



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

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ជាតិ សាសនា ព្រះមហាក្សត្រ

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Nation Religion King
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អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS
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CMS/CFO: Kouv Keoratanak

27 March 2012
Trial Day 42

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YOU Ottara
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MR. KAING GUEK EAV, alias DUCH

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MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. KAING GUEK EAV alias DUCH	Khmer
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MS. NGUYEN	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MS. SIMONNEAU-FORT	French
MR. SMITH	English
MR. SON ARUN	Khmer
MR. VERCKEN	French

1

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

2 (Court opens at 0905H)

3 MR. PRESIDENT:

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

5 During today's session we're going to continue hearing

6 testimonies of witness, Kaing Guek Eav, alias Duch; questions

7 going to be posed by the Prosecution.

8 Without further ado, the Chamber would like to hand over to the

9 Prosecution to proceed with their questioning.

10 QUESTIONING BY MR. SMITH RESUMES:

11 Good Morning, Mr. President. Good morning, Your Honours. Good

12 morning, Counsel. Good morning, general public. Good morning,

13 Witness.

14 [09.06.12]

15 Yesterday, we finished our discussion talking about the documents

16 that were produced at S-21, how that information was recorded.

17 And so we can understand how that information may have been

18 communicated later.

19 I would like to show you a couple of documents and I'd like you

20 to see whether you recognize those documents and if you can

21 provide some information about the form of the documents, whether

22 they appear genuine to you and whether there's anything in those

23 documents that reminds you of how information was recorded.

24 Your Honour, if I ask that the first document be produced -- or

25 the first two documents? And they are IS 3.5 and IS 3.1. We have

2

1 copies in Khmer for the witness. And I'd also ask that our case
2 manager place them on the screen for the public. Thank you.
3 Perhaps if I can ask that IS 3.5 be placed on the screen.

4 [09.08.00]

5 Q. Mr. Kaing Guek Eav, looking at those documents, do you
6 recognize them or that class of document that's before you? Are
7 those documents familiar to you?

8 MR. KAING GUEK EAV:

9 A. Thank you. This document is S-21's document, indeed. It is
10 confirmed by the handwritings by Comrade Hor, my deputy. This
11 document is for recording people who were detained at the
12 location in Phnom Penh, not at Prey Sar.

13 Q. Thank you. And looking at the documents, can you just read out
14 the title of the document as to what the document is?

15 A. This document entitled "The History of a Detainee".

16 Q. And the document that you're looking at, what is the name of
17 the detainee?

18 A. His name is Phal Va. His alias name or revolutionary name is
19 Nat.

20 Q. In the document, at point number 3, it states: "The ministry
21 and position since the date joined the revolution until the
22 present."

23 [09.10.10]

24 Can you read out what information was obtained in relation to
25 that criteria?

3

1 A. On point number three, it is about the ministry and the roles
2 and the date of entry until the present time, and Hor was the one
3 who was in charge of registering this data.

4 Q. And was this the type of document you were referring to
5 yesterday? When people initially arrived at S-21 brief details
6 were recorded; are you referring to this type of document as to
7 those details that were recorded from prisoners?

8 A. This piece of information was the preliminary information we
9 obtained during the first arrival of a detainee or a prisoner.

10 Q. And would you agree with me that the document contains details
11 such as age, the position that the detainee had since they joined
12 the revolution, parents' names, where they were born, and where
13 they were arrested?

14 A. Yes, it is correct.

15 [09.12.17]

16 Q. And in relation to Phal Va, it states that he was a member of
17 the Committee of State Commerce stationed in Hong Kong and that
18 he was arrested on the 30th December 1978 at the State Commerce;
19 do you agree with that?

20 A. Yes, I do.

21 Q. And if we look at document 3.1 -- that's the other biography
22 -- does it appear from that that this person is, in fact, the
23 wife of Phal Va and was also -- was arrested on the 29th of
24 December 1978 at the State -- at the State Commerce Department?

25 A. Yes, it is correct.

4

1 Q. And all of these initial personal histories taken from
2 prisoners, where were they -- what part of S-21 were they stored
3 in?

4 A. I don't really know the details, but I think this document was
5 stored at the central office.

6 Q. Thank you. Now, I'm finished with those documents.

7 [09.14.40]

8 If we can look at a further document -- and it's IS 3.5, and it's
9 a photograph, and we'll place that on the screen -- and if you
10 can advise us if that photograph is familiar to you or that type
11 of photograph is familiar to you. If we look at the photograph on
12 the right-hand side, is that style and type of photograph
13 familiar to you or not?

14 A. The photo on the right-hand side was taken at S-21.

15 Q. Now, this photograph, it states below that it's a photograph
16 of Phal Va alias Nat, who was the person in the biography. Was
17 this part of the normal procedure, as you testified yesterday,
18 that when people arrived at S-21 they're photographed before
19 they're placed in cells?

20 A. Yes, it was.

21 Q. Was every prisoner photographed at S-21 when they arrived?

22 A. As a principle, everyone should have their picture taken, but
23 in some circumstances that didn't happen.

24 [09.17.20]

25 There were some special prisoners sent to the special guards

1 whose photographs had never been taken.

2 Q. And why was that? Why were special prisoners -- why were their
3 photographs not taken?

4 A. To maintain secrecy, the principle at S-21 as guided, the most
5 important prisoners would not be -- the presence of the special
6 prisoners must be kept secret and the date of entry was also
7 blank.

8 Q. Who would classify as a special prisoner during that time;
9 what type of people?

10 A. Son Sen was the one who identified special prisoners; for
11 example, before Koy Thuon was arrested, we had already been
12 briefed on this.

13 [09.19.01]

14 I used to see Koy Thuon at Boeng Thum, behind the factory in
15 Kampong Cham, so the special prisoner would already be
16 predetermined by our superior.

17 Q. And were special prisoners people that held high-level
18 positions in the government or the Party?

19 A. Yes, they were.

20 Q. Whose idea was it to photograph every prisoner as they came
21 in; was it yours, as the Chairman of S-21, or did it come from
22 another place?

23 A. This practice was in place a short while before I resumed my
24 post as the Chairman of S-21. Nat had already applied this
25 practice and when I started the office, Nat asked me to have all

1 prisoners' photos taken.

2 Q. Did you know the reason why photographs were taken; for what
3 purpose were they to be used?

4 A. The photos were for records. For example, when the prisoners
5 escaped their photos could remain and they could not be at large
6 because prisoners could have been sent from respective
7 cooperatives and with their photos remained, we could track them.

8 Q. Thank you.

9 [09.21.32]

10 We'll move away from the topic of photographs, at the moment, and
11 I'd like to show you another document; it's D108/26.82. And if I
12 ask that that be shown on the screen and I have a hard copy for
13 you to have a look at.

14 And if you can advise us whether you're familiar with this
15 particular document or the class of document and if you can
16 explain what it is, if you are?

17 (Short pause)

18 [09.23.23]

19 Firstly, perhaps, if you can read the title of the document and
20 then if you have any observations about what the document is, if
21 you could please advise the Chamber.

22 A. This document is entitled "The Names of Prisoners from the
23 Ministry of Foreign Affairs". This document detailed the
24 statistics of prisoners registered on a daily basis.

25 Q. And was this a document or a type of document that was

7

1 produced at S-21?

2 A. Indeed, yes, it was. This document was originally initiated by
3 S-21.

4 Q. And do you agree with me that the document contains the number
5 of the person, the name, the age, the sex, the position, and the
6 date of entry?

7 A. Yes, I do.

8 Q. Yesterday, when you testified, you referred to the practice of
9 recording prisoners at S-21 in prisoner lists. Was that your idea
10 when you became Chairman? Was it Nat's idea before you became
11 Chairman or was it an idea from somewhere else, from your
12 superiors?

13 A. With regard to lists, it was Hor who initiated all this
14 because, at the beginning, things were messy.

15 [09.26.10]

16 Q. And what was the purpose of making the lists?

17 A. Commonly, the list was prepared to confirm that our work was
18 precise and that we would be able to report to our superior if he
19 had to ask us some questions concerning our work. So the idea
20 came from Comrade Hor to prepare the lists.

21 Q. Thank you. I've now finished with that document.

22 I would like to move to another one; it's D43/4. Excuse me, Your
23 Honours, it's IS 16.80 or D121.4; it's the same document. I ask
24 that a hard copy be put in front of the witness and that it be
25 placed on the screen.

8

1 Mr. Kaing Guek Eav, if you could look at that document, read out
2 the title of the document, and if you could advise the Court
3 whether that document -- you've seen that one before or whether
4 that type of document is familiar to you from your work at S-21?

5 (Short pause)

6 [09.29.19]

7 A. Thank you. I would like to start explaining this issue. This
8 document was obtained from S-21. I can confirm this by referring
9 to TSL code. However, this document was not used by S-21 staff
10 for their daily routines. The term "organization's hospital" was
11 not part of S-21; it was under the supervision of the upper
12 echelons.

13 And if Co-Prosecution is referred to this, look at this piece of
14 paper, the old paper, you look at the writing, "depôt" -- in
15 French - "origine", "destinataires" - the terms that were not
16 used by S-21. Perhaps this paper was picked up from somewhere to
17 register these names. It could have been the papers collected
18 from the Lon Nol offices because at S-21 we never used the old
19 paper.

20 Q. Thank you very much.

21 [09.30.57]

22 And if we look at that document, it states the original name, the
23 revolutionary name, the age, sex, position of the person, date of
24 entry, and interrogation date. Can you assist us in trying to
25 understand what that date of entry means and the interrogation

1 date means?

2 A. Thank you. Thank you for bringing up this issue and
3 questioning me. And on this particular issue I could think of
4 something else. I think those individuals were from
5 organization's hospital. The entry date and the interrogation
6 date were on these documents. Those documents were from S-21, but
7 I -- I have never seen it at all, but when I read the last two
8 columns, I believe that this document was produced at S-21, but
9 these individuals on the list were sent from the organization's
10 hospital, but it was not the main lists of the S-21.

11 [09.32.42]

12 That is my clarification on this document after I read the last
13 two columns of this document.

14 Q. Thank you.

15 You talked about the interrogation process yesterday at S-21.
16 Were all interrogations recorded in this manner, the dates of
17 interrogation, or did that only apply to a certain number of
18 prisoners?

19 A. Thank you. As the prosecutor sees, these individuals were sent
20 sometime in 1978. So the interrogation was done in a hurry, so we
21 had to simply conduct it -- cursory interrogations only because
22 we had to ensure that we get the information as soon as we could.

23 Q. Thank you.

24 I'm now finished with that document, and I'd like to turn to
25 another issue and that is the issue of confessions.

10

1 Yesterday, and previously, you've explained that at S-21
2 confessions were obtained from prisoners and often under torture.
3 Can you briefly explain, just so that we're clear, what the word
4 "confession" means to you; how did it -- what did it mean to you
5 back during that period the word "confession"?

6 [09.35.06]

7 A. The word "confession" was used generally and it refers to the
8 answer. Even those -- this answer or confession was extracted by
9 ways of torture, but that actually means answer.

10 As to your second part of the question, whether or not all
11 confessions were extracted by ways of torture, I can say that,
12 well, all of them except Koy Thuon's were torture because my
13 superior, my immediate superior order me that I must not inflict
14 any torture on Koy Thuon.

15 But as for Yim Sambath -- was accused of plotting the bomb attack
16 and then he was arrested and detained at S-21, but my superior
17 actually asked me not to torture this person and I was not even
18 allowed to interrogate him myself, but later on, I learned that
19 he was also tortured.

20 [09.36.30]

21 Q. Thank you.

22 And in relation to the confession document, the document on which
23 the confession was recorded, what were the average sizes of those
24 documents; were they a few pages or hundreds of pages?

25 Can you give the Chamber an idea about how large a confession

11

1 would be and how long, perhaps, an interrogation would take?

2 A. As for the confessions, it varies according to the stories.

3 Immediately after I arrived they arrested the former officers of

4 the Lon Nol's regime and then they had a format in which the

5 names of those officials were recorded. Then at that time voice

6 recording was also used, but later on my immediate superior said

7 that, well, voice recording should not be used and Brother Nuon

8 actually wanted to read rather than listening to the recording.

9 So I then changed to written records of the confession.

10 So later on, the practice was that those who could write, we

11 asked them to write, and those who could not write, we recorded

12 their voice.

13 And for example, Koy Thuon, I had to actually conduct it -

14 interrogation four times with this individual. And as for other

15 confession, I think it was fabricated if it was produced.

16 [09.38.42]

17 But as for Koy Thuon, actually, there were hundreds of pages of

18 his confession, and as for other prisoners the lengths of

19 confession vary from one person to another.

20 Q. And I'll finish on this topic before I show you a document,

21 but what was the aim of the confession; what were you trying to

22 achieve at S-21 by these interrogations and tortures?

23 [09.39.30]

24 A. The mandate of S-21 was to extract confession to be submitted

25 to the upper authority for their decision and action. That was

12

1 the core mandate of S-21.

2 Once we got confessions from prisoners and we had to take those
3 prisoners out, we had to do so.

4 And as for torture, it was inevitable at S-21, but the tactics we
5 used at S-21 was that torture was not the means of last resort.

6 Actually, we deploy many other means, for example, we deployed
7 the cold method, the hot method, and the chewing method.

8 Q. What were you wanting prisoners to confess to?

9 A. The main purpose was to extract systematic confessions from
10 prisoners, and we had to elicit the answers from them that they
11 had carried out or conducted certain activities that were
12 interrelated from the early days to date.

13 And as for the veracity of these confessions, it was up to the
14 upper echelons to decide.

15 Q. Were the prisoners expected to supply names of other people
16 that were traitors; was that one of the aims of the confession?

17 A. Those who were supposedly connected through the traitorous
18 link, then we would report it to the upper echelons and the
19 decision was entirely up to them to decide whether or not they
20 would be arrested.

21 [09.42.15]

22 Q. Thank you.

23 And perhaps moving to a document; if I can show you D43/4. I have
24 a hard copy that I can provide to the court system, and if that
25 can be placed on the screen.

13

1 Mr. Kaing Guek Eav, if you can look at the document that you have
2 and see whether or not that's familiar to you; or that type of
3 document is familiar to you. And if you can tell -- if it is, if
4 you can tell the Court what it is.

5 [09.43.18]

6 A. This is the cover page of one of the confessions by an
7 individual by the name of Tiv Mey, alias Santepheap.

8 Upon completion of the interrogation on the 18 September 1977, it
9 was done then and then it was submitted to me. Following reading
10 this confession, I made a brief report to the -- to my superior
11 as I addressed to Brother -- Respected Brother.

12 These documents involve individuals from the previous regime, and
13 then I signed, dated 10 November 1977. It was my handwriting, and
14 above that it was written in dark blue ink. It was handwriting of
15 Son Sen, my immediate supervisor.

16 Q. Thank you.

17 Your handwriting, I think, is referred to in the lower red box.

18 The handwriting on the left-hand side in the upper red box, whose
19 handwriting is that?

20 A. Thank you. In the red box on the upper left of this paper
21 reads "Not yet read. Copy to Brother Nuon, one copy" and the
22 date. It was written by Son Sen, my immediate supervisor.

23 Q. And would you agree with me that the red boxes didn't appear
24 on the original document, they've been placed on the document to
25 make it easier to identify the annotations?

