



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 16-Mar-2012, 11:32
CMS/CFO: Sann Rada

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

12 March 2012
Trial Day 34

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

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KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
MS. GUISSÉ	French
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

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

2 (Court opens at 0909H)

3 MR. PRESIDENT:

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

5 The Trial Chamber will now recommence its proceedings on the

6 facts in Case 002/01.

7 [09.10.44]

8 For today's proceedings on the facts for the second segment of

9 Case 002/01, which are related to the administrative and

10 communication structures of Democratic Kampuchea as well as facts

11 in relevant paragraphs concerning the roles and the functions of

12 the Accused, which are closely related to the administrative and

13 communication structures.

14 Three greffiers of the Trial Chamber will be appointed to read

15 the relevant portion of the Closing Order in relation to the

16 above facts before we proceed with the oral arguments to the

17 documents proposed to be put before the Chamber by the parties.

18 For this week proceeding, the Trial Chamber will not question the

19 Accused or hear the testimonies of witnesses, civil parties or

20 experts, as indicated in its memorandum E172/5. This week

21 proceedings will mainly focus on the oral objections to the

22 documents proposed to be put before the Chamber by the parties.

23 [09.12.27]

24 Mr. Duch Phary, could you report the attendance of the parties to

25 the proceeding?

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1 THE GREFFIER:

2 Mr. President, the attendance of the parties are as follows: all
3 the Prosecution is present; Ieng Sary's defence is present; Khieu
4 Samphan's defence is present, but only the national side; and,
5 for Nuon Chea's team, all is - all are present; the three Accused
6 are present, Mr. Khieu Samphan, Ieng Sary, and Nuon Chea; the
7 civil party lawyers are present. Thank you, Mr. President.

8 MR. PRESIDENT:

9 In order to clarify the facts related to the three Accused within
10 the second segment of Case 002/01, that is the facts for the
11 first trial, and pursuant to Rule 89 bis, the greffiers are
12 appointed -- that is, Ms. Se Kolvuthy, Mr. Duch Phary, and Mr.
13 Dav Ansan -- to read the portions of the Closing Order and of the
14 relevant paragraphs in relation to the administrative and
15 communication structures of Democratic Kampuchea and certain
16 paragraphs related to the roles and functions of the Accused,
17 which are closely related to the above administrative and
18 communication structures.

19 As indicated in our memorandum dated 15 December 2011 - that is,
20 document E1/75-Correction 1 and document E172 - each greffier
21 shall read out the allocated portions.

22 [09.15.35]

23 I would like now to invite Ms. Se Kolvuthy to read the segments
24 allocated to her.

25 THE GREFFIER:

1 II. Administrative Structures -- Centre

2 A. The Communist Party of Kampuchea -- CPK

3 As of 17 April 1975, the CPK was governed by a statute which had
4 been initially adopted at the Party's First Congress, in
5 September 1960. In January 1976, a new statute was adopted at the
6 Party's Fourth Congress that outlined the ideology, membership,
7 structure, and organization of the Party. Within the Statute, a
8 number of state bodies were particularized: that is the
9 Revolutionary Army of Kampuchea, the national system of Party
10 Committees, the Party Central Committee, and "various offices and
11 ministries surrounding the Central Committee". The Party itself
12 was governed by a Central Committee and a Standing Committee.
13 Paragraph 34: The Statute further states that the CPK was to be
14 led by the system of "collective leadership" based on the
15 principle of "democratic centralism". Applied to the committee
16 system, this meant that individual members could not make
17 decisions by themselves, but only in concert with other members,
18 with specific persons holding specific thematic responsibilities.
19 This is echoed in a Standing Committee meeting dated 9 October
20 1975: "When a telegram comes in, immediately when it is received,
21 the office must hand it to the responsible section immediately,
22 so they can examine and consider it and make proposals to the
23 Standing Committee."

