuzzi is on his feet. You may proceed, Counsel.

24 MR. IANUZZI:

25 Thank you, Your Honour. Very briefly, Nuon Chea would request to

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1 retire to the holding cell this afternoon to follow the
2 proceedings from there.

3 And we've prepared the relevant documentation, which we will
4 submit to the Greffiers. Thank you.

5 [12.00.27]

6 MR. PRESIDENT:

7 Thank you.

8 Having heard Nuon Chea's request made through his counsel, which
9 requests the Chamber to follow the proceedings through the visual
10 - audio-visual means from the holding cells, downstairs, and to
11 waive his rights to participate directly in this courtroom, and
12 that the counsel will submit to the Chamber the waiver with the
13 signature of the Accused, the Chamber allows.

14 The AV Unit is also instructed to live the proceedings to the
15 holding cells this afternoon.

16 Again, security guards are instructed to bring the two accused
17 persons to the holding cells, downstairs, and for the afternoon
18 session, to bring the accused Khieu Samphan back to the courtroom
19 while keeping Mr. Nuon Chea in the holding cell so that he can
20 follow the proceedings from there.

21 The Court is now adjourned.

22 (Court recesses from 1202H to 1331H)

23 MR. PRESIDENT:

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

25 We will now hand the floor to the Prosecution so that they can

1 continue with their response to the objections raised by the
2 defence teams. You may proceed with your remaining time.

3 MR. LYSAK:

4 Thank you, Mr. President. This afternoon, I have three annexes
5 left to respond to, and so I will start with Annex 16, which is a
6 list of audio and video material. And in the case of this annex,
7 I will focus on responding to the specific objections that have
8 been raised by the Defence.

9 I note, though, that there was some general objections or
10 comments regarding these documents, an assertion by the Nuon Chea
11 defence that -- quote unquote - authors of these materials should
12 appear in Court so that the full context of recorded statements
13 by the Accused can be understood. I think it's very unclear who
14 authors are when we're talking about video recordings or audio
15 recordings where the actual words of the Accused themselves --
16 the Accused are recorded and can be heard.

17 [13.34.32]

18 The Ieng Sary defence similarly asserts that, if recordings
19 contain -- quote unquote -- witness statements, they should have
20 the right to confront those persons.

21 Now, my colleague yesterday responded to those concepts in
22 general, so I would just note again that this Court has already
23 ruled that all authors of materials do not need to appear and
24 that the issue regarding the use of witness interviews or
25 statements is pending before the Chamber.

1 We certainly would take issue with the Ieng Sary defence's
2 attempt to characterize anything anyone ever says as a witness
3 statement. Again, as my colleague discussed yesterday, the rules
4 regarding witness statements are intended to cover certain types
5 of statements, specifically those intended or at least known to
6 be likely to be used in potential legal proceedings.

7 [13.35.41]

8 Returning to specific objections, the Ieng Sary defence objected
9 to one audio recording, which was D232/110.1.1.49R -- to repeat
10 that, D232/110.1.1.49R -- which is a recorded interview of
11 TCW-536. And the defence objects because the audio recording is
12 in French and not available in English.

13 Of course, audio and video recordings are only being translated
14 by the Court where they have a corresponding written transcript.
15 Otherwise, they can be translated when clips -- at such time as
16 clips are played in Court, as was done with the clips of the
17 interviews of Khieu Samphan that were played at the end of the
18 historical background phase.

19 And also, in regard to this particular witness, I note that this
20 is a recording of a prior interview of a trial witness, and it
21 was our office's policy -- and remains our office's policy -- to
22 try to include in our annexes and disclose all past statements of
23 witnesses that we have proposed as trial witnesses or other
24 people who are added to the trial witness list before this Court.
25 And because of that, where we have any type of statement that

1 we've identified, we try to make that available in part of the
2 proceedings.

3 [13.37.53]

4 The Khieu Samphan defence has made a number of objections to
5 these materials which I'll cover next. There was an objection to
6 document D295/2/2.25R -- to repeat that, D295/2/2.25R. I'm
7 reading these slowly and repeating them because yesterday I was
8 watching on video and was having a hard time keeping these
9 numbers and had to do some searching myself to make sure I had
10 the correct videos that had been objected to.

11 But this first video is one that's entitled "Khmer Rouge Military
12 Exercises". And there was a second video, D295/2/2.56R --
13 D295/2/2.56R -- which is a video entitled "Khmer Rouge Industry".
14 And the Defence objection is that these were not relevant to the
15 first trial.

16 These were identified in our annex as potentially relevant to
17 military structure and other issues. However, I did a quick
18 review of those videos myself yesterday and I can tell the
19 Chamber at this time that we have no present intention to play
20 them during this trial, so the Trial Chamber can defer ruling on
21 those two videos for this time.

22 The Khieu Samphan team also objects to D210/5R, which is an audio
23 recording of an interview of TCW-494, and to a number of other
24 audio recordings of interviews of TCW-92 and TCW-223.

25 The list-- It was a range of four recordings that starts at

1 D269/9/1.9R, and the case file numbers are the same for the other
2 three, except that the second one ends in 1.10R; the next one,
3 1.11R; and the last one, 1.12R. Again, the preface to those is
4 all D269/9.

5 [13.41.27]

6 These are all audio recordings of interviews for which we have
7 also identified written transcripts. As a result, those -- the
8 written transcripts of those interviews are part of the annex
9 that is pending before the Trial Chamber in terms of its ruling
10 as to the circumstances under which such witness statements can
11 be used.

12 These are also witnesses who have been requested to appear by one
13 of the parties in these proceedings, and that, too, is a matter
14 pending before the Chamber.

15 We would submit that the issue regarding the use of these audio
16 recordings will be dependent upon how the Court rules on the
17 corresponding statements and whether or not these witnesses
18 testify in Court. So, in other words, this issue will be dealt
19 with by other rulings of this Court and need not, I think, be
20 separately ruled upon at this time.

21 The Khieu Samphan team also objects to a series of three video
22 recordings of interviews of Khieu Samphan; those are case file
23 numbers D313.9R, D313.10R, and D313.11R. And the objection, as I
24 heard it, was on the grounds that the journalist who conducted
25 the interview is unknown.

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1 [13.43.37]

2 And I'd like the Court to just see -- there's no need for this to
3 be translated, but to see what this video -- how this video
4 appears because I think it will be informative to responding to
5 this objection. So, if I - if the audio -- Mr. President, if the
6 audio/video booth-- We've identified the first of these -- first
7 of these recordings, D13 -- or, excuse me, D313.9R, and I've
8 asked the audio/video booth to play a part of that recording so
9 that the Court can see it, if that is acceptable, Mr. President.

10 [13.44.27]

11 MR. PRESIDENT:

12 Yes, you can proceed with the display of the video. The AV Unit,
13 you are instructed to show it as requested by the Prosecution.
14 (Audio-visual presentation -- No interpretation from Khmer)

15 [13.45.23]

16 MR. LYSAK:

17 That's enough.

18 So, Mr. President, I wanted to play part of this, which I watched
19 yesterday, because I heard the defence counsel, yesterday, saying
20 they were not objecting just for the sake of objecting.

21 I don't know who the person was who conducted that interview --
22 there may be only one person in this room who knows that, which
23 is Mr. Khieu Samphan himself -- but I think it is crystal clear,
24 beyond any question, that the person who is talking in this video
25 is Khieu Samphan. And if he wishes to make an assertion that this

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1 is a forged video, he's free to do that. I have not heard that
2 assertion and I think that the video speaks for itself. And this
3 is clearly a prime facie authentic and admissible piece of
4 evidence.

5 I would note, Your Honour, that there are three of these videos.
6 The first is 30 minutes, the second 55 minutes, and the third is
7 one hour and 55 minutes.