14

1 [09.45.56]

2 And when it says one copy has been submitted to Brother Nuon, are
3 you referring to Nuon Chea?

4 A. Thank you. The red boxes. The red boxes are newly drawn
5 because it was drawn, I think, by the Office of the Prosecutor in
6 order that I could explain that, but as for your question
7 concerning Brother Nuon, of course, it refers to Nuon Chea.

8 [09.46.40]

9 Q. Thank you. I've finished with that document now.

10 Yesterday you said that after confessions were made that -- or
11 perhaps if I'll re-phrase the question. Once the interrogations
12 had finished, once the confessions were made, is it the case that
13 the detainees were taken out and killed?

14 A. Yes, but certain individuals it was necessary that I delay the
15 execution. For example, Koy Thuon, there was an order from the
16 upper authority that I had to delay the execution even following
17 the completion of interrogation.

18 Q. And who gave you that order?

19 A. When Son Sen was my direct supervisor, of course, he was the
20 one who ordered, but when he was transferred to Neak Loeang from
21 17 August 1977, Brother Nuon was the -- order directly.

22 Q. Thank you.

23 Now I've finished on the confession, and I would like to show you
24 another type of document, and it's D1.3.5.1. I have a hard copy
25 for the witness if that could be passed to him? And if I can ask

15

1 that it be shown on the screen at the same time.

2 [09.48.32]

3 Again, Witness, if you can look at that document, see whether
4 it's familiar to you and explain to the Court -- if it is --
5 explain to the Court what it is.

6 A. This is the smash list of S-21, and if you look at the names
7 of individuals in this list they were the former soldiers of the
8 Lon Nol's administration.

9 And if you look at the dates, it was revised once; it was in 1977
10 or 1976, so in the early days it was not clear as to the date of
11 this document.

12 Q. Thank you.

13 And do you agree with me it contains names of 47 people and it's
14 entitled "List of Prisoners Smashed on 22 March" and then it has
15 the figure "7"? Are you saying it's unclear to say what date,
16 what year these prisoners were actually killed from this
17 document, or can you read that in Khmer?

18 [09.50.29]

19 A. Yes, I can read it out:

20 "List of prisoners to be smashed on 22 March 1975."

21 And then it was revised to 1976, so the date was not that clear
22 you see.

23 For 1975, actually, the Security Office was -- had not been
24 established yet, so how could we detain prisoners and brought
25 them for execution.

1 MR. SMITH:

2 Thank you, Your Honours.

3 For the record, I've been advised that the number, although it's
4 the number, of course, of the document, there's another number
5 that relates to this case file number which is D312.1.46, which
6 is the number in this case not in another case.

7 BY MR. SMITH:

8 Q. Thank you, Witness.

9 [09.51.32]

10 Now, I'd like to show you two other similar documents quickly
11 before we move on to another type, and the document I'd like to
12 show you is IS 7.2 -- D312.1.55. If that can be placed in front
13 of the witness, a hard copy, and if it can be placed on the
14 screen? Thank you.

15 Witness, if you can look at this document again, see whether it's
16 familiar to you. If it is, can you explain what it is and also
17 read out the title of the document when you do so? Thank you.

18 MR. KAING GUEK EAV:

19 A. Thank you. This document belongs to S21 entitled, the list of
20 prisoners died at S-21C. This list contains 162 prisoners.

21 [09.53.26]

22 Q. And would you agree with me that the duty or the positions
23 that most of these people on the list had were that of soldiers
24 and a group of students?

25 A. Thank you. I do agree. Most of them were the former soldiers

17

1 and the others, a few others, were the relatives of Long Boret.

2 Q. And the document provides the date that they were smashed; is
3 that correct?

4 A. No, I don't see the date. Well, yes, there is -- there is a
5 date smashed.

6 All these dates I think the Prosecution might still remember that
7 when Nat left S-21 it was sometime in March, and the superior --
8 his superior asked him to finalize as well as to finish his task.
9 So he had to prepare all of this.

10 Q. Thank you.

11 And this is the last document of this type I would like to show
12 you. It's IS 16.46D312.1.25. It also has the number D10919 on the
13 document as well.

14 [09.55.59]

15 If I can provide you with a hard copy and if the original can be
16 placed on the screen? Thank you.

17 Again, Witness, if you can look at this document, see whether
18 it's the type of document that's familiar with you -- to you, and
19 explain -- read out the name of the document or the title of the
20 document and briefly explain what it is?

21 A. This document also belongs to S-21. On the upper left-hand
22 side in the red box reads "S-21 Phnom Penh". This document
23 entitled, name list of prisoners suspended in January 1977.

24 [09.57.18]

25 Q. And if you look at that list, would you agree with me that the

18

1 positions of the people on the list are varied; some relating to
2 military positions, some students, some hospital workers, and
3 various other professions?

4 A. I agree.

5 Q. Now this document is a little different. Seemingly, by the
6 title -- can you read out the title of the document and explain
7 what it means?

8 A. (No interpretation)

9 MR. SMITH:

10 Sorry, there's no translation in English for that whole last--

11 MR. KAING GUEK EAV:

12 The -- this document belongs to S-21 (no interpretation)--

13 MR. SMITH:

14 I believe it's working now, Mr. President.

15 BY MR. SMITH:

16 Q. Witness, can you just -- sorry, we didn't hear your answer
17 because it wasn't being translated; well, people in English
18 didn't hear it because it wasn't being translated.

19 Can you provide your answer again?

20 [09.59.50]

21 What is the title of that document?

22 MR. KAING GUEK EAV:

23 A. Thank you. This document is entitled, the List of prisoners
24 suspended in January 1977.

25 The term "suspended" here suggests that the confessions were not

19

1 complete, but where were they taken to? They were executed indeed
2 and why they were executed when their confessions was not
3 concluded?

4 On the 25th in 1976, Koy Thuon sent these prisoners to us and Koy
5 Thuon was -- rather Koy Thuon was sent by the superior to us and
6 on the 27th, the superior decided to smash Koy Thuon associates,
7 so for that reason these confessions from these prisoners were
8 suspended.

9 [10.01.11]

10 Q. Thank you.

11 And, Witness, if you can look at the last page of the document,
12 and if I can ask that the last page is shown on the screen? It's
13 dated 1st February 1977.

14 Who would have prepared that document?

15 A. This document was the statistics concluded by Comrade Hor, so
16 Hor was the one who prepared this.

17 Q. Thank you.

18 Thank you for your explanation in relation to some of the basic
19 documents that were prepared and stored at S-21.

20 I'd like to move to another type of document that you may be
21 familiar with and, if I ask that the following document be placed
22 before you -- and it's IS 11.14. It's dated the 8th of August
23 1978. It's a part of a document -- if I can provide that to the
24 orderly and if it can be placed on the screen, please.

25 Witness, if you can look at that document and see whether that is

20

1 one that you recognize, and if you can explain to the Court what
2 it is and what its purpose was.

3 A. Thank you. This document is entitled "The Revolutionary Flag".
4 It was part of the Party internal documents. The secretary of the
5 Party wrote this for the purpose of educating Party members on a
6 monthly basis, and this document you handed over to me is the
7 special issue of The Revolutionary Flag, the issues for May and
8 June 1978.

9 Q. And is this a copy of the document -- or one of the documents
10 -- that you were referring to earlier as -- that were used as
11 part of your study purposes and used to educate and train staff
12 members at S-21?

13 A. This Revolutionary Flag document was the document meant to be
14 studied by each and every member of the Party.

15 [10.05.15]

16 Q. And that document -- what was it to contain? What did it
17 contain? Not that one in particular, but those types of documents
18 -- those Revolutionary Flags -- what was the purpose of them?

19 A. With regard to Party's education, they focused on three
20 issues. First, the policy of the Party; second, the stance and
21 ideology; and the third one is the organizational policy of the
22 Party. And the writing of these flags focused mainly on the three
23 matters.

24 Q. And at S-21, you received copies of these flags -- of these
25 publications; is that correct?

21

1 A. At S-21, I received this document of Revolutionary Flags on a
2 regular basis.

3 Q. When the publications came out, did you receive only single
4 copies of the publication?

5 [10.07.09]

6 Or were multiple copies given to you for staff at S-21?

7 A. Revolutionary Flags were meant to be distributed to members of
8 the Party, so at least every one should have received a copy.

9 Q. And how are these copies communicated? Who was in charge of
10 distributing the Revolutionary Flags to places like S-21 and
11 other places?

12 A. As indicated, S-21 was a regiment of the Central Army. The
13 persons who were in charge of delivering the flags to S-21 were
14 the assistants of the general staff, and the documents were sent
15 through messengers monthly. When we received the documents, I,
16 myself, with Hor would manage to deliver or to manage the
17 documents.

18 Q. And, as part of your study sessions that you held at S-21 --
19 or your training sessions you held at S-21 -- did you teach the
20 content of that document to your staff as well, or not?

21 A. Yes, I did.

22 Q. Thank you.

23 [10.09.20]

24 Perhaps if we move on from that document, and if I can show you
25 another document. It's IS 14.3/corrected-1, and it's dated the

22

1 17th of December, 1977. And I have a hard copy, if that can be
2 passed to the witness. Thank you. And if I can ask that that be
3 placed on the monitor, Your Honours.

4 Again, Witness, if you can take your time and have a look at that
5 document, briefly. It's just a few pages from the full document,
6 and if you recognize that document particularly or that style of
7 document, can you advise the Chamber what the purpose of the
8 document is and the type of information it recorded?

9 A. This document was a handwritten note by a cadre at S-21 named
10 Morm Nai.

11 [10.11.04]

12 This document ethic -- we attended the study sessions with our
13 superior, and Morm Nai would be the one who took very good notes,
14 and he kept the notes. He copied every study session -- the
15 content of every session and the orders he received from Nat all
16 compiled and integrated into this compilation of his hand-written
17 notes. And I have kept these documents from the very beginning
18 until the end.

19 Q. You refer to the fact that notes were taken at study sessions.
20 Which -- this document is dated 1977. Say during that year --
21 1977 -- which study sessions would Morm Nai have attended? Would
22 they have been study sessions conducted by you or by your
23 superior or by someone else?

24 A. These study sessions I attended, and lectured by my superior,
25 attended by I, myself, and a few comrades, including Comrade Hor.

1 And later on, Morm Nai was invited by the assistant of the
2 general staff to attend some study session, where in which he
3 took such notes.

4 Q. Was it a requirement that members took notes of what was being
5 taught to them at these sessions?

6 [10.13.09]

7 Or did Morm Nai just do that of his own free will?

8 A. Normally, each trainee had a diary or a book to take note of
9 what being lectured. I, myself, also kept notes, but my ability
10 to keep notes was not as precise as those of Morm Nai. Morm Nai
11 used to be the professor in Khmer literature, so he was the very
12 precise person in taking notes. He was very meticulous in that,
13 and I could fall behind him in doing that good.

14 Q. And what was Morm Nai's main job at S-21; his main task?

15 A. Morm Nai was the assistant -- was my assistant. Whenever
16 people could not be called to assist me, he would be the first
17 person that I would call. He escorted me to Ounalom Pagoda,
18 because I was looking for a portrait of Samdach Chuon Nath.

19 [10.15.19]

20 So he would accompany me when I went places. And at some point, I
21 had to ask him to act on my behalf to assist me in my duties.

22 Q. And did he have duties in relation to interrogation of
23 prisoners?

24 A. When needed, he would be asked to do so. From the 6th of
25 January 1978, I asked him to interrogate the Vietnamese so that

24

1 their confessions could be recorded to be publicized on radio
2 broadcast. And I also asked another guy named Chan (phonetic) to
3 help during such interrogation.

4 Q. Thank you. Your Honour, I'm finished with that document now.

5 Witness, perhaps if we moved to another topic for a moment.

6 You've just described the types of documents or the types of
7 information that have been recorded at S-21. Now I'd like to ask
8 you some questions about other ways in which information was
9 communicated at S-21, and then some questions about how you
10 communicated with superiors outside of S-21.

11 [10.17.09]

12 Particularly the way you communicated to your subordinates --
13 your subordinate staff -- and the way they communicated to you.

14 You've said that at S-21 you'd have study and training sessions.

15 Also, you've said that you had meetings with S-21 committee
16 during your time. How did subordinates -- how did they

17 communicate information to you as to what was happening -- what

18 the situation was -- what the work was being done at S-21? Would

19 it be orally or in writing? Could you explain how that

20 information was brought to your attention?

21 A. With regard to the work -- the Party's work at S-21 -- we only

22 attended the general assembly twice. First, it was led by Nat.

23 And the objective of the assembly was that we should be informed

24 that we are now dealing with the socialist revolution.

25 [10.18.53]

25

1 And in 1977, in April, Son Sen conducted another assembly, and I
2 remember the date very clearly because it coincided with the date
3 that my child was born. My wife delivered our first child, and we
4 had never have -- or we've never had any further assembly later
5 on.

6 Q. And that general assembly, was that just for S-21 staff, or
7 was that for a larger group of members?

8 A. They were meant for the members of the Party who belonged to
9 S-21 only.

10 Q. And that assembly -- would that -- was that held at S-21, or
11 was it another place?

12 A. The general congress for S-21 was conducted at S-21 and was
13 chaired by Son Sen.

14 Q. Perhaps, now, if I can move to the topic of how individual
15 staff members communicated with you. And if I can show you
16 D159/5.22 -- I have a hard copy for the witness, if that can be
17 provided, and if I can ask that that be placed on the screen.

18 Witness, in relation to this document, can you see whether it's
19 familiar to you, and if it is, can you read what's contained in
20 the red box on the document -- and that's 00299585 in Khmer --
21 and explain what information is being communicated, and to who.

22 A. I think the document I obtain and the one on the screen are
23 different.

24 [10.21.48]

25 Which one are you now referring to?

1 Q. I think that's correct. The one you have is the correct
2 document, D159/5.22.

3 So, while that's being placed on the screen, if you could look at
4 that document, look at the annotation -- perhaps read it out --
5 and then explain what that information is intending to do.

6 A. I think this document -- or perhaps another document like this
7 -- was presented during the Co-Investigating Judge questions. And
8 this document did not belong to S-21, as we never used names in
9 Latin. S-21 did not use the Latin terms or numeric number. It was
10 done by Ung Pech, the first chairman of -- rather, Tuol Sleng
11 Museum.

12 [10.23.32]

13 So the cover -- or the stick on the front page, here, could have
14 been done by the former chairman of Tuol Sleng Museum, not by
15 S-21 staff member.

16 Q. Thank you. That makes it clear.

17 Now, if you could look at the second page of that document, can
18 you -- are you familiar with that second page? What's the title
19 of the document? And if you could read the annotation, please?

20 A. Thank you. The title of this document is "The History of
21 Activities of Chap Mit". This confession was obtained on the 31st
22 of January 1978, and I indeed wrote to Comrade Pon. I indicated
23 that it should be summarized as before.

24 "Remove Comrade Chhien, Sector 22, Comrade Mon, Comrade --
25 rather, Bong Soe, as a principle; and as advised, these names

27

1 shall be removed. Bong Soe, Sector 23; Mon, 203 -- Sector 21;
2 Chhien, Sector 22."

3 And this is the annotation I wrote to Comrade Pon without any
4 date signed.

5 Q. From the annotation, are you able to see who advised you on
6 the 25th of February 1978 that the names be withdrawn? From that
7 annotation, can you see who gave you that advice or that
8 instruction?