24 [09.17.52]

25 Paragraph 35: Both the Central Committee and the Standing

4

1 Committee were comprised of "full-rights" and "candidate" -- or
2 "reserve" members. Candidate status was a lower ranking than
3 full-rights. Being a full-rights member meant having the rights
4 "to consider and discuss and join in decision making" with
5 regards to all matters. A candidate member was allowed to
6 participate in meetings, without the right of decision-making. At
7 the Central Committee level, not being a full-rights member meant
8 not having "the decision-making power to eliminate people", a
9 power stated by Duch to be officially enjoyed only by certain
10 members of the Central Committee. "Assistants" to the Central
11 Committee, although not members as such, enjoyed a status similar
12 to some form of membership, to the extent that they could
13 participate alongside full-rights and candidate members in
14 political training organized at the Party Centre level.

15 Paragraph 36: Other bodies characterized by the Central Committee
16 as totally belonging to the Party were: the Party's -- People's
17 Representative Assembly -- see the section of the Closing Order
18 regarding the roles and function of Nuon Chea, said to have been
19 elected on 20 March 1976; the State Presidium -- see the section
20 of the Closing Order regarding the roles and functions of Khieu
21 Samphan; and the Organization Committee of the Party Central
22 Committee -- headed by Nuon Chea -- which was empowered to
23 monitor and inspect Party members and oversee their integration
24 in offices and ministries.

25 [09.19.43]

1 B. Central Committee

2 Paragraph 37: The Central Committee was given responsibility in
3 the Statute of the CPK to "implement the Party political line and
4 Statute throughout the Party", as well as to "instruct all the
5 Zone and Sector" and to "Govern and arrange cadres and Party
6 members throughout the entire Party".

7 Paragraph 38: Members of the Central Committee including (sic):
8 Pol Pot -- referred to in official media as the Secretary of the
9 Central Committee; Nuon Chea -- Deputy Secretary of the Central
10 Committee; Ieng Sary; Khieu Samphan; Koy Thuon -- later arrested
11 and executed; Ta Mok; Ney Saran alias Ya -- later arrested and
12 executed; Soeung; and Ke Pauk. In addition, Sua Vasi alias Doeun,
13 Chairman of Political Office 870 -- later arrested and executed
14 -- was a member of the Central Committee. Chhim Sam Aok alias
15 Pang was described as either a member of the Central Committee or
16 as assistant to the Committee. Furthermore, other zone
17 secretaries and at least some sector secretaries were also
18 members of the Central Committee, along with some additional
19 military cadres. Some witnesses also state that Ieng Thirith
20 would attend Central Committee meetings.

21 [09.21.15]

22 Paragraph 39: Furthermore, there was a "Specialist Military
23 Committee", or "High-Level Military Committee", of the Central
24 Committee originally comprised of Pol Pot, Nuon Chea, Son Sen,
25 Sao Phim, and Ta Mok. Vorn Vet and Ke Pauk became members of the

1 Military Committee at a later date. Duch states that also
2 attached to the Central Committee were assistants with military
3 responsibilities, namely Sam Bit and Soeung. The Central
4 Committee and Military Committee would sometimes meet jointly to
5 discuss military matters. Ultimately, the Revolutionary Army of
6 Kampuchea and all local military units were subordinated to the
7 Military Committee and the Central Committee, the army being
8 described in one edition of the "Revolutionary Flag" as the "pure
9 dictatorial instrument of the Party".

10 Paragraph 40: In total, though membership evolved over the course
11 of the DK regime, the Central Committee was comprised of over 30
12 members, whose statutory obligation was to lead the close
13 implementation of CPK policies down through all levels of society
14 and to report back up the hierarchy to the Central Committee,
15 meeting in accordance with the Statute with a frequency of
16 approximately once every six months.

17 C. Standing Committee

18 Paragraph 41: The Standing Committee was a smaller body than the
19 Central Committee comprised of the higher tier of CPK cadre.
20 According to Khieu Samphan, whilst the Central Committee was, in
21 principle, statutorily the highest decision making body, it was
22 within the Standing Committee where effective power was exercised
23 and the day-to-day affairs of the CPK were conducted. For
24 example, one aspect of the Standing Committee's superior position
25 was that it had the authority to order the arrest of Central

1 Committee members.

2 [09.23.36]

3 Paragraph 42: Khieu Samphan confirms in an interview that Pol Pot
4 was the highest authority in the CPK as Secretary of the Standing
5 Committee, stating that: "When we talk to Pol Pot it was the same
6 as talking to the Party because he was the Party secretary." He
7 further states: "All the decisions were circulated to the level
8 of the Standing Committee so that they could be implemented at
9 the local level."

