



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
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 28-Mar-2012, 10:29
CMS/CFO: Sann Rada

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

21 March 2012
Trial Day 40

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

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KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MS. GUISSÉ	French
MR. KAING GUEK EAV alias DUCH	Khmer
MR. KARNAVAS	English
JUDGE LAVERGNE	French
MS. NGUYEN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. PESTMAN	English
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MR. SON ARUN	Khmer

1

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

2 (Court opens at 0908H)

3 MR. PRESIDENT:

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

5 International Counsel for Nuon Chea, you may now proceed, but

6 advise the Chamber how much time you would need for your

7 observation; we just want to know this first.

8 MR. PESTMAN:

9 Five minutes, Your Honour.

10 MR. PRESIDENT:

11 You may proceed.

12 MR. PESTMAN:

13 Good morning, Mr. President. Good morning, everyone in the

14 courtroom.

15 [09.10.02]

16 Yesterday, I tried to say something before the session was

17 adjourned; maybe I can take this opportunity to say what I wanted

18 to say yesterday. I did send an email -- I don't know whether

19 you're aware of that -- to the senior legal officer about

20 yesterday's incident in the holding cell and the ruling you gave

21 afterwards.

22 I would like just to highlight a couple of things -- to emphasize

23 a couple of things.

24 First of all, I did go downstairs when the Court ordered the

25 medical examination of my client. I think and I firmly believe

2

1 that it is my - not only my right, but even my professional duty
2 to assist my client when he's being medically examined.

3 [09.10.53]

4 I was not downstairs to interfere with that examination. I was
5 simply there to observe what was going on and I think my presence
6 there was very useful in the end because I've never witnessed a
7 medical examination of my client and it was a very instructive
8 experience.

9 Although I am not a doctor, I noticed -- and I think I can
10 conclude -- that the medical examination was inconclusive or
11 incomprehensive. He was tested on his blood pressure, on his
12 heartbeat, and they also did an examination of his blood; I'm not
13 exactly sure what the purpose of that examination was, but I saw
14 them doing that.

15 [09.11.38]

16 What they did not do and what I think they should do is test his
17 ability to continue to effectively participate in the trial at
18 that particular moment of the day. What I think they -- though
19 they do -- I'm not sure what the instructions are, but what I
20 think the Judge or the doctor is trying to establish is whether
21 my client is able to sit in a chair in court, to put it simply;
22 whether he's able to sit for the remainder of the day and that's
23 not what they should do.

24 They should actually test and try to establish whether my client
25 is able to follow what's going on, to concentrate on the

3

1 procedures, and to instruct counsel about what to do next. They
2 should test his cognitive functioning -- you've said this before
3 -- they should test on fatigue -- signs of fatigue -- and they
4 should test his ability to concentrate and his attention span at
5 that particular time of the day; that's what they should do.

6 [09.12.42]

7 I don't know how to solve this problem, but I think that the
8 doctor should get proper instructions; otherwise, this problem is
9 going to occur again because my client is not always able to sit
10 through an entire court day; especially not when he has to
11 concentrate very hard or answer questions from the Court.

12 One final word on the ruling yesterday, I had difficulty
13 following what was going on. I haven't seen a transcript yet, but
14 I understand that the Court ruled that I had interfered with the
15 medical examination. I take issue with that ruling; that was a
16 conclusion which was hasty and harmful to me and suggests that my
17 intentions were somehow less than bona fide. That was a decision
18 which was delivered in open court reached without any
19 investigation, without talking to the doctor involved, and
20 without even providing me the opportunity to respond.

21 [09.13.51]

22 That's all I wanted to say this morning. Thank you, Your Honours.

23 MR. PRESIDENT:

24 International Co-Prosecutor, you may now proceed.

25 MR. SMITH:

4

1 Your Honour, the Prosecution don't object to, obviously, a proper
2 medical examination being carried out. There's no reason why, as
3 defence counsel has said, the doctor -- the current doctor can't
4 ask those particular questions; can you concentrate, are you
5 sleepy, etc, etc.

6 I don't think anything special needs to be put in place, but if
7 what defence counsel is saying that -- that the Chamber ensures
8 that the medical examination by the doctor takes into account his
9 ability to follow the proceedings, I don't think we need an
10 expert or anything like that so we would just support the fact
11 that all medical examinations just be appropriate.

12 [09.14.52]

13 Thank you.

14 MS. NGUYEN:

15 Your Honours, the civil parties are concerned that this might be
16 setting a precedent where the eventual result is a substantial
17 delay in proceedings; particularly, where this happens every
18 single day and we draw Your Honours attention to Internal Rule 81
19 subsection 5 which says that where due to the health reasons or
20 other serious concerns the Accused cannot attend in person before
21 the Chamber, but if otherwise physically and mentally able to
22 participate and where the Chamber determines that the Accused
23 absence reaches a level that causes substantial delay and where
24 the interests of justice so require that the Court has an option
25 to order that the Accused participation before the Chamber shall

5

1 be by audiovisual means.

2 [09.15.56]

3 This is, obviously, a question that will arise again and again.

4 Mr. Nuon Chea is legally represented by a very able and vigorous

5 defence team and all of these things need to be taken into

6 account in considering the balance between the rights of the

7 defendant and the rights of all the other parties that are

8 participating in this trial including the civil parties and the

9 victims.

10 MR. PRESIDENT:

11 Counsel, you may now proceed.

12 MR. KARNAVAS:

13 Good morning, Mr. President. Good morning, Your Honours, and good

14 morning to everyone in and around the courtroom.

15 Normally I would not stand up at this point, but what I've heard

16 from the civil parties is that if somebody is comatose,

17 nonetheless, the proceedings should go forward. That's her

18 understanding of the rules and if that is the case, then it is a

19 mockery.

20 [09.17.03]

21 I think we've had debates over this point. I think Your Honours

22 have heard our submissions in the past. I understand the lawyer

23 wasn't here when these submissions were made, but I don't think

24 that what is being asked by Mr. Nuon Chea, at this point in time,

25 and it comes anywhere near as close to what is being submitted by

1 the civil party.

2 We have maintained the following position that an Accused is
3 entitled to be present; not just physically, but mentally as
4 well. To suggest that somehow if he's comatose, but there is a
5 screen available for him to look at that that participation is
6 nonsense; it's utterly ridiculous.

7 [09.17.47]

8 Now, there may come a time, Your Honours, when you will have to
9 decide or may have to decide whether somebody who is incapable,
10 both mentally and physically, of being present whether you should
11 go forward. That decision, at least in the Milosevic Case, was
12 never or fully resolved because the Case never got to that stage;
13 Milosevic died beforehand. Although, it was entertained, at one
14 point, they indicated that they would cross that bridge when they
15 got to it; this was on appeal when his rights were taken away to
16 represent himself.

17 I am unaware - I am unaware of a particular case, thus far,
18 before an international tribunal where it is indicated that where
19 somebody is mentally incapable of participating that the
20 proceedings could go forward nonetheless. I'm not -- It's -- my
21 understanding of the law is it cannot, but I'm unaware of a
22 particular case that that issue has actually been resolved, and
23 it's something that perhaps the Trial Chamber would need to
24 consider and ponder over before we even get to that stage so that
25 if we ever do get to the stage then perhaps that issue can be

7

1 addressed in an expeditious manner.

2 [09.19.06]

3 Thank you.

4 MR. PRESIDENT:

5 Thank you.

6 Counsel for Nuon Chea, you may now proceed.

7 MR. PESTMAN:

8 Thank you, Mr. President. Just to reassure everyone present, my
9 client is not comatose yet, but I support Ieng Sary -- the Ieng
10 Sary submissions.

11 I just want to make absolutely clear that my client has done
12 everything, so far, to cooperate with this Court. He has
13 expressed his willingness to be present in court. He has answered
14 questions up to last week and, as far as I'm aware of, the
15 substantial delay, so far, caused by my client's health is one
16 hour. I think yesterday was the first time my client said, "I
17 would like to be present when the witness is being heard"; so we
18 haven't reached the bridge yet, Mr. Karnavas was talking about.

19 [09.20.06]

20 I quoted the Stanasic Case last week and I just want to remind
21 everyone present that the ICTY -- the Trial Chamber of the ICTY
22 ruled -- or it was the Appeals Chamber, in that particular Case,
23 ruled that a delay of three to six months in a -- in a trial is
24 not yet substantial so I would like the Court to be very careful
25 about ordering this Case to go on without my client being able to

1 participate.

2 Thank you.

3 MR. PRESIDENT:

4 Counsel for Khieu Samphan, this time the Chamber allows you to
5 have the floor. However, please be reminded that next time you
6 would be quick enough to respond when the issue is raised so that
7 you have the same opportunity along with the other counsels. We
8 do not wish to see that comments would be made time and again and
9 that you need -- the Chamber needs to give the floor to the other
10 party to respond. And back and forth -- and we will never end
11 but, please, you have one minute for this.

12 MS. GUISSÉ:

13 Yes, good morning, Mr. President. Good morning, Your Honours.

14 [09.21.50]

15 I simply want to reassure you, Mr. President, that I do not
16 intend to make any comments on the subject that has just been
17 raised before us. I believed that we were at a conclusion which
18 is why I had allowed myself to stand. I wanted to raise a
19 different subject prior to hearing of the testimony of the
20 witness.

21 [09.22.11]

22 Two days ago, we had made mention of the speed at which the
23 testimony was being given. We wish to request the Chamber to have
24 the witness speak at a slower cadence and the issue of speed
25 between questions put by the Co-Prosecutor and answers are such

1 that it is very important for the witness to understand that when
2 there is interpretation going on, there may be a delay when a
3 pause is not observed between two parties speaking in Khmer. For
4 example, may I refer you to the transcripts of the 19th of March
5 when at 14.40 the witness had described the composition of the
6 National Assembly in 1956 and in the French transcripts there are
7 only five lines -- there are five lines that have been omitted.
8 We are fully aware that the French interpreters are doing their
9 utmost. However, while the English interpretation is being
10 completed, the original Khmer question is being commenced which
11 leads, therefore, to a significant delay. I think this is a very
12 important issue as this may have an effect on which transcript we
13 will rely upon in preparing our cross-examination.
14 This is something that should be reminded to the witness and to
15 all parties regularly; especially since the two speakers are
16 speaking in Khmer, but this is simply a remark that I wanted to
17 raise this morning, Mr. President.

18 MR. PRESIDENT:

19 (No interpretation)

20 (Judges deliberate)

21 [09.27.30]

22 Having noted the observations made by parties concerning the
23 decision made by international counsel for Nuon Chea to go to the
24 medical room to inspect the medical check-up on Nuon Chea; in
25 order to respond to this issue precisely, I would like to hand

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1 over to Judge Lavergne to respond to the remarks made by counsel
2 for Nuon Chea concerning his presence in the medical unit or in
3 -- in the room where medical check-up took place.

4 [09.28.40]

5 Judge Lavergne, you may now proceed.

6 JUDGE LAVERGNE:

7 Thank you very much, Mr. President.

8 The Trial Chamber wishes to make the following clarifications.

9 The Trial Chamber yesterday ordered a medical examination of the
10 accused, Mr. Nuon Chea, following statements made about his
11 health condition.

12 The Defence of the Accused, obviously, has the right to challenge
13 the mandate that has been conferred to the doctor who undertakes
14 the examination. The Defence, obviously, may raise such
15 challenges based on legal grounds. However, the Defence is not
16 authorized to assist or to intervene directly with the doctor
17 during the time that the medical doctor is carrying out the
18 medical examination. I believe that this is abundantly clear and
19 understood. The duties of counsel are limited and the Trial
20 Chamber wishes simply to remind counsel of such limits.

21 [09.30.32]

22 To be absolutely certain that we have been understood, the
23 counsel for defence cannot personally attend the medical
24 examination of the Accused.

25 MR. PRESIDENT:

11

1 The Chamber now continues to listen to the testimony by the
2 witness, Kaing Guek Eav alias Duch.

3 There was, again, a request for the parties and the witness to
4 slow down for the record.

5 In addition, parties and witness are advised to pause a bit in
6 between questions and answers so that the translation gets
7 through. It is important that the parties putting question pause
8 between the answer and question. And again, the Chamber wishes to
9 advise the witness that you should avoid any answer that is --
10 that induces conclusion or your observation on the matters.

11 [09.32.24]

12 So the floor is now given to the Prosecution.

13 MR. SENG BUNKHEANG:

14 Thank you, Mr. President. I would like to continue my line of
15 questioning concerning the cooperatives and the work site and
16 then I will proceed to the general policy, as well as the
17 re-education, as well as the policy on smashing enemies, as well
18 as the imposing of policies of the CPK.

19 QUESTIONING BY MR. SENG BUNKHEANG RESUMES:

20 Q. Good morning, Mr. Kaing Guek Eav. As the Chamber has advised
21 that when I ask a question, you should pause a bit so that the
22 translator can translate it into the working languages of the
23 Court.

24 [09.33.14]

25 You have enlightened the Chamber, so far, concerning the policy

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1 of the CPK concerning the establishment of the cooperatives; when
2 did you first learn about this policy?

3 MR. KAING GUEK EAV:

4 A. In 1973, I was at Amleang. Cooperatives were established at
5 Peam Commune, Kampong Tralach District, Kampong Chhnang, and also
6 in Amleang District – rather, Amleang Commune, Kampong Speu. It
7 was part of the process – the cooperatives were established back
8 then.

9 Q. Concerning the policy of managing the production and produce,
10 do you know any detailed policies of that?

11 A. Cooperatives were established in order to produce production
12 annually. So cooperatives produce is under the management of the
13 commune committee and, at that time, the zone Committee was
14 tasked to divide the produce generated by the cooperative; for
15 example, how much is given to the front and how much is reserved
16 for the commune. And for me, whenever I put a request for rice
17 and foodstuff, I would submit my request to the zone committee.

18 [09.35.35]

19 Q. Concerning the production of the cooperative, has they -- did
20 they lay out any plan for managing the food?

21 A. No, there was no – any written documents but there was an
22 announcement on the radio on a regular basis that we had to learn
23 to live and let live together.

24 And as for the precise detailed written policy, it was – there
25 was none and, in 1974, we did not have enough food to eat and

13

1 food rations were reduced substantially at that time, so we had
2 about half a can of rice per day.

3 [09.36.29]

4 Q. Did you know the plan to achieve, for example, how many
5 hectares – how many tons per hectare, for example?

6 A. Well, to my recollection, it was announced on the – announced
7 later, probably in 1976 or so that we should aim to produce for
8 three tons per hectare.

9 Q. Can you describe the policy of the Communist Party of
10 Kampuchea concerning the production yield?

11 A. For high-level cooperatives, the statistics was within the
12 Committee and, as for the production means for rice farming, such
13 as ox cart or ox or so, those were the production means at that
14 time that were under the management of the committee.

15 [09.37.48]

16 The committee was in full control of all production means and
17 transportation and in the cooperatives, the production means was
18 in the supervision of the secretary or the cooperative committee
19 rather.

20 And this was the Party branch so too cooperatives nationwide have
21 their production means but those production means were actually
22 under the control of the Party and, as for factories and other
23 transportation means, were of course under the control of the
24 Party.