8 [13.46.41]

9 It's unclear to me whether these are the same -- part of the same
10 recordings that are presently being transcribed, so I will be
11 looking into that to make sure -- to see whether or not these
12 recordings -- a transcript is created for these recordings, given
13 that these are -- appear to be fairly substantive interviews of
14 the Accused.

15 But in terms of admissibility, there simply can be no question
16 that the person talking in that video is Khieu Samphan.

17 The Khieu Samphan team has also objected to D269/9/1.13R --
18 D269/9/1.13R. And this is an audio recording entitled "Cham
19 Interview". The Khieu Samphan team objects on the basis that it
20 is unclear who was interviewed, who conducted the interview, and
21 under what circumstances.

22 [13.47.56]

23 Contrary to that assertion, when I played the tape yesterday, at
24 the very start the interviewer identifies himself as Dan
25 Dickinson, indicates that he was conducting an interview, on the

1 18th of May 1985, of seven Cham witnesses, in Seattle, and then
2 the interview proceeds from there.

3 However, again, it looks to me that it is unlikely that this
4 video -- or this audio recording is likely to be used in the --
5 in this present proceeding. So, in response to the objection, I
6 would also inform the Court that there is no need for the Court
7 to rule on this audio as part of the first -- first trial.

8 The next annex that I will respond to is Annex 11, which are the
9 trial transcripts from Case 001. And the Defence have objected to
10 the use of these.

11 And first, as a general response, let me say that our position is
12 that the testimony of these witnesses from Case -- from the Case
13 001 trial should be treated the same as other witness statements,
14 interviews, and testimony that are pending before the Court in
15 its rulings on Annexes 12 and 13. This was probably an oversight
16 in terms of our planning here, but I think the Court's rulings on
17 other witness statements should also apply to the testimony of
18 witnesses in the Case 001 trial. And so, whatever the Court rules
19 on Annexes 12 and 13, we would submit, should also govern the
20 witness testimony in the Case 001 trial.

21 [13.50.24]

22 And I note that we have made an effort to disclose statements
23 from other cases when they relate to people who are -- we have
24 proposed as trial witnesses in this case or they've been
25 selected. We were applauded by the Ieng Sary defence when we

1 disclosed statements from such witnesses from Cases 003 and 004;
2 the same should apply to statements or testimony of witnesses
3 from Case 001.

4 And I would also add to this that much of the testimony in the
5 Case 001 trial transcripts was from Duch. He is, of course,
6 scheduled to testify next week, and when he does so, it is our
7 position that all -- like with other witnesses, all of his prior
8 statements, and interviews, and testimony will be properly before
9 the Chamber, as the Accused will now have a chance to
10 cross-examine the witness.

11 So, simply put, Annex 11 can be dealt -- thrown into the same
12 group as Annexes 12 and 13, and ruled on, and subject to that
13 ruling, in our submission.

14 [13.52.01]

15 And that brings me to the last annex that I will address today,
16 which is Annex 10, the S-21 confessions. This is an issue that we
17 could talk at length about. I will not do that today; I will
18 endeavour to make a few general comments because I think the
19 issues that relate to the use of these documents in the current
20 trial are somewhat more limited than, perhaps, issues that will
21 arise in a case that includes S-21.

22 The Defence objections that were made in the last few days were
23 general objections based on the torture convention and relevance.

24 I, at least, did not hear any objections based on authenticity.

25 I, nonetheless, note that there can be little question about the

1 authenticity of these particular records.

2 As with other documents from S-21, there is a fairly consistent
3 structure, or format to the documents, as well as thumbprints,
4 repeated initials, signatures, many indicia of authenticity. On
5 top of that, the Chairman of S-21, Duch, has confirmed the
6 authenticity of many of these confessions, both the underlying
7 documents themselves and, importantly, also annotations made on
8 the documents by himself, by Son Sen, by Nuon Chea, and some of
9 the interrogators. So there is no question about the authenticity
10 of these records.

11 [13.54.07]

12 Now, in regards to the general admissibility of the documents and
13 the Defence objection based on the Torture Convention, I would
14 make a few observations at this time.

15 First, as my colleague discussed yesterday, the Torture
16 Convention has a very express criteria that only results in the
17 exclusion of statements shown to have been obtained by torture.
18 In their discussions and objections, I've heard some fairly broad
19 statements from the defence counsel, statements to the effect
20 that anything associated with S-21 is tainted and should be
21 viewed with scepticism. And admittedly these statements are
22 vague, but it suggests that the Defence would like the Court to
23 build a wall around S-21 and not allow any evidence related to
24 the operation of that prison before this Court. But of course
25 that is not the law. There is no "fruit of the poisonous tree"

1 doctrine that applies to the Torture Convention.

2 And I realize that that term may not translate well, so let me
3 explain, in case some people do not know -- understand that
4 reference.

5 [13.55.44]

6 There is a doctrine developed in American jurisprudence that if
7 an illegal search -- if a suspect's rights has been violated and
8 illegal search has been conducted, evidence -- any evidence that
9 results from the violation of the rights from the illegal search
10 cannot be used, not only the evidence that was immediately taken
11 in the illegal search, but evidence, subsequent evidence that was
12 derived as a result of that initial violation.

13 There is no such doctrine in regards to the Torture Convention;
14 the Accused would like there to be, they would like any use of
15 anything that was done by interrogators at S-21 to be off -- to
16 be barred so that we can't talk about it, but of course that is
17 inconsistent with the purpose of the Torture Convention, which is
18 to ensure that people are prosecuted for torture.

19 To put this another way, there is no rule that bars the admission
20 showing how S-21 confessions were used by the regime. As one
21 example of that, the fact that copies of confessions were sent to
22 Son Sen, to Nuon Chea, and to the heads of the organizations of
23 the interrogated cadres and used by them as a basis to identify
24 other suspect cadres within their organizations, the fact of how
25 these confessions were used are legitimate issues before the

1 Court that are not barred by the Torture Convention because to do
2 so would prevent the prosecution of one of the largest schemes of
3 torture that the world has ever seen.

4 [13.57.52]

5 Second general point regarding the Torture Convention is that one
6 of the intended uses of all the documents in this annex is simply
7 to identify the persons who were detained, interrogated, and
8 tortured at S-21.

9 I have already heard at least one of the defence teams openly
10 concede that this is a permissible use of confessions that falls
11 within the exception of Article 15 of the Convention. And,
12 indeed, this is the very reason that some of the S-21 confessions
13 as well as prisoner lists are cited in paragraphs of the Closing
14 Order in the upcoming segment that we – segment that we will be
15 trying. And I refer to paragraphs 38, 43, 50, and 99, which are
16 paragraphs that talk about the arrests -- or reference the
17 arrests of members of the Central Committee and Party leaders and
18 cite as evidence of that prisoner lists or confessions from S-21
19 to show that, in fact, these people were arrested.

20 [13.59.15]

21 Because of this fairly simple point, the issue of admissibility
22 in regards to S-21 confessions, we submit, is a relatively easy
23 one, as no one has disputed that these confessions are at least
24 admissible for that purpose of identifying the persons who were
25 detained at S-21.

1 And we would submit, Your Honours, that the real issue that is
2 before you will not be admissibility of these documents, but
3 rather the permissible uses of the documents. And I will address
4 the other possible uses of the S-21 confession records as part of
5 my explanation of the other bases on which these documents are
6 relevant in this case.

7 Before doing that, one last general comment I would like to make
8 regarding the application of the Torture Convention relates to
9 the different types of documents that are contained within the
10 S-21 confession files that are part of this annex.