9 MR. PRESIDENT:

10 Witness, could you please hold on?

11 [10.26.28]

12 Counsel for Ieng Sary, you are on your feet. You may now proceed
13 -- rather, counsel for Nuon Chea -- correction.

14 MR. PESTMAN:

15 I assumed you were referring to me. Good morning. This is a
16 leading question.

17 It's unclear whether the witness received any instructions at
18 all.

19 MR. SMITH:

20 Your Honour, I'm just referring to the annotation itself, which
21 basically reads: "In principle, brother number II has advised on
22 the 25 February 1978 that the names [...] be removed." That's in
23 the English annotation. And all I was doing was doing was asking
24 the witness whether or not -- where that information came from,
25 because, when he read out the annotation initially, that -- it

28

1 wasn't clear. But it's on the annotation. It's before him. It's
2 not something that I've introduced into the discussion. But
3 perhaps, if I just ask the question again, and we'll keep it to
4 the annotation.

5 BY MR. SMITH:

6 Q. Witness, from the annotation, does it state in the Khmer
7 version where that advice came from, or-- Yes.

8 MR. KAING GUEK EAV:

9 A. Thank you. Indeed, as a principle, as I indicated, Brother
10 Number Two advised on the 25th of February '78. It was Brother
11 Nuon, or Nuon Chea, who issued such instruction or advice.

12 Q. Just so that we're clear, that's written in the Khmer
13 annotation; is that correct?

14 A. Yes, indeed. I quote from what I wrote back then.

15 MR. SMITH:

16 Your Honour, it's 10.30 now; I can continue, or if you would wish
17 to take a break, I can break now.

18 [10.29.16]

19 MR. PRESIDENT:

20 Thank you.

21 Since it is now appropriate time for an adjournment, the Court
22 will adjourn for 20 minutes.

23 Counsel for Ieng Sary, you're now on your feet. You may proceed.

24 MR. ANG UDOM:

25 Thank you, Mr. President. Thank you, Your Honours. Due to health

1 concern, my client, Mr. Ieng Sary, cannot remain seated in this
2 courtroom, and he asks that he be excused from the courtroom and
3 asks that he be allowed to observe the proceedings from his
4 holding cell.

5 MR. PRESIDENT:

6 The Chamber has noted the request by Ieng Sary through his
7 counsel waiving his right to be present in this courtroom and ask
8 that he be allowed to observe the proceedings from his holdings
9 cell for the whole day due to his health reason.

10 [10.30.14]

11 The Chamber therefore grants such request. He is now allowed to
12 observe the proceedings from his holding cell, through
13 video-link, for this whole day.

14 Counsel for Ieng Sary is advised to produce the waiver to the
15 Chamber immediately.

16 AV officers are now instructed to ensure that the video-link is
17 connected to the holding cell so that the Accused can observe the
18 proceedings.

19 And security personnel are now instructed to bring Mr. Ieng Sary
20 to the holding cell, and also bring Mr. Kaing Guek Eav alias Duch
21 to his waiting room for witness and have him returned to the
22 courtroom before the next session resumes.

23 (Court recesses from 1031H to 1053H)

24 MR. PRESIDENT:

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

30

1 I hand over to the Prosecution to continue his line of
2 questioning.

3 [10.53.50]

4 BY MR. SMITH:

5 Q. Thank you, Mr. President. Good morning again, Witness.

6 Before we move on to a different topic, I would like to just
7 show you five more documents that hopefully will assist in
8 understanding how information was communicated at S-21.

9 But before we do so, I would just like to ask you a further
10 couple of questions on the document that we just discussed before
11 -- before the break, and that's the confession of Chap Mit --
12 there was a -- there was a difficulty with the translation.

13 And, so that the annotation is read by you on the transcript so
14 it's absolutely clear and accurate, could you read out again the
15 annotation that you made, entitled "Submit to Pon"? If you can
16 read that out so that the English can record it correctly?

17 [10.55.21]

18 MR. KAING GUEK EAV:

19 A. Thank you. I would like to read my annotation as follows:

20 "To Comrade Pon. One, conclude as what done before. Number two,
21 withdraw Brother Chhien, Sector 22, Brother Mon, Brother Soe. As
22 a principle guided by Brother Number II on the 25th of February
23 1978, that these names, Comrade Soe (Sector 23), Mon, general
24 staff 203 (sub-sector 21), Chhien (Sector 22), Tat and Sokh
25 (170), Tal (290) if they were... Three, after printing, please help

1 highlight those names who have already been arrested. Fraternal
2 Revolutionary, Duch."

3 Q. Thank you. Now, do you know why Nuon Chea advised you of this,
4 to withdraw the names?

5 A. In S-21, the practice of temporary removal of names were done
6 time and again. So, at that time, we decided to -- we removed
7 those names because we did not want them to be aware that their
8 names were implicated because this document was to be sent to the
9 Eastern Zone.

10 Q. So was it to protect them from being implicated or was it to
11 withhold that information so that they could be surprised later?

12 [10.58.13]

13 A. As a principle, it was not to let them know; otherwise, they
14 would have counteracted or they would escape. So, as a principle,
15 we did not let them know because this document was to send to
16 Brother Pon, Secretary of the East Zone.

17 Q. And do you know what happened to the people that had their
18 names removed? Do you know what finally happened to them?

19 A. Those whose names were removed were later on arrested. They
20 were arrested sometimes in June 1978, sometime around the time
21 when So Phim was arrested. At that time Chhien, Tat and Tal were
22 arrested. So, all in all, those whose names were removed were
23 eventually arrested and they were arrested sometime in June 1978.

24 Q. And after their arrest, do you know where they were taken and
25 what happened to them?

32

1 [11.00.02]

2 A. They were arrested and sent to S-21. Mon, Chhien were both
3 sent to S-21 and they were interrogated and then they were sent
4 for execution.

5 Q. And last question: And all of these individuals that had their
6 names removed, which zone did they come from?

7 A. They were all from the East Zone with the exception of Tat.
8 Sokh, from the region 170, originated from the Eastern Zone as
9 well, but they were then attached to the Central Zone. And as for
10 Tal from the Division 290, were in the Central Military
11 Committee.

12 Q. Thank you.

13 I would now like to show you another document; it's IS 10.5. I
14 have a Khmer version for you, and perhaps if it can be shown on
15 the screen.

16 Witness, can you look at that document, see if it's familiar to
17 you, and, if it is, can you read the two passages that appear in
18 the red, text boxes on your version, please?

19 (Short pause)

20 [11.02.29]

21 A. Thank you. This document belongs to S-21, and Comrade Pon who
22 wrote this. Pon was one of my interrogators staff. I would like
23 to read it as follow:

24 "Brother Duch,

25 "Confession -- interrogation measures number IX (for Men San

1 alias Ya), confession on the 26 of September '76 (in the
2 afternoon).

3 "One, in the morning, Brother Duch entered the place to 'give
4 some massage'.

5 "Number 2--"

6 [11.03.29]

7 Q. Sorry, Witness, if I can stop you there? The main purpose to
8 use this document is to explain to the Chamber how information
9 was reported to you from your subordinates. So perhaps the Judges
10 can see the document and they will read it.

11 But perhaps, if you go to the second red box and if you could
12 read that out, that will assist us in understanding how
13 information is communicated. Thank you.

14 A. Thank you.

15 "Number 4: In the afternoon, we requested Bong Duch to apply both
16 hot and cold measures. After being allowed, in the afternoon, we
17 entered to the place to threaten the detainee or the prisoner and
18 to ask him to be prepared at 8 or 9 o'clock for further torture."

19 [11.04.59]

20 Q. Thank you very much. And so, just on that, can you advise us
21 how that information was communicated, how Pon requested from you
22 to carry out these techniques? Was that done in person? Was it
23 done in writing? How did that happen?

24 A. This document concerns the interrogation tactics Pon and I
25 would use them. In general, we only discussed this orally, but at

34

1 this time, Pon wrote the details and presented it to Comrade Ya
2 that he had the authorization from me to inflict torture on Ya.

3 Q. Thank you.

4 If we can move to another document now, and it's D366/7.1.481 --
5 and I have a copy, one page of that document if I can provide to
6 you. And if it can also be placed on the screen? Can you look at
7 that document and, if it's familiar to you, can you read out what
8 is in red in those first two boxes so we can understand the
9 transaction that occurred in relation to this person?

10 [11.06.59]

11 A. Thank you. This document also belongs to S-21. It is also part
12 of the tactics there to extract confession from Ya. This time, I
13 wrote to Comrade Pon so that he could produce it to Ya. I would
14 like to read the content in the first box:

15 "1. I reported to Angkar, at 10 to 9, about Comrade - about the
16 guy named Ya, this morning, according to the document Comrade
17 provided and also according to the report of this Comrade
18 concerning his ideology;

19 "2. Angkar decided that if this guy, Ya, still hides his
20 traitorous activities, Angkar asked that he be smashed. Because
21 Angkar would not want him to play game with Angkar further
22 because he seemed to be reluctant to give his confession; first
23 he say yes, later on he say no."

24 Q. Thank you. If I can - if I can now ask you a question about
25 this - this document?

1 It's signed on the 1st of October 1976, and you've stated in this
2 document that, at 10 to 9 in the morning, you reported to Angkar.
3 Who was "Angkar"? Who were you reporting to?

4 [11.09.27]

5 A. "Angkar", here, referred to Son Sen. And I was under his
6 supervision in October 1976.

7 Q. Thank you. And you may not remember particularly, but
8 generally, when you reported to Son Sen, would that have been in
9 person or by the telephone?

10 A. Thank you. This document was fabricated. It was the tactic to
11 fabricate the document to extract confession from a prisoner and
12 such document was not communicated to our superior. We never
13 leaked this document to him, although in certain circumstances we
14 would call him, but not in this case.

15 [11.10.33]

16 Q. So, in this particular case, are you saying there was no
17 communication with Angkar? It was something you made up on this
18 particular document?

19 A. Yes, it is so.

20 Q. And why would you do that in this particular instance?

21 A. Men San alias Ya did not give in easily so we had to make up
22 strategies, tactics to avoid torturing him but extracting his
23 confession instead.

24 Q. Well, then, how often would you communicate with Son Sen
25 whilst he was your superior at S-21?

1 A. I think I already testified about this. When I was the deputy
2 chairman at S-21, I was the only deputy chairman that was -- or
3 called by the superior to work closely with him. After my
4 superior left, he never asked Hor to go and work with him. He
5 only trusted me. And every three days he would ask me to meet
6 him. And every evening, or late afternoon, he would call me,
7 asking me to update him on the confessions and the situation
8 surrounding my work. And I also was given advice or instructions
9 from him through the interactions with him through the telephones
10 and meetings.

11 Q. And in relation to this particular person, Ya, do you remember
12 ever having any discussions with him about Ya?

13 And perhaps if you can explain who Ya was during that time?

14 A. Before Ya had been arrested, I was advised by my superior on
15 Ya.

16 [11.14.15]

17 And also I need to emphasize that he was also called Ya Long
18 (phonetic) by my superior. I was briefed, and when Ya arrived he
19 followed up this closely. He asked whether tortures were already
20 employed, and he asked that tortures could be postponed, because
21 he was very careful with Ya.

22 Q. Now, where did you meet Son Sen? You said that you met him in
23 person every three days. Where would that happen?

24 A. I met Son Sen at the beginning at the train station. Later on,
25 we met at a place to the north of Borei Keila, codename letter

1 "B", as already emphasized in the hearing, and also I met him on
2 the fourth story on the building to the north of Olympic Stadium.
3 [11.15.54]

4 And after that I met with him every now and then at the only
5 location, the "B" location, as indicated when I reported to the
6 Co-Investigating Judges -- that location, codename "B".

7 Q. And that location, codename "B", was it an office, was it a
8 department? What was located in there? What was the function of
9 that location name "B"?

10 A. I cannot say what the location was, but I would like to
11 describe the situation as follows. His assistants -- his
12 associates, Nat and other important messengers were all there.
13 And the telephone connection was also in place, and Comrade Tha
14 (phonetic), who was the important messenger, was stationed at
15 that particular location. Although there was another messenger at
16 the train station, but he was an external messenger who would
17 also contact "B" office -- "B" location. I don't know other
18 information; for example, where people would eat their meals. I
19 sometimes saw Comrade Sou Met coming out from that location.
20 Sometimes I spotted Comrade San, so I can see that this is the
21 concentrated area where people from divisions would meet.

22 Q. Thank you. When you met with Son Sen, would you meet in a
23 group -- with a group of people, or would it just be the two of
24 you?

25 [11.18.34]

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1 A. I most often met with him in person -- he and I only, but
2 sometimes there would be other assistants of his meeting in the
3 place, but rarely.

4 Q. And how long would those meetings be for, on average?

5 A. Normally, we would meet no less than 10 minutes, but no longer
6 than 30 minutes.

7 Q. And your discussions with Son Sen, what was the nature of
8 them? What would you discuss? I think you've talked about
9 discussing about detainees at S-21. Would any other matters be
10 discussed?

11 A. When I entered the room, I would be asked to sit down, and the
12 agenda items would be set up by him. But the most important thing
13 of the meetings were about the confessions -- the brief
14 information concerning the confessions.

15 [11.20.10]

16 Then I would be asked to brief him on the situation surrounding
17 the offices and other issues. But, again, the items of the agenda
18 would be set up by he, himself, Mr. Son Sen.

19 Q. Thank you. And when Son Sen no longer became your superior --
20 I think you said in August 1977 -- who became your superior after
21 that?

22 MR. PRESIDENT:

23 Witness, please hold on. We note that counsel for Nuon Chea is on
24 his feet. He may proceed.

25 MR. PESTMAN:

1 Thank you very much, Mr. President. The prosecutor just said: "I
2 think you said August 1977". I wrote down that this particular
3 witness, on the 20th of March, said that until the 15th of April
4 1978 he reported to Son Sen.

5 MR. SMITH:

6 That may be correct.

7 [11.21.44]

8 I think the witness has given two conflicting dates, so perhaps
9 if -- I believe he's also said August '77, so if I just ask him
10 to clarify--

11 MR. PRESIDENT:

12 Witness, please respond to question.

13 BY MR. SMITH:

14 Q. Perhaps, to be clearer, when did Nuon Chea become the person
15 that you directly reported to at S-21? About what date?

16 MR. KAING GUEK EAV:

17 A. Thank you. On the 15th of August, 1977, Brother Nuon called
18 me.

19 [11.23.30]

20 We met at the Suramarit Buddhist School, and I started to report
21 to Bong Nuon since then.

22 Q. And how often would you communicate? How often would you
23 report to Nuon Chea?

24 MR. PRESIDENT:

25 Counsel, you may proceed.

1 MR. PESTMAN:

2 Thank you very much. I have a general objection to this line of
3 questioning.

4 I suppose the prosecutor is going to ask more questions about
5 this witness' relations with my client; I would like to make a
6 general objection.

7 I know that, Your Honours, this Trial Chamber has ruled that the
8 prosecutor -- and so can we -- can examine a witness on the
9 structure of the Party, both administrative or communicating --
10 or communicative structures after the period relevant for the
11 first trial. And we can also discuss the role of the Accused,
12 even if it's not relevant for the facts or the charges we are
13 supposed to examine during this first trial.