25 And the division of labour was also under the control of the

14

1 Party as well. For example, the working hours of the farmers,
2 members of the cooperatives were also determined by the Party.
3 For example, the working days per week or so was also dictated by
4 the Party as well.

5 We had to work. We had to work all week and we were not working
6 for eight hours a day, actually, we had to work up to ten hours
7 or so every day.

8 [09.39.14]

9 So, again, the production means was under the control of the
10 Party and the labour was also within the control of the Party and
11 for use we - we made was also up to the Party as well to divide.
12 For the number one force among the people, they had one and a
13 half can of rice per day as their food ration and for military
14 personnel, they had around 1.5 can of rice as well per day.

15 Q. You mentioned about three tons per hectare, what was that -
16 what did that mean?

17 A. That meant cooperatives had to meet the target of producing
18 three tons per hectare in the rice farming.

19 Q. Who set that target or quota?

20 A. That target was set by the Party but later on I also found it
21 in a document; a document dated the 30th of March 1976, paragraph
22 2 of that document.

23 [09.40.59]

24 Q. When you talk about three tons, what do you compare with?

25 A. Well, three tons actually per one season.

15

1 Q. Please wait a bit when I finish my question before you answer.

2 How did you learn that?

3 A. The three-ton target was also incorporated into the training
4 materials I studied with Son Sen and, during the training course,
5 they also disseminated that information and document "kor nor
6 hor" [KNH]166.

7 Q. Do you know when Prey Sar was first established?

8 A. Yesterday, I told you that Prey Sar was the legacy left from
9 Nat from Office 103 - division, rather, 103.

10 Q. How about the operation and functioning of M-13? Can you
11 enlighten us on its operation and functioning? My clarification,
12 M-13B.

13 A. Thank you. Before answering your question, I would like to
14 correct one word I said yesterday. It was not the soldiers of Wat
15 Prolung but Wat Antaluk instead.

16 [09.43.29]

17 And as for office M-13 B was established later on and it was my
18 request, actually, at that time to wait to establish one office
19 located in Sdok Srat village, Sdok Taol commune, (inaudible)
20 district. Vorn Vet granted that request.

21 And the purpose of establishing this is not to let the newly
22 arrested individuals to see the shackles and other stuff in the
23 other office.

24 So this office was mainly established in order to provisionally
25 detain individuals who were arrested and those who were brought

1 into this office were not shackled but they were asked to live in
2 a communal hall.

3 And, at that time, Vorn Vet submitted a budget to the Party and
4 we could buy, at that time, wood and nails to build this office.

5 [09.44.57]

6 But in that area, we did not grow rice, instead we planted
7 potatoes and it was established in 1972, in late 1972, with
8 approval from Vorn Vet.

9 And Son Sen ordered the release of all detainees in that office
10 in April 1975. So those detainees were released based on the
11 policy at that time because, at that time, we did not consider
12 those people enemies yet.

13 Q. Thank you. So during the Democratic Kampuchea, do you see the
14 distinction between cooperatives and working sites before and
15 after - before and during 1975?

16 A. Before 1975, there were only base people but after the 17th of
17 April 1975, the Party selected people, particularly new people,
18 to reside with the base people so that they can refresh
19 themselves.

20 Q. Do you know the number of people in one cooperative?

21 A. I do not know about this.

22 [09.47.17]

23 Q. What was the food ratio - or food ration for members of the
24 cooperatives at that time?

25 A. As I said, in terms of food ration, there was no distinction

1 between the base and new people. They were given 1.5 can of rice
2 per day. But those who had to build dykes and dams, they were
3 given 2 cans of rice per day.

4 As for new and base people, the only distinction which I would
5 like to highlight is that the new people were not selected into
6 militiamen or they could not be promoted to be the committee of
7 the village or so, so the only purpose was to make the new people
8 to blend themselves with the base people. That's what I noted the
9 difference between them.

10 Q. How about the issue of hygiene at that time, did you notice
11 anything concerning that issue?

12 [09.48.57]

13 A. For hygiene issue, it was not actually an issue of - that
14 received attention at that time.

15 As for malaria or so, it was only taken into account later on and
16 as for boiling water to drink, then that was also the matter that
17 was dealt with later on during the period.

18 Q. How about medical service? Was medical service made available
19 for people working in the cooperatives?

20 A. After the 17th of April, the medical doctors and nurses were
21 evacuated to the countryside and, as I said yesterday, the
22 Professor Rath Kut and Tip Mam were all arrested and other
23 medical staff were dispersed. There was no such thing as medical
24 schools or so.

25 But, later on, there was a movement that encouraged people to use

18

1 traditional medicine and I noted that we did lack medical
2 supplies since the war times and Ta Mok said that the French
3 medicine was produced to suit the weather conditions in their
4 country but it was not suitable for Cambodia.

5 At that time, some Vitamin C was available and it was mixed with
6 quinine, was also mixed with water and it was tighten with a
7 rubber band and they also used the coconut juice instead of the
8 IV liquid.

9 [09.51.41]

10 And in 1976, sometime in July - or, no, in May, there was a
11 movement to produce modern medicine. For example, if they wanted
12 to produce penicillin, they burned coconut shell or so to produce
13 it and that was allowed by Pol Pot because the Office of General
14 Staff was under the supervision of Son Sen and what my wife from
15 this office was also sent to study how to produce modern medicine
16 but, later on, this idea did not materialize because the Chinese
17 friend didn't give ideas that that was not the appropriate ways
18 of producing medicine. Instead, we were designated to involve in
19 the cooperatives to produce rice.

20 [09.53.43]

21 MR. PRESIDENT:

22 The National Prosecutor, you should re-focus - you should
23 re-focus your questions as indicated in document E124/2.2
24 concerning the first phase of the trial; particularly, relevant
25 paragraphs, paragraphs 18 to 32 concerning the historical

19

1 background of the Communist Kampuchea and, then, you move on to
2 discuss the administrative structure of the Democratic Kampuchea
3 both at the local and national levels and the roles of the
4 Accused concerning the administrative structure and communication
5 of the Democratic Kampuchea.

6 This is the flow of the examination so you should address a
7 question concerning these relevant portions of the Closing Order
8 and you should also make sure that your questions are concerned
9 with the first phase of trial, particularly facts relevant to the
10 case 002/01.

11 If you follow the flow of the proceedings in accordance with the
12 facts alleged in the relevant paragraphs determined by the
13 Chamber, I believe that it will be efficient and we can avoid
14 repetition as well and it serves the interest of time and
15 objectives of this hearing.

16 [09.54.48]

17 And the Chamber wishes to advise that, in the memorandum dated
18 the 22nd of September 2011 concerning the Severance Order
19 pursuant to Rule 89.2 TERS, paragraph 7, concerning the facts
20 relevant to the work sites and execution site or the facts
21 concerning the forced movement of the people, phase 3, were not
22 the subject of the hearing in the first segment of trial.

23 So this is the purpose of the hearing and this serves as a
24 reminder for the Prosecution which you intend to raise questions
25 concerning the work sites and cooperatives.

20

1 So the Chamber hopes that the Prosecution as well as all parties
2 concerned make every effort to put questions that are most
3 relevant to the confines of the first segment of trial which we
4 have notified the parties.

5 If parties wish to expand their questioning outside the scope of
6 the first segment of trial then we will have to make sure that we
7 have concluded this first section first and you have to ask for
8 permission from the Chamber as well whether or not that would be
9 granted by the Chamber or not.

10 [09.56.50]

11 And, in that case, we will have to consider whether or not the
12 witness will be summoned for the second time or not to testify
13 before the Chamber and, by listening to your line of questioning,
14 it appears that they are not very relevant to the relevant
15 portion of the Closing Order and the Chamber hopes that the
16 Prosecution will consider other lines of questioning.

17 MR. SENG BUNKHEANG:

18 Thank you, Mr. President. What I asked just now was actually a
19 reflection of the policy of the CPK so I would like to continue,
20 with your permission, my line of questioning.

21 BY MR. SENG BUNKHEANG:

22 Q. Well, do you know that the policies implemented at that time
23 were inconsistent with the ideology of the Democratic Kampuchea
24 government?

25 [09.58.01]

1 A. One principal policy of the Democratic Kampuchea was
2 disseminated immediately after 1960; that was the policy of
3 self-reliance.

4 We had to establish cooperatives in order to be self-sufficient.
5 We endeavoured to produce traditional medicine; was also to be
6 self-reliant; building up forces was also to be self-reliant as
7 well. So that was the main principle of the policy of the CPK.

8 Q. I would like now to proceed concerning the policy of the CPK
9 with regard to how enemies were classified and, also, the
10 treatment of the minority groups and other operations.

11 Mr. Kaing Guek Eav, you already indicated to the Chamber
12 concerning your role at M-13 as the Chairperson and that you hold
13 this position before April 1975 and later on, you became the
14 Chairman of S-21 during the Democratic Kampuchea Regime.

15 During this span of time in your capacity as Chairman of S-21,
16 did you know anything about Party policy concerning the enemies?

17 [09.59.52]

18 A. In real practice, first, we were talking about the spies. We
19 were instructed by the Party that anyone who entered the
20 liberated zone would be considered as enemy. And then, it led to
21 the event of the jailbreak and, later on, M-13 was classified
22 into M-13A and M-13B.

23 So the first principle is that anyone who was spotted in the
24 liberated zone would be regarded as enemy. After nine - after the
25 aerial bombardments, Ta Mok started to order the arrest of some

1 people and have them sent to M-13.

2 And the person who identified the location of the Southwest
3 office was a Chinese dissident. So this second group of people
4 also classified as enemies.

5 Then, there was another incident at Wat Antaluk. There was
6 gunfire and people engaged in the fire were arrested upon the
7 order by Vorn Vet and they presumed enemies as well.

8 Q. I would like to remind the witness that, indeed this point had
9 already been raised, but may I re-phrase the question concerning
10 how enemies were classified according to the Party's policy.

11 [10.02.23]

12 A. Thank you. I would like to also recollect the Revolutionary
13 Flag magazine of 1973.

14 It was mentioning about a special class or two special classes:
15 First, the police and soldiers.

16 In the Revolutionary Flag, we were explained that the police and
17 the soldiers were of a special class because they were armed with
18 the enemies' weapons to kill us.

19 The second special class was comprised of those like monks.

20 Monks, educated Buddhists, introduced the cause and effect, or
21 karma principle.

22 Buddhism in Cambodia was not deep-rooted or well-respected anyway
23 because monks were the children of the peasants and they could
24 only live on the alms collected from the peasants. If the peasant
25 wanted them to die, they die.

1 [10.04.02]

2 And after 1975, this policy was obviously implemented.

3 Q. In the Party's policy, was there any classification of
4 people's group where the minority group was classified as the
5 Party's enemies?

6 A. No, there was none, but in reality the Party seemed to have
7 good faith in the minority groups in the Northeast area of the
8 country.

9 Q. Apart from the minority groups in the Northeast, as you
10 indicated, were there any other groups of minority groups or
11 religious groups in Cambodia, and how were they treated by the
12 CPK's policy?

13 A. I think I can answer with my observation and my knowledge.
14 When I was detained in 1969 in the Central Prison, I talked to a
15 former member of the Party who told me that the Party regarded
16 the Cham as the minority group.

17 In the Party rank, there were two important people, Brother Mat
18 Ly (phonetic) and Ta Man (phonetic) who were from this minority
19 group, and when I was released from the prison in 1971, I heard
20 that Mr. Sos Mat (phonetic) joined the army, worked for the --
21 Lon Nol soldier -- worked for the Lon Nol government, be
22 stationed at -- on National Road Number 4. He worked for the
23 company, military company, and Sos Mat (phonetic) was a soldier
24 himself.

25 [10.06.57]

1 Later on, when I worked at S-21, I questioned people and I came
2 across the confessions of the Cham children, and one person was
3 Sok, his family names were Sos (phonetic), the Muslim family
4 common name.

5 Q. What about the Party policy towards soldiers and the police.
6 Could you elaborate on this?

7 [10.07.51]

8 A. Yesterday, I touched upon this briefly already.

9 I was talking about the political line to classify enemies into
10 three categories, guard forces, neutralize others and isolate the
11 remaining, and I referred to this but it's not the thing that I
12 refer to the 17 of April 1975. This happened before that.

13 Q. Where were the people who were perceived as enemies sent to?

14 A. I worked at M-13 and S-21, waiting for people to be sent.

15 Those people who were decided by the Party as enemies and sent to
16 us, we had nothing but to receive them, according to the orders
17 of the Party.

18 Q. When did you come to know about this policy?

19 A. What policy indeed it was? Was it about the policy toward
20 enemies smashing or else?

21 Q. The policy concerning how to classify enemies of the Party?

22 A. This policy to determine who would be the spy -- would be the
23 spy was established long ago during the Issarak regime. I would
24 like to touch upon this when it comes to Issarak issue. In Kaoh
25 Thum, there was a police officer, Leng Bav (phonetic). He was

1 still alive when I worked at S-21.

2 Q. Thank you. But please focus on the event that happened after
3 1975 to us.

4 [10.10.43]

5 A. After 1975, I noted the evidence, the lists of people executed
6 at S-21 because we noted the family's name bearing Long as the
7 family name; the family members of Long Boret, including another
8 person, Thach Chea. Doctors were also arrested and sent in.

9 Before I became the chief or chairman of S-21, that police office
10 had already purged the former soldiers and officials of the
11 former regime, including the Muslim villagers in Arab village, as
12 well as the Thai fishermen arrested offshore.

13 [10.12.11]

14 Koy Thuon and Dim Sambath (phonetic) and other people who were
15 implicated in the confessions were later on arrested.

16 Q. How did you know all of this?

17 A. After 1975, April 1975, I was the chairman of S-21. There were
18 lists of people arrested and I provided trainings on
19 interrogation techniques, so I witnessed this policy.

20 In my capacity as the chairperson, I had regular contacts with my
21 superior, including Son Sen and Nuon Chea. With Son Sen I had a
22 daily contact, but with Nuon Chea I would contact him every other
23 day.

24 Q. You mentioned the two individuals, Long Boret and Thach Chea;
25 who are they?

1 A. Long Boret was the former minister in Lon Nol's regime and he
2 was implicated in the super -- seven super traitors list.
3 Thach Chea was a teacher, a school teacher. Later on, he became
4 the Minister of Education. But at that time, there was a
5 demonstration led by Son (phonetic) in which this person was
6 assassinated. Other people also died during that event. So Thach
7 Chea was in charge of education during the Lon Nol's regime.

8 [10.14.42]

9 Q. At M-13 and S-21, did you know whether this policy was
10 implemented distinctively or not?

11 A. The policy was applied the same -- the same policy was that
12 whenever the Party regarded someone as an enemy we had to smash
13 him or her, and we had no way to contest it. When the Party
14 determined a person as an enemy, we had nothing but to smash that
15 enemy for the Party.

16 [10.15.38]

17 I already made it clear in Case File 001, the incident that I
18 would like to have it amended, but I failed.

19 So, again, after 1970, spies were regarded as the key enemies.

20 After 1975, former soldiers and officers of Lon Nol regime were
21 the key enemies.

22 After 1976, from -- in particular January 1977, the purges of the
23 north people were conducted. It was the internal purges, Kaoh
24 Thum, then people in the northwest and the north. Soldiers in
25 those zones were purged as later on no soldier was left.