11 [14.00.32]

12 It is very important for the Chamber to understand that these
13 files often contain much more than just the signed confession of
14 the S-21 detainee. In fact, it would be more accurate to describe
15 these documents as the entire files maintained by S-21 relating
16 to individual prisoners. So the documents that are listed on this
17 annex often include, in addition to the actual confessions, notes
18 between -- exchanged between the interrogators and Duch, and
19 reports from the interrogators to Duch and his superiors
20 describing the process of how the detainee was interrogated,
21 whether or not torture was used, their assessment of the
22 information obtained, and other matters.

23 These other documents are not statements of the detainee, they
24 are not statements that were obtained by torture; they are
25 communications either between the cadres in S-21 or

1 communications in which S-21 cadres are reporting to the higher
2 level on what was going on in the prison. As such, there is no
3 basis for them to be excluded by the Torture Convention.

4 Now, I recognize that a lot of these documents will be much more
5 important when we get to a trial regarding the torture and crimes
6 that were committed at S-21. There are frequent -- these reports
7 that were prepared by the interrogators and are often sent to the
8 superiors, to Duch's superiors, often describe in detail the use
9 of torture and other matters. But there is other information that
10 sometimes appear in these that will also be important to these
11 proceedings, and that is why it is important to understand that
12 these documents are more than just confessions from the detainee.

13 [14.02.58]

14 Now, proceeding to relevance, there are a number of reasons as to
15 why the S-21 confessions are relevant to the current proceedings,
16 in addition to the matter I've already discussed, which is as
17 with the S-21 biographies, as with the S-21 prisoner records,
18 they are a way to identify the persons who were detained at S-21.

19 And that list is a very reflective list that shows the
20 organizational structure of the regime because of the fact that
21 prisoners came from all different organizations.

22 But in addition to that basic use, there are a number -- at least
23 three other uses that I will briefly touch upon, of these S-21
24 confessions that are relevant to the current proceedings.

25 The first such issue is that the documents -- these documents

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1 demonstrate the authority and responsibility of the Standing
2 Committee, the Accused and the heads of DK organizations for
3 security matters. The authority structure of the regime and what
4 were the relevant respective authorities of the Standing
5 Committee, heads of ministries, heads of zones is part of the
6 upcoming segment of this trial.

7 [14.04.34]

8 What do the S-21 confession files tell us about that issue? Well,
9 quite a lot, actually, starting with something that, I think,
10 most people are familiar with, which is that the cover pages of
11 these confessions are frequently and usually annotated, typically
12 in - in either Duch's handwriting, Son Sen's handwriting, and
13 sometimes Nuon Chea's handwriting, with annotations indicating
14 who the confessions were sent to.

15 We have identified so far at least 26 confessions that have an
16 annotation written by either Duch or Son Sen, indicating that the
17 confession was sent to Nuon Chea. I will not list those 26
18 confessions at this time, but when we get -- as part -- certainly
19 as part of the proceedings, some of them will be presented, and
20 when we get to the conclusion and are asked -- to the stage where
21 we are to present important documents, we will certainly submit
22 the entire list to you at this time. But I will spare you, at
23 this time, from me reading into the record the list of 26
24 documents.

25 [14.06.05]

1 There are an additional number of confessions, so far, in which
2 Duch has identified the handwriting as that of Nuon Chea.
3 And there are other confessions that have a more general
4 annotation, such as from Son Sen or Duch, indicating they were
5 sent to "Brother". There are confessions annotated indicating
6 they were sent to Ieng Sary. And there are many confessions that
7 also have annotations indicating they were sent to, for example,
8 the Northwest Zone Secretary, if it was a confession of a cadre
9 from that zone, to the head of a military division if it was a
10 cadre from that division, and so on. In other words, as Duch has
11 testified, it was the standard practice to send a copy of the
12 confession to the head of the organization.

13 The fact that this process occurred tells us and shows to us who
14 it was that had the authority in relation to ultimately deciding
15 on arrests, and what were the responsibilities of the relative
16 organizations in Democratic Kampuchea, and what was the
17 responsibility of the Accused. As I noted this morning, in the
18 next trial segment, the issue is the military structure and the
19 roles of the Accused in relation to military and security
20 matters.

21 [14.07.48]

22 In addition to the annotations showing who the responsible
23 leaders of Democratic Kampuchea who received these confessions,
24 there are also significant statements in some of the documents
25 extraneous to the confessions that I mentioned.

1 So, for example, an example of this is document D288/6.5/2.47.
2 This is a confession of a cadre from a district in the East Zone
3 named Chap Mit. And included in the confession file is a
4 handwritten note from Duch to his interrogator, Pon, and point 2
5 of Duch's note advises Pon that - quote -- "brother number II has
6 advised" on the 25th of February 1978 "that the names of [certain
7 cadres] must be withdrawn, if they appear in this confession".
8 And there is a list of various leaders of sectors and military
9 divisions from the East Zone.

10 What is the significance of this document? Clearly, this is
11 pretty strong a confirmation of Nuon Chea's role in providing
12 instructions to Duch regarding S-21 and the interrogations.
13 [14.09.59]

14 Admittedly, this will be more important-- This is one of these
15 issues that we talked about yesterday that is a foundational
16 issue of who had what responsibility that will be part of the
17 basis for this and future trials, but there are references like
18 this that are not part of the statements of the detainee. This is
19 a statement by Duch, so there is no argument that this could be
20 barred by the Torture Convention, and it's a contemporaneous
21 statement that very clearly shows Nuon Chea's role in these
22 matters.

23 Another couple of examples of some documents that are separate
24 from the confessions that you will find these files that are
25 relevant on this basis.

1 One is the -- is in the confession of Hu Nim, who is the Minister
2 of Propaganda. And one of the initial documents that's found in
3 this IS 5.30, which is the document, is a letter that Hu Nim
4 wrote, a letter addressed to - quote -- "Brother Pol, Brother
5 Nuon, Brother Van, Brother Vorn, Cadre Khieu and Hem". The letter
6 starts:

7 "Today, [the 10th of April 1977], while I was extremely busy
8 preparing a radio broadcast to memorialize the 2nd anniversary of
9 the great victory of 17 April 1975, cadre Pang called me on the
10 phone to work with Angkar."

11 [14.12.01]

12 Pang, for those of you who don't know, was the Chairman of S-71,
13 one of the principal organizations responsible for arresting
14 cadres and taking them to S-21.

15 Hu Nim continues -- quote:

16 "I was very surprised and did not expect to be arrested by our
17 military. At first, I did not believe that it was the group of
18 cadre Pang. I was not guilty as I did not betray and I was
19 truthful with Angkar. I suspected that some enemies may have
20 implicated me."

21 He then goes on to continue and, at the end of his letter, states
22 -- quote: "I firmly reassure the party that I have never betrayed
23 the party at all, I have never been involved with the CIA, the
24 Vietnamese or Son Ngoc Thanh's agents or liberalists."

25 Now, again, this is a document, as indicated at the outset, that

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1 was written by Hu Nim at the time he was arrested, a letter he
2 sent to the people that he understood, as the Ministry of
3 Propaganda, to be responsible for his arrest. And the people he
4 addressed this letter to, saying "Why are you arresting me? I'm
5 not a traitor", that list includes Pol Pot, Nuon Chea, Ieng Sary,
6 Vorn Vet, Son Sen, and Khieu Samphan.

7 [14.13.30]

8 Again, this is another compelling piece of contemporaneous
9 evidence that shows the Standing Committee and Central Committee
10 members', as well, responsibility in relation to security
11 matters.

12 A similar type of document is found in the confession file of the
13 Ministry -- I'm sorry, the Minister of Agriculture, Chey Suon,
14 alias Non Suon; this is document IS 5.69. And contained, again,
15 within this confession file is a number of documents that are
16 separate from the actual confession of the detainee.