10 Paragraph 43: This primacy of the Standing Committee is
11 corroborated by Duch, who further confirms that, after Pol Pot,
12 Nuon Chea was second in the Standing Committee hierarchy,
13 followed by Ta Mok. A meeting minutes suggests that, in Pol Pot's
14 absence, Nuon Chea would preside over meetings of the Standing
15 Committee. Other members of the Standing Committee included: So
16 Yann alias Sao Phim -- committed suicide in 1978; Ieng Sary; Vorn
17 Vet -- later arrested and executed; Ros Nhim -- later arrested
18 and executed; and Son Sen. Of these seven members, five were
19 based permanently in Phnom Penh, namely: Pol Pot, Nuon Chea, Ieng
20 Sary, Vorn Vet and Son Sen -- until his relocation in August 1977
21 to the East Zone to oversee the conflict with Vietnam.

22 Paragraph 44: In addition to Pol Pot, Nuon Chea, and Ta Mok, Ieng
23 Sary enjoyed full-rights status as a member of the Standing
24 Committee. Vorn Vet and Son Sen were likely either full-right or
25 candidate members of the Standing Committee.

1 [09.25.42]

2 Paragraph 45: Although it is clear from the evidence that Khieu
3 Samphan was not a formal member of the Standing Committee whilst
4 the CPK was in power, there is evidence of Khieu Samphan
5 contributing to or assisting in the work of the Standing
6 Committee, as outlined in the section of the Closing Order
7 regarding Khieu Samphan.

8 Paragraph 46: In a meeting on 9 October 1975, the Standing
9 Committee exercised its authority to assign operational
10 responsibility of various fields of governmental work to
11 high-level CPK cadres, including members of the Central
12 Committee. This included the military, the economy, security,
13 foreign affairs, and social action. They were required to report
14 to the Standing Committee, and real decision-making authority
15 remained with the Standing Committee, the Minutes of Meeting
16 stating: "In bringing up projects, we must ask the Standing
17 Committee's opinion so it may decide and approve." The same
18 minutes, requiring that records be kept of Standing Committee
19 decisions, state that: "The important objective is that
20 minutes/records must be clear; what is asked must be known from
21 decisions of the Centre, of the Standing Committee, minutes
22 documenting meetings of the Centre, what day, what month,
23 whatever needs to be done to make it clear is what must be done."
24 Paragraph 47: The Standing Committee would meet frequently; Khieu
25 Samphan stating approximately every seven to ten days. In

1 addition, one witness states that whenever there was an important
2 matter requiring discussion, a meeting of the Standing Committee
3 would be called immediately in order to make a decision.

4 [09.27.35]

5 D. Offices of "870"

6 Paragraph 48: Existing at the CPK Party Centre level were a
7 series of entities associated with the number "870", a code which
8 alluded to the highest level of the CPK Centre, including
9 sometimes a reference individually to Pol Pot. They are generally
10 described as servicing or supporting the Standing Committee with
11 regard to various political, administrative, communications,
12 security, and military tasks, answering in particular to the
13 members of the Standing Committee located in Phnom Penh.

14 Paragraph 49: The official names of the two most important of
15 these entities were the "Political Office of 870" and the
16 "Government Office", also designated by the Standing Committee as
17 "Office S-71" or "Ministry S-71". Minutes of the meetings of the
18 Standing Committee also refer to an entity called "Bureau 870"
19 headed by Sim Son alias Yem, which the minutes suggest is endowed
20 with responsibility for the taking of minutes during Standing and
21 Central Committee meetings.