14 [11.24.41]

15 I know you have ruled that. Just to be clear, the facts that we
16 are supposed to examine -- and I haven't heard the prosecutor
17 asking anything about those particular facts or charges are, of
18 course, the evacuation of Phnom Penh and phase 2 of the
19 population movement in 1975 and '76 from the South to the North.
20 That is what we're supposed to discuss.

21 Our submission is that we should be very careful to discuss the
22 structure post the initial period -- the period we are talking
23 about now, or the prosecutor is going to ask questions about --
24 the period which starts in 1977 and goes on through 1978 until
25 the beginning of 1979. We submit that interrogating or

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1 interviewing this particular witness about these events is
2 prejudicial for our client for two reasons.

3 [11.25.48]

4 First of all, it could give rise to the impression that our
5 client, somehow, had more or different responsibilities in 1975
6 or 1976 than he actually had. Talking about his responsibilities
7 in 1978 or after the 15th of August 1977 is prejudicial because
8 it could influence your decision with regards to the facts which
9 happened two years before that date. I think that's a very
10 dangerous development, and I would like to warn the Trial Chamber
11 for possible consequences.

12 There's another reason why this is prejudicial, and that is
13 because we are not supposed to discuss S-21 at this first trial.
14 S-21 -- although the prosecutor would like to see others -- is
15 not part of this first trial. There is going to be -- or at
16 least, that is your intention -- there is going to be a new
17 trial, a different trial, a follow-up completely dedicated to
18 S-21. If we start discussing my client's role -- alleged role --
19 in S-21 post-1977, it also prejudices this trial which is still
20 to come. We maintain that one cannot establish any facts with
21 regard to 1977-1978 with regard to our client, his role in S-21
22 -- his alleged role in S-21 without considering all relevant
23 evidence. And that can only happen at a trial which will start at
24 a later date. All relevant evidence, all documentary evidence,
25 all witnesses -- let's not forget that we also have the right to

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1 call witnesses "à décharge" -- one can establish the facts when
2 we get to that particular trial

3 [11.27.54]

4 So it is prejudicial for two reasons. It is prejudicial for this
5 trial -- the evacuation of Phnom Penh -- and it is prejudicial
6 with regard to the trial that has still to come -- S-21. We
7 suggest that we discuss our client's role in greater detail when
8 Your Honours decide to put S-21 on the agenda. And as I said
9 yesterday, although the prosecutor has filed a request to do so
10 -- to include it in this trial, in January of this year, the
11 decision has not been taken yet. We will cross that bridge when
12 we get there, and I suggest that we continue this particular line
13 of questioning when we have possession of all relevant evidence.
14 Thank you very much.

15 MR. PRESIDENT:

16 International Co-Prosecutor, you may now proceed.

17 MR. SMITH:

18 Thank you, Your Honour.

19 [11.29.02]

20 As Your Honours are aware, your order in relation to the
21 severance of this case was done on the basis to establish some
22 basic areas of evidence that would be used in future cases. That
23 was one of the purposes of it. And those areas were the role of
24 the Accused, communication structures, administration structures,
25 etc.

1 Your Honours, we've discussed yesterday -- and Your Honours have
2 ruled on it -- that discussing the communications structure of
3 S-21 and how an independent regiment like S-21 communicated with
4 other parts of the regime is relevant. It's in paragraph 72 of
5 your order -- or of the Closing Order -- which is included in the
6 Severance Order for this case.

7 The forced evacuation -- or the evacuation of Phnom Penh, phase 1
8 and phase 2 -- as Your Honours are aware, phase 2 moves into
9 1977. It's not just 1975 as my learned friend has stated. That's
10 particularly phase 1. Phase 2 was '75, '76, and '77.

11 [11.30.23]

12 Thirdly, the purpose of this questioning, Your Honours, of
13 course, is not to establish the implementation of the crimes --
14 or implementation of the policy at S-21. We're not asking about
15 torture techniques. We're not asking about killing techniques.
16 We're not asking about how they went about their business. All
17 that's being asked about with this witness is the role that Nuon
18 Chea played in that process. And Your Honours have decided
19 already that the role of the Accused -- all their various roles
20 -- are to be discussed and established in this case. And that's
21 all we're doing. The fact that some of the roles are alleged to
22 be criminal roles -- and the evidence comes out that way --
23 that's just how the evidence is, and that's how the facts are.
24 We're certainly not trying to question this witness for days on
25 Nuon Chea's participation on a detail by detail basis.

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1 [11.31.31]

2 Just so that it's clear, the discussion in relation to Son Sen --
3 that explained how meetings were held, of course, with other
4 people outside of S-21. And that's quite relevant to the
5 communications structure. How different groups communicated. The
6 same with Nuon Chea; we simply want to establish and understand
7 his basic role in relation to security operations, which is
8 paragraph -- which you've asked -- which Your Honours have
9 decided are paragraphs which would be in this Indictment.

10 Your Honours will see, the questioning won't go on for a long
11 period of time. But it's something that, of course, Your Honours,
12 we have to establish beyond reasonable doubt. Otherwise, we
13 haven't fulfilled our obligation. And I think one of the main
14 misunderstandings by the Defence is that Your Honours have asked
15 that evidence be detailed in this Case to be brought into another
16 case. And that's in fact what we are doing.

17 [11.32.38]

18 It relates to communication, it relates to structures, it relates
19 to role of the Accused and we understand that we don't question
20 forever and a day to a point where we're talking about the
21 implementation or the participation, in great detail, of the
22 Accused. We understand that's not what this case is about. But
23 his role is what it's about and that's what Your Honours have
24 asked to be included and we're simply just trying to discharge
25 our burden. We won't be dealing with it for - ad nauseam but we

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1 just ask that we actually finish gaining the information we need
2 to prove that point. Thank you.

3 MR. PRESIDENT:

4 The International Counsel, you may proceed.

5 MR. PESTMAN:

6 Thank you very much. Just to respond briefly, the prosecutor said
7 that it's trying to establish beyond a reasonable doubt and it's
8 asking you, Trial Chamber, to establish beyond a reasonable doubt
9 what our client's role was with regard to S-21 in this particular
10 trial.

11 So what is the point of another trial about S-21, if you are
12 going to establish in this first trial what our client's role was
13 -- criminal role was with regards to S-21?

14 [11.34.06]

15 And that should be established in a different trial. And you
16 cannot reach any conclusion on our client's role without the
17 benefit of our evidence -- evidence we want to present --
18 documentary evidence which we have not presented yet, and
19 evidence in the form of witnesses which are on the list -- on our
20 list -- but not on the list -- the short list you made for this
21 particular trial.

22 So, I would, again, ask Your Honours to restrict this line of
23 questioning and to refrain from any conclusions with regard to my
24 client's role in S-21.

25 (Judges deliberate)

1 [11.35.01]

2 MR. PRESIDENT:

3 Since there was an objection by the defence counsel for Nuon Chea
4 concerning the boundary of line of questioning by the
5 Prosecution, the Chamber decides that the objection is not
6 sustained because the Chamber has already ruled on the issue.
7 And at the same time, the Chamber wishes to advise the
8 Prosecution to be focused on the questions to ensure that the
9 questions are within the confines of Case 002/01. And at this
10 stage of witness examination, the question should be focused on
11 the communication within the structure of the Democratic
12 Kampuchea. The Prosecution should refrain from asking questions
13 that beyond this boundary, particularly the questions that go
14 beyond the framework of the issue that happened in S-21.
15 The Prosecution may continue his line of questioning, and you
16 should repeat your question so that the witness can respond to
17 that question.

18 MR. SMITH:

19 Thank you, Mr. President. Your Honours, we were absolutely
20 mindful of the fact that it's necessary for the Prosecution to
21 stay within the bounds of this particular case, and I would just
22 refer my learned friend to paragraph 878 relating to the role of
23 Nuon Chea in the CPK security apparatus where-- And I won't read
24 it so the witness doesn't hear it, but it explains quite clearly
25 the evidence we're exactly talking about right now in that

1 paragraph 878 and the role of the Accused.

2 [11.40.40]

3 Having said that, Your Honours, I'll certainly focus the
4 questions to ensure it stays within reasonable bounds that you've
5 said.

6 BY MR. SMITH:

7 Q. Witness, you've just talked about your meetings with Son Sen,
8 and then you said -- you testified that, on the 15th of August
9 1977, Nuon Chea--

10 MR. KAING GUEK EAV:

11 A. Well, the translation into Khmer did not get through. I could
12 not get your question.

13 MR. PRESIDENT:

14 The International Co-Prosecutor, please repeat your question
15 because the translation did not get through so the witness did
16 not understand your question fully.

17 [11.41.56]

18 Court officers are instructed to contact with the Translation
19 Unit to ensure that the translation is working.

20 The International Prosecutor, you may now proceed.

21 BY MR. SMITH:

22 Q. Witness, you said that, on the 15th of August 1977, Son Sen no
23 longer became your immediate superior but Nuon Chea did. Why --
24 how do you know that date? Why do you remember that date?

25 MR. KAING GUEK EAV:

1 A. Brother Nuon was the -- was in higher position than Brother
2 Khieu so the date was actually recorded.

3 Q. And how often did you meet Nuon Chea after that date?

4 MR. PRESIDENT:

5 The Court officer, the battery for the headset of the witness has
6 run out. Could you please have it changed?

7 [11.43.42]

8 BY MR. SMITH:

9 Q. Can you hear me now? So the question was: How often would you
10 meet Nuon Chea after that date?

11 MR. KAING GUEK EAV:

12 A. I would meet him once every three or five days. Normally, they
13 rang me so that I could go and meet him.

14 Q. And where would you meet him?

15 A. I met him on the ground floor of the Suramarit Buddhist High
16 School.

17 Q. And on average, how long would your meetings take with Nuon
18 Chea?

19 A. Each meeting would last for 10 minutes or more -- a little
20 more or less than this because he did not have much thing to say.

21 [11.45.37]

22 Q. Would other people be present at those meetings?

23 A. I would meet with him in person only between the two of us.
24 There might have been body guards but I did not know where they
25 hid out - they hid out.

1 Q. And who would call the meeting? Was it you or Nuon Chea or
2 someone else?

3 A. As normal practice in the Democratic Kampuchea the subordinate
4 would never convene a meeting but the superior would convene the
5 meeting and Comrade Phung would call me.

6 Q. And what was discussed at those meetings?

7 A. We merely discussed the confession regarding the enemies, and
8 I, at times, reported to him the overall situation.

9 Q. And when you state you explained the overall situation, what
10 would that be? Situation in relation to what?

11 [11.47.31]

12 A. The situation involved the freedom movement in the units or in
13 my workplace.

14 Q. And what do you mean by that, the "freedom of movement"?

15 A. I could not recollect, but I could mention in general -- for
16 example, certain comrades put more question or they questioned
17 our practice. So we thought that they possessed the liberal
18 mentality or in other situations it would involve the freedom of
19 movements of people and normally at S-21 people were not free to
20 move around by themselves.

21 [11.49.04]

22 Q. And you've said that these meetings were every three days. Did
23 they continue throughout the whole Democratic Kampuchean period
24 or not?

25 A. Since I reported to him, there were two separate stages.

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1 The first stage was before he visited China, so I had to report
2 to him on a regular basis on every five days and then following
3 his visit to China, then Phung contacted me as - in his capacity
4 as the spokesperson for Pol Pot. So Phung could decide on certain
5 matters.

6 Following his return from China, my meeting with Brother Nuon was
7 less frequent. We would meet once every five days. I can say
8 that.

9 Q. So, before he went to China, was it every three days; after he
10 came back it was every five day; is that correct?

11 A. I cannot be exact. I could not say three days, once every
12 three days but it could be once every four days, three days, but
13 the longest was -- would be five days, one every five days.

14 Q. And just in general, so we can finish this topic and perhaps
15 avoid going through some individual documents for the moment,
16 what would he say at these meetings in relation to the
17 confessions that you were discussing? What types of statements
18 would he make in these meetings?

19 [11.51.26]

20 A. I could not recollect all but one day he asked me what I had
21 done over the past few days. There was nothing to report to me.
22 And, actually, it was true. At that time I was too tired and I
23 did not have any motivation to work. And that was actually known
24 to the upper echelon. And I did not want to elaborate on the
25 implication made in the confession because that was another

1 matter to be dealt with later.

2 [11.52.13]

3 Q. And more specifically, what did you report to Nuon Chea?

4 A. To be specific, the confessions of all prisoners imprisoned at
5 S-21 and those who identified by the upper echelon as important
6 prisoners. And sometime we provided our own comments that these
7 individual prisoners were important but normally we are only
8 reported on those individuals whom the upper echelon identified
9 as important. So we kept the report and we send the report as to
10 what stage of confession had -- we had made.

11 Q. After you had reported to him some of the information from
12 these confessions during these meetings, did you get any
13 instructions from him or not?

14 A. It was long time ago, I could not remember clearly but that
15 document, the document you just display was indicative and was
16 rather clear because he mentioned that certain individual should
17 be removed. And I should mention here that there were some
18 prisoners implicated others; where one of the prisoners
19 implicated his own brother-in-law. In one situation they, Phung
20 who was my friend and the son-in-law of Ieng Sary was also
21 implicated as well in one of the confessions.

22 And I asked him whether or not he was terrified by being
23 mentioned in that confession and then when I returned I actually
24 asked that his name be removed from that.

25 And there was one confession that implicated Khieu Samphan as

1 well.

2 [11.54.55]

3 So this was the -- this was some of the information from the
4 confession and I made that testimony before the Co-Investigating
5 Judges as well.

6 Q. And perhaps to conclude the topic at the moment what would you
7 say the purpose of those meetings you had with Nuon Chea, what
8 was the main purpose for those meetings?

9 [11.55.32]

10 A. When he designated me a work -- actually he wanted the
11 confession of the prisoner whom he identified as important. And
12 then he also wanted to know the overall situation at S-21 and
13 then he would provide direction or guidance.

14 Q. Thank you.

15 Now, if we can go back to just generally communication within
16 S-21, at meal times, at lunch, at dinner, did people eat together
17 or did people eat separately?

18 A. Brother Pol made it clear in one of his presentation that
19 people had to eat in a communal hall. They had to eat
20 collectively, so at S-21, as indicated in the plan, in the layout
21 of S-21, I did mention the communal hall in S-21 where we ate
22 together.

23 Q. And that communal eating principle, are you aware whether that
24 was applied outside of S-21, in other departments, in other
25 offices?

1 A. Brother Pol, or Pol Pot, as the secretary of the Party -- and
2 it was his order and it was applied across the country. Nobody
3 dare go against this order.

4 [11.57.54]

5 MR. SMITH:

6 Your Honours, that might be an appropriate time for lunch, and I
7 plan to move onto another topic as well.

8 MR. PRESIDENT:

9 Thank you, the International Co-Prosecutor, and thank you,
10 Witness.

11 The time is now appropriate to adjourn for lunch, so the Chamber
12 will adjourn for lunch until 1.30 this afternoon.

13 The security guards are instructed to bring the witness to the
14 waiting room for witness and have him back in the courtroom
15 before 1.30 p.m.

16 I note the International Counsel is on his feet. You may proceed.

17 MR. PESTMAN:

18 Thank you very much. My client is tired; he would like to remain
19 downstairs after the break. He will try to follow the procedures
20 from the holding cell. I will inform the Court if he is no longer
21 able to do so.