17 MR. PRESIDENT:

18 Could the International Co-Prosecutor refer again to a name of
19 the Foreign Minister? Because the name was not caught up by the
20 interpreter.

21 MR. LYSAK:

22 Yes. The detainee was the Minister of Agriculture, and the name,
23 Chey Suon -- let me spell first the family name, C-h-e-y, and
24 then S-u-o-n -- alias Non Suon -- N-o-n, and second name S-u-o-n.

25 [14.15.35]

1 And contained within IS 5.69 is a number of documents that are
2 separate from the actual confession, including a letter, or note
3 that was sent from the interrogator, interrogator Pon again. On
4 the 15th of November 1976, he wrote a several page letter, or
5 note to the detainee, and one of the initial statements at the
6 very start of this letter indicates that his detention was a
7 matter that had been decided by the Standing Committee of the
8 Party. So I cite this, again, as examples of materials that are
9 separate from the confessions that will be relevant to the
10 authority of the Standing Committee, the authority of the Accused
11 in relation to security matters.

12 I have touched upon this already, but a second area, or issue in
13 these proceedings that these confessions are relevant to is that
14 the annotations themselves show -- the annotations show how the
15 confessions were sent to various heads of organizations and,
16 therefore, reflect the reporting system that existed between the
17 Centre and between zones and military divisions as to how
18 information was reported between them regarding security issues,
19 and in particular how communications were done as to people who
20 were - who were to be viewed as suspect and monitored. And a
21 principal way that that was done was through the communication of
22 the S-21 confessions, in particular the lists of implicated
23 cadres. So these documents also have relevance to the
24 communication structure and how information was reported in the
25 regime.

1 [14.18.13]

2 And the last area, or way in which these documents are relevant
3 concerns an issue that is part of the next phase - phase of the
4 trial, and that is paragraph 112 of the Closing Order. This is a
5 section of the Closing Order that deals with communications, and
6 it deals with various entities, communication organizations
7 within the Ministry of Propaganda, one of which was the radio,
8 the DK radio system. And there's been a lot of discussion already
9 about the DK radio broadcasts that were captured by FBIS, also
10 captured by BBC Summary World of Broadcasts. We've seen a number
11 of those documents.

12 But in paragraph 112 of the Closing Order, which is part of the
13 next segment, the start of that paragraph, the first sentence is
14 as follows: "Confessions of Vietnamese prisoners of war who had
15 been interrogated at S-21 were broadcast over the radio."

16 So what is the evidence of that? Well, there are many -- of
17 course, there are many DK radio broadcasts that can be put before
18 the Court in which Vietnamese -- confessions of Vietnamese
19 prisoners were broadcast and captured by -- reported in FBIS, but
20 we have identified and been able to match up four of those radio
21 broadcasts to actual S-21 confessions that we have in the files
22 so that the Court can see that what was broadcast on the
23 Democratic Kampuchea responds exactly to the -- the confession
24 that was found years later at Tuol Sleng.

25 [14.20.30]

1 This is significant for quite a few reasons.

2 First of all, purely in terms of the reliability of the FBIS
3 reports, this is pretty good corroboration that, when FBIS
4 reported matters that were broadcast on the Democratic Kampuchea
5 radio, they got it right. You can follow the FBIS report and see
6 how it – how it matches, paragraph by paragraph, with the
7 confession from S-21. So there is a significance to these
8 documents to corroborate the accuracy of FBIS records, which is
9 something we've talked a lot about in this proceeding, so it's an
10 important issue.

11 But even beyond that, more than that, the fact that the radio
12 station at the Ministry of Propaganda was broadcasting word for
13 word confessions that came from S-21 is a very important fact, as
14 it shows control, organized control of this process by the
15 leaders. Obviously, it took directives from fairly senior people
16 for confessions to get from Duch's organization at S-21 over to a
17 radio broadcasting office that was part of the Ministry of
18 Propaganda.

19 [14.22.02]

20 So I will give you some of the documents that we've been -- where
21 we've been able to match the DK radio broadcast of a confession
22 to an actual confession that was found at S-21 so that the Court
23 has that information as part of its record. But the reason I'm
24 bringing this up now is simply that this is one more use of S-21
25 confessions that fits within the issues that are about to be

1 tried by this Court.

2 So let me give to you the four examples that we found.

3 D108/50/1.40 contains -- is the FBIS report of a 12 June 1978

4 broadcast by the Phnom Penh domestic service, which was the DK

5 radio operation, of the confession of a Vietnamese spy, Tran Ngoc

6 Tuong, which confession was dated 9th of June 1978.

7 The S-21 confession that corresponds exactly to that radio

8 broadcast is document D175/2.4 -- D175/2.4, which is the S-21

9 confession of this Vietnamese prisoner of war.

10 The second example, the DK radio broadcast is contained in

11 D108/50/1.29 -- that's D108/50/1.29. It is the report -- and it

12 contains a report broadcast on the 10th of April 1978 of a

13 confession of Vinh Minh Chau that was made on the 3rd of April

14 1978. And I think that this is part of a large -- one of the

15 monthly FBIS reports, so let me give the specific ERN pages for

16 this one: they are English 00168793 to 168794; French ERN

17 00316464 through 316465; and Khmer ERN 00225342 through 225345.

18 And the S-21 confession which, again, corresponds exactly to what

19 was broadcast over the radio by the Ministry of Propaganda, is a

20 document that was identified as a new document in our July or

21 April filing; it is ERN 00233921 through 233923 in English; in

22 Khmer, the relevant -- the pages are ERN 00052923 through

23 00052935. And I think the French translation of this is still

24 pending.

25 [14.27.09]

1 And just to clarify, this was a document that we disclosed as
2 part of our original document lists, back at the start of last --
3 or in April of last year, a year ago, before the start of the
4 trial. So, when we listed these documents in the annex as "new",
5 it was simply because these documents did not have case file
6 numbers. These should be distinguished from documents that are
7 subject to the higher standards as new documents introduced after
8 the start of trial. So I want to make sure that that
9 clarification -- that that is clear, because I know this is an
10 issue that has come up.

11 And very quickly, the other two examples: document D108/28.262 --
12 that's D108/28.262. This is a BBC broadcast summarizing the
13 broadcast of a confession from the DK radio and of an individual
14 named Vuong Ngoc Xuan. And the corresponding S-21 confession that
15 we have identified is document D175/2.5 -- that's D175/2.5.

16 And the last example, the radiobroadcast is document IS12.29,
17 which specifically relates to a broadcast on the 21st of April
18 1978 of a confession by a Vietnamese female, Vo Thi Thuy. And the
19 matching S-21 confession that was found at Tuol Sleng is document
20 D108/9.2; D108/9.2.

21 [14.30.00]

22 So, just to conclude, this is another -- the last of my examples
23 of other relevant uses of the S-21 confessions for purposes of
24 these trial proceedings.

25 That concludes my comments on these annexes, and I think we've

90

1 now addressed all the – all of the annexes that were subject for
2 these proceedings. So I appreciate the time, and we concluded our
3 comments at this time.

4 MR. PRESIDENT:

5 Thank you, the International Co-Prosecutor.

6 After the break, then it will be the turn for the Lead Co-Lawyers
7 to respond to the objections raised by the defence teams.

8 The time is now appropriate for a break. We will take a 20-minute
9 break and we shall return so that we can resume our proceeding.

10 (Court recesses from 1431H to 1453H)

11 MR. PRESIDENT:

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

13 The floor is now given to the Lead Co-Lawyers for civil parties
14 so that you can respond to the objections raised by the defence
15 teams to those documents listed in paragraph 3 of the memorandum
16 by the Trial Chamber -- that is document E172/5. You may proceed.

17 [14.53.49]

18 MR. PICH ANG:

19 Good afternoon, Mr. President, Your Honours. Good afternoon,
20 everyone. We, as the Lead Co-Lawyers for civil parties, we
21 present our response.