1 Q. Could you specify on the identification of enemies? How was
2 this done; who made the decision to single out an enemy?

3 A. To be straightforward, every time I received information from
4 Son Sen, long before that, even before 1975 -- later on, I
5 received this information from Brother Nuon Chea concerning the
6 arrest of people, and whenever the upper echelon made the
7 decision to arrest any person, S-21 had to be prepared to amend
8 -- rather to implement the orders.

9 Q. Do you recall whether this policy was applied all across the
10 country or in only some particular areas?

11 [10.18.29]

12 A. Mr. Prosecutor, Brother Number One, Pol Pot, and Brother
13 Number Two, Nuon Chea, controlled the whole country.

14 Q. Do you have any knowledge about other security centres; were
15 they the same as the one at S-21?

16 A. I already explained in Case File 001.

17 Among the 196 security prisons, Party only valued the most the
18 confessions, nothing further than that, and we obtained the
19 confessions from Sector 32 of the Southwest Zone.

20 Comrade Nam (phonetic) was the chairman of that office, and the
21 confession was sent to us, and Son Sen advised me on the
22 confession obtained.

23 [10.20.17]

24 On 17 April 1978, Kang Chap wrote a letter to the Central
25 Committee because the enemy implicated Comrade Ming (phonetic) in

1 that confession, and Son Sen took that confession seriously and
2 he had it communicated to me and he read it and asked me to
3 follow up that confession.

4 I think that document is still available and I don't recollect
5 the ERN number of the document because I forgot it.

6 I can reiterate that the importance of each security centre was
7 in the confession of each detainee -- or prisoners, and that
8 confession had to be sent through messengers to K-7 through Kang
9 Chap - rather, confession of Kang Chap was sent also through
10 messenger to K-7. K-7 was the messenger office of the Central
11 Committee.

12 This is the thing that operated similarly and I also told you the
13 distinction between this -- how this policy applied in the
14 security centres.

15 Q. You indicated that there were 196 security centres. Were all
16 these security centres established before 1975 or after?

17 [10.22.26]

18 A. M-15 security office under supervision of Teng was established
19 in 1972. Security office of the Southwest in Sector 32 by Tang
20 Kher (phonetic) was established long before my office was
21 established. So I can tell you that security offices were
22 established gradually over time.

23 MR. PRESIDENT:

24 International Counsel for Nuon Chea, you may now proceed.

25 MR. PESTMAN:

1 Thank you very much, Mr. President.

2 I believe that the witness on this particular point is quoting
3 his own research on this particular topic.

4 [10.23.26]

5 I would like the -- invite the prosecutor to ask specifically on
6 what information -- on -- what source is this information based,
7 whether it is his own personal knowledge, experience at the time,
8 or whether he has learned so later. I believe the latter.

9 Thank you very much.

10 MR. PRESIDENT:

11 Thank you, Counsel.

12 Co-Prosecutor is now instructed to -- or advised to rephrase the
13 question.

14 BY MR. SENG BUNKHEANG:

15 Thank you, Mr. President.

16 This is the next question I would proceed to the witness.

17 Q. Can you tell the Court how did you know this?

18 MR. KAING GUEK EAV:

19 A. As I indicated, I used to live in S'ang, Sector 25. Sok
20 Butchamroeun appointed Teng as the secretary of the police
21 office.

22 I did not know what the police office named, but later on I
23 obtained the information from Nat when I was the deputy secretary
24 of S-21 and I came to know that police office was office of
25 Sector 15.

1 [10.25.14]

2 Before I was the chairman of M-13, I met Taing Kai (phonetic) in
3 Peam. He said that he was assigned a police task. I and Taing Kai
4 (phonetic) were acquaintance and we exchanged information
5 concerning how people were arrested.

6 Comrade Mam was also arrested at Sector 32. I did not know Chap
7 Nam but my superior, Son Sen, brought me a confession in which --
8 from which I was reprimanded for not being able to locate a CIA
9 agent because Son Sen said in that confession, the confession
10 obtained at Sector 32 by Chap Nam, they located CIA agent; why
11 not at S-21.

12 [10.26.29]

13 Q. You said there were 196 security centres. How did you come to
14 know this number of security centres?

15 A. I already made a summary of what I understood about the
16 security centres all across the country to the Co-Investigating
17 Judges.

18 I came to know this when I was interviewed -- or when I attended
19 sessions in the court, and I learned that there were 196 security
20 centres across the country back then.

21 Q. Who -- or where were these prisoners sent from? I mean, sent
22 to these security centres.

23 A. I'm talking about now the M-13 office. The Southwest Zone
24 would arrest some people and had them sent to M-13 for
25 questioning. And we also received people from the special zone.

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1 And when I became the deputy secretary of S-21, I noted that Nat
2 was contacting others to receive these people, and we received
3 people from Kaoh Thum as well. And later on when I was under the
4 supervision of Son Sen and Nuon Chea, they just told me to
5 receive all prisoners from all parts of the country.

6 [10.28.38]

7 Q. You said that there were more than 12,000 prisoners at S-21.
8 Where were they from?

9 A. These were workers from factories in Chak Angrae, electricity
10 factories at Psar Touch, and soldiers. That's one phase, workers
11 and soldiers.

12 [10.29.20]

13 Later on, when I was the chairman, I noted that people from
14 Sector 25 were arrested and sent to S-21 too, and as the -- in my
15 capacity as the chairman I learned more that people were arrested
16 from Division 310, 540, 520 and other divisions. And, later on,
17 people were also arrested from other zones, those who were sent
18 by the upper echelon.

19 MR. PRESIDENT:

20 It is now an appropriate time for adjournment. The Court will
21 adjourn for 20 minutes. The next session will be resumed at 10 to
22 11.

23 Counsel for Ieng Sary, you may proceed.

24 MR. ANG UDOM:

25 Mr. President and Your Honours, I thank you.

1 I am here to proceed with the request by my client that he has a
2 health concern and that he asks that he be excused from this
3 courtroom. He asks that he be allowed to observe the proceeding
4 from his holding cell.

5 MR. PRESIDENT:

6 Nuon Chea, you may now proceed.

7 MR. NUON CHEA:

8 Today I'm not feeling very well. May I, therefore, ask that I be
9 allowed to take a rest downstairs at the holding cell? I will do
10 my best to follow the proceeding if my health allows.

11 Thank you very much, Mr. President and Your Honours.

12 [10.31.49]

13 MR. PESTMAN:

14 Thank you, Mr. President. Before you take a decision, my client
15 is suggesting that he will follow the proceedings from the
16 holding cell, so he's waiving his right to be present in court
17 and he will try to effectively participate downstairs.

18 [10.32.07]

19 I have discussed this with my client. I will inform the Trial
20 Chamber as soon as we think that there might be a problem and
21 that he is no longer able to do so from the holding cell.

22 So we will file the usual letter waiving his right to be present
23 in court and we'll follow up if necessary.

24 But as long as we don't mention anything or as long as we don't
25 bring this matter up, you can assume that my client is

1 participating in the procedure.

2 And I stood up, not because I wanted to ask for my client go and
3 step downstairs, but I wanted to raise an objection to the line
4 of questioning, but maybe I can do that as soon as we resume the
5 session after the break.

6 Thank you.

7 MR. PRESIDENT:

8 So it is clear that you would like to raise your objection to the
9 lines of question after we resume the next session?

10 [10.33.18]

11 MR. NUON CHEA:

12 Indeed I would like to be transferred to the holding cell now.

13 MR. PRESIDENT:

14 Counsel, could you please answer my question?

15 MR. PESTMAN:

16 I think the answer was yes, but I've forgotten the question. I'm
17 sorry.

18 MR. PRESIDENT:

19 I would like to repeat the question, whether you request that
20 your client be excused from the courtroom for this whole
21 afternoon or for – for this morning session only or for the
22 afternoon session as well? Your response or clarification would
23 be very helpful to the decision to be made by the Chamber. We
24 just want to make sure that when the decision is rendered, it is
25 rendered on any particular portion of the trial or also to cover

34

1 the whole day. So please be more precise on this.

2 [10.34.32]

3 MR. PESTMAN:

4 I can only repeat what I've just said, and I don't know whether
5 my client will be able to attend the hearing this afternoon. I
6 will consult my client during the break, the afternoon lunch
7 break and maybe I will ask a doctor to examine our client as
8 well.

9 (Judges deliberate)

10 MR. PRESIDENT:

11 The Chamber has noted the request by Ieng Sary through his
12 counsel waiving his right to be present in this courtroom and he
13 has asked that he be excused from the courtroom and be allowed to
14 follow the proceeding downstairs from his holding cell.

15 [10.36.46]

16 We noted that the request includes the health concern by Ieng
17 Sary. The Chamber has therefore granted such requests to both
18 Nuon Chea and Ieng Sary and counsels are instructed to produce
19 the waivers with thumbprint or signatures.

20 The two accused are allowed to observe the proceedings from the
21 holding cells. Once again, counsels shall produce that waiver to
22 the Chamber immediately.

23 [10.37.39]

24 AV officers are now instructed to make sure that the audiovisual
25 link is installed to the holding cell so that the accused can

1 observe the proceedings.

2 Security personnel are now instructed to bring them to the
3 holding cells.

4 However, the Chamber would like to inform counsel that counsel
5 has no authority to be present in the medical room to interfere
6 in the work of the medical check-up. If counsel wishes to be
7 there, counsel shall invite - shall make a request to the Chamber
8 indicating his or her intention to see his client during such
9 examination, and the doctor is also advised not to allow any
10 counsel for the accused to come into the room without such
11 permission.

12 The witness is now allowed to go to the waiting room and the
13 security personnel shall bring him back to the courtroom.

14 Now the Court adjourns, but the next session will be extended -
15 the adjournment is extended until 11:00 a.m.

16 Counsel, we note you are on your feet. What else would you wish
17 to indicate to the Chamber?

18 [10.39.28]

19 MR. PESTMAN:

20 Well, I understand I can make a request to attend the medical
21 examination. I would like to do so now. I would like, first of
22 all, to have my client examined during the afternoon break for
23 lunch, and I would like to be present when he is being examined.

24 MR. PRESIDENT:

25 Doctor is now advised not to examine the Accused person yet, only

1 when there is a health concern and that medical check-up is
2 needed, a request is made, that doctors will be allowed to do so
3 or at his or her own initiative, doctor can do so and inform the
4 medical report or result to the Chamber after such examination.

5 The Court is adjourned.

6 (Court recesses from 1040H to 1108H)

7 MR. PRESIDENT:

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

9 Before we proceed to the Co-Prosecutors to pose further questions
10 to the witness, the Chamber would like to reiterate the decision
11 rendered by the Chamber before we broke.

12 [11.09.08]

13 The Chamber has ruled that counsel is not allowed to make a
14 direct request to a medical doctor to examine his client's health
15 concern. If counsel note any concerns with regard to his or her
16 client's health issue, he or she shall make a request through the
17 greffier of the Trial Chamber citing such request.

18 In other occasions, in practice of his or her medical career, a
19 doctor is allowed to examine the health of the accused and the
20 result of the examination can be submitted to the greffier of the
21 Trial Chamber.

22 So the Chamber hereby does not allow any counsel to go to the
23 medical room where the Accused person is being medically examined
24 during the course of the proceedings.

25 Judge Lavergne, who was given the floor to emphasize on this

1 point, made it very clear already to the parties.

2 We note also that the rendition of my decision in Khmer was not
3 properly rendered into the other two languages. That's why we
4 need to emphasize this to be more clearly understood and to be
5 more precise, we would like to proceed through Judge Lavergne to
6 have the floor.

7 [11.11.57]

8 JUDGE LAVERGNE:

9 I don't believe I have much to add to what the President has just
10 indicated and everything has been correctly interpreted this
11 time, and I believe that this should be very clear for all
12 parties. It is useless to make applications to be present during
13 medical examinations because they will be systematically denied.

14 MR. PRESIDENT:

15 Thank you.

16 Once again, the prosecutors are advised or reminded to confine to
17 the topics in case file 002/001 in relation to the historical
18 background of the Democratic Kampuchea, the administrative and
19 communication structures. The questions shall be in line with
20 these topics, as indicated, and the reference of this part can be
21 referred to document E124/7.2.

22 [11.13.38]

23 With regard to point number 7, the subject matter is only, at
24 this time, for the relocation of the population. We hope that
25 parties will be guided by this and that their questions will be

1 framed to remain in the course of these agreed, already set
2 paragraphs.

3 Counsel for Nuon Chea, you may now proceed.

4 MR. PESTMAN:

5 Mr. President, thank you very much. You preempted my objection,
6 the objection I wanted to raise about the line of questioning
7 before the break, S-21, the internal purging of the Party, the
8 implementation of policies formulated maybe before or maybe after
9 1975 are not within the scope of this first trial. So as soon as
10 S-21 is raised again, I will object again. I would really invite
11 the Prosecutor to keep within the boundaries of this first trial.

12 [11.15.07]

13 MR. PRESIDENT:

14 International Co-Prosecutor, you may now proceed.

15 MR. SMITH:

16 Good morning, Your Honours. Good morning, Counsel.

17 Your Honours, the Prosecution obviously takes heed of what the
18 Chamber has said. However, the questioning this morning

19 particularly was to articulate or ask the witness whether or not
20 he could provide evidence on the policies that existed during
21 that period, and certainly not concentrating on the
22 implementation of those policies.

23 As Your Honours are aware, in E124/7.2, at paragraph 6, the topic
24 that's included in this trial is the factual findings of the
25 joint criminal enterprise, and that's paragraphs 156 to 159.

1 Now, admittedly, Your Honours, we are well aware that this trial
2 is largely dealing with the forced evacuation -- or the
3 evacuation of people from towns and cities. However, Your Honours
4 have decided, in your decision, that it's important that at least
5 some policy evidence be heard on the other policies that relate
6 to the evacuation and the transfer of people because it's those
7 other policies, Your Honour, that actually explain why the
8 evacuation occurred.

9 [11.16.39]

10 So we only have, Your Honours, I would say, another 15 or 20
11 minutes to finish off the policies. It's clearly stated in that
12 paragraph 6 that it is part of the first trial and we understand
13 the reason why Your Honours have placed that in that order is, so
14 if there is a subsequent trial, that some of that evidence
15 wouldn't be needed to be repeated and also, of course, because it
16 directly relates to what was the justification for the evacuation
17 of people from Phnom Penh and other parts of the country. And it
18 is those other policies, Your Honour, that the Prosecution is
19 arguing that is the justification for that evacuation, not
20 something else.

21 [11.17.30]

22 So unless some evidence is led on those policies, Your Honours
23 will only have half of the story or half of the evidence that's
24 required, but we are well aware, Your Honours, that it's on
25 policy, not on implementation. And in relation to the

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1 presentation, we've advised Your Honours that we initially wanted
2 to start with the witness' association with the CPK, then discuss
3 some ideology and policy, not implementation. There can always be
4 an argument, is it policy or is it implementation, and in some
5 respects the evidence is drawn from the same pool.