22 [11.59.19]

23 I will file the waiver, the waiver waiving his right to be
24 present in court while Duch is testifying.

25 MR. PRESIDENT:

1 Having heard the request by Nuon Chea through his defence counsel
2 requesting that he be excused from this courtroom to the holding
3 cell where he can follow the proceedings by video-link due to his
4 health condition, and the defence counsel has already indicated
5 that he would submit the letter of waivers of Mr. Nuon Chea, the
6 Chamber grants this request.

7 Mr. Nuon Chea will be brought to the holding cell downstairs and
8 he will follow the proceedings through video-link from the
9 holding cell and he will not be present in the courtroom this
10 afternoon.

11 And the Chamber advised the counsel to submit to the Chamber the
12 letters of waivers with his thumb print or signature.

13 And the technicians are instructed to link the audio-visual
14 equipment so that he can follow the proceeding from the holding
15 cell.

16 The security guards are instructed to bring the two co-accused to
17 the holding cell, downstairs, and this afternoon bring Mr. Khieu
18 Samphan to this courtroom before 1.30, and Nuon Chea will remain
19 in the holding cell downstairs, where the audio-visual equipment
20 is linked for him to follow the proceeding.

21 [12.01.23]

22 The Court is now adjourned.

23 (Court recesses from 1201H to 1331H)

24 MR. PRESIDENT:

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

1 Next, we would like to hand over to the Prosecution to proceed
2 with further questions to the witness.

3 MR. SMITH:

4 Thank you, Mr. President. And good afternoon, Your Honours,
5 Counsel and to the general public and to the witness.

6 BY MR. SMITH:

7 Q. Mr. Kaing Guek Eav, before we broke for lunch we were talking
8 about -- you were providing information on how S-21 --
9 information travelled within S-21 and how information travelled
10 outside of S-21 to other aspects of the CPK.

11 [13.33.17]

12 So now I would like to move outside of S-21 and ask you some
13 questions as to your learning, your studying, your observations,
14 your experiences in relation to how the state was run, the state
15 of Democratic Kampuchea.

16 We've talked earlier about the Party, membership to the Party,
17 general principles, criteria and duties and discipline within the
18 Party. Now, I'd like to ask you some questions about the state as
19 a whole and how the Party related to the state in -- during that
20 period, that Democratic Kampuchean period.

21 [13.34.07]

22 Firstly -- you may have mentioned this already in your testimony
23 -- how many political parties were there in Democratic Kampuchea
24 between 17 April '75 and the 7 January 1979?

25 MR. KAING GUEK EAV:

1 A. After the 17 April 1975 to the 6 January 1979, there was only
2 one Party, the one Party that controlled everything absolutely
3 and in monopoly.

4 Q. And when you say the Party controlled absolutely everything
5 "and in monopoly", what types of things are you saying that they
6 controlled?

7 [13.35.15]

8 A. "Monopoly" here means the Party ruled alone and there was only
9 one political line and the Party line was not influenced by any
10 external lines.

11 Q. And what about property? Who controlled property during that
12 period -- private property, buildings, warehouses, land -- who
13 controlled it during that period?

14 A. With regard to these assets, as I already indicated any means
15 of production including warehouses, buildings, farms and natural
16 assets, resources on the lands and the ground, these are -- these
17 were considered as the means of production and it was in total
18 control of the Party.

19 Q. What about the public institutions like schools, hospitals,
20 medical facilities, other state institutions, who controlled them
21 during the period once the CPK took over in 1975?

22 A. All state institutions were exclusively controlled by the
23 Communist Party of Kampuchea.

24 Q. When did you hear the name Democratic Kampuchea; when did you
25 first hear that name?

1 A. It was after the 17 of April.

2 Q. How was it announced?

3 A. My memory is not very precise on this, but I remember that
4 this information was broadcast on radio, and when it comes to the
5 constitution S-21 also obtained a copy, and when the statute was
6 adopted we were invited to attend such meeting in which the
7 statute was adopted. People from divisions were also invited.

8 [13.39.27]

9 Q. And when you say the statute was adopted, are you referring to
10 the Communist Party of Kampuchea statute or the constitution?

11 A. My apologies, perhaps I didn't make myself clear. I was
12 referring to the constitution, the provisions in the
13 constitution.

14 Q. And during that time did you study the provisions of the
15 constitution?

16 A. The constitution was broadcast on radio and it was also
17 broadcast in the form of art performance. I did not learn the --
18 it during study sessions, I learned this information from the
19 radio broadcast.

20 [13.40.36]

21 Q. Do you know who wrote the constitution?

22 A. I'm not sure who wrote it, but the persons who wrote the
23 constitution were no other people at lower level other than
24 Brother Number One, Pol Pot, or Nuon Chea. But I think it could
25 have been initiated by Pol Pot.

1 Q. And did you obtain a copy of the constitution?

2 A. Yes, I did. The constitution that shown or used in this Court
3 at the ECCC refers to the constitution obtained from S-21.

4 Q. Document IS 9.2. Please show it to the witness, please. I have
5 a hard copy and if it can be placed on the screen.

6 Now, Witness, if you can look at the document, examine it, and
7 see whether or not it's familiar to you. And if it is, I'll ask
8 you a few questions about that document.

9 [13.42.50]

10 A. I am familiar with this document. The Co-Prosecutor may
11 proceed with the questions he wishes to ask me.

12 Q. Thank you.

13 If we look at Article 5 of the constitution, it states that
14 "legislative power is invested in the Representative Assembly of
15 the People, workers, peasants and all other Kampuchean
16 labourers". Do you see that provision?

17 A. Yes, I am now looking at this article.

18 Q. And it states that "the assembly shall be officially known as
19 the Kampuchean People's Representative Assembly".

20 [13.44.06]

21 Then it states that "it should be made up of about 250 members
22 representing the people, the workers, the peasants, and all other
23 Kampuchean labourers and the Kampuchean Revolutionary Army. Of
24 these 250, there would be 150 peasants, 50 labourers and working
25 people, and 50 from the Revolutionary Army".

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1 My question is: To your knowledge at the time, was this
2 Kampuchean People's Representative Assembly, was it -- were
3 elections ever held to form that -- to form that body, those 250
4 people?

5 MR. PRESIDENT:

6 Witness, please hold on, the counsel for Nuon Chea is on his
7 feet. He may proceed.

8 MR. PESTMAN:

9 Thank you, Mr. President. Again, the prosecutor is using this
10 witness as an expert.

11 As far as I understand, he assumed that Pol Pot has written it,
12 Brother Number One. He never taught anyone about this
13 constitution. He said he heard something about it on the radio.

14 I don't see how this witness can say anything sensible about this
15 document. So I would object to this question.

16 [13.45.57]

17 MR. SMITH:

18 Thank you, Mr. President. I think perhaps if the Prosecution can
19 ask the witness a few questions; we'll be able to see whether he
20 can say anything sensible about the document.

21 Your Honours, this is not -- this is a document that's not
22 particularly scientific, it's a fairly basic document. This
23 witness lived through the period. This witness observed and
24 experienced aspects of the government through the period and
25 aspects of the political process and the government process.

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1 This witness should be able to ask some -- answer some basic
2 questions on some of these provisions in the constitution. He
3 said that he received a copy of it, sure he did hear it on the
4 radio, but you don't need to be an expert to be asked questions
5 on a fairly simple document, Your Honours, and he's in a position
6 to do so.

7 [13.47.01]

8 MR. PESTMAN:

9 I don't see why the document -- why the prosecutor has to show
10 this particular document to the witness. If they have some simple
11 questions about the General Assembly and elections, if they
12 really want to know what this witness knows or what this witness
13 experienced at the time, then they should simply ask those
14 questions and not try to refresh his memory by showing him
15 documents beforehand.

16 MR. SMITH:

17 If I can, Your Honours, it's not a question of refreshing the
18 witness's memory, it's a question of understanding the document.
19 He worked during the period, there is terminology and phrases he
20 may well be able to inform the Chamber on.
21 And, secondly, we could do it another way and we could ask the
22 who, how, why, what and where questions, but it would take quite
23 a long time.
24 Your Honours, this witness has shown enough familiarity with this
25 document. He's read it. It would seem to be a waste of time to --

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1 for me to explain and ask to take him through every aspect of
2 this document without it being shown to him.

3 [13.48.39]

4 (Judges deliberate)

5 MR. PRESIDENT:

6 The objection by counsel for Nuon Chea is not sustained.

7 International Co-Prosecutor, you may continue your questions
8 concerning the content of this constitution.

9 BY MR. SMITH:

10 Q. Witness, if we look at articles--

11 MR. PRESIDENT:

12 International Co-Prosecutor, could you please hold a moment since
13 counsel for Nuon Chea is on his feet?

14 National Counsel for Nuon Chea, you may now proceed.

15 MR. SON ARUN:

16 Good afternoon, Your Honours.

17 At the beginning, I heard that this witness was put some
18 questions whether he ever saw this constitution. The witness said
19 he never saw it. He said he heard about it through the art
20 performance, through radio broadcast.

21 [13.50.37]

22 And I don't know how questions could be put to lead this witness
23 and he has no knowledge of the constitution.

24 MR. PRESIDENT:

25 Mr. Kaing Guek Eav, have you ever seen this constitution -- or

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1 did you ever see, rather, this constitution during the Democratic
2 Kampuchea period in your capacity as the deputy chairman and,
3 later on, the Chairman of S-21 Security Centre?

4 MR. KAING GUEK EAV:

5 Mr. President, I already indicated to the prosecutor that this
6 constitution before me was obtained from S-21 and the code name
7 TSL certifies that it means that I have already been
8 knowledgeable of the documents, and it is from S-21.

9 MR. PRESIDENT:

10 It is clear now. We just want to be more precise on this.

11 [13.51.47]

12 Perhaps that you have not conducted any training using this
13 material in study sessions or training courses, but now -- we can
14 now proceed to the Co-Prosecutor and you may proceed with further
15 questions on this.

16 BY MR. SMITH:

17 Thank you, Mr. President.

18 Q. Witness, if we look at Article 6 of the constitution, it
19 states:

20 "The members of the Kampuchean People's Representative Assembly
21 are to be elected by the people through direct and prompt general
22 elections by secret ballot to be held throughout the country
23 every five years."

24 My question to you is: From your experience and observations at
25 the time during the Democratic Kampuchea period, did you ever

1 hear of an election to elect the Kampuchean People's
2 Representative Assembly?

3 MR. KAING GUEK EAV:

4 A. Thank you. I would like to separate this into two.

5 The polling station in Phnom Penh -- there was only one polling
6 station at the railway station in Tuol Kork district. The people
7 representative who was running the election back then was Brother
8 Number Two, Nuon Chea, and -- there were other people also,
9 including Sihanouk -- Penn Nouth. However, there was no election
10 in other locations.

11 [13.53.58]

12 For example, Nat's wife, Comrade Kun -- she was the head of a
13 factory, and she was also representative of workers: Comrade Say
14 (phonetic), a member of the industry committee, and another guy
15 from the military section running for the elections.

16 Q. Was there a nationwide election in relation to this assembly,
17 to your knowledge?

18 A. I recall, once, when my superior talked about foreigners. And
19 he said we were, perhaps, too busy with the election. But there
20 was no such election. He said that foreign countries could view
21 that Cambodia could have been very busy with elections, but we
22 did not really have such elections, because the constitution was
23 adopted promptly without such elections award.

24 Q. Thank you.

25 [13.55.29]

1 Are you aware -- under Article 7, where it states:

2 "The People's Representative Assembly is responsible for
3 legislation and for defining the various domestic and foreign
4 policies of Democratic Kampuchea."

5 Are you aware whether there was an assembly that wrote
6 legislation for Democratic Kampuchea?

7 A. The Kampuchean People's Representative Assembly was very
8 symbolic. It was named -- it had only the name, but it had no
9 activities. The reason I say it had no activities -- because,
10 after that so-called election, Nuon Chea led a meeting. That's
11 only one meeting. And there were additional 10 -- or, about 10
12 members recruited, and I also heard the speech. And later on, we
13 have -- we had never had any further meetings. All the
14 representatives had to remain in their each respective unit. And
15 every now and then we could see that the members were gradually
16 arrested and sent to S-21. Thank you.

17 Q. Do you know why these members were being arrested and sent to
18 S-21?

19 A. Members of the Kampuchea People's Representative Assembly were
20 decided by the Party to -- whether to have them arrested and sent
21 to S-21.

22 Q. And if I can ask you to look at Article 9, it states;

23 "Justice if administered by people's courts, representing and
24 defending the people's justice, defending the democratic rights
25 and liberties of the people, and condemning any activities

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1 directed against the people's state or violating the laws of the
2 people's state".

3 [13.58.34]

4 Were there any people's courts set up in Democratic Kampuchea, to
5 your knowledge?

6 A. During the Democratic Kampuchea, the cooperatives had two
7 distinct powers; the executive power and the judicial power.

8 Q. In relation to Article 9, it states that; "judges at all
9 levels will be chosen by the People's Representative Assembly".

10 Was that ever done, to your knowledge?

11 A. None.

12 [13.59.57]

13 A committee of the Party at level could conduct or manage this,
14 but -- organized by the Party.

15 Q. The judicial process you mentioned at the cooperative level --
16 who controlled that process?

17 A. I just stated that, in the base-level Party committee, they
18 hold two separate powers; the judicial and executive power. For
19 example, in a commune or cooperative, this power shall enjoy by
20 the committee of that respective cooperative or commune. So the
21 Party hold this two important powers -- the -- both executive
22 power and the judicial one.

23 Q. Thank you. And if we look at Article 11, it refers to the
24 state presidium, and it says;

25 "Democratic Kampuchea has a State Presidium chosen and appointed

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1 by the Cambodian's People's Representative Assembly once every 5
2 years".

3 [14.01.35]

4 Was a state presidium chosen?

5 A. Thank you. The state presidium was only a symbolic
6 institution. There was almost no activity at all. Actually, in
7 the state presidium there were -- as a matter of principle, there
8 were three people; Khieu Samphan as the president of the state
9 presidium, Penn Nouth and Ros Nhim. But Penn Nouth was too old
10 already. He was, actually, residing in one of the residence in
11 Phnom Penh. And, actually, this institution did not carry out any
12 activity. So, once again I would like to repeat myself that this
13 state presidium did not have any office, did not have any
14 activity. It was merely symbolic.

15 Q. You mentioned Ros Nhim was on this symbolic body. Who was he
16 and what happened to him during the Democratic Kampuchea period?

17 MR. PRESIDENT:

18 Witness, hold on. The counsel is on his feet. You may proceed.

19 MR. PESTMAN:

20 Thank you, Mr. President. We've had this discussion before. The
21 witness has, in the past, given his opinion about certain facts
22 -- now, about the state presidium.

23 [14.03.43]

24 And we have asked the prosecutor to continue with follow-up
25 questions -- ask him -- the witness -- what his sources of

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1 information are. And the prosecutor had promised that they would
2 ask these follow-up questions. We have no idea whether this
3 witness was actually there -- ever visited the presidium. We have
4 no idea where this knowledge comes from. This is also important
5 because we don't know whether this knowledge is -- for example --
6 based on confessions obtained at S-21. If that is the case, then
7 one could say that this witness is whitewashing information
8 obtained -- possibly obtained -- under torture. So it's very
9 important that we establish what the source of this information
10 is. And if it comes from S-21 confessions, it should be excluded.

11 MR. PRESIDENT:

12 The International Co-Prosecutor, you may proceed.

13 MR. SMITH:

14 Thank you, Your Honour. I think -- I mean, that's the purpose of
15 cross-examination or examining the witness, to ask these
16 particular questions.