22 First, I'll take the floor, and then Ms. Simonneau-Fort, the
23 International Lead Co-Lawyer, will take her turn.

24 I would like to make some observations to the points raised by
25 the defence teams. First, I would like to touch upon the

1 objections raised by Mr. Son Arun, the defence counsel for Nuon
2 Chea, regarding the photocopies and the scanned documents. The
3 counsel said the authenticity could not be verified because there
4 is nothing else, except the annotation on those documents, and it
5 is insufficient, you have to rely that the documents were from
6 the Tuol Sleng Museum.

7 [14.55.12]

8 The counsel also demands the original documents from the
9 contemporaneous DK regime, and Mr. Son Arun also said that the
10 documents from the National Archives are in the same status, that
11 staff from the National Archives should be questioned regarding
12 those documents. These are the requests by Mr. Son Arun, the
13 defence counsel for Nuon Chea.

14 And we, the Lead Co-Lawyers, are of the view that this is a very
15 serious request, as at this stage we are talking about the
16 probative value of the documents, not at a stage that we actually
17 study the content, the factual content of those documents.

18 For that reason, there is no need to have such a clarification at
19 this stage. This is the prima facie stage of the proceeding
20 regarding these documents. For that matter, a verified source of
21 the photocopies of those documents from DC-Cam or from -- also
22 from the two representatives of the DC-Cam centre regarding the
23 provenance and the chain of custody of those documents are more
24 than sufficient, and that these documents prima facie relevant
25 and that they shall be admitted for consideration.

1 [14.57.23]

2 Another point that Mr. Son Arun raised regarding the witness Duch
3 -- pseudonym Duch -- was also mentioned in the last few days
4 during these proceedings. So I believe there is no problem in
5 mentioning his name. The counsel said Duch had a very small role,
6 as he was only a chairman of S-21, and that he would not be in a
7 position to know details about the affairs of the Central or the
8 Standing Committees. It seems that he wouldn't have a role as
9 high as Pol Pot, and for that reason he requested the Trial
10 Chamber to reject all the statements made by Duch during Case
11 001.

12 It is unimportant as to the role of Duch during that regime.
13 There is no point to reject his statements because he did not
14 hold a senior position during the regime.

15 This kind of request is unjustifiable, in particular in the term
16 of the role of Duch. It is not justifiable as to the knowledge
17 that he has regarding the details of the affairs of the Central
18 or the Standing Committees. The question is how Duch came across
19 such information and what did he do in his role in regards to the
20 administrative and communications structure of the regime. We
21 shall consider this matter and that his information can be
22 examined.

23 And as I understand, Duch may be called to be questioned in the
24 proceeding in this case.

25 This is an approach in order to verify or examine the statements

1 that he made in the Case 001 proceedings. The statements are
2 testimonies by Duch in Case 001 and also subject to examination
3 by Your Honours, the Bench, in Case 001 before you reach your
4 judgement. Therefore, his statement in Case 001 should not be
5 rejected.

6 [15.00.50]

7 Moreover, Mr. Son Arun talked about a witness, as proposed by
8 Khieu Samphan's team, who is currently working in the Prosecution
9 office. The pseudonym is TCW-726. The counsel mentioned that the
10 photocopies and scanned documents are prosecuting materials and
11 are documents that contain doubt and so cannot be assertive.

12 In responding to this, the Lead Co-Lawyer is of the view that
13 what is important is that these documents are relevant, and it is
14 not necessary that those documents are precise. These documents
15 can be taken into account and can be considered further by the
16 Judges.

17 The fact that a document has to be beyond reasonable doubt cannot
18 be chosen as a mechanism to admit documents. Documents should be
19 considered with -- those documents could assist the Judges to
20 ascertain the truth beyond a reasonable doubt. Therefore,
21 documents made by TCW-726 - rather, TCW-729 are relevant and can
22 reflect the truth.

23 [15.03.25]

24 And the last point that I would like to raise before I hand over
25 to my colleague, Counsel Simonneau-Fort, is to respond to Counsel

1 Karnavas and Counsel Anta Guissé.

2 Mr. Karnavas said that for those witnesses who have not testified
3 or who do not take an oath -- cannot have their testimonies
4 conceded.

5 By saying so, I submit that it is inappropriate, and this is not
6 reflected in the Cambodian practice. In practice, when it comes
7 to civil parties, if you say that we require civil parties to
8 take an oath so that their testimonies can be conceded, I submit
9 that this is inappropriate. The reason is that civil parties are
10 not required to take an oath. This has to be stipulated in the
11 Internal Rules, that civil parties are not required to take an
12 oath as a witness. Unless there is uncertainty in the testimony,
13 then the person shall be called to be questioned, and there is no
14 need for the civil parties to take an oath before the statements
15 can be admitted.

16 This is the conclusion of my response, and I will allow my
17 colleague to take the floor.

18 [15.06.08]

19 MR. PRESIDENT:

20 Mr. Counsel, you may proceed.

21 MR. KARNAVAS:

22 Thank you, Mr. President. And good afternoon to everyone. I don't
23 recall, in my submissions yesterday, going into civil parties and
24 whether they should be under oath.

25 I take the gentleman's point and I agree with him, so I just want

1 to make the record clear. Perhaps there was something lost in
2 translation, but yesterday, in my submissions, I don't recall
3 having this conversation. Perhaps he was thinking of something
4 else by someone else at some other time. Thank you.

5 MR. PRESIDENT:

6 Thank you for your remark, counsel.

7 The floor is now given to the International Lead Co-Lawyer.

8 [15.07.11]

9 MS. SIMONNEAU-FORT:

10 Thank you, Mr. President. Good morning, sir. Good afternoon,
11 rather, to the Bench and to everybody in the court.

12 Just to conclude on the question of objections, this is the third
13 hearing we've had on the subject of objections to documents. We
14 had a hearing in January, another in February, and now we've got
15 this one in March.

16 Perhaps I can make an admission. I do have one or two doubts, and
17 I am not entirely convinced that all of us here have precisely
18 the same idea of the kind of discussion we are having, its
19 substance, and the consequences of our discussion of objections,
20 speaking in general terms.

21 [15.08.14]

22 Having such doubts as I do, I have chosen to base my comments on
23 certain legal rules and on Chamber decisions because I think that
24 is a sound basis for what will precede in the debate.

25 And my first reference is Rule 87. I will not delay over this

1 because the national Co-Prosecutor yesterday, mentioned Rule 87,
2 which is the basic procedural network -- framework, for our
3 discussion on objections and on documents, and the national
4 Co-Prosecutor laid some stress yesterday on the fact that
5 evidence before the ECCC is free. All evidence is admissible. He
6 recalled the conditions under which objections should be raised,
7 and those are set out in Rule 87.3. I believe that we should hold
8 by that rule, the rule of the ECCC.

9 [15.09.48]

10 I would also like to draw your attention to certain Chamber
11 decisions that I believe are significant when we come to examine
12 the objections raised yesterday and the day before by the
13 Defence.

14 Obviously, there is decision E43/4, which was made in the
15 framework of Case 001 on the 26th of May 2009. I'm not going to
16 bring this to everybody's attention in detail, because everybody
17 is perfectly well aware of it, the Chamber in particular.

18 In that decision, the Chamber took pains to explain Rule 87. I'm
19 well aware that it has been amended since then, but the Chamber
20 laid down certain foundations that we would do well to refer to.
21 So in this decision taken in Case Number 001, the Chamber drew
22 attention to certain rules about evidence and records of
23 investigative actions. I shall come back to that.