6 But certainly, Your Honours, the secretaries are not trying to
7 put evidence in this Case in relation to implementation of those
8 other crimes, just simply, as Your Honours heard, this witness is
9 in a very good position to at least outline that policy in
10 relation to many of the other witnesses in the case.

11 So with Your Honours' leave, we would ask that my national
12 colleague can proceed with a couple of questions in relation to
13 the - whether there was a policy in relation to the Vietnamese,
14 which is a targeted group, which is mentioned in the E124/7.2, in
15 the factual findings of the JCE, and then place three documents
16 before the Accused to see whether or not those documents - he can
17 comment on whether those documents reflect the policy of killing
18 enemies. We would only be about 20 minutes to do that and we are
19 putting it forward on the basis that we really aren't going into
20 implementation. If that was the case, for a number of these
21 policies we'd be asking for lots and lots of witnesses to come
22 before this Chamber.

23 [11.19.34]

24 We are not doing that. This witness is very unique in terms of
25 his understanding of policies.

41

1 So with your leave, Your Honours, we would just ask for 20
2 minutes to round off this topic and then we will move to the next
3 topic which is the structure of the CPK, its statute and roles of
4 the accused to follow.

5 MR. PRESIDENT:

6 The Co-Prosecutor, you may proceed.

7 [11.20.19]

8 BY MR. SENG BUNKHEANG:

9 Thank you, Mr. President.

10 Q. Mr. Kaing Guek Eav, I would like to proceed with the policy to
11 smash the enemies. In any way are you knowledgeable of such
12 policy?

13 MR. KAING GUEK EAV:

14 A. I was one of the operators or the implementer of the policy to
15 smash the enemies both within the military ranks and in the
16 Party. The policy was aimed to get rid of people who were
17 affiliated with Americans. Later on, those people turned out to
18 be others who were affiliated with Vietnamese or with Vietnam as
19 well. At the beginning, the target was aimed at those affiliated
20 with the American government, but later on, those who were
21 affiliated with Vietnam also were targeted.

22 [11.21.55]

23 Q. How did you know about the policy to smash those who were
24 affiliated with the Vietnam?

25 A. I was just now talking about the internal rank, internal Party

1 issue. Those who were in the Party, they were Cambodians, but
2 they were sent to Vietnam. These people who once were expelled
3 from the country – expelled from the country by Pol Pot took the
4 advantage of another situation to come back to Cambodia. So these
5 people I referred to were those who were former members of the
6 People's Revolutionary of Kampuchea.

7 Q. Was the policy applied to these people, equally to others?
8 [11.23.28]

9 A. The policy was to eliminate or smash anybody who committed
10 wrongdoing.

11 Pol Pot had ordered the removal -- or had ordered the
12 repatriation of Vietnamese people to Vietnam. However, when I
13 talked about the purges here -- the purges of people who were
14 affiliated with Vietnam, they were not Vietnamese; they were
15 Cambodians living in Cambodia, but had such affiliation with the
16 Vietnamese Government and Party.

17 Q. With regard to other cadres at ministries who were smashed,
18 how many ministries were these people brought from?

19 MR. PRESIDENT:

20 Duch, could you hold on? Counsel for Nuon Chea is on his feet. He
21 may proceed.

22 MR. PESTMAN:

23 Thank you, Mr. President.

24 [11.25.02]

25 I think the prosecutor is losing focus again. I was told by the

1 prosecutor, just a few minutes ago, that the policies of the
2 Party post-1975 could be relevant to understand the evacuation of
3 Phnom Penh. We are about to -- or the prosecutor's inviting this
4 witness to answer a question about internal purges at a
5 particular ministry after 1975. I really don't see the relevant
6 -- or the relevance of that question for what we need to discuss;
7 the charges in the first trial.

8 MR. PRESIDENT:

9 International Co-Prosecutor, you may now proceed.

10 MR. SMITH:

11 Thank you, Your Honour.

12 [11.25.56]

13 I think learned counsel has just heard half of my answer earlier.
14 The other half was that Your Honours have ordered that the -- the
15 policies of the CPK are relevant to this trial and they'll also
16 be relevant to the next trial and so Your Honours have asked and
17 confined the issues in this case to those JC policies because
18 they could be used in the next trial and that's why it's
19 relevant. It's squarely in your decision; paragraphs 156 to 159.
20 And secondly, the policy, itself, in relation to purges within
21 the Party does relate to forced transfers, in any event, but Your
22 Honours have said that the Prosecution should be establishing the
23 JC -- the policies of the CPK in this case.

24 [11.27.08]

25 We have a burden of proof. We have to prove that beyond

1 reasonable doubt and, Your Honours, it's relevant to that fact.

2 Thank you.

3 MR. PRESIDENT:

4 The objection is not sustained. Witness is advised to respond to
5 the current question put by the prosecutor.

6 BY MR. SENG BUNKHEANG:

7 Q. Do you still recall the question?

8 MR. KAING GUEK EAV:

9 A. No, could you please repeat?

10 Q. Do you remember the policy to smash the enemy; whether it was
11 applied at various ministries as well?

12 A. Thank you.

13 [11.28.01]

14 I think I responded earlier, but only partially. It was -- the
15 purges was -- were involved in the petite bourgeoisie and the
16 lower, middle class peasants of Ke Pauk. And when it was -- when
17 it comes to the North, the purges were targeting the soldiers and
18 these purges drag on or -- or extended to the North and the
19 Northwest and it affected ministries.

20 At the ministry of commerce, in particular, was hit the hardest.

21 And also the Department of Transportation was also hit. Divisions
22 310, 540, 920, under the supervision of Koy Thuon, were purges --
23 or were purged.

24 In the East, Divisions 170, 290, and navy regiment at Chrouy
25 Changva, and people in these divisions and regiment were also

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1 purged.

2 Q. Apart from the ministries you mentioned, was this policy also
3 applied in others?

4 A. I cannot recollect this event immediately because it was long
5 time ago and the question was put to me and I didn't have much
6 time to think.

7 [11.30.36]

8 Perhaps there could have been more because even at the Ministry
9 of Energy, Comrade Chhon, who was the subordinate of Koy Thuon
10 working at the Ministry of Energy, was also purged. So I could
11 conclude that the purges took place almost at every ministry.

12 MR. SENG BUNKHEANG:

13 Mr. President, with your leave, I would like to show this
14 document to the witness so that his memory is refreshed.

15 MR. PRESIDENT:

16 Counsel can -- Co-Prosecutor can proceed with this.

17 (Short pause)

18 [11.32.12]

19 MR. KARNAVAS:

20 Mr. President, may I make one observation? Normally, it's
21 procedure, at least where I come from, to identify the document
22 for the rest of us to know what exactly is being shown to the
23 witness in case there may be an objection, but also for record
24 purposes.

25 So what document is being used to refresh the gentleman's memory?

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1 I think that's something that we're entitled to know at this
2 point in time; not after the gentleman has looked at it, studied
3 it, and, supposedly, refreshed his memory.

4 Thank you.

5 MR. PRESIDENT:

6 Counsel for Khieu Samphan, you may proceed.

7 MS. GUISSÉ:

8 Yes, Mr. President.

9 [11.33.06]

10 With the assistance of my colleague who has been able to take
11 stock of the title of the document in Khmer, I would object to
12 having this document shown to the witness because it appears that
13 it is a document from the ministry of commerce and since the
14 Co-Prosecutor has used the expression, "refresh his memory", he
15 should tell us what is the basis on which he is requesting this
16 witness to comment on the document; a document which, as we know,
17 shows that Mr. Duch worked in the ministry. So to enlighten us on
18 this debate, he should clearly say what is the basis for showing
19 this document to the witness.

20 MR. PRESIDENT:

21 Prosecution, I don't know if you have any response to the
22 observation made by the two defence teams.

23 MR. SMITH:

24 Just briefly, Your Honour. My colleague was going to provide the
25 numbers; it was just taking -- take a little longer.

1 Secondly, this document is being shown to the witness, firstly,
2 to see whether or not he recognizes that document, whether he has
3 personally seen that document before, and even if he hasn't seen
4 that document before, this document is being shown to the witness
5 to authenticate that document to see whether the content of that
6 document is consistent with the policies that were put in place
7 during that period and it will authenticate the document and,
8 also, it may well authenticate the document as well as the
9 witness may be able to comment on some of the policies that are
10 contained in that document.

11 [11.35.18]

12 It's quite a different thing if the witness was -- had no
13 position, whatsoever, to comment on policies, structures during
14 that period, and purges during that period. I think we've heard,
15 quite clearly, he's -- there's a strong foundation that this
16 witness is able to comment on the authenticity and the -- and any
17 aspects of that document so I think that the document should be
18 put to the witness for him to be able to do that.

19 MR. KARNAVAS:

20 A clarification, Mr. President. I don't want to get into a
21 debate, but I do wish for us to be rather precise in the way we
22 go about doing things.

23 First of all, the document should be identified by number so that
24 we all know about it and, of course, with that seeking leave to
25 give it to the witness. I agree once the witness has indicated

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1 that he is -- his memory is faulty then maybe something --
2 anything, in fact, can be used in most instances to refresh a
3 witness' memory provided that a foundation is laid such as the
4 one that was being noted by our learned colleague; does he
5 recognize the document, does he know about how the document was
6 generated and so on and so forth.

7 [11.36.45]

8 With respect to authentication, I think here's where I would
9 depart -- and I strongly object to saying that even if he hasn't
10 seen the document, he would be able to authenticate it. The
11 document may contain information which he may be able to -- which
12 may coincide with his memory of the events at the time, but to
13 suggest that by looking at a document which he's never seen, he
14 would be able to authenticate the document itself, which is
15 really not the issue at this point in time, I think is wrong.
16 I have no objections to witnesses being shown documents to
17 refresh their memory. I do object and I strongly object to then
18 say that once they look at a document that has refreshed their
19 memory because of the content that may be in the document that
20 the document, itself, is authenticated by the refreshment of the
21 memory from the contents within the document. That's my
22 objection.

23 [11.37.49]

24 And, again, while I understand we're still learning the process
25 of how we can be most efficient in this particular trial --

1 because every trial has its own complications and challenges -- I
2 would respectfully request that the parties first identify the
3 number of the document so that Your Honours can also make a
4 determination as to whether the document itself can be shared
5 with the witness. I think it's proper procedure. It alarms
6 everybody what to look at. You, of course, have to make the
7 decision to grant leave or not to grant leave and you cannot do
8 so.

9 And -- and then, of course, we're having this debate in the
10 abstract and I think we would avoid a great deal of time if we
11 would just follow some simple procedures such as the ones that
12 I'm requesting and I think it's late in the day for the
13 prosecutor to stand up and say, well, my colleague was going to
14 get to it at some point. That point has come and gone.

15 [11.38.48]

16 Thank you.

17 MS. GUISSÉ:

18 Thank you, Mr. President. I completely endorse the remarks of my
19 colleague. Let me add that as far as this witness is concerned,
20 we have received a list of documents; turned that into evidence.
21 I think we should proceed by indicating the number on the list so
22 that we should be sure that that document, which is being shown
23 to the witness, is on that list. It is very important for us to
24 follow what is happening, what it is all about.

25 [11.39.40]

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1 Discussing this document in the presence of the witness is not
2 proper because our discussions could colour the witness'
3 testimony on this document. I think it is unfortunate that we are
4 discussing this issue in the presence of the witness and he is
5 listening to us. I am not questioning the integrity of his
6 testimony, but I just want us to bear in mind that we may mislead
7 the witness or we may influence the witness depending on the
8 arguments we make to the witness' hearing.

9 MR. PRESIDENT:

10 The International Co-Prosecutor, you may proceed.

11 MR. SMITH:

12 Your Honours, we would only respond by saying that this witness
13 is in a unique position to be able to provide commentary on the
14 accuracy and events, structures, communication aspects, and
15 policies contained in those documents. And to assist Your Honours
16 in determining the truth, we think it's highly appropriate that
17 this witness be able to show -- be shown any document from that
18 -- that period and if the witness is unable to provide any
19 assistance to the Chamber as to the content of that document so
20 be it, but we submit he's an important witness in which Your
21 Honours can gain a greater understanding of the meaning of the
22 documents that are before you.

23 [11.41.23]

24 Thank you.

25 MS. SIMONNEAU-FORT:

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1 Yes, Mr. President, I must admit that I do not quite understand
2 the purpose of this discussion on the documents. It is obvious
3 that we need the references. It is also clear that the Chamber
4 authorizes the use of any documents, but it appears to me that
5 thus far we have used documents; we have tendered documents into
6 evidence in the presence of the witness or some witnesses.
7 I think the possibility is open to us and so we should not
8 discuss whether the document should be presented to the witness
9 or whether it should be presented to refresh the witness' memory
10 or not.
11 We have already tendered documents into evidence in Court and the
12 matter shouldn't arise at this stage in the proceedings.
13 (Judges deliberate)
14 [11.43.27]
15 MR. PRESIDENT:
16 The Chamber wishes to enquire the Prosecution concerning the
17 document proposed to be put before the Chamber. Has the
18 Prosecution put this document before the Chamber earlier on?
19 And the Chamber wishes to remind the national prosecutor that you
20 should pay attention on the facts that, as the moving party or
21 party proposed to put the document before the Chamber, should
22 identify the document; the number of the document as well as the
23 ERN numbers, and please identify the relevant ERN page of that
24 document as well. That is the way we have already practised so
25 far concerning placing documents before the Chamber.

1 [11.44.30]

2 And just now, the Prosecution failed to indicate the document
3 numbers. Can you, please, clarify these matters before the
4 Chamber rule on that?

5 MR. SENG BUNKHEANG:

6 Mr. President, I was about to identify this document, but since
7 there was an interruption by my learned friends, I failed to
8 mention that number; D366/7.1 and D3N.

9 MR. PRESIDENT:

10 Has this document been put before the Chamber so far?

11 MR. SENG BUNKHEANG:

12 Mr. President, so far we have already requested that this
13 document be put before the Chamber.

14 MR. PRESIDENT:

15 Yes, you may proceed then.

16 BY MR. SENG BUNKHEANG:

17 Q. Thank you.

18 Mr. Kaing Guek Eav, can you please look at this document; this
19 document entitle "The Report on the General Meeting of the
20 Ministry" dated the 25th and 26th of July 1976?

21 [11.46.04]

22 Can you look at this document? Have you seen this document
23 before?

24 MR. KAING GUEK EAV:

25 A. No, I have never seen this document before.

1 Q. Can you look at point 1 of the document concerning the
2 activities of the enemies? It reads, "Activities of the Bad
3 Elements". Did you know that back then if this was the policy
4 embedded in the ministry which was also mentioned in this
5 document concerning the bad elements?

6 A. Back in 1976, in July -- actually, it was earlier than the
7 14th of May 1976 when Pol Pot convened permanent meeting. In that
8 meeting, he mentioned proverbs. In order to concur the
9 Vietnamese, we had to have a pure and clean Party and pure people
10 as well. So if we look at the events of the bomb blast in the
11 royal palace, it was earlier than that and Koy Thuon was under --
12 was put under house arrest.