17 [14.05.05]

18 And then, of course, where it is deemed necessary, those
19 follow-up questions will be asked.

20 BY MR. SMITH:

21 Q. So, my question was--

22 MR. PRESIDENT:

23 The International Counsel for Nuon Chea, you may proceed.

24 MR. PESTMAN:

25 Thank you for allowing me to reply. I think that's too easy. The

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1 prosecutor is leading this witness, and also has the -- what we
2 would call the professional duty -- to obtain proper evidence,
3 and they should not allow the witness to speculate or to
4 regurgitate evidence which may be -- has been obtained from
5 confessions at S-21.

6 [14.05.50]

7 So they have the professional duty to do this properly, and they
8 can't rely completely upon us and the cross-examination. That
9 would be unnecessarily unfair.

10 MR. SMITH:

11 Your Honour, I don't think there's any basis to say that the
12 witness is necessarily speculating on this point, nor is he
13 regurgitating on this point, nor is he gaining this information
14 from confessions. That's -- I don't know where learned counsel
15 gets that basis of the objection from. But certainly, we will ask
16 the witness where he gets that knowledge from. But -- I mean, in
17 a way, I don't want every question that I ask the Defence
18 standing up and saying you must ask this one, and you must ask
19 another.

20 [14.06.45]

21 They will have an opportunity to examine the witness. But, in any
22 event, I will ask the question.

23 MR. PRESIDENT:

24 Objection by the defence counsel for Nuon Chea is not sustained,
25 so the prosecutor can continue his line of questioning.

1 BY MR. SMITH:

2 Q. Thank you. Ros Nhim -- Ros Nhim -- you stated, was on the
3 state presidium, which you said was largely symbolic. Can you
4 tell the Court who he was, and what happened to him during the
5 Democratic Kampuchea period?

6 MR. KAING GUEK EAV:

7 A. Ros Nhim was the secretary of the Northwest Zone.

8 [14.08.01]

9 Then, later on, he was implicated and eventually arrested and
10 sent to S-21.

11 Q. The next question I have -- well, the next question I have is
12 in relation to Article 12, and it relates to the rights and
13 duties of the individual. And it states;

14 "Every citizen of Kampuchea enjoys full rights to a constantly
15 improving material, spiritual and cultural life".

16 And then if we look at Article 13, it states;

17 "There must be complete equality among all Kampuchean people in
18 an equal, just, democratic, harmonious, and happy society within
19 the great national solidarity for defending and building the
20 country together."

21 My question for you is; during the Democratic Kampuchea period,
22 were these rights that are referred to in Article 12 and 13 --
23 were they respected for each individual?

24 (A short pause)

25 A. Article 13:

1 "There must be complete equality among all Kampuchea people in an
2 equal, just, democratic, harmonious, and happy society within the
3 great national solidarity for defending and building the country
4 together. Men and women are fully equal in every aspect. Polygamy
5 is prohibited.

6 [14.11.10]

7 "There must be complete equality among all Kampuchean people" --
8 on this very issue, it is more theoretical. I would like to bring
9 up an example. The new people or the 17 April people were
10 supposed to be under the supervision of the old or base people.
11 So that creates inequality. This was the manifestation of the
12 inequality in the society. That's all I can answer to that
13 question.

14 Q. Were there any democratic aspects in existence in Kampuchea
15 between 1975 to 1979?

16 A. Democratic in this sense was varied depending on the
17 definition of the leaders at that time because democracy in
18 Cambodia at that time was a democratic centralism.

19 [14.12.36]

20 And it was meant to safeguard the interests of the workers'
21 class. That was democracy dictated by Pol Pot, and it was also
22 set out for implementation throughout the period by Pol Pot.

23 Q. Thank you. You've said that the Communist Party of Kampuchea
24 controlled the state. So now I'd like to look at how the
25 Communist Party in fact did that. And so, earlier, you mentioned

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1 that the Central Committee was the highest committee in the
2 Party; is that correct?

3 A. The Central Committee, by definition, was of course the
4 supreme organ of the Party.

5 Q. And, if I can ask you to look at the statute again, at IS 9.1
6 -- and perhaps if that can be placed on the screen. Witness, do
7 you have a copy of the statute with you? If you can turn your
8 mind to Article 23, and if I can ask you to read out that
9 article, and then I'll ask you some questions about what that
10 article meant in terms of the statute.

11 A. Thank you.

12 [14.15.20]

13 Article 23;

14 "The task of the Central Committee. The tasks of the Central
15 Committee are one, implement the Party political line and statute
16 throughout the Part; two, instruct all zone and sector city
17 organizations and Party organizations responsible for various
18 matters to carry out activities according to the political line
19 and the ideological and organizational principles and stances, in
20 accordance with the task of national defence and building
21 Democratic Kampuchea and in accordance with the Party direction
22 of socialist revolution and building socialism; three, govern and
23 arrange cadres and Party members throughout the entire Party
24 along with all core organizations by constantly, clearly and
25 closely grasping personal histories, political, ideological and

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1 organizational stances and closely and constantly arming them
2 politically, ideologically and organizationally; four, act in the
3 name of the Party in contact with all brother-sister
4 Marxist-Leninist parties".

5 [14.17.01]

6 That's all for this article.

7 Q. And do you know what the size of the Central Committee was --
8 how many members were in it back in the Democratic Kampuchea
9 period?

10 A. The Central Committee is divided into four levels. The lowest
11 level is the assistants to the Central Committee. This group of
12 committee was entitled to attend the training, but they were not
13 allowed to speak or to vote on any decision. And above this
14 lowest level was the candidate Central Committee members. These
15 were -- these individuals had the right to attend trainings, and
16 they actually were not allowed to vote anything until they were
17 promoted to be the full rights member. And above that level was
18 the Central Standing Committee, and I know the number of the
19 members of the Standing Committee. As I said, they were -- these
20 include Pol Pot as secretary. Nuon Chea was the first secretary
21 -- first deputy-secretary, rather, So Phim, second
22 deputy-secretary -- So Phim, member, and Ieng Sary, member. Son
23 Sen -- Vorn Vet, rather -- Vorn Vet, candidate member. And Son
24 Sen was a candidate member as well.

25 [14.19.08]

1 So there was seven members of the Standing Committee. And as for
2 other committees, I do not know the exact number or size, but I
3 think the numbers may have been well above 100.

4 Q. Thank you. There may have been a translation issue, but as I
5 was recording the members of the Standing Committee, I only
6 counted six. And if I can read them back to you; you stated Pol
7 Pot, Nuon Chea, So Phim, Ieng Sary, Son Sen, and Vorn Vet.

8 Q. Thank you. Let me confirm. They respected each other, so I had
9 to count them in order. One, Pol Pot; two, Nuon Chea; three So
10 Phim; four, Ung Choeun, alias Mok; Ieng Sary -- four, Ieng Sary;
11 Vorn Vet; and the last member was Son Sen.

12 [14.20.44]

13 And they respected the hierarchical authority in the
14 organization.

15 Q. Thank you. And how did you know who the members of the
16 Standing Committee were?

17 A. Thank you for the question. Nat was an -- a person who was
18 eager to be promoted to be in this committee, so he actually got
19 the information and he told me. This was the hierarchical
20 structure of the committee. Then, later, I asked Koy Thuon. Koy
21 Thuon was the only prisoner that did not receive any torture. And
22 then I met with Sam Aok, alias Pang. Pang was a member of the
23 Central Committee. I asked him, and then his answer was exactly
24 the same. At the same time, when Son Sen asked me to tally all
25 the confession, I prepared seven folders of documents to him, and

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1 then Son Sen received those dossiers, and then he told me that;
2 well, the brothers in the upper echelons were about to meet, so I
3 had to prepare documents for them. So I had to prepare documents,
4 and I could answer to your question and I said as -- what I told
5 the Prosecution was based on these facts.

6 Q. Thank you. And why were you asked to prepare seven copies of
7 confessions or a confession?

8 A. Probably you got me wrong.

9 [14.23.00]

10 My superior asked me through the telephone that the brothers in
11 upper echelons were about to meet in order to decide on the
12 secretary of Sector 24 by the name of Chhouk and, at that time, I
13 remember, very well, I had to work three days and three nights
14 consecutively in order to prepare three different files of
15 confessions for him.

16 Q. You said earlier that you had to prepare seven folders or
17 seven files and then now you stated that Son Sen had asked you to
18 prepare some documents for his brothers and then you referred to
19 three different files so--

20 MR. PRESIDENT:

21 Witness, please hold on; the defence counsel is on his feet.

22 You may raise your issue.

23 MR. PESTMAN:

24 Thank you very much. First of all, minor point, but important.

25 [14.24.28]

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1 The witness just stated that he knew about the number or maybe
2 the names of the Standing Committee because he heard that from
3 two people who were detained in S-21 and gave this information to
4 him maybe under duress.

5 But I object to this particular question because the prosecutor
6 stated twice that he was -- the witness was asked to produce
7 seven copies and the witness did not say that. He said that he'd
8 produced seven copies, but then afterwards Son Sen said that he
9 was going to discuss it with the upper echelon, but he was never
10 asked -- as far as I know, at least the witness had not said so
11 -- to produce seven copies by Son Sen.

12 MR. SMITH:

13 Well, firstly, Koy Thuon -- just factually -- factually correct,
14 Koy Thuon was detained at S-21 as the witness has said. He said
15 no torture was applied to Koy Thuon.

16 [14.25.33]

17 Secondly, Pang, Chhim Sam Aok, there's no indication from the
18 witness at all that he received that information -- the witness
19 received that information from Pang whilst he was detained at
20 S-21. That's been, I think, placed in the dialogue by the defence
21 counsel so perhaps if I just clear that up with the witness and
22 ask him the question that when Pang gave him the information as
23 to who the members of the Standing Committee were, was he a
24 detainee at S-21 or was he still the representative of the
25 Central Office Committee. I think that should clarify it.

1 Secondly, there is a small amount of confusion with the seven --
2 preparing seven copies and then three different copies, and I'm
3 trying to resolve that and I apologize if I misspoke on that.

4 [14.26.41]

5 If I can continue?

6 MR. PRESIDENT:

7 The objection is not sustained so the Prosecution may continue
8 with the questioning.

9 BY MR. SMITH:

10 Q. When Pang told you who the seven members of the Standing
11 Committee were, was he working for the CPK, at the time, or was
12 he detained at S-21?

13 MR. KAING GUEK EAV:

14 A. Thank you for asking for clarification on this matter. Before
15 the Party decided to arrest Pang, I and Pang exchanged a lot of
16 comments. And as for the numbers of the Standing Committee, it
17 was when Pang was still free and he could communicate -- he
18 could communicate with S-21 freely so, at that time, he enjoyed
19 his full right; he was not detained at S-21.

20 Q. And in relation to the numbers of copies, you said that you
21 prepared seven copies; were you asked to prepare seven copies or
22 did you just do that of your own accord?

23 A. Thank you. Thank you for asking for clarification. And we
24 could not understand each other very well; I think there might be
25 some loss in translation.

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1 [14.28.38]

2 At that time, my direct superior -- Duch -- he told me that;
3 Duch, you should prepare documents for the upper echelons; they
4 were about to meet. So I did not -- they did not indicate as to
5 how many copies I should prepare and I -- actually, it was my own
6 decision to prepare seven copies so when I submitted to him the
7 seven copies, he did not say anything so it was my assumption
8 that the members of the Standing Committee was at least seven.

9 Q. And you prepared seven copies because you were told that there
10 were seven members on the Standing Committee by Pang earlier; is
11 that correct?

12 MR. PRESIDENT:

13 Witness, could you hold on.

14 Counsel for Ieng Sary, you may proceed.

15 MR. KARNAVAS:

16 Mr. President, I think there's a proper way of conducting this
17 examination. This is so leading. If the gentleman knows so much
18 firsthand, there's no need to lead; he can simply ask the
19 questions. He just said in his answer he assumed that there were
20 seven. Then there's a follow-up which is clearly leading.

21 [14.30.14]

22 I simply don't understand why we cannot proceed in an orderly
23 fashion so we know exactly what the gentleman knows versus what
24 is being put into his mouth through this line of questioning. I
25 object to the form of the question and I would -- I would just

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1 certainly -- I would just simply ask the prosecutor to go
2 step-by-step, ask him what he knows. If he's under time
3 constraint, he can ask for more time, but we shouldn't get -- try
4 to get around that by saying it would take us a long time,
5 therefore, we can just lead the witness and help him.

6 [14.30.50]

7 And having said that, also, the gentleman -- the prosecutor
8 explained to you, Your Honours, well, if I ask him if he knew it
9 before or if he knew it after that would clarify the matter.
10 Well, yes, however, when you have a very clever individual who
11 spent years training himself in the art of deception, in the art
12 of torture, in the art of confabulation--

13 MR. SMITH:

14 Your Honour, I -- I object to this.

15 MR. KARNAVAS:

16 --it's easy for that gentleman to understand and pick up the
17 vibes that he's being given by the prosecutor. Now, I'm not --
18 I'm not suggesting that the prosecutor is doing this
19 intentionally, but the result is that the gentleman hears, knows
20 where the answer should go, and provides the answer.

21 [14.31.39]

22 And what we're left with is, was that the real answer or was that
23 the one that he just made up because those individuals are not
24 here to be cross-examined and there's nothing other than this
25 person's word, which Your Honours and the Prosecution have

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1 already said in 001 he was less than truthful; euphemistically
2 for -- for saying that he lied under -- while he was testifying
3 or giving evidence.

4 So I suggest that rather than making these statements in front of
5 the witness, questions should be posed in an open fashion and
6 that way, I won't have to react.

7 Thank you, Your Honour.

8 MR. PRESIDENT:

9 You may proceed.

10 BY MR. SMITH:

11 Q. Thank you, Your Honour.

12 [14.32.29]

13 Just to be clear, the witness said that earlier I summarized his
14 earlier answer to be efficient, but we can -- we can take it more
15 slowly if that's -- if that's required.

16 When you prepared these seven--

17 MR. PRESIDENT:

18 Co-Prosecutor, could you please hold on.

19 (Judges deliberate)

20 [14.34.32]

21 MR. PRESIDENT:

22 I would like to hand over to Judge Silvia Cartwright to address
23 the objections and also shed light on how we deal with this.

24 Judge Cartwright, you may proceed.

25 JUDGE CARTWRIGHT:

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1 Thank you, President. The prosecutor is asked to ensure that
2 questions do not appear to be leading by clarifying, for example,
3 that in answer to an earlier question the witness said Pang told
4 us the seven names -- told me the seven names of the Central
5 Committee members and then follow up with a question.

6 It is essential that it's clear to the Chamber and to the
7 parties that these are not leading questions so I ask the
8 prosecutor to make sure that it is clear to everyone that he is
9 not putting words in the mouth of this witness.

10 [14.35.48]

11 And Mr. Karnavas, just as an aside, could you stop using the word
12 "confabulation" because I'm not at all sure how it's translated;
13 perhaps a simpler English word? Thank you.

14 Mr. Prosecutor, the Trial Chamber allows you to continue with
15 your line of questioning with that request that you make sure
16 that everyone understands that this is not a leading question.
17 Thank you.