24 [15.11.14]

25 The second decision by this Chamber that seems to me to be very

1 significant in connection with the objections, and in particular
2 as regards relevance and scope of Case 002/1, is document
3 E124/7.2; this is the annex to your decision E124/7. As I said,
4 document E124/7.2 is the annex to document E124/7, which is your
5 decision of the 18th of October 2011, which responds to a request
6 from the Co-Prosecutors to modify the Severance Order.

7 In the annex which enumerates the paragraphs of the Closing Order
8 that were discussed in the first trial segment, it clearly says
9 that paragraph 156 of the Closing Order is a part of our
10 discussions. And paragraph 156, as we are all well aware, refers
11 to the five policies of Democratic Kampuchea, and we are all
12 aware and we all understood that the Chamber was drawing a
13 distinction between the conception, the theoretical notions
14 behind the five policies and their enforcement.

15 [15.13.07]

16 And in document E124/7.2, the Chamber is careful to make it clear
17 that the policies, as implemented, would not be referred to with
18 the exception of forced transfer. On the other hand, policies,
19 theoretically speaking, are free to be discussed.

20 The third discussion that is important to substantiate our
21 response is decision E159 that was taken by the Chamber on the
22 11th of January 2012. The decision came before our first hearing
23 on objections to documents, and in paragraph 8, at two points,
24 the Chamber clearly indicates that we are only talking about
25 objections that have been set down in writing, in submissions,

1 with a deadline of the 5th of January. Since then, I have not
2 seen any decision that in any way changes that rule. In other
3 words, we are discussing written objections submitted by the
4 parties before the 5th of January. I haven't, as I said, seen any
5 change to that in any document.

6 [15.14.34]

7 Let me now come to the objections that have specifically been
8 raised.

9 I intend to make two distinctions here. We seem to have, first,
10 objections that are rooted in principle, that are based,
11 therefore, on legal principles or principles that spring from
12 jurisprudence, which have an effect on the admissibility of
13 documents and which, in particular, refer to Rule 87.3 when it
14 says that documents may not be allowed under the law. And that is
15 the reason for the rejection.

16 That's not the only thing. There is a second series of objections
17 that I will come back to, but on these issues of principle,
18 rooted in legal principles, I think that the Chamber has answered
19 several objections on several occasions, which we heard in
20 January, heard again in February, and heard once again in March.

21 [15.15.45]

22 I am not saying that these are not important objections. The
23 first is one that concerns confessions. I believe a distinction
24 has to be made between confessions and biographies.

25 Yesterday, we heard a long statement by the Prosecution -- that

1 we would agree with -- concerning biographies. When biographies
2 are not obtained under torture, they are of course admissible.
3 They cannot be analysed in the same way as confessions are.
4 As concerns confessions themselves, on the 16th of February we
5 stipulated our position and we said that, as far as we were
6 concerned, we wanted to see Article 15 of the Torture Convention
7 put into effect in this context, and in particular the
8 jurisprudence of the Chamber which is, in fact, rooted in that
9 very article 15.

10 And I do note that, in decision E162 of the 31st of January of
11 this year, the Chamber, in paragraph 9, seems surprised that the
12 question of confessions is coming up once again and recalls that
13 it has already given an answer to the matter and handed down
14 decisions thereupon.

15 [15.17.18]

16 I would simply like to express the hope that such decisions be
17 put into practice, quite simply, and if it may be, that the
18 Chamber has to hand down a more precise decision on annotations
19 to confessions, subsequent to observations that have been made
20 just now by the International Co-Prosecutor, I believe that, in
21 its decision E162, the Chamber had already handed down its
22 decisions.

23 In these objections rooted in legal principles, we also have the
24 question of statements by witnesses and the right to
25 confrontational dialogue belonging to the Accused. And that has

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1 been raised by several defence teams. There are two questions
2 that need to be decided upon in this regard, and we subscribe to
3 international jurisprudence and, secondly, to the very detailed
4 explanations that we have heard from the Prosecution yesterday on
5 this question.

6 [15.18.44]

7 We believe that only those who are heard in the framework of a
8 procedure should be considered as witnesses. That is what applies
9 in international jurisprudence and that is what we would like to
10 see done here. It is quite clear -- perhaps more for a civil law
11 legal mind -- that those are the people who should be heard in
12 such a procedure rather than authors of articles, books, films or
13 whatever who are not testifying as witnesses.

14 With respect to statements by witnesses, we subscribe to the
15 terms of international law and we believe that it is not possible
16 to oppose a right for an adversarial procedure.

17 There are also objections that have been raised about questions
18 of authenticity, reliability, and relevance, and the additional
19 question of originals of papers and documents. And I shall be
20 brief on this.

21 I think, in decision E162 that I have already mentioned, the
22 Chamber did provide precise information on how it was analysing
23 the idea of reliability, authenticity as well. And in the same
24 decision, E162, the Chamber also gave precise information about
25 its views on originals and whether or not they needed to be put

1 before the Court.

2 [15.20.59]

3 There is also the question of records of investigative actions,
4 and questions have been raised - objections, rather, with respect
5 to Annex 14, site identifications, and Annex 20, which are
6 reports based on rogatory letters.

7 On that point, the Chamber, on a number of occasions, has drawn
8 attention to the value of the work done by the Investigating
9 Judges and of work done under their authority, in paragraph 3 of
10 decision E162, which we all know only too well, and also in its
11 recent decision, which is dated erroneously the 13th of March
12 2011 but which was corrected yesterday to 2012, which is E142/3.
13 The Chamber recalls that the Investigating judges, as such, carry
14 out work that has jurisdictional value, and they also recall that
15 the rogatory letters and the documents produced at the request of
16 the Investigating Judges are documents that are part of the
17 proceedings, and this apart from the fact that the decisions of
18 the Investigating Judges have been open to appeal for a good many
19 months, and they are -- they now have identical value to the
20 decisions handed down by the Trial Chamber.

21 [15.22.58]

22 In its recent decision handed down yesterday, the Chamber has
23 pointed out that it is not sufficient to point out any possible
24 partiality on the part of the Investigating Judges for that to
25 become truth; quite the contrary. The fact that the investigating

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1 judges have put a number of documents into the file, including
2 recordings that they were not obliged to put in, is proof that
3 they had not the slightest intention of either hiding anything or
4 being in anyway partial.

5 We understand that the Chamber is going to take certain decisions
6 vis-à-vis these objections based on principle -- and we do
7 understand that they, perhaps, have to add to certain decisions
8 that they have taken. We believe that it has already ruled on a
9 certain number of these issues of principle.

10 Now, alongside these matters of principle, I'd like to draw your
11 attention to other kinds of objections we have heard. They are
12 more ad hoc, so to speak, that are either to do with categories
13 of documents, or connected with very specific documents in which,
14 as I see it, are not necessarily clearly connected with the
15 written objectives submitted by the parties. They are connected
16 with Prosecution documents or connected with the 10 documents,
17 among others, which are under discussion at the moment, because
18 the others will be brought up for debate at a later stage.

19 [15.24.56]

20 I would like to deal very briefly with the objection connected
21 with the problem of translation. I don't think that the fact that
22 a document has not been translated so far is a good enough reason
23 to declare it inadmissible at this juncture in the procedure, as
24 long as the document is not being used specifically, per se,
25 being put before the Court in discussion of a specific topic.

1 When we encountered the translation problem for requests for
2 civil party status, we dealt with the problem by submitting
3 translation requests, and we used the documents very carefully --
4 sparingly -- in the language used by the Accused, as the Chamber
5 had suggested we do. We will do precisely the same thing if the
6 situation comes up again. And let me say to the parties and to
7 the Chamber today that, as regards the 10 documents, we have
8 already submitted translation requests, and along with that we
9 have requested that other documents be translated as well, since
10 we do have quite a good number of them.