13 [11.48.01]

14 Koy Thuon was arrested and placed under house arrest at the order
15 of Pol Pot; so I think that was a real possibility in the policy
16 to eliminate enemies.

17 MR. PRESIDENT:

18 The national counsel for Nuon Chea, you may proceed.

19 MR. SON ARUN:

20 I would like to make it clear for the records. The witness said
21 he had never seen this document but, afterwards, he made a
22 conclusion on this document so I would like to object against
23 this document. I don't think that it is appropriate for this
24 witness to draw any conclusion from this document.

25 MR. PRESIDENT:

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1 Thank you for your comment, but this was merely a remark, but the
2 objection was actually against the question asked.

3 [11.49.09]

4 The Chamber has reminded repeatedly, including this morning
5 reminder that in answering questions by parties, the witness
6 should avoid drawing a conclusion. Rather, the witness is advised
7 to answer based on his experience; answer what he knows and
8 answer what he witnessed because the witness is not an expert and
9 even if -- and that the witness should not draw any conclusion
10 and the conclusion may be made at the end.

11 And the Chamber wishes to, once again, remind parties that they
12 be vigilant in putting questions to the witness, making sure that
13 they do not put leading question or questions that induce
14 conclusion from the witness.

15 BY MR. SENG BUNKHEANG:

16 Q. Thank you, Mr. President.

17 [11.50.39]

18 When you said you knew that it was the policy as it was embedded
19 in this document; how did you know that?

20 MR. KAING GUEK EAV:

21 A. I would like to go back to my earlier answer on this document.
22 Admittedly, I have never seen this document, but then the
23 Prosecution asked me whether or not there was the purge --
24 purging activities at that time. Of course, I could answer that
25 there was purge in the ministry of commerce. But as for your last

1 question, I could not quite catch your question; could you please
2 repeat it?

3 Q. You have already answered this question so I would like to
4 move on to my next question, document E3/153. And with the
5 President's leave, I would like to ask that this document be
6 presented to the witness.

7 MR. PRESIDENT:

8 The counsel for Khieu Samphan, you may proceed. The international
9 counsel for Khieu Samphan, you may proceed.

10 MS. GUISSÉ:

11 Thank you, Mr. President. My question is just to request
12 clarifications. Is the Co-Prosecutor referring to documents on
13 the list; the list he gave us regarding the testimony of this
14 witness? If that is the case, would it be possible for him to
15 give us the number of the document on this list? It would make it
16 a lot easier for the parties to find it. There are about 57
17 documents on the list. If he can give us the exact reference of
18 that document, our work would be considerably facilitated.

19 [11.53.14]

20 Thank you.

21 MR. PRESIDENT:

22 The Prosecution is merely asked to indicate the document number
23 and actually the Prosecution has already identified his document
24 number and if the Prosecution wishes to add further elaboration
25 on this document, you may proceed.

1 MR. SENG BUNKHEANG:

2 This document number is E3/153 and if the international counsel
3 would look at the list, according to the number I indicated, I'm
4 sure that you will find it in the list of documents.

5 This document entitled, "Additional Comments on the Report of the
6 General Meeting of the Ministry" dated the 25th and 26th of July
7 1976.

8 BY MR. SENG BUNKHEANG:

9 Q. Have you seen this document before, Mr. Witness?

10 MR. KAING GUEK EAV:

11 A. Mr. Prosecutor, I have never seen this document. This is the
12 first time I encounter this document.

13 Q. Do you know that this document was about comments of the
14 certain comrades on the reports of the meeting of the ministry of
15 commerce?

16 MR. KARNAVAS:

17 Mr. President, I wish to interject here.

18 [11.55.12]

19 The gentleman has indicated that he hasn't seen the document.

20 Now, he's leading the witness using the contents of the document
21 to get an answer from the witness. If the witness hasn't seen it,
22 then he cannot comment about the document.

23 Now, if they wish to elicit from the witness evidence which he
24 knows, for instance, if I may assist; was anybody from any
25 ministry purged; how do you know. The Prosecution says he's in a

1 unique position; perhaps, he is. Perhaps he is because he
2 tortured and killed himself; either he, himself, or through him.
3 So maybe that's how he knows, but to show a document and then
4 say, well, let me tell you what's in the document and did you
5 know this, after he said already that he hasn't seen the
6 document; he's not participating in this ministry.

7 [11.56.01]

8 Yesterday he said, "Only within the confines of S-21 do I have
9 any personal knowledge". We know that he's read. We know that
10 he's trying to assist, but I think this is wholly improper and
11 the Prosecution knows that and they simply can't say, well, gee,
12 he's in a unique position though I have all these other experts
13 coming in. Perhaps they're trying to replace Kiernan with Duch;
14 that may be one of the -- the strategy behind, I don't know. But
15 to say that he's in a unique position; yes, he's unique in some
16 aspects, but that's not the answer to every single objection that
17 we're raising and you can't say, well, he's in a unique position
18 and, therefore, he would have known what's in this particular
19 document which he has never seen.

20 [11.56.47]

21 We would ask that they go step by step; have you seen this
22 document, if the answer is no, then move on. If they wish to ask
23 him concrete questions such as, are you aware of this or that;
24 that may be appropriate depending on what it is they're trying to
25 elicit. But using documents that the witness has never seen to

1 somehow anchor an answer from the -- from the witness is improper
2 whether it's the civil law system, whether it's the common law
3 system, or whether it's a hybrid system.

4 [11.57.20]

5 I apologize for having to be somewhat academic about this, but
6 when it comes to evidence, I think we need to be very, very
7 precise. I'm all for allowing all of these documents to come in
8 if Your Honours feel that they're relevant, but a witness should
9 only comment about documents or the contents within the documents
10 if they know about it.

11 MR. PRESIDENT:

12 The International Co-Prosecutor, you may proceed.

13 MR. SMITH:

14 Thank you, Your Honour. I mean, we agree with the Defence that a
15 witness shouldn't -- not be allowed to look at a document just
16 because he hasn't seen it before. This witness is able to give
17 evidence of policy, of structure, of communication during that
18 period because of the very particular position he was involved --
19 involved in. All we are asking this witness to see whether or not
20 he recognizes some people within that document and after that
21 series of questions, if he can't assist the Chamber with that
22 document, of course, we move on.

23 [11.58.36]

24 But the Prosecution should be allowed to question the witness on
25 aspects of the document to which may coincide with his memory at

1 the time and it may add probative weight to that document in the
2 evidence. And we think it's important, Your Honours, that we have
3 this witness be able to help Your Honours understand further, how
4 these documents relate to each other. I mean, he is far better,
5 in many respects, than an expert because he was there at the time
6 and just because he hasn't, sort of, seen the document before, it
7 doesn't mean he should be stopped from that. Because of all of
8 the information that he has, the experience he has with the CPK,
9 he will be able to -- we assume, be able to illustrate and
10 emphasize aspects and confirm issues that arise in those
11 documents and we just ask that we be allowed to do that and that
12 those questions will follow and we agree with the Ieng Sary
13 defence that if, at the end of the day, he can't comment on that
14 document at all, well, then we move on to another document.

15 [11.59.46]

16 Thank you.

17 MR. KARNAVAS:

18 Just one final point of clarification, Your Honour, and Mr.
19 President, I know I'm testing everyone's patience, but if the
20 purpose, as was done at least with the previous document, is to
21 refresh the gentleman's memory because he simply cannot remember
22 about certain events, the proper procedure is identifying the
23 document, showing the document, asking the gentleman whether he
24 has seen it. If he hasn't then perhaps even ask a question; well,
25 now that you've looked at this document, does it refresh your

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1 memory in any way, and then to allow the witness to testify from
2 his memory. I simply don't know the technique that is being used
3 and it's foreign to me, but it would appear that they're trying
4 to feed information into -- to the witness so then he can
5 regurgitate it back.

6 [12.00.33]

7 Frankly, in the civil law system the -- once you admit the
8 document, it's there; it's part of the dossier that you're going
9 to be looking at, at the end, and you're perfectly capable of
10 deciding what from the document you're going to use.

11 If this gentleman is such in a unique position, he should be able
12 to testify and answer questions. He doesn't need to be shown
13 documents which he's never seen and then ask him to comment about
14 certain things in a leading fashion. That's why I object. I don't
15 think we're that far apart, but I think part of the technique
16 that I'm seeing here, at least, is we're allowing this very
17 special, very knowledgeable, very unique witness to confabulate
18 in the sense that we're giving him information which we may not
19 have, may know nothing about, but now, armed with the information
20 in this document, he's then going to go off and testify about
21 matters which we don't know whether it is part of his independent
22 memory or something that he just learned and on the fly, now,
23 he's providing to the Trial Chamber; that's where I object.
24 I apologize if I'm not being articulate enough in making my
25 point, but I hope that I am making a point for your

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1 consideration.

2 And I see, Your Honours that we're about ready for lunch;
3 perhaps, this is something that Your Honours can think about over
4 the lunch period.

5 Thank you very much.

6 (Judges deliberate)

7 [12.02.41]

8 MR. PRESIDENT:

9 Thank you very much. This issue is complicated and it's also --
10 the matter that is raised can be used to consider in the future
11 what we would treat documents to be put before this Chamber and
12 we will rule on this in due course.

13 And since it is now appropriate time for lunch adjournment, we
14 will adjourn. The afternoon session will be resumed by 1.30.
15 Security personnels are now instructed to take Khieu Samphan to
16 his holding cell and have him returned to the courtroom by 1.30.

17 At the same time, Kaing Guek Eav shall also be taken to his
18 waiting room for the witness and have him returned to the
19 courtroom by 1.30.

20 The Court is adjourned.

21 (Court recesses from 1203H to 1333H)

22 MR. PRESIDENT:

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

24 Before we hand over to the prosecutors to proceed with the
25 questions, the Chamber would like to rule on the objection

1 concerning the document presented before the witness as follows.

2 [13.34.50]

3 Any document put before the witness for debate, if the witness or
4 a witness says that the document -- or, rather, says that he has
5 no knowledge of the document or has never seen the document, the
6 document shall be removed from the screen or -- and the party is
7 advised to put other questions instead of referring to that same
8 document.

9 (Judges deliberate)

10 [13.35.48]

11 I would like now to hand over to the -- to Judge Sylvia
12 Cartwright to specify on this.

13 JUDGE CARTWRIGHT:

14 Yes, thank you, President.

15 It's simply a question of translation and clarifying what the
16 President just said.

17 The first part of the Trial Chamber's ruling is very clear, I
18 think. If the witness to whom a document is given cannot identify
19 it or says he has never seen it before, the document must be
20 removed from him and from the screen in front of him.

21 The second part, however, was not so clear. Notwithstanding that,
22 the -- any party may put questions to the witness based on that
23 document. And I hope that that is now clear to the parties.

24 Thank you.

25 [13.36.58]

1 MR. PRESIDENT:

2 Thank you.

3 Does the witness have the documents before him?

4 Court officer is now instructed to remove the documents from him.

5 We would like to now hand over to the prosecutor to pose some

6 further questions, should he wish to do so.

7 BY MR. SENG BUNKHEANG:

8 Thank you, Mr. President.

9 [13.37.44]

10 Q. Mr. Kaing Guek Eav, in this document the socialist revolution

11 policy was mentioned.

12 MR. PRESIDENT:

13 Can court officer now replace the battery in the headset for the

14 witness?

15 MR. KARNAVAS:

16 Mr. President, while that's being done, perhaps I could use this

17 opportunity.

18 Based on the question that is being posed now and the manner in

19 which it's being posed, I think we're back to where we were

20 before.

21 [13.38.35]

22 As I understood, Judge Cartwright's clarification was that we

23 could use -- any party could use, you know, what's in the

24 document, but not necessarily refer to the document -- what is in

25 the document, in other words, this document said such and such,

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1 and go from there as opposed to the substance in the document,
2 using it in posing a question without making reference while it's
3 in the document.

4 Maybe I'm -- I'm not stating my -- stating it clearly or maybe I
5 misunderstood, but it would appear that we're back to the same
6 scenario that we were this afternoon -- or this morning.

7 [13.39.25]

8 MR. PRESIDENT:

9 International Co-Prosecutor, you may now proceed.

10 MR. SMITH:

11 Thank you, Your Honours.

12 I don't think my learned friend had finished his question. I
13 think he was framing a question to point to the issue in which he
14 wanted the witness to talk about, so I think defence counsel
15 might have been a little bit quick there.

16 [13.39.45]

17 But I think it relates to the issue of a leading question. If
18 there's a leading question saying, in this document there is this
19 issue; is that correct, I think that's one -- may be problematic.
20 But I think questions like, in this document there is an issue;
21 are you familiar with it; can you comment on it because of your
22 position at the time -- so I think it's really the form of
23 questioning.

24 And unfortunately, I don't think my colleague had actually
25 finished framing his question to sort of point to the issue. But

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1 certainly, leading questions when the witness has no
2 understanding, we agree that's not very useful to the Chamber.
3 But to point to the issue and say, are you familiar; can I ask
4 you about that; I think that's highly proper and very probative,
5 bearing in mind this particular witness.

6 [13.40.47]

7 MR. KARNAVAS:

8 Mr. President, my only objection is, why make reference to the
9 document. They can certainly ask the question, are you familiar
10 with this topic. I think by mentioning the document it is leading
11 -- that, itself, leads the witness, especially after the witness
12 has looked at the document and says I don't -- I can't -- I'm not
13 familiar with it.

14 Why not just go ahead and ask, are you familiar with this or
15 that. He can say yes or he can say no.

16 There's no need to say that something is in the document because
17 then that leads -- that is feeding information to the witness.

18 And with this particular witness, we respectfully submit no
19 leading is necessary.

20 [13.41.37]

21 MR. SMITH:

22 Your Honours, obviously we don't want this to go on for days, but
23 our position is that if we had to ask open questions from this
24 witness on every particular issue relating to the CPK period, we
25 would be here for days and weeks and weeks.

1 As Your Honour is aware, this witness has come across thousands
2 and thousands and thousands of documents. And issues that are
3 contained in those documents are very specifically put or raised.
4 If we at least can't pinpoint him to that particular issue and
5 ask him to comment on that, then we'll never get to the type of
6 precision that Your Honours will need to determine the probative
7 value of the documents or the type of evidence that this witness
8 can give. So there has to be an element of taking the witness to
9 the topic or the statement or the point and then, from there, the
10 witness should be able to answer questions on that particular
11 point if he can.

12 Otherwise, what will happen is we will lose the value of this
13 witness because we won't be able to take him to particular issues
14 and then question him about it.

15 [13.43.05]

16 If he knows nothing about it, of course, we would move on; but
17 otherwise, Your Honours won't get the precision that you need.
18 And certainly, we're mindful of the fact that we shouldn't be
19 asking leading questions to tell him what the answer is. That's
20 not why we're here.

21 Thank you.

22 (Judges deliberate)

23 MR. PRESIDENT:

24 To clear this issue -- and we have had some problems concerning
25 this time and again, and to clarify this, we would like to hand

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1 over to Judge Silvia Cartwright to inform in detail to the party
2 concerning the document put before the Chamber and, in
3 particular, when it comes to the document the witness says he has
4 never seen or heard of it before.