18 BY MR. SMITH:

19 Q. Thank you, Your Honours.

20 [14.36.24]

21 Witness, when did Pang tell you who was on the Standing
22 Committee?

23 MR. KAING GUEK EAV:

24 A. I asked Pang, in his capacity as the spokesperson for Pol Pot,
25 who controlled S-21 back then.

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1 Q. Do you know when he told you who those Standing Committee
2 members were; what year?

3 A. He met me very often and in 1977. This person came to S-21 for
4 a long while. However, he officially came to S-21 in his work
5 capacity in 1977.

6 Q. When you were told -- when you were told who the Standing
7 Committee members were -- the seven were; was that before or
8 after the -- before or after you prepared those seven files?

9 A. I think I'm rather confused. I mean, I could not recollect
10 whether I obtained this information before or after, but I think
11 it could have been -- I could have heard this before I met him.

12 Q. You mentioned Nat also told you who the seven members of the
13 Standing Committee were; do you remember when Nat told you that?

14 A. As I indicated just now that Nat would like to be in the
15 Central Committee and he was given two tasks in the military and
16 also the Santebal.

17 [14.39.52]

18 Nat met me and told me that there were seven members in -- the
19 seven members that I indicated so he detailed the names of those
20 people and I was told about this in November or December.

21 Q. And what year was that; November or December of which year?

22 A. 1975.

23 MR. PRESIDENT:

24 Since it is now appropriate time for adjournment, the Chamber
25 will adjourn for 20 minutes. The next session will be resumed by

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1 3 o'clock.

2 Security personnel are now instructed to take the witness to his
3 waiting room and have him returned to the courtroom before the
4 next session resumes.

5 (Court recesses from 1440H to 1501H)

6 MR. PRESIDENT:

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

8 I hand over to the Prosecution to continue his line of
9 questioning. You may proceed.

10 BY MR. SMITH:

11 Q. Thank you, Mr. President.

12 [15.02.06]

13 Witness, when we left off, your last answer was that Nat told you
14 in November or December 1975 that there were seven members on the
15 Standing Committee.

16 Can you now tell the Court when Chhouk was arrested and taken to
17 S-21?

18 MR. KAING GUEK EAV:

19 A. I could not recall it. The record -- the entry record of
20 Chhouk was available in a document left from S-21 -- and his
21 name, Chhouk, was Suas Nau alias Chhouk or alias Chhay (phonetic)
22 -- was actually available in the prisoner's list who were
23 smashed.

24 [15.03.17]

25 Q. Thank you. Can you say whether it was before, during 1975 or

1 after 1975? Can you particularize it to that, or do you not know
2 at all?

3 A. My apology, I could not get through the translation. I don't
4 know what you said about-- Could you please repeat your question?

5 Q. I understand that you may not know the date that Chhouk was
6 arrested, but can you say whether it was in 1975 or after 1975;
7 are you able to do that? If you can't, just say I can't.

8 A. Thank you. It was after 1975, sometime between in 1977 or late
9 1976.

10 Q. Thank you.

11 When the -- after the phone call with Son Sen in relation to
12 Chuuk, did you hear later from Son Sen any information about what
13 was decided with his upper -- I think we said with his brothers?

14 [15.04.54]

15 A. Thank you. After the meeting, Son Sen told me that Pol Pot had
16 asked him to read a document proffered by S-21. After reading for
17 a short period of time, then Pol Pot asked how many per cent
18 could we consider Chuuk as enemy? Son Sen said 50/50. Then Son
19 Sen told -- Son Sen said Phim said abruptly that it was 100
20 percent enemy -- Chhouk was 100 percent enemy.

21 Then I asked Son Sen and then he told me that Duch, when I say
22 50/50, in politics it was 100 percent, so that was what was
23 decided in that Standing Committee meeting at that time.

24 [15.05.59]

25 Q. And you said Phim; what was Phim's full name?

1 A. It was So Phim, secretary of the East Zone, the direct -- or
2 immediate superior of Chuuk.

3 Q. Thank you. You said that there were four levels to the Central
4 Committee, and you've explained three of them. You had one level
5 being an assistant -- assistant to the committee, candidates to
6 the Central Committee and the Central Standing Committee.

7 What was the fourth level?

8 A. It was not the last. Above the candidates committee was the
9 full rights Central Committee, and then above this full rights
10 Central Committee was the Standing Committee.

11 Q. Thank you.

12 If we look at the statute at Article 25, it states that:

13 "The Central Committee must hold ordinary meetings once every six
14 months to examine, monitor and deliberate all old work in every
15 field and to bring up new work in every field."

16 My question for you is, did the Central Committee meet once every
17 six months? Do you know, or how often did the Central Committee
18 meet, if you can say?

19 [15.08.42]

20 A. Thank you. This question is beyond my knowledge.

21 Q. Are you able to say how long -- how often the Standing
22 Committee met?

23 A. I can recall the actual learning -- diverse training course
24 annually sometime between July -- June or July, so whenever the
25 Central Committee met, Sou Met and -- Brother Met and Brother

1 Muth also attended this meeting.

2 [15.09.53]

3 And then after the meeting, Son Sen would continue to train us,
4 and those two brothers I just mentioned did not attend the
5 training Son Sen conducted, so I thought they would have attended
6 the training with the Standing -- I mean the Central Committee.
7 So that was the practice in 1960. Normally, the members of the
8 Central Committee would attend the training sometime in June or
9 July and at the convention of Pol Pot.

10 Q. Do you know how many members of the Central Committee didn't
11 live in Phnom Penh?

12 A. I don't know, but all the secretaries of the Zones were
13 members of the Central Committee. However, So Phim was the
14 secretary of the East Zone, was the deputy secretary of the
15 Central Committee. Ung Choeun, the former secretary of the
16 Southwest Zone, was the deputy secretary of the Central
17 Committee.

18 So I think in Phnom Penh there were five members and others were
19 from across the country.

20 Q. Thank you. And can you explain the relationship -- do you know
21 the relationship between the Standing Committee and the Central
22 Committee?

23 [15.11.54]

24 A. My explanation of this relationship was as follows: secretary
25 of all Zones across the country were members of the Central

1 Committee and they were under the order of the secretary and the
2 first deputy secretary of the Central Committee. As for other
3 members of Standing Committee, they had their respective
4 portfolios.

5 For example, Ieng Sary, his portfolio was with foreign affairs.
6 He established relations with Leninist movement and states,
7 foreign states. Son Sen was in charge of internal security and
8 military. Vorn Vet was in charge of economic affairs. So they had
9 their respective portfolios.

10 Q. The Central Committee and the Standing Committee, can you say
11 which of those committees had more power or more authority; are
12 you in a position to know that?

13 [15.13.36]

14 A. All power was concentrated in the hands of the secretary of
15 the Party, namely, Pol Pot, but at the same time Nuon Chea was
16 working alongside with Pol Pot. Whenever Pol Pot was busy then
17 Nuon Chea would take his place, and whatever was decided by Pol
18 Pot, Nuon Chea had to follow up.

19 So it was -- actually, the power was centred in the hand of the
20 secretary and deputy secretary, Nuon Chea.

21 Q. And if I can show you document IS 63, and look at some of the
22 individuals that are named in the document. And I'd like to - if
23 you're familiar with those individuals or some of those dates, I
24 would like to ask you some questions about - about those
25 individuals, if you'd be able to assist the Chamber.

1 I have a hard copy for the witness, Your Honour.

2 MR. PRESIDENT:

3 There is an objection by the defence counsel. So, Counsel, you
4 may proceed.

5 [15.15.06]

6 MR. PESTMAN:

7 Yes. Thank you, Mr. President. Sorry for interrupting again.

8 I don't want to sound like a broken record, but the prosecutor
9 has promised before, also today, that he would ask follow-up
10 questions.

11 We'd really like to know what this information the witness has
12 just given is based upon. He's making sweeping statements. We'd
13 really like to know whether he knows that because he has written
14 a particular document, whether he has written recently documents
15 in Case File 001, or whether this is knowledge which he knew at
16 the time.

17 I'd really like to invite -- I want to ask the prosecutor to
18 follow up with proper questions about the sources of knowledge.
19 He has to lay a proper foundation for this witness and the
20 information given by this witness.

21 [15.16.22]

22 MR. SMITH:

23 Your Honour, the purpose of placing the document before the
24 witness is to see whether or not some of the individuals in that
25 document that are named, whether he can assist the Chamber in

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1 understanding their roles other than what's placed in the
2 document.

3 It's also to ask the witness to look at some of the subject
4 matter in the document to see whether that subject matter is
5 consistent with what he believes to be the truth at the time, and
6 that will certainly assist in Your Honours' in authenticating the
7 document and understanding whether or not this document is, in
8 fact, authentic.

9 There's certain language that's used in the document that the
10 witness -- I would ask the witness whether or not that's
11 consistent with the language that was used by Party members at
12 the time, and there are some particular dates and personalities I
13 would like to ask the witness about.

14 It would be easier, of course, if that information is placed in
15 front of him rather than speaking to him without the document in
16 front of him.

17 MR. PRESIDENT:

18 Counsel Karnavas, you may proceed.

19 [15.17.47]

20 MR. KARNAVAS:

21 Thank you, Mr. President, and Your Honours, and to everyone in
22 and around the courtroom.

23 It's my understanding that the gentleman, in speaking with the
24 Co-Investigating Judges, indicated in one of his statements -- I
25 don't have it in front of me but I do recall reading it very

1 recently -- that he had never seen this document until he came to
2 this facility. So he was not aware of it at the time it was
3 generated.

4 [15.18.04]

5 And, therefore, now showing him the document and asking him to
6 explain what is in the document, I think is not appropriate under
7 the circumstances.

8 With respect to having the gentleman talk about certain
9 individuals that may be named in the document, I see no reason
10 why the document needs to be shown to the gentleman. He can
11 simply be asked who is so-and-so; please explain if you know this
12 person and, if so, how.

13 So, again, there are matters that -- there are ways of discussing
14 what's in the document if properly put to the witness without
15 necessarily showing the document to the witness because this is
16 not just some ordinary document.

17 And as I've indicated, he's already -- he's told the
18 Co-Investigating Judges that he had never seen the document at
19 the time and that's why I object to this way of conducting
20 business, not just with this document but with other documents.
21 So the Prosecution will say they're at a disadvantage. Well, let
22 me help them out.

23 They can certainly ask about contents that's in the document and
24 there may be others that will be able to come here and discuss
25 the document or the events.

1 [15.19.23]

2 That, in my opinion, is the proper way of proceeding, and he's
3 not in a position to authenticate the document. He may be able to
4 be in a position to discuss some of the matters that are in the
5 document, but he doesn't need to be shown the document and have
6 it in front of him in order to discuss what may be substance in
7 the document.

8 Thank you.

9 MR. PRESIDENT:

10 Counsel for Nuon Chea, you may proceed.

11 [15.20.11]

12 MR. PESTMAN:

13 My computer is not working properly, my screen is not working
14 properly, I can't see the document yet, but my objection was not
15 against the showing of this document, it was against the lack of
16 a follow-up question.

17 The witness gave a lot of information about various members of
18 the Central Committee and what their responsibilities were and I
19 think, as I said earlier today, it is the professional duty of
20 the prosecutor to come up with follow-up questions; ask this
21 particular witness what this information is based upon.

22 I don't want this information to be based on documents which the
23 witness has read recently in his own case file.

24 And the prosecutor, as I have said, has promised on several
25 occasions that he would ask those follow-up questions. I'm still

1 waiting for the question with regards to the various members of
2 the presidium; also promised a follow-up question that never
3 came.

4 MR. PRESIDENT:

5 The International Co-Prosecutor, you may proceed.

6 [15.21.27]

7 MR. SMITH:

8 Thank you, Your Honour. I think that the main issue, and
9 certainly what we took away from the test that Your Honours gave
10 the other day in putting documents to witnesses, is that there
11 needs to be a sufficient familiarity with the document or the
12 subject matter or the issues contained in the document before a
13 document is put to a witness. And we understand the reason for
14 that because it would otherwise lead the witness just to repeat
15 information that's contained in the document.

16 [15.21.53]

17 So we're certainly not asking to do that. What we are asking, and
18 we can have a few more follow-up questions, is that if a witness
19 has a sufficient familiarity or sufficient relationship with
20 matters that are contained in the document, whether that be an
21 understanding of the type of language that's used in the
22 document, whether it be an understanding in the form that's used
23 in the documents from that period, or whether it be an
24 understanding of events that are contained in the document, if
25 the witness can provide further information or personalities or

1 dates.

2 That's why -- that's -- that would be the basis in which we would
3 submit it's appropriate to put a document to a witness because
4 they won't be simply repeating the information, they will be
5 providing further information as to understanding the relevance
6 of the document, the probative value, and the authenticity.

7 [15.22.59]

8 I mean, Your Honours have heard many times at the document
9 hearings that these documents are or aren't authentic, the
10 prosecutor shouldn't be making submissions as to authenticities
11 of the documents.

12 We weren't there during the period. We're not in a position to
13 understand whether the -- all of the different nuances, the
14 context of the document, would lend itself to making the document
15 appear to be more reliable than less reliable.

16 What we are saying, when we do have an opportunity with a witness
17 to be able to provide extra value in terms of understanding
18 whether it's authentic or not, and extra information to the Court
19 in relation to particulars that are raised in the document, we
20 would submit that that is the import of the rule that was put
21 before the Chamber. If the witness has nothing further to add on
22 the document, it would be very, very obvious.

23 And, Your Honours, we would submit that that sufficient nexus
24 between the witness's understanding of the document even if they
25 haven't seen it before, that really is the rule at the

1 international courts.

2 [15.24.13]

3 And, perhaps, whilst I have the floor, if I can quote a couple of
4 cases, and it's -- at the international courts it has been
5 allowed where the witness has a direct knowledge of the contents
6 of the document or some aspects of the document that the document
7 be shown to the witness, and that can be established first with a
8 few questions.

9 Secondly, if the witness has direct knowledge of persons or
10 events contained in the document to be able to further elaborate
11 to the Chamber as to what those persons and the events, the
12 appearance of them in that document, what that means so that we
13 don't get to the end of the case, the final submission, and the
14 Defence and the Prosecution are extrapolating or trying to
15 conclude what all that material means when we have a witness here
16 right now that, if there's a sufficient basis, can provide that
17 extra understanding.

18 Whether that's accepted or not, it's a matter for Your Honours,
19 and it can be obviously examined by the Defence.

20 Perhaps if I just -- for the record, just quote a couple of
21 cases. These cases are hard to find, Your Honours, because often
22 decisions in relation to these types of issues are not in full
23 decisions, but they're actually within the transcripts.

24 And I'd just like to refer Your Honours to the case of The
25 Prosecutor versus Seselj. It's on 2 February 2002, it's an ICTY

1 Case, a Yugoslavia Case, where it stated that "the witness has
2 never seen this document that's for sure". This is the judge:
3 "...but the document mentions a number of items which you will see
4 which cross-references what he said before. Let the prosecutor
5 put the question and during your cross-examination you'll be able
6 to provide counter-evidence. I'm looking at the document..."

7 This is the judge:

8 "...I can see there are some paragraphs which coincide with what
9 the witness has said already."

10 [15.26.22]

11 And it goes on further:

12 "As the Trial Chamber concluded in a written decision, the
13 witness's testimony served to support the admission of the
14 document because it spoke to the relevance, reliability and
15 probative value."