11 [15.26.28]

12 In any case, this matter, this issue of translation, cannot a
13 priori stand as a reasonable substantiated objection here and
14 now.

15 There have also been a good many objections connected with
16 relevance of documents submitted and the scope of Case 002/1, and
17 it has been said that a good many documents don't really fall
18 within the scope of this first trial segment.

19 Let me answer in two ways; first, by saying that, several times
20 since the severance, the Chamber has said that it would, at its
21 own discretion, decide whether or not to expand the scope of the
22 first trial segment to other subjects than those set down in
23 August 2011. The Chamber was very clear on this in E172, from the
24 17th of February of this year, and therein it says that the
25 Chamber recalls what it has already said in the Order, in the

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1 Severance Order and other related documents, that, for the
2 purposes of proper management of the trial, it is part of its
3 discretionary powers to expand the scope of this first trial. If
4 such were to be done, the parties would be duly informed in good
5 time.

6 [15.28.29]

7 Now, the Chamber didn't say this once; it had said it before
8 that, and it repeated its statement in E172/1, and it repeated
9 that in E172/5, which is its decision of the 2nd of March 2012.
10 So that can only be described as a very serious hypothesis. And
11 in such circumstances, it is perfectly acceptable for proper
12 administration of a trial -- proper administration, should I say,
13 of justice to keep within the files documents for which no
14 objections based on Rule 87.3 have been raised so far.

15 How can you imagine removing documents if the Chamber has, in a
16 profoundly serious way, left open the possibility of expanding
17 the scope of the trial to other subjects?

18 A second answer to this whole question of relevance and scope
19 that I would like to give you refers to decision E145, which is a
20 decision of the 29th of November 2011. The Chamber told us
21 clearly that, in exceptional circumstances, it would allow
22 witnesses, experts or civil parties to be heard on the entirety
23 of Case Number 2. And that means that, in admittedly exceptional
24 circumstances, which is open by definition, that certain
25 witnesses may come to testify outside the scope of the first

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1 trial segment. And therefore it would seem unjustified to discard
2 documents on the grounds that they are not within the scope of
3 the first trial segment, because we might find ourselves in a
4 position where we are needing to call witnesses to speak on
5 matters that go beyond the first trial segment.

6 [15.31.19]

7 The Defence raised several various objections which, to our mind,
8 deal with probative value rather than admissibility. For the last
9 three days, as with the case during our set of hearing in
10 February and January, the Defence made attempts to establish the
11 terms of admissibility and tried to make arguments with respect
12 to probative value. This is understandable. Obviously, there
13 seems to be a confusion between what defines reliability, a term
14 that the Chamber has defined in its memo of E172, as well as a
15 separate and distinct definition of probative value.

16 [15.32.24]

17 Allow me to take an example: document E250/3.37. This is a
18 written document that was drafted by a 22-year-old student. And
19 the defence for Khieu Samphan contends that this document is not
20 reliable for several reasons, one of which is because it's
21 written by a 22-year-old student.

22 I would firstly signal out to Your Honours that I personally
23 believe that the intellectual capacity of a 22-year-old student
24 may in some cases be of equal value to a full-fledged
25 professional -- that is an entirely personal opinion.

1 Nevertheless, the fact that this student has written an article
2 at the age of 22 years does not mean that this document is not
3 reliable; it does not make this document a forgery; it does not
4 render this document inauthentic. As such, I believe that the
5 objection which was raised in the most general terms simply does
6 not hold with respect to the discussion we are holding on
7 admissibility. The Chambers shall decide on the probative value
8 of this document, as it has always done.

9 It was also stated that, within Annex 16, there is a video
10 recording that should be dismissed because it was characterized
11 as -- I quote -- "partisan" or "biased".

12 Once again, I do not believe that, just because a document
13 happens to be politically partisan should undermine its
14 authenticity or should compromise its relevance or reliability
15 and its potential probative value. Once again, it is up to Your
16 Honours to determine the valid -- the probative value. It is a
17 document that deals with the Vietnamese arrival in 1979.

18 [15.34.54]

19 The Defence also levelled objections specifically to our 10
20 documents and contended that our documents do not fall squarely
21 within the scope of Case 002/1.

22 I indicated just now why I believe that it is important to keep
23 in mind a certain number of documents in the scenario that
24 statements or testimony or discussion goes above and beyond this
25 first stage of the trial. However, I would add that one should

1 not merely base one's judgement on the title of a document before
2 deciding whether or not it is admissible.

3 And to illustrate this, I would call to your attention document
4 D356 -- or rather, [corrects the interpreter], D357.1.22. I would
5 invite all defence teams to read pages 24 to 26 of this document
6 and to also review pages 121 to 125. To this day, they are only
7 available in English, and we have submitted our translation
8 requests. However, this document describes very clearly the
9 forced transfers 1 and 2. All of this points to the fact that
10 this document is entirely admissible and that the objections
11 raised to it are simply unfounded.

12 Once again, we have the responsibility to submit the relevant
13 passages of these documents -- to submit requests for translation
14 in a timely manner, and then it is the responsibility of the
15 Chamber to establish the probative value of such pieces. However,
16 in no scenario should the issue of admissibility be raised at
17 this particular stage.

18 [15.37.25]

19 Before I make my concluding remarks, I want to point out that the
20 Co-Prosecutors laid great emphasis on the need to submit
21 documents of this case file that pertain to the context or the
22 background of this issue that you were going to consider. These
23 documents are of crucial and primary importance. We subscribe
24 entirely to the arguments that have been developed by the
25 Co-Prosecutors, and I will not repeat those arguments that have

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1 been expanded upon for the last two days.

2 In conclusion, I would say that, clearly, we are asking the
3 Chamber to dismiss all of the objections that concern our
4 particular 10 documents. These 10 documents are a only tiny
5 proportion of all of the documents we intend to submit, because
6 they are part and parcel of the documents that are contained in
7 the closing -- in the footnotes of the Closing Order. They
8 include civil party applications, the procedure that governs --
9 that the ECCC is governed by is derived in civil law, and we
10 therefore believe that it is necessary to do so.

11 [15.39.12]

12 Because this is a civil law procedure, without these exhibits
13 that comprise the Co-Investigating Judges' Closing Order and
14 without the applications of the civil parties, and for all of the
15 reasons we have just laid out, we therefore request that the
16 Chamber dismiss all of the objections that have been raised by
17 the Defence and we - which, we believe, have no grounds. Thank
18 you.

19 MR. PRESIDENT:

20 Thank you, the International Lead Co-Lawyer, for your response.

21 [15.39.57]

22 Before the adjournment for this afternoon, the Chairman would
23 like to inform the defence teams and all the concerned parties
24 that, for tomorrow's proceedings, we shall commence with the
25 replies by the three defence teams to response by the Prosecution

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1 and the Lead Co-Lawyers.

2 The time allocation for the three defence teams is a one hour
3 time limit, so you can allocate the times amongst your teams. If
4 you decide to not to reallocate the times amongst yourselves,
5 then each team would have 20 minutes to reply to the response by
6 the Prosecution and the Lead Co-Lawyers.

7 Also, tomorrow we will continue hearing the request by the
8 Prosecution on the request for a video link to a witness, TCW-38
9 -- TCE-38, rather.

10 And also there is a request by Ieng Sary's defence for additional
11 documents from the expert in advance, before the expert is due to
12 give testimony. These are the remaining issues that shall be
13 discussed tomorrow.

14 As to the witness, TCE-38 is the person named Ben Kiernan, and
15 the name Ben Kiernan can be used openly tomorrow.

16 Today's proceedings have come to an end. We will adjourn the
17 hearing today and continue tomorrow.

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

19 [15.42.34]

20 MR. IANUZZI:

21 Your Honour, good afternoon. I don't mean to make this a habit,
22 but I have a brief request.

23 Could we be informed, please, as to the schedule for Monday -- as
24 to the envisaged schedule for Monday?

25 And could we also request perhaps 10 to 15 minutes of time

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1 tomorrow to make submissions on the issue of Monday's schedule if
2 - if -- you are intending to schedule both Duch and Nuon Chea for
3 a full day?