5 Judge Cartwright, you may now proceed.

6 [13.46.47]

7 JUDGE CARTWRIGHT:

8 Thank you, President.

9 In an attempt to provide further guidance to counsel for the
10 parties, the first rule is the one that's already been stated. If
11 a witness is not familiar with a document, then the document must
12 be taken from him.

13 The second rule is that the party putting the questions is not
14 entitled to go through the document saying, in paragraph 1, it
15 says such and such, please comment. However, the party putting
16 the questions can ask questions based on the subject matter in
17 the document. For example, witness, what do you know about this
18 topic.

19 [13.47.50]

20 Have I made myself clear?

21 MR. KARNAVAS:

22 Very clear.

23 JUDGE CARTWRIGHT:

24 "Som orkun".

25 MR. PRESIDENT:

1 Thank you.

2 Now we would like to hand over to the Co-Prosecutor.

3 BY MR. SENG BUNKHEANG:

4 Thank you, Mr. President.

5 [13.48.15]

6 Q. Mr. Kaing Guek Eav, according to your recollection and your
7 experience, do you know anything about the Party's policy
8 concerning the socialist revolution? Please describe.

9 MR. KAING GUEK EAV:

10 A. This line to defend or to protect socialism was the main Party
11 line introduced after the 17th of April, 1975. In the statute of
12 the Party, such a line was also mentioned and in the first
13 general assembly the issue was also raised. So it was a more
14 general issue in nature.

15 Q. Have you had any further knowledge on top of this?

16 A. I may not say what exactly the lines could have been, but
17 members of the Party were educated to help build socialist
18 revolution, defend it. And each member of the Party was required
19 to achieve this goal.

20 Everyone in each division was bound to implement such policy.

21 Q. Thank you.

22 [13.50.25]

23 MR. SENG BUNKHEANG:

24 Mr. President, I have no further questions. I would like to hand
25 over to my colleague to proceed with the remaining of the

1 questions.

2 MR. PRESIDENT:

3 Thank you.

4 International Co-Prosecutor, you may now proceed.

5 QUESTIONING BY MR. SMITH:

6 Good afternoon, Your Honours. Good afternoon, Witness.

7 [13.50.48]

8 Q. Mr. Kaing Guek Eav, for the last, I think, day and a half
9 you've been questioned on your association with the CPK, that
10 long-standing association, as well as the ideology and the
11 policies of the Party over those, particularly in the period
12 before 1975 and the period from 1975 to 1979. And we thank you
13 for your answers on that.

14 Now we would like to move to another topic, another area relating
15 to the structure of the Party, the structure of the Democratic
16 Kampuchea government, and then we'll move to communications and
17 then we'll move to other topics in relation to the role of the
18 accused.

19 But now I'd like to talk -- ask you questions on the Communist
20 Party of Kampuchea as an organization as it was back in 1975 to
21 '79 and as it grew from the early years.

22 So do you understand the shift we're moving to with the
23 questions, looking at the Party statute and trying to understand,
24 assist the Judges in how the Communist Party of Kampuchea worked?
25 So the first question is, you said, actually, a moment ago that

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1 the socialist revolution that was -- you first saw that or heard
2 of that in -- well, particularly it was in the Party statute. And
3 it was every member of the Party's responsibility to build that
4 revolution.

5 So I'd like to ask you the question: have you seen the Communist
6 Party of Kampuchea Party statutes?

7 [13.53.32]

8 MR. KAING GUEK EAV:

9 A. There are three statutes. The first one issued in 1960, and I
10 studied that statute in 1967.

11 The second generation of statute for the Party was also part of
12 my lesson that I learned in 1972. And the third generation of
13 statute of CPK was also disseminated and included in the training
14 sessions. And I also offered training sessions using the material
15 from the statute.

16 Q. Regarding the first statute, the 1960 statute, is it the case
17 that you have seen that one?

18 A. Yes, I have. And I have studied it thoroughly.

19 Q. Did you also study the statute of 1971 thoroughly?

20 A. Yes.

21 [13.55.17]

22 Q. And in relation to the 1976 statute, have you studied that as
23 well?

24 A. I also studied this statute through the sessions lectured by
25 my mentor, Mr. Son Sen, and this document can also be referred to

1 the "kor nor hor" [KNH]166.

2 Q. Did you see that 1976 statute -- did you see that in those
3 study sessions or did you just see the substance of that in other
4 materials?

5 A. Please, could you refer the statute to any particular year?
6 Which year was that?

7 Q. When was the first time that you saw the 1976 Communist Party
8 of Kampuchea statute? What year was that, the first time that you
9 saw it and studied it?

10 A. I saw it in 1976, indeed.

11 [13.56.58]

12 Q. Can you tell the Court what the purpose of the statute was;
13 what it was to legislate on?

14 A. Statute was the base, the fundamental principle for the Party.

15 Q. Would you also agree with me that the statute outlined and
16 prescribed the criteria for membership and the duties of Party
17 members during that period, their responsibilities?

18 A. I may analyze the statute that I learned from 1970 and may
19 make a comparison to the statute of 1976.

20 The two statutes are not different, but they're classified into
21 two sections. First, it is about the political lines and
22 confidence for the Party. It was the lines concerning the
23 organizational management and also the lines to restore the
24 morality of members of the Party.

25 The second section is about the organizational management line,

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1 for example, how members of the Party would be recruited or the
2 criteria as you indicated would be included in the second section
3 of the statute.

4 MR. SMITH:

5 And Your Honours, if the document, the statute, could be shown --
6 this document can be shown to this witness. It's E3/130, Khmer
7 00053007 to 0005338, in English 00184022 to 00184047 and French
8 00292914 to 00292934.

9 We have a hard copy for the witness as well. I would like to show
10 the document on the screen as well, if I can ask the court
11 orderly to -- the greffier if he could pass the document to the
12 witness, please, with your permission.

13 [14.00.47]

14 MR. PRESIDENT:

15 You are permitted to do so. Court officer is instructed to bring
16 the document to the witness for examination.

17 BY MR. SMITH:

18 Thank you, Your Honours.

19 I assume it's okay to proceed in a slightly darkened atmosphere,
20 so I'll do so.

21 Q. Mr. Kaing Guek Eav, looking at that document, E3/130, what is
22 that document? Can you identify it for us?

23 MR. KAING GUEK EAV:

24 A. What do you want me to indicate?

25 [14.01.45]

1 Q. Can you tell the Court which statute that is, whether it's the
2 1960 one, the 1971 statute or the 1976 statute?

3 A. This Party statute is the 1976 statute.

4 Q. And is it the case this is the statute that you taught in your
5 duties at S-21, and studied?

6 A. This Party statute was used by my superior for his teaching
7 purposes, and this is a copy of this statute; I studied it
8 myself. I did not use it to teach.

9 Q. You have studied that statute, and in your recent statement
10 you've discussed it.

11 Does that statute reflect accurately your understanding of
12 membership criteria and duties of members during that period,
13 during the '75 to '79 period -- or '76 to '79 period?

14 A. Let me say that all Party members who were worried about their
15 work and their lives needed to consider, to consider properly the
16 first part of the statute they had to do in order to provide the
17 -- to provide the need -- to fulfil the needs of the Party. From
18 page 007 to page 01 12 (sic), it is very difficult for the Party
19 members to re-educate themselves, so Party members need to
20 consider this part properly.

21 [14.04.47]

22 MR. SMITH:

23 And, Your Honours, if I can ask our case manager if they can show
24 this document on the screen so that as we refer to different
25 parts, at least the public would be able to see it.

1 BY MR. SMITH:

2 Q. Mr. Kaing Guek Eav, the second chapter of the statute relates
3 to 10 criteria for selection into the various Party key
4 leadership organizations. Were those criteria -- were they put in
5 place during that period?

6 [14.05.44]

7 MR. KAING GUEK EAV:

8 A. Before I answer this question, could I indicate one point
9 before that? Did you allow me to do so concerning the second
10 chapter?

11 The second chapter, if compared to the 1970 statute, we can see
12 that the two chapters are the same, but if you combine the second
13 chapter of the two years and compare that to the 1960 statute, we
14 can see the difference.

15 The 1960 statute states that any Party member who has had 10
16 years of experience in the Party, the Party will consider that
17 membership. When it comes to the 1970 and 1975 (sic) statutes,
18 the experience was no longer considered, so in the practical --
19 practicality, the other question who consider -- who decides on
20 this, to put it plainly, it is Brother Number One and Brother
21 Number Two to decide to select the Party members, that is, to no
22 longer consider the seniority of the member -- the Party members.

23 Q. Just so we understand you correctly, are you saying that the
24 10 criteria in this statute for selection into various Party
25 leadership organizations was placed in the 1971 statute, but it

1 wasn't in the 1960 statute?

2 [14.08.16]

3 A. The 10 criteria were created by the -- by Pol Pot, newly
4 created by Pol Pot from 1970. The 1960 statute was different. The
5 statute in the 1970 and 1976 were different from the '60 statute.

6 Q. From your knowledge of the Party at the time, do you know why
7 those 10 criteria for membership into leadership positions, do
8 you know why they were included in the 1971 statute?

9 What was the reason for them to be placed in?

10 [14.09.26]

11 A. Why that was included, I refrained myself from answering this.
12 It is difficult to answer. But if you ask me to make comparisons,
13 I can do that.

14 Q. If you, if you can -- if you do have an opinion as to why
15 those 10 criteria were included because of your experience in the
16 Party at that time, can you tell the Court?

17 A. The reason was to promote from being a member to the leader of
18 the Party. It is the subjective evaluation of the secretary of
19 the Party.

20 If you talk about the 10 criteria, number -- Article 1 talks
21 about the solidarity, and this is up to them to decide whether we
22 are -- we have this solidarity or not. So it is up to the
23 secretary and the deputy secretary of the Party.

24 Q. You said a moment ago that because of the 1971 statute that
25 seniority in the Party didn't matter or wasn't respected. Why --

1 why do you think they made that change in the 1971 statute? Why
2 did they decide not to respect seniority from those earlier
3 years?

4 A. If I answered this question, I will be providing conclusion,
5 so I want to give only the comparison.

6 [14.11.57]

7 Q. If I can ask you your conclusion because you were in the Party
8 and you're in a position to make that conclusion. So if I can ask
9 you that.

10 MR. KARNAVAS:

11 Mr. President, before he answers the question, I would raise an
12 objection.

13 It is not a conclusion. He's asking the gentleman to speculate.

14 That's what it is.

15 He can ask the gentleman does he know. It's a yes or a no. If he
16 says yes, tell us; if he says no, anything beyond that is pure
17 speculation.

18 So call it conclusion, call it opinion, call it speculation, it's
19 improper, so he either knows or he doesn't know.

20 [14.12.43.]

21 MR. SMITH:

22 Your Honours, the witness didn't use the word "speculate". The
23 witness used the word "conclude".

24 I think a witness, bearing in mind he was in the Party, I think
25 it's reasonable for him to draw a conclusion. If -- I can ask the

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1 witness whether or not he'd be speculating, and if he would be on
2 that particular issue, then I won't continue.

3 MR. KARNAVAS:

4 Mr. President, Your Honours, here's what I would object. If the
5 gentleman can say that he was sitting around with Pol Pot and
6 whoever else when they were drafting the statute and he was part
7 of this committee and they were part of this drafting process
8 where all sorts of issues were being discussed and he has some
9 personal knowledge, I would say yes. But to ask an opinion, it's
10 the same as asking for a conclusion, and it's speculating. He
11 either knows or he doesn't know.

12 So if he knows, the next question I would say, how is it that you
13 would know given that, he claims in 001 and here today that he
14 was just a low-level cadre and that his confines were within
15 S-21. So how is it that he would know?

16 [14.13.58]

17 But if he doesn't know, then anything else is pure speculation.
18 And frankly, in my humble opinion, I don't see what sort of
19 traction this sort of an opinion or conclusion really provides
20 the Prosecution in meeting their burden of proof as to one issue
21 or another.

22 In other words, I doubt if the answer, even if it's speculative
23 and he provides a conclusion, is really going to make or break
24 their case or is something that is so essential that they must
25 get these sorts of speculative answers from this witness.

1 [14.14.38]

2 MR. SMITH:

3 Thank you. I mean, Your Honour, I would have thought that would
4 be a question for cross-examination, but perhaps if I just
5 rephrase the question to take the heat out of this.

6 BY MR. SMITH:

7 Q. In 1971 when those membership criteria were placed in that
8 statute for leadership positions, how did that change how the
9 Party operated in terms of promotion?

10 MR. KAING GUEK EAV:

11 A. The course of the 10 criteria -- to identify the courses of
12 the adoption of the 10 criteria, I have observed that a lot of
13 Party members have their seniority, but they were not considered
14 as part of the Party. However, some of the Party members who had
15 fewer experiences were considered as part of the Party.

16 Q. Thank you.

17 Mr. Kaing Guek Eav, this statute contains a number of parts, and
18 we've discussed -- we've just started to discuss some of them.
19 What I would like to do with you is go through the parts in a
20 logical order starting at the beginning and dealing with the
21 section entitled "Fundamental Principles and Political Statuses
22 of the Party During the New Era of Socialist Revolution and the
23 Construction of Socialism".

24 [14.16.54]

25 And the reason why I would like to start there is to ask you to

1 assist the Court to provide some explanation of specific Party
2 terminology that's used in the statute, the governing statute of
3 the CPK. Some of that terminology might be similar or consistent
4 with what you've said earlier in this hearing in relation to
5 ideology and policies. But so that we're clear about what the
6 statute means, I would like to ask you your view of the specific
7 meaning of certain terms in the statute so we can interpret and
8 understand the structure of the Communist Party of Kampuchea.
9 So if I can begin by looking at the second fundamental principle,
10 and we can show it on the screen so you'll be able to see it or
11 in the document in front of you. It states:

12 "After the Party led and totally achieved the national democratic
13 revolution, the Party continues to lead the socialist revolution
14 and construct socialism in absolute monopoly in every sector."

15 [14.18.34]

16 So my question is, what does the term "construct socialism in an
17 absolute monopoly" mean? What do they mean by an "absolute
18 monopoly"?

19 A. The Party led the national democratic revolution and to
20 establish the socialism. That was the principle prior 1975. After
21 1975, they did the socialist revolutionary and they build
22 socialism.

23 What do we mean by socialism? That all possessions belong to the
24 Party and means of the production also belong to the Party. The
25 economic action plans also came from the Party. That is the

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1 socialist revolution, and to build socialism, we try to eliminate
2 the partisanship, the selfishness and the anarchy activities. And
3 who led these activities? It's the Communist Party who led it,
4 and no other parties will participate in these activities.

5 In the Cambodian society, there were also attempts to create new
6 or other parties. This is according to the documents that I
7 studied. So it was only the Party led by Nuon Chea that
8 exclusively led the establishment of socialism.

9 [14.21.10]

10 The police, the military, the economics and also the politics
11 were led by Nuon Chea's party.

12 Q. Thank you for that complete answer.

13 So are you saying that when the terms "absolute monopoly" are
14 used, there was no room for any other party?

15 A. It is correct. And there was no other spirit, no other ideas
16 from any other parties. We only had ideas from the Labour Party.