16 And there's further decisions in relation to Prosecutor versus
17 Krajisnik. It's on 24 June 2004 at pages 4292; the Prosecutor
18 versus Lubanga, an oral decision from the International Criminal
19 Court, 27 May 2009, at page 3.

20 There are other decisions in the same line, Your Honour, and
21 basically the test seems to be at these courts if the witness has
22 an ability to be able to explain, understand events, dates,
23 people or the nature of the document to the court, it's not
24 whether they have seen the document before but it's whether they
25 have an ability to add value to the evidence, not repeat it, but

1 add value, rather than at the end of the case the counsel for all
2 parties simply stating, this is what this document means and this
3 means that.

4 [15.27.47]

5 We would submit that this witness is in a particularly unique
6 position to be able to understand the language used, the
7 substance of it and the people described in it, and provide
8 further information.

9 So, Your Honour, that is why we would ask that we be able to
10 place the document before the witness because we think it's
11 consistent with general standards, and we believe it will assist
12 the Chamber and certainly the purpose is not to lead the witness
13 to give evidence that he wouldn't otherwise know.

14 Thank you.

15 [15.28.28]

16 MR. PRESIDENT:

17 Lead Co-Lawyers for the civil party, you may proceed.

18 MS. NGUYEN:

19 Good afternoon, Your Honours. We are facing two quite distinct
20 objections from the respective counsel for Mr. Ieng Sary and Mr.
21 Nuon Chea.

22 In response to the first one from Mr. -- sorry, in response to
23 the objection put before the Court by Mr. Ieng Sary's counsel and
24 following on from what my learned friend, the prosecutor, said, I
25 think we must remind ourselves that we are in the civil law

1 system and it is really a matter of weight for Your Honours to
2 put to the evidence adduced from the placement of the document
3 before the witness.

4 In relation to counsel for Mr. Nuon Chea's objection, if defence
5 counsel has no objection to placing the document before the
6 witness then, in my submission, the reliability of the evidence
7 that the witness could give in relation to matters which, as the
8 prosecutor has said, might add value to the evidence contained in
9 the document is a matter that defence counsel could simply put in
10 cross-examination.

11 Those are the two very brief comments that I have.

12 [15.29.56]

13 MR. PRESIDENT:

14 Counsel for Khieu Samphan, you may now proceed.

15 MR. VERCKEN:

16 Thank you, Mr. President. I merely wanted to add to the
17 objections that have been put forward by my learned colleagues.

18 [15.30.19]

19 This document is, therefore, contested and its admissibility has
20 not yet been decided upon by your Chamber, which would seem to me
21 to add to the reasons already submitted by my colleagues to
22 conclude that at this stage it should not be put before the
23 witness.

24 Thank you, Mr. President.

25 (Judges deliberate)

1 [15.33.46]

2 MR. PRESIDENT:

3 After deliberation, the Chamber would like to now hand over to
4 Judge Silvia Cartwright to say something on this. She may
5 proceed.

6 JUDGE CARTWRIGHT:

7 Thank you, President. Last week, a very similar objection was
8 ruled upon by the Chamber.

9 The rule is that the -- any party may put a document to a witness
10 and ask if the witness has seen this document previously. If the
11 answer to that is no, then the document should be removed
12 physically from the witness because, otherwise, it might be
13 suggested that he is reading answers from the document and so the
14 document must be removed physically.

15 That does not prevent any party from asking the witness questions
16 concerning the subject matter of the document and when it comes
17 to objections of this nature again, if there are any further
18 objections of this nature, the Chamber reminds the other parties
19 that they will have their opportunity to examine this witness and
20 may raise these issues should they wish to do so.

21 [15.35.07]

22 I do not use the word "cross-examine"; it is not in that context.
23 I am saying that each party has the opportunity to examine the
24 witness when their turn comes around and so the objections are --
25 the objections are not sustained.

1 BY MR. SMITH:

2 Thank you, Your Honour, and Mr. President.

3 Q. Witness, do you have the document in front of you that's IS
4 63?

5 MR. PRESIDENT:

6 Court officer is now instructed to bring the document to the
7 witness.

8 BY MR. SMITH:

9 Q. Witness, can you have a look at that document and see whether
10 your -- see whether you have read that document before?

11 MR. KAING GUEK EAV:

12 A. This document was put to me by Co-Investigating Judges during
13 the investigation phase and I already reported or responded to
14 the Co-Investigating Judges and during my testimonies before the
15 Chamber, previously, I also based my testimonies on the document
16 before me as well.

17 Q. Can you read the title of the document and the date, and then
18 I have some questions to ask of you in relation to some matters
19 contained in the document?

20 MR. PRESIDENT:

21 Witness should hold on. And, Counsel, you are on your feet; you
22 may proceed.

23 MR. VERCKEN:

24 Thank you, Mr. President.

25 [15.37.53]

1 I'd like to raise an objection to the continuation of the
2 questioning by the prosecutor. It seems to me that under the rule
3 which has just been enunciated by Judge Cartwright, the document
4 was not one that the witness was aware of at the time of the
5 facts, but he became acquainted with it 30 years later as part of
6 a judicial investigation.

7 And I, therefore, don't really see why the Prosecution feels that
8 it has the right to continue its questioning since it appears
9 that your Chamber has ruled about knowledge of the document, at
10 the time, and it seems to me that the obvious conditions of that
11 rule are not present here right at this moment and, consequently,
12 the document cannot be used for the questioning which the
13 Prosecution seems to be insisting to continue to carry out. Thank
14 you.

15 MR. PRESIDENT:

16 National Counsel for Khieu Samphan, you may proceed.

17 MR. KONG SAM ONN:

18 Thank you, Mr. President, Your Honours.

19 [15.39.12]

20 I would like to add on top of what my colleague just indicated
21 and with reference to what the prosecutor indicated, he asked the
22 witness whether he had ever seen this document before.

23 Witness could have been -- could have mistaken for the question,
24 for example, had he seen this document before; before here means
25 before 1975 or before the Co-Investigating Judges phase or before

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1 he came here to the Court.

2 He should have been asked whether he had seen the document during
3 the Democratic Kampuchea regime.

4 MR. PRESIDENT:

5 There might be some confusion or -- International Co-Prosecutor,
6 if you would wish to respond to what has been raised by the
7 counsel for the defence for Khieu Samphan. You may proceed.

8 MR. SMITH:

9 Thank you, Your Honour.

10 [15.40.27]

11 The first couple of things, the document has been admitted as --
12 and I've just been provided the number, E312, and even if that
13 wasn't the fact, obviously, any aspect of authentication this
14 witness could assist with would obviously be valuable to the
15 Chamber.

16 In relation to the ruling, at this stage -- and perhaps we would
17 still like to address the Chamber at another time about
18 authenticating documents which witnesses haven't seen, but are in
19 a privileged position to do so, but perhaps we'll raise it
20 another time, but our understanding is the ruling, certainly, for
21 the moment, is that if the witness has read the document before
22 whether, in fact, it's actually during the period or -- or at a
23 later time, the witness can still refer to the document and --
24 and perhaps in -- in particular, in this case, as my friends
25 would know from the case file, from the statements, this witness

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1 has been able to elucidate on different aspects of this document
2 rather than just simply repeat the contents.

3 [15.41.32]

4 The concern about repetition of information from other sources is
5 a concern for the Prosecution as well the Defence, but the
6 written records of this witness show that he can add value to the
7 content of this document of which is not contained in the
8 document that helps corroborate the reliability and the probative
9 value of it, but certainly our understanding is that the ruling,
10 at this stage, relates to whether or not the witness has actually
11 read the document before rather than read the document before at
12 the time.

13 Perhaps we would like to address this at another time, as well,
14 but that's -- that's the ruling as it stands at the moment, Your
15 Honours.

16 MR. VERCKEN:

17 Very briefly, Mr. President, it does appear to me the -- the
18 ruling that was just given by Judge Cartwright was that if the
19 document was not known to the witness at the time of the fact,
20 the party wishing to use the document could ask questions about
21 the subjects contained in the document so as to see if the
22 responses of the witness were in keeping with the contents of
23 said document, but on the other hand, it was simply not
24 admissible to try and have the document directly authenticated by
25 submitting it to the witness as if he were able to authenticate a

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1 document that he was not aware of at the time of the fact.

2 [15.43.13]

3 Now, I may have got this wrong, in which case I will stand
4 corrected, but that seems to me to be the perfectly logical
5 meaning of what we were told by Judge Cartwright.

6 MR. PRESIDENT:

7 Counsel for Nuon Chea, you may now proceed.

8 MR. PESTMAN:

9 Yes. Thank you very much. And very briefly -- I know it's almost
10 time to call it a day, but I've noticed that the witness was
11 studying the document while we were having this discussion so
12 this defies the purpose of the ruling which was supposed to
13 prevent from feeding the witness with information he's not
14 supposed to see before answering questions.

15 MR. PRESIDENT:

16 (No interpretation)

17 MS. SIMONNEAU-FORT:

18 Mr. President, your Bench has just set a rule for the parties on
19 the question of submission of documents to witnesses, but when I
20 hear it said that since this document was presented by an
21 investigating judge, it cannot be talked about today, I think we
22 are setting off in the wrong direction.

23 [15.44.29]

24 This ruling applies to the parties; it does not apply to what a
25 judge did in the course of an investigation. The witness has told

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1 us that he became acquainted with the document not just now, but
2 during the investigative phase and I do believe that we are fully
3 entitled to talk about the document today.

4 What the investigating judge does is not, of course, subject to
5 subsequent rulings by the Chamber to the parties. There are no
6 difficulties, therefore, he did not become acquainted with the
7 document just now; he talked about it at an earlier stage with
8 the investigating judge. I recall, in fact, having read in the
9 transcript of the appeal concerning Mr. Duch, he refers to the
10 decision of the Central Committee in the statement he made, at
11 the time, in the month of March. So this is not a new document;
12 there is no difficulty here. It's not a new paper that the
13 prosecutors are submitting today.

14 [15.45.28]

15 Thank you.

16 MR. PRESIDENT:

17 Thank you very much.

18 According to our observation, there could have been
19 misunderstanding in the rendition into the three working
20 languages concerning the ruling. There -- the misunderstanding
21 could have been contributed to the fact that unless the document
22 had been seen or known during the Democratic Kampuchea or during
23 the relevant period as set forth in the indictment or that unless
24 he had this knowledge before he came to give testimony before the
25 Court that the document could be allowed to be put, but through

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1 translation or interpretation from Judge Cartwright, I did not
2 hear that the document must be the piece of document that's seen
3 or known by witness before or during the Democratic Kampuchea.

4 And, indeed, to shed light on this and to clarify things we had
5 already handed over the floor to Judge Cartwright to make sure
6 that English speakers or those who listened to the English
7 language can clearly understand this. Once again, I may hand over
8 to Judge Silvia Cartwright to shed light on this or clarify this
9 for one more time.

10 (Judges deliberate)

11 [15.49.48]

12 MR. PRESIDENT:

13 Judge Cartwright, you may proceed.

14 JUDGE CARTWRIGHT:

15 Thank you. The Chamber wishes to confirm that its ruling should
16 not be understood to confine -- to be confined to the witness'
17 knowledge of documents only during the period of Democratic
18 Kampuchea. The witness can be asked if he has seen this document
19 before and if he has not seen it before, then he cannot, in any
20 way, authenticate it which is why the document should be removed
21 from him.

22 [15.50.17]

23 This is -- the authentication of the document is not necessary,
24 in this case, because it's already been put before the Chamber or
25 it's not necessary through this witness. It's already been put

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1 before the Chamber and his prior knowledge of the document has
2 been explained by the witness and can be examined further by the
3 parties should they wish to do so when their turn comes so the
4 objection is not sustained.

5 MR. PRESIDENT:

6 International Co-Prosecutor, you may proceed with the
7 questioning.

8 MR. SMITH:

9 Thank you, Your Honours. Your Honours, briefly, just before I
10 proceed, there is one aspect of the ruling which the Prosecution,
11 perhaps, would like to address at another time and, perhaps, if
12 the parties can be given an opportunity as well because this will
13 come up a lot but, for the moment, we'll proceed on the basis of
14 that ruling, but we would like, perhaps, an opportunity next week
15 or -- or at some point just to raise one particular aspect of
16 that rule. But, for the moment, that's just a request for early
17 next week, but I'll continue with the questioning now.

18 [15.51.57]

19 BY MR. SMITH:

20 Q. Witness, do you have the document in front of you?

21 MR. KAING GUEK EAV:

22 A. Yes, I do. Thank you.

23 Q. And can you -- can you read out -- have your read that -- have
24 you read that document before?

25 A. I have read the document. I have also written quoting some

1 part of this document in my appeal.

2 Q. Thank you. The title of the document is "The Decision of the
3 Central Committee Regarding a Number of Matters," dated the 30th
4 of March 1976, and then the first item of the document states,
5 "The right to smash inside and outside the ranks".

6 [15.53.10]

7 The question I have for you is after the 30th of March 1976, was
8 there an increase in killings from what you could observe at S-21
9 or arrestees coming in to S-21?

10 A. I already talked about this to the Co-Investigating Judges,
11 the document of the 30th of March 1976. Before the 30th of -- the
12 3rd of -- rather, the 30th of March '76, the Communist Party of
13 Kampuchea smashed outsiders, but after that they started to smash
14 people inside the Party including their relatives and associates.
15 I could say that more people were killed or smashed before the
16 30th of March 1976.

17 Q. Did I hear you correctly that more people were killed before
18 the 30th of March 1976; is that what you said?

19 A. That's what I believe and you got it right.

20 Q. The prison population, you said, at S-21 or the -- the number
21 of killings at S-21 was at least 12,000 people; when did those
22 killings start to increase intensity -- in intensity at S-21?

23 [15.56.00]

24 A. At S-21, we did not have a separate statistics; more than
25 12,000 prisoners smashed at S-21 was compiled since Nat was in

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1 control of the office, and this number also included some Muslim
2 people -- Arab people from the Arab village and -- but, at that
3 time, they distinguished the prisoners who were insiders or who
4 were internal Party members or who were taken from outside.

5 Q. Of those 12,000 people you referred to, about how many of them
6 -- about how many of them were killed before the 30th of March
7 1976, approximately?

8 A. I, perhaps, cannot estimate it. I should refer the -- you to
9 the list to be more precise. I don't want to say something which
10 -- which is my speculation.

11 MR. SMITH:

12 Thank you.

13 [15.57.42]

14 Your Honour, I would now like to ask the witness in relation to a
15 matter -- a number of the organizations that I mentioned or the
16 units mentioned in this document, and it's a couple of minutes to
17 4, and I think the answers will lead into some further questions
18 about the understanding of that particular unit of the CPK.

19 So perhaps I would suggest that if we broke at the moment, or I
20 can continue.

21 MR. PRESIDENT:

22 Could you advise the Chamber how much time would you need to
23 proceed with the remaining of these questions? Could the
24 prosecutor advise the Court how much time would you need to
25 finish these last few questions?

1 MR. SMITH:

2 About 15 minutes, Your Honours.

3 MR. PRESIDENT:

4 The time proposed is significant. For that reason, the Chamber

5 may adjourn today's session and you may proceed with that

6 question -- those questions tomorrow, when the morning session

7 resumes, at 9 a.m.

8 Security personnels are now instructed to bring both the witness

9 and the accused persons to the detention facility and have them

10 returned to the courtroom tomorrow by 9 o'clock.

11 The Court is adjourned.

12 (Court adjourns at 1559H)

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