4 MR. PRESIDENT:

5 Judge Cartwright, you may proceed.

6 JUDGE CARTWRIGHT:

7 Thank you, President.

8 By "both for a full day", I presume you mean half a day each.

9 MR. IANUZZI:

10 Half a day, please, exactly.

11 JUDGE CARTWRIGHT:

12 Thank you.

13 [15.43.30]

14 MR. IANUZZI:

15 Maybe I should clarify. It's our position that, if Duch is
16 testifying for half the day, Nuon Chea would wish to be present
17 in court to effectively participate in that. And then, if he's
18 also going to asked to effectively participate, obviously, in his
19 own testimony for half a day, we take the position that's not
20 feasible and we'd like to make submissions on that. And we'd like
21 about 10 or 15 minutes tomorrow, time permitting, to do that, if
22 that's what the Chamber intends to do on Monday.

23 And I believe we've communicated this to the senior legal
24 officer, so this should not come as a surprise to the Chamber.

25 (Judges deliberate)

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1 [15.45.03]

2 MR. PRESIDENT:

3 Nuon Chea's defence counsel, the Chamber actually informed the
4 parties yesterday that, due to the early conclusion of the
5 scheduled items for the proceedings, we've moved the hearing
6 accordingly, and the time for questioning the Accused and hearing
7 the testimony of the witness shall be moved to Monday, next week.
8 And as scheduled for morning session, we shall question the
9 Accused, and for the afternoon session we will hear the testimony
10 of a witness or an expert, depending on the individual scheduled.
11 And this is a regular schedule for the proceedings, and we will
12 not change that.

13 As for other requests, we shall consider them, including the
14 possible challenge between Nuon Chea and Duch. We already
15 received that request and we shall consider it in due course.
16 That is a separate matter from the regular proceedings at this
17 stage.

18 [15.46.51]

19 MR. IANUZZI:

20 Thank you. So, just so I understand you, Nuon Chea will testify
21 in the morning, and Duch is that next scheduled witness that you
22 are referring to for the afternoon?

23 And on our request to make oral submissions, that's been denied
24 -- tomorrow, on the issue -- on the objection that we will make
25 to that schedule? In other words, could we have 15 or 20 minutes

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1 to address that point tomorrow?

2 (Judges deliberate)

3 [15.48.00]

4 MR. PRESIDENT:

5 I believe we already made it clear that, regarding the factual
6 proceeding, it shall be following the regular pattern, or
7 approach that we are taking so far. And I believe it is clear
8 enough, and there is no need for you to make additional request
9 regarding this matter. And that is the decision of the Trial
10 Chamber.

11 And if you believe that your client shall present in order to
12 challenge the Accused (sic), that is the decision of your client
13 and yourself -- that is to be questioned in the morning, and then
14 to sit in the courtroom in the afternoon to challenge the
15 testimony of a witness or an expert. And this is going to be a
16 regular approach that we are going to take in the proceedings in
17 this case.

18 [15.49.19]

19 MR. IANUZZI:

20 Thank you, Your Honour. Perhaps I'll try again tomorrow. Thank
21 you.

22 MR. PRESIDENT:

23 Counsel Karnavas, you may proceed.

24 MR. KARNAVAS:

25 Thank you, Mr. President. And good afternoon, Your Honours. If I

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1 may be heard briefly, because this may touch upon my client at
2 some point in time, and therefore, if -- with leave, I would like
3 to just explain the position that is being made at this point in
4 time.

5 An accused, if he or she is healthy, may be able to sit through
6 morning and afternoon. The application that is being made is
7 that, because of Mr. Nuon Chea's age and inability to follow the
8 proceedings in court, and though he wishes to be in court, he
9 cannot be here. It is not the same for him to be in the holding
10 cell, where, as you note, whenever an accused wishes to go to the
11 holding cell, they sign a waiver -- a waiver of being present.
12 Here, the accused is asking to be actually present, and it's a
13 matter of not only fundamental rights, but also due process
14 rights and equal protection. In other words, a healthy individual
15 would enjoy more rights than an older person or an ill person.

16 [15.50.49]

17 This issue was raised in Milosevic, where Milosevic intended to
18 be -- wished to be present in court.

19 So to suggest that Nuon Chea can give evidence in the morning and
20 then participate in the afternoon in court-- What if he
21 physically cannot? What if he physically cannot, and then he goes
22 to the holding cell, and he's lying there, and he's sleeping
23 because he's fatigued, is that participation? If that is the
24 case, then why are the Accused signing waivers every day or
25 putting their thumbprints on it?

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1 And so I think that's the fundamental issue, because it may touch
2 upon our clients at some point. He may wish to be present in
3 court when he physically cannot be because he is fatigued.
4 Obviously, that may be on a very rare occasion. But here you may
5 -- you're having a witness who is directly going to be talking
6 about a particular Accused, and I think that's what is being
7 requested.

8 I apologize if I'm stepping over anyone's toes. I wanted to make
9 sure that a decision isn't made that may affect us in the future.
10 Perhaps the Trial Chamber wishes to brew this matter over, and
11 written submissions can be filed -- brief written submissions by
12 the parties -- if necessary. But I think that's the fundamental
13 issue here.

14 And I apologize for taking your -- taking the time.

15 And while I'm on my feet, let me also apologize for coming here
16 late twice today. I will endeavour never to have that occur
17 again. Thank you.

18 (Judges deliberate)

19 [15.53.34]

20 MR. PRESIDENT:

21 Defence counsel for Nuon Chea, can you now express your position
22 clearly regarding this matter? So then we can get a response from
23 the Prosecution, and we will consider all the requests made by
24 the parties and be -- make a decision tomorrow; because actually
25 we already ruled on this matter, and for that purpose we

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1 established the audio-visual communication for the room
2 downstairs. That is our effort in respecting the rights of the
3 Accused to the maximum, so that, if the Accused cannot
4 participate directly in the courtroom, then we try our best for
5 the Accused to follow the proceedings in the waiting room,
6 downstairs, and that person can actually communicate with their
7 counsel.

8 Of course, unless there is -- a new event occurs, we shall adhere
9 to the practice that we have applied so far. And if there is --
10 nothing major happens, then there is no need to make any changes
11 to the current practice.

12 Anyhow, we will hear the request by the defence counsel. You may
13 proceed.

14 [15.55.23]

15 MR. PESTMAN:

16 Thank you Mr. President. Our request was to be allowed to speak
17 about this particular issue for 10 to 15 minutes. To be honest, I
18 think it will take -- more likely it will take 15 minutes than 10
19 minutes, tomorrow.

20 If I am allowed to make my arguments and submissions now, which I
21 can do if I have to, and the Prosecutor is allowed to response --
22 respond -- and then I am sure Ieng -- defence for Ieng Sary will
23 also be eager to respond to it, I think everyone will miss the
24 bus. I would prefer to do this tomorrow. And it would also allow
25 us to reply first to what the Prosecution has said on the

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1 documents.

2 So my request is: Can we do this tomorrow, when there enough time
3 to do it? And nobody will be rushed because of this bus that
4 leaves at 4.30.

5 MR. PRESIDENT:

6 Thank you for your comment.

7 The Court is now adjourned, and we shall resume tomorrow morning,
8 starting from 9 a.m.

9 Security guards, you are instructed to take the Accused back to
10 the detention facility and bring them back here tomorrow morning,
11 before 9 a.m.

12 (Court adjourns at 1556H)

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