17 Q. In the -- in this principle, it states:

18 "The Party led and totally achieved the national democratic
19 revolution and it continues to lead to the socialist revolution."

20 [14.22.21]

21 Can you tell us what the difference is between national -- a
22 national democratic revolution to a socialist revolution? What is
23 the difference between the two?

24 MR. PRESIDENT:

25 Could the prosecutor put the question again because the question

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1 was not translated because of the technicality of the terms?

2 BY MR. SMITH:

3 Thank you, Your Honour.

4 [14.23.07]

5 Q. Mr. Kaing Guek Eav, in the second principle it states the
6 Party achieved the national democratic revolution and it says it
7 continues to lead the socialist revolution.

8 The question is: What is the difference between the national
9 democratic revolution and the socialist revolution?

10 MR. KAING GUEK EAV:

11 A. There were two parts within the national democratic
12 revolution. One is for the national and the other one is for
13 democratic. For the national part, it is to expel the
14 imperialists, and as for the democratic part, we tried to help
15 the farmers to have land so that they could cultivate their rice.
16 On the 17 April 1975, we were able to achieve not only the
17 national part, but also the democratic part.

18 [14.24.35]

19 Because everything was now under the control of the party -- that
20 is the Workers' Party -- so we moved forward towards the -- we
21 moved forward towards the socialism.

22 So the national democratic revolution composed of these two
23 parts. As for the national part, we were to expel the
24 imperialists out of the country and for the democratic part we
25 tried to do whatever to provide land to our people.

1 Q. Thank you; that's very clear.

2 Can you tell us now what the term socialist revolution means?

3 A. Socialist revolution. Actually, socialist revolution was about
4 the production of -- about production and distribution of that
5 production, that is to look at the competence of the people to
6 ask for the production -- that is the principle of production and
7 the distribution of that production.

8 Within the socialist revolution, we also have the principle of
9 working in order to have the production. The rubber plantations
10 belong to the Party; rice fields belong to the Party.

11 [14.26.38]

12 Q. And one last question on this topic: In the way socialist
13 revolution is used, or was used back then, did people have a
14 choice whether they would be a part of that or did they have no
15 choice in terms of being involved in that production?

16 [14.27.01]

17 A. We can say that -- we can say no, totally, or we can say yes,
18 partially. In practice, the production was brought back to the
19 industry and it was up to them to distribute the production. The
20 cooperatives were the place where people were trained to produce
21 goods, but everyone were to go to work in the rice fields.

22 Q. Did they have a choice in that; to go to the rice fields?

23 A. No.

24 Q. Thank you.

25 Now, if I move to the next principle, or it's still within

1 principle 2, and if I can read it, it states:

2 "Therefore, the members of the Communist Party of Kampuchea are
3 the most enlightened workers and peasants working at the very
4 forefront, the most audacious and determined, and the very best
5 of models."

6 [14.29.03]

7 Was there a difference between members of the Communist Party of
8 Kampuchea and people who were non-members in terms of the
9 expectations of the Party as to what their role would be in this
10 socialist revolution?

11 A. This role is referring to the leading unit of the Party and
12 this is the requirement the Party would expect from each member
13 of the Party. Youth League was part of the nursery for training
14 people to become members of the Party at a later date. So this is
15 how people could be promoted to the level of members of the
16 Party.

17 At the beginning, people would be made to work at the work sites
18 -- rather at the farms, paddy fields, and people would be then
19 nominated as leaders of a group and so on and so forth.

20 Q. Are you able to say how many Communist Party members there
21 were during the Democratic Kampuchea period, an average number?

22 A. I don't know.

23 Q. Are you able to say whether the majority of the population
24 were members or non-members? If you can't, just say so.

25 [14.31.38]

1 A. I think the members of the Party were about 5 per cent of the
2 population if it calculated into this amount.

3 Q. Was membership to the Party voluntary?

4 A. Normally, people volunteer to be promoted. However, if we were
5 not allowed to become members of the Party we would never have
6 any other alternative; it's up to them.

7 Q. Thank you. I'd now like to move to principle number 4, and
8 there's a phrase in this principle I would ask if you could
9 explain. And it states:

10 "The Party holds Marxism and Leninism as the foundation of its
11 view as the compass for all of its activities by lively
12 implementing Marxism/Leninism in accordance with the concrete
13 situation of Kampuchea, in accordance with the principle of
14 connecting principle with the concrete absolutely."

15 My question is, do you know what that principle is? The principle
16 of connecting principle with the concrete absolutely. What does
17 that mean in the statute?

18 [14.34.21]

19 A. The Marxism was implemented along with the political lines and
20 it was seen in the strategic lines of 1960 and the lines to
21 construct forces. And in these lines, the Marxism ideology was
22 integrated in the Cambodian context. And the person who was
23 entitled to introduce these notions of Marxism into the lines was
24 Pol Pot, the secretary of the Party, because if other persons
25 were to be able to introduce such notion then we would have two

1 heads leading in two directions.

2 [14.35.32]

3 Q. Thank you. So when you say it was to construct forces, are we
4 talking about forces -- military forces or working forces; what
5 type of forces are we talking about constructing?

6 A. Could you please repeat the question? I think perhaps it is
7 not what I meant to say.

8 Q. In your answer, you discussed the idea of constructing forces,
9 but perhaps if I just go back to the question; connecting
10 principle with the concrete. Is that connecting principle with
11 the people? Is the concrete -- are we meaning the people, or is
12 it something different?

13 [14.36.41]

14 A. I think perhaps my words were not rendered consistently into
15 English, that's why it was not understood as I -- what I said.
16 I would like perhaps to re-state what I say. The reason that
17 Marxism was introduced in Cambodian society, it was Pol Pot who
18 improvised these Marxism into lines and policy for being
19 implemented; and as I indicated there were two lines, the lines
20 to collect the front forces prepared by Pol Pot and also
21 strategic lines, and it is the -- it is Pol Pot who built these
22 lines to be consistent with the Cambodian context.

23 Q. I will move on, but if I can ask you this: Does that mean that
24 it -- it's the principle to connect theory to implementation;
25 Marxism to policies that will be implemented? Is that what the

1 principle means?

2 A. Now, let me give you an example. In Khmer, we had five
3 classes. Pol Pot used these Marxism -- Marxism to find way to
4 attack any particular class, but by way of interpreting this
5 Marxism and when Pol -- rather, when Lon Nol was expelled from
6 power then they had great leap to the socialist revolution. It
7 has already been skipped halfway through already by then and Pol
8 Pot took that great leap forward and, indeed, it is the method to
9 connect -- to link the theory into the implementation.

10 MR. PRESIDENT:

11 Since it is now appropriate time to take the adjournment, we will
12 adjourn now for 20 minutes.

13 Security personnel are now instructed to take the witness to his
14 room and have him returned to the courtroom when we resume.

15 (Court recesses from 1440H to 1458H)

16 MR. PRESIDENT:

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

18 We will hand over to International Co-Prosecutor. You may now
19 proceed.

20 BY MR. SMITH:

21 Thank you, Mr. President.

22 Q. Mr. Kaing Guek Eav, before we went to the break, the last
23 thing you told us was how the Communist Party had a principle of
24 putting the theory into practice and that was one of the
25 principles.

1 Now, I would like to move to another part of principle 3 and I'll
2 read briefly, it states:

3 "The Party arms itself with and holds correct and strong
4 proletarian world views and life views and absolutely struggles
5 against non-proletarian world views and life views, and opposes
6 the revolutions of the petite bourgeoisie, the capitalists, the
7 feudalists, the imperialists, and all reactionaries."

8 I know you have discussed earlier this morning about some of the
9 class or the enemies of the Communist Party, but I would just
10 like to ask you a few questions on these terms as they appear in
11 the statute -- the ruling statute of the Communist Party of
12 Kampuchea.

13 [15.01.35]

14 When the statute says it opposes the revolutions of the petite
15 bourgeoisie, who are they referring to?

16 MR. SMITH:

17 And, Your Honour, if I just can ask that the document, if
18 possible, can be continually placed on the screen so that the
19 witness can see it as well as having the document in front of
20 him, and he has two options.

21 MR. KAING GUEK EAV:

22 A. I don't quite catch what you asked me because the portions you
23 mentioned are not shown on the screen. Could you please show that
24 particular portion while putting questions; which paragraph you
25 are referring to?

1 BY MR. SMITH:

2 Q. I believe it's being shown on the screen now and it's -- it
3 relates to principle 4 -- 4 of the statute and it starts with,
4 "The Party arms itself" and continues on and says -- it's at page
5 00053010.

6 Do you see it where it says, "The Party opposes the revolutions
7 of the petite bourgeoisie", and then four other groups?

8 [15.03.53]

9 So can you tell the Court, in the context of this statute, what
10 petite bourgeoisie means, please?

11 KAING GUEK EAV:

12 A. Due to interpreting issue, I may suggest that you're asking
13 about the petite bourgeoisie or the proletariat?

14 Q. The petite bourgeoisie, what that means in the statute. Thank
15 you.

16 A. Teachers, doctors were included in the petite bourgeoisie
17 category because these people could only make enough for the
18 living, so that's why they're classified as petite bourgeoisie.
19 The petite bourgeoisie class were those who used intelligence to
20 make their living and, at that time, I, myself, was also
21 considered as -- in this petite bourgeoisie class.

22 Q. And the next term is the "capitalist". What does the
23 capitalist mean in the statute?

24 A. Capitalists refer to those who invested their capital to make
25 more money or profits. Workers use their physical strength to

1 earn a living when the capitalist use their money to make more
2 money. So those who run big businesses were classified as in the
3 categories of the capitalists.

4 Q. Thank you, that's -- that's very clear.

5 [15.06.51]

6 Now, if I could ask you what the term "the feudalists" means
7 within the statute?

8 A. Feudalist in Khmer, it's the combination of two terms; rank
9 plus land. But in -- this means that people who used their rank
10 to make money and those who used the land -- who own the land
11 and, basically, they were landowners or landlords.

12 Q. Does it any -- any way relate to the royal class?

13 A. In the document concerning class analysis by Pol Pot, there
14 are about 800 members of the Royal Family that included in the
15 feudalist class. So according to that document by Pol Pot, these
16 people included in the feudalist class.

17 Feudalist class refers to those who use their ranks and duty to
18 oppress other people.

19 Q. Can I ask you what document you're referring to?

20 A. That document is an old document. I'm afraid it is not yet
21 available in this case file or this courtroom setting because the
22 document contains members of the Royal Family who have been
23 classified as the feudalist class.

24 Q. Where did you first see that document?

25 A. I saw the document only once and all in Angk Snuol Market when

1 I met Vorn Vet. The document was accessible -- accessible to me
2 informally; it was not part of my formal duty that I could read
3 the document.

4 Q. And can you remind us what year that was?

5 A. It was in 1967, late September or early October.

6 [15.10.50]

7 Q. Thank you.

8 Can you now describe what the term "imperialists" means in the
9 statute?

10 A. Imperialist here referred to the Americans only.

11 Q. And the last term. It states "opposes the revolutions of all
12 reactionaries". Who is the all reactionary group as it's meant in
13 the statute?

14 A. Reactionary refers to the groups of people who opposed the
15 revolution and opposed the Party and the people and, as you seen,
16 in the statute they used the term "reactionary religion".

17 [15.12.36]

18 So these refer to the religion which had any affiliation with the
19 Americans and this religion was particularly referred to the
20 Protestant.

21 Q. Does it refer to any other religions or just to the Protestant
22 religion?

23 A. The original essence was the Protestant, but then it refers
24 also to the Vatican.

25 Q. Thank you.

1 In the statute, the word "absolutely", "absolute" is used often.
2 In this principle, it says the Party absolutely struggles. In
3 principle number 5, it states that the Party absolutely clings.
4 Within the context of the statute, what does it mean by the word
5 "absolute"?

6 A. I thank you. I think you refer to one of the paragraphs used
7 here.

8 "Absolute" means one is supposed to do something with will,
9 without hesitation or reluctance, and with confidence.

10 [15.14.47]

11 Q. Thank you.

12 Now, if we look at principle 5, at the beginning of it, it
13 states:

14 "The Communist Party of Kampuchea closely and absolutely clings
15 to the views and lines of the popular masses." What does that
16 mean, that the "Party clings to the views and lines of the
17 popular masses"? What does that mean?

18 A. In this paragraph, I still believe that it is still a theory
19 which is only put there to look nice and I still am convinced all
20 along that it is still the theory.

21 I still don't know who -- whether any popular mass who would only
22 ask for a can of rice a day. I don't see any members of the
23 popular mass who would like to see their family member arrested
24 and had no complain. So I can see that this is only part of the
25 theory and it was placed just to look nice.

1 [15.16.36]

2 Q. If I understand you correctly, your testimony has been that
3 the views and lines come from the Communist Party of Kampuchea
4 and it's the popular masses that have to cling to that. It's the
5 other way around; do you agree with that?

6 A. It is my notion -- my idea that I try to interpret before this
7 Chamber.

8 Q. Thank you.

9 And if we move further down, it states that each Party member
10 must trust and depend on the power of the popular masses and must
11 keep close contact with the popular masses.

12 What does it mean that the Party member must keep close contact
13 with the popular masses; what does that mean?

14 A. In reality, each chief had to understand and grasp the
15 well-being of his or her subordinates. In order to achieve the
16 goal of the Party, each chief had to take good care of their
17 subordinates. However, in some circumstances, they had to apply
18 the Party theory.

19 [15.18.51]

20 For example, if the incident happened in the case of their
21 relatives who were arrested, then they had to apply the Party's
22 principle; they had to be absolute with this.

23 Q. And the next phrase states that the -- it was the Party member
24 -- must remain with the great revolutionary movement of the
25 popular masses.

1 What does it mean that they "must remain with the popular
2 masses"?

3 [15.19.31]

4 A. I think the -- this essence was explained in detail when I
5 attended training sessions in Phnom Penh. The popular -- the
6 masses movement was the Great Leap Forward to build the socialist
7 revolution. This means that we must remain in this movement --
8 the popular masses movement. We could not isolate -- we could not
9 try to stray away from this movement or to be in favour of our
10 family. We have to stick to this movement in order to achieve the
11 Great Leap Forward movement to achieve the socialist revolution.

12 Q. One last phrase in principle 5, it states at the bottom:

13 "Along with this, the Party opposes following along behind the
14 masses as well."

15 What does that mean?

16 A. After the 17 of April, they built socialist revolution and
17 they aimed to achieve the communism very soon. It has been
18 indicated in paragraph 3, the early part of paragraph 3.

19 Q. Thank you.

20 And perhaps if we move to the next principle, a different idea,
21 and it states:

22 "The Communist Party of Kampuchea was established according to
23 the principle of democratic centralism." What does that principle
24 mean, "democratic centralism"?

25 [15.21.03]

1 A. Democratic centralization means the small minority -- or the
2 minority respects the majority. It means if the decision made by
3 the -- by the majority, then the minority had to follow suit. And
4 democratic -- rather, "democratic centralisation" means
5 subordinates had to respect the superiors and upper-level cadres.
6 Everyone in the whole country had to respect the Central Party.
7 It doesn't matter who it was, he or she had to respect the
8 secretary of the Party because he was representing the
9 collective; because the "collective" here refers to the whole
10 country and that the secretary of each zone only representing
11 each particular or respective zone, that's why this is the way
12 how democratic centralization was interpreted according to my
13 best knowledge and practice and experience.

14 [15.24.26]

15 Q. I would like to talk briefly about that practice but, first,
16 you said the principle encapsulated (sic) the idea that the
17 minority must follow or agree with the majority.

18 In relation to decision-making, say, of a committee during that
19 period, does the principle of democratic centralism within a
20 committee, does that apply in that decision-making process?

21 A. I would like to emphasize what "duties" are and what "orders"
22 are.

23 "Duties" was supposed to be the tasks that rendered and that when
24 it comes to Party line, the Party's line which must be
25 implemented. For example, if the Party rendered that all enemies

1 had to be smashed then we had to smash for them.

2 And, for example, if the Party said that we had to grow three
3 tons of rice per hectare per season then we had to achieve this
4 goal.

5 [15.26.27]

6 Q. Thank you. But the principle of democratic centralism, did
7 that apply to decision-making at the committee level? Is there an
8 application for that principle there or not?

9 A. In real practice, as I indicated, the lower-level had to
10 respect the upper-levels.

11 So at the lower level, people would discuss and did their best to
12 achieve the goals. So the discussions were made to achieve the
13 tasks rendered to them from the upper levels.

14 So the deputy secretary had to report to the secretary -- or
15 respect the secretary.

16 Q. So I understand from what you're saying that lower levels had
17 to follow higher-level decisions but, in terms of
18 decision-making, if we can look at Article 6 of the Statute - and
19 it's Article 6.2 - it states: "All the various decisions of the
20 Party must be made collectively ..." if that could be shown on the
21 screen? Article 6.2

22 [15.28.23]

23 A. Could you please refer to that particular page?

24 Q. Thank you, Your Honour, if we can place that page on the
25 screen then I'll be able to provide the number.

1 It maybe page 30 in your document.

2 (Short pause)

3 A. Article 6, subparagraph 2 indicates that each decision shall
4 be made collectively. It means that we had to meet to make a
5 decision and the person who made the final decision would be the
6 Secretaries. Some Secretaries could explain things, some could
7 not. That also was an issue. However, the ideas had to be put on
8 the table in meetings although, finally, in general, the
9 Secretaries were supposed to be the ones who made the final
10 decisions.

11 Q. So then, the term "must be made collectively" what does that
12 mean?

13 [15.31.18]

14 A. Let me talk about this issue. In practice, when this is the
15 plan from the superior, it is usually the Secretaries who receive
16 the plan and then the Secretaries call for a meeting among the
17 committees on how to do it. So that is what we mean by "to decide
18 collectively" and it could be, in the end, that the Secretaries
19 will say, well, we should do it this way or that way.

20 And we may have heard from the Deputy Secretaries. They may give
21 their opinions as to how to achieve our plan more effectively. So
22 this is the discussion during the meeting and then the decision
23 will be made.

24 Q. So if I heard your evidence correctly, you said that when a
25 decision is made by a committee, all issues must be placed on the

1 table; is that correct?

2 [15.32.26]

3 A. Yes, it is correct. It is the collectivity within their
4 respective committees.

5 Q. Thank you. And if we move further down, principle number 6, it
6 states that: "The Party must have high-level revolutionary
7 vigilance ..."; this is a principle at page 5 in your document.

8 What does the term "revolutionary vigilance" mean in the context
9 of the Statute?

10 A. "The Party must have high-level revolutionary vigilance
11 towards all enemy activity and trickery, direct or indirect,
12 overt or secret, which have the intent to destroy the Party by
13 every means."

14 This is clear that we have to be careful. We try to avoid from
15 being separated. We try to avoid from being threatened or from
16 being persuaded because the enemy have their own tricks. They may
17 be - we may be persuaded by our enemy by bribing, by giving food
18 so we try to control our members not to be tricked.

19 No, we should not walk freely so every Party member must not - or
20 they are not to walk to any other places.

21 [15.34.54]

22 Q. Thank you. If we move to principle 7, it states: "The
23 Communist Party of Kampuchea takes criticism and self-criticism
24 as its daily routine as it means to struggle to build the Party
25 internally in eradicating and altering faults and various

1 confusions inside the Party and to push to expand the good
2 qualities of the Party to prosper quickly non-stop."

3 My first question is: What does it mean "... these criticism and
4 self-criticism as a daily routine ..."? What does that mean?

5 A. This is called the "Party Livelihood Meeting". As Party
6 members, if you did not participate in the "Livelihood Meeting"
7 then your membership will be removed. This is first.

8 Secondly, the "Livelihood Meeting", as I have said, is a means to
9 educate oneself and to build the Party branch on the basis of the
10 political - the Party lines. We meet every month and everyone is
11 criticizing each other.

12 [15.37.01]

13 For example, Comrade Von said: "You said you did not educate
14 yourself ... you did something wrong." Things like that.

15 And then, they criticize each other and Party members also
16 self-criticize. For example, the secretary may realize his or her
17 own mistake and, then, he or she admits that he or she has done
18 that and this is what we call "autocratique" in French.

19 So the "Livelihood Meeting" is nothing but the criticism and
20 self-criticism in order to direct the thinking of the Party
21 members in order to have built the Party.

22 Q. And why is it called a "Livelihood Meeting"?

23 A. All Party members are worth being members because of these
24 meetings. If they do not participate in a meeting, they are
25 isolated from the meeting. That is why we call it a "Livelihood

1 Meeting".

2 Q. So if they don't participate and they're separated, what
3 happens to those Party members if they move – they don't go to
4 the Livelihood Meetings? What happens to them, if anything?

5 [15.39.07]

6 There may be one – there may be something mentioned in the
7 Statute that the person would be automatically removed from being
8 a member of the Party.

9 Q. In principle 7, it says: "... takes criticism and self-criticism
10 as its daily routine ..." and you've just referred to Party
11 livelihood meetings as a monthly routine.

12 Was there any daily routine in terms of criticism and
13 self-criticism as it states in the Statute or was it only
14 monthly, as you say?

15 A. Usually, we conducted the meeting monthly but we can also do
16 it monthly.

17 Q. There may have been a translation problem.

18 Did you say that you could also do it daily or did you say
19 something else?

20 A. As a principle, we conducted the meeting monthly but, under
21 special circumstances, two people may secretly meet with each
22 other and that secret meeting is necessary.

23 [15.41.12]

24 Q. So we understand, in practice, what these meetings were like,
25 what was the size of these meetings? Did they vary in size or

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1 were they always with a certain number of people?

2 Can you describe how many would be there and how long they would
3 continue for?

4 A. The livelihood meeting is called the "Livelihood Meeting of
5 the Branch" and we have three members in a Branch. If there were
6 not enough members and then the - other members would join the
7 other Party Branch.

8 I had my own committee when I was in Phnom Penh and so I
9 conducted a regular meeting with my branch. However, under
10 special circumstances, when we could not rest the issue in the
11 meeting, we could meet the person secretly and raise that issue
12 with him or her.

13 For one example, I usually saw the person -- arrested people. I
14 was afraid. So when I met him personally, I said it was very
15 dangerous to arrest people like that.

16 Nat was afraid that I would report these issues to the superior
17 and so Nat reported that issue before I did and Nat was blamed
18 for doing that.

19 [15.42.21]

20 Q. You said that these meetings were in groups of three, Branch
21 level. Did every Party member have to have these self-criticism
22 or livelihood meetings? Did that apply to everyone or just the
23 leaders of units and other small sections?

24 [15.43.58]

25 A. During each livelihood meeting, everyone joins it -- everyone

1 joined it.

2 Q. And indeed these meetings were in groups of threes. How long
3 did these meetings take; were they all day or one hour? Can you
4 explain how long it would take?

5 A. For me, it usually took one day. I did that when I was in
6 M-13. It took me one day for that meeting.

7 Q. Can you explain a situation where you saw a person called Nat
8 arresting someone but he advised his superiors or someone else
9 before you did?

10 Are you saying that what these meetings encouraged was people to
11 come out with their mistakes or that -- the faults -- the Party
12 might view as faults, before someone else criticizes them? Is
13 that what the idea of self-criticizing -- is that what the
14 principle 7 is encouraging; people to come out with their
15 mistakes first rather than being found out by someone else?

16 A. This issue is more practical. Let me put it this way. In my
17 capacity as a deputy secretary of S-21, I was informed that the
18 secretary made mistake as he arrested, subjectively, a lot of
19 people. And if I kept this information only with me, I would be
20 in danger in one day. So I tried my best to stop him from doing
21 that.

22 [15.46.36]

23 I knew him since 1966, so I tried to find time to talk to him.
24 Very shortly, I said to him that it was very dangerous that he
25 arrested people that way. He was furious with me. He said to me

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1 that when people try to murder us do you think it was a small
2 issue?

3 I, as a deputy secretary, was usually called upon to attend
4 regular meetings with our superiors, so Nat was afraid that I
5 would report that issue to our superior.

6 So the next time Nat met with our superior, Nat reported that
7 issue to the superior. He told the superior that one day there
8 were people trying to murder him and so he decided to arrest them
9 people.

10 [15.47.40]

11 The superior took off his glasses and cleaned the glasses and put
12 the glasses back on, and then he said to Nat that you arrested
13 people on the basis of your personal safety; this is very
14 personal. And this is the only thing he said. So this is very
15 practical. This is the -- or what happened.

16 But on a daily basis, I would criticize Nat when time was
17 permitted. I did so because I believed that I was responsible for
18 doing so, as I saw that Nat committed some mistake and so I tried
19 my best to criticize him that way.

20 And I would like to end my answer here.

21 Q. And just a short question. What happened to Nat?

22 A. It was probably in December or January when I tried to talk to
23 him, and then in February Nat was removed from his position and I
24 was promoted to take his position at S-21.

25 Q. And what finally happened to Nat?

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1 A. Finally, Nat was no longer in the military; he was no longer
2 the assistant of the Chief of Staff. He -- and later on, there
3 was an issue reported to the superior and Nat was arrested and
4 brought to S-21.

5 And later on in document issued in April, issued on 21 April
6 1976, Pol Pot indicated clearly that Nat was no longer trusted.
7 It was mentioned clearly in that decision issued on the day.

8 [15.50.47]

9 Q. Thank you.

10 And did Nat die at S-21; was he killed there?

11 A. Nat was tortured, interrogated and then smashed.

12 [15.51.07]

13 Q. You mentioned -- just going back -- you mentioned that every
14 day you would try and criticize Nat and you've also mentioned
15 that the livelihood meetings were once a month, and we also see
16 in the statute that criticism should be a daily routine.

17 Is it the case that the statute created a culture of on-going
18 criticism on a daily basis, even if it wasn't a formal meeting,
19 was that the culture that developed in the CPK?

20 A. I believe that the translation makes me difficult to answer,
21 but I'll try my best.

22 The monthly meeting, in principle, was a must. And as for the
23 daily routine, it was for individuals to observe others and to
24 observe themselves to see what faults or mistakes they would have
25 made. So when it comes to individuals, that issue was not raised

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1 in the monthly meeting. It had to be raised personally to that
2 person.

3 Then during the meeting, every person was to be self-criticized
4 and was to be modest for others to criticize.

5 And as for a daily routine, everyone was looking -- was observing
6 any other people and tries to observe and try to consider what
7 activities the person could have done wrong and would know that.

8 But that issue would not be raised during the livelihood meeting
9 because it was serious. They can't be this specific.

10 [15.54.02]

11 Q. Thank you.

12 And what was the duty or responsibility, if anything, once you
13 had discovered that someone had a fault, another member in the
14 Party had a fault; was there any duty or obligation to report
15 that fault to someone else or was there not?

16 A. There was a duty to do so. There was a duty to report.

17 Regularly, the secretary was the one to report, but there could
18 be also time that the deputy secretary was to report.

19 [15.55.01]

20 This morning, Mr. Co-Prosecutor -- I'm not sure whether it was
21 yesterday that you asked me -- that I was at this railway station
22 with my superior. I said, no, I was not with him there.

23 The railway station was not the place where my superior lived. We
24 could not go to the place where the superior lived, we could only
25 be near there and then we sent the report through someone to our

1 superior.

2 So the deputy secretary, they are not to talk directly to the
3 superior, but under special circumstances he or she could do so.

4 Q. So once the secretary or deputy secretary was made aware of a
5 fault in a member, who would they report to; who would the
6 secretary report to?

7 A. There are different weights of faults. A normal fault would be
8 criticized during the livelihood meeting, and faults with heavier
9 weight would be reported. So it depended on the weight of the
10 fault committed.

11 Q. So if it was a serious fault, who would the secretary report
12 to?

13 A. For serious faults, it was not the secretary to report, it was
14 the person -- it was not committed by the secretary but the
15 secretary reported to the superior.

16 Let me give you an example. Prisoner Son Sary alias Prey was
17 smashed, was brought outside of the prison and then was smashed.

18 [15.57.45]

19 This job was not supposed to be done, but the secretary found out
20 later that he was smashed and he was asking for the confession of
21 this person, and I told him that Comrade Huor brought him outside
22 and smashed him.

23 And then the secretary talked to the person who brought the
24 prisoner and told him that next time the prisoner must be brought
25 to Duch and asked whether the person could be brought out of the

1 prison.

2 [15.58.27]

3 Another instance was that the enemy was able to snatch a gun from
4 us, and so I reported this incident to the superior, and this is
5 how we did when it comes to reporting to our superiors.

6 Q. And for serious faults, what would be -- would there be
7 punishment, and if there was punishment, what would be the worst
8 punishment that was given?

9 A. Allow me to be long in my answer.

10 I was talking with Chhay Kim Huor. I was asking if it was a
11 serious fault why the punishment was to remove from the Party. He
12 told me that if the mistake was to do with the Party, then that
13 was the punishment, but when it comes to the criminal offences,
14 then it was up to other people.

15 The person killed the other husband. I'll give you an example of
16 Koy Thuon. Koy Thuon killed a woman's husband because he had an
17 affair with that person and he was later on arrested.

18 Although he's the member of the Central Committee, the decision
19 was made from the secretary of the Party to remove him.

20 And the Co-Prosecutor already notes that when we talk about
21 disciplinary, this has to be firmly applied in the Party--

22 [16.00.50]

23 MR. PRESIDENT:

24 Since it is now appropriate time to take adjournment, we will
25 adjourn and the next session will be resumed on Monday next week

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1 at 9 a.m.

2 Please be notified that there will be no hearing tomorrow as the
3 Chamber has already communicated or informed the parties that the
4 Chamber needs to rule on some pending issues and that we need to
5 ensure that we have a smooth and prop -- a smooth conduct of the
6 proceedings and the Chamber needs to rule on these matters.

7 Security personnel are now instructed to bring all the accused to
8 the detention facility and have them returned to the courtroom by
9 Monday before 9 a.m., and also bring Duch to detention facility
10 and have him returned to the courtroom before 9 a.m. on Monday.

11 The Court is adjourned.

12 (Court adjourns at 1602H)

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