22 Paragraph 50: The first Chairman of the Political Office 870 was
23 Sua Vasi alias Doeun, who remained in this position until his
24 arrest in 1977. Khieu Samphan was also assigned to work in this
25 office, but has categorically denied having been at any time the

10

1 chairman. The Government Office -- that is, Office S-71 -- was
2 chaired by Chhim Sam Aok alias Pang from 17 April 1975 until
3 1978, when he was arrested. He was replaced by Ken alias Lin, who
4 remained in charge through to 6th January 1979. Although one
5 witness states that Pang's office was controlled by Pol Pot
6 himself with Pang under his direct authority, the evidence shows
7 that Pang's office also, more generally, "reported to The
8 Centre".

9 [09.29.55]

10 Paragraph 51: The distinction between these two offices was that
11 Political Office 870, headed by Doeun, was tasked with matters of
12 policy whilst Office S-71, headed by Pang, was responsible for
13 more administrative and support tasks. Both Political Office 870
14 and Office S-71, as well as other entities associated with them,
15 were often referred to by the unspecific term "Office 870" or the
16 "Organization's Office", without clarity about which particular
17 office was being referred to.

18 Paragraph 52: Political Office 870 was principally tasked with
19 ensuring the flow of communication between the decision-makers in
20 the CPK Centre and for monitoring the implementation of decisions
21 through a system of regular reporting directly to Political
22 Office 870. According to the minutes of the 9 October 1975
23 meeting of the Standing Committee, referring to the office headed
24 by Doeun, it is stated the "Office of the Standing Committee
25 makes contacts back and forth with each section. The Standing

1 Committee monitors each section's implementation of the line. The
2 Office has the task of monitoring implementation".

3 Paragraph 53: The functions of Office S-71, as described by Duch,
4 were the "protection of the central office and cadre, welcoming
5 guests, communications, logistics, food, transport". Office S-71
6 was however also tasked, on behalf of the Standing Committee, to
7 monitor suspected members of the CPK, the ministries, the Central
8 Committee and the Standing Committee itself, and to effect
9 arrests of those perceived to be traitors and their transfer to
10 S-21.

11 [09.32.06]

12 Paragraph 54: Contained within the structure of S-71 was a series
13 of sub-offices code-named with the prefix "K" that performed a
14 variety of administrative or logistical functions to support the
15 work of the Centre. These K offices reported directly to Pang.
16 Those of particular significance included K-1, K-3, K-7 and K-18.
17 55. The evidence shows that K-1 was a housing compound containing
18 both the residence and working places of Pol Pot, though some
19 witnesses state that K-1 was only the working place of Pol Pot.
20 Furthermore, a number of witnesses state that Nuon Chea and Khieu
21 Samphan would also reside and/or work at times with Pol Pot at
22 K-1.

23 Paragraph 56: There is further evidence that the location known
24 as K-3 was a residence and working place of Nuon Chea, and/or
25 Khieu Samphan, and/or Ieng Sary, and/or Son Sen, and/or Vorn Vet

1 at various times. Nonetheless, a number of witnesses attest to
2 seeing Pol Pot arrive to conduct meetings at either K-1 or K-3
3 with Nuon Chea, Ieng Sary, Son Sen, Vorn Vet and Khieu Samphan,
4 as well as with Ieng Thirith on occasion, if the meeting
5 concerned Social Action.

6 Paragraph 57: K-7 was a messenger unit through which written
7 communications addressed to "Committee 870" or "Office 870" were
8 routed before being directed to Pol Pot at K-1 as well as to the
9 members of Committee 870 or its appropriate member depending on
10 thematic responsibility. K-18 was a telegraph unit through which
11 radio communications were received and then directed to K-1.

12 [09.34.28]

13 58. It is not fully clear from the evidence as to precisely which
14 individuals would be considered recipients to message - messages,
15 rather, addressed to "Committee 870", or to "Office 870". Some
16 witnesses state that these terms were a direct reference to the
17 Central Committee, whilst conversely other witnesses state it
18 would have been the Standing Committee or even Pol Pot
19 individually. Nonetheless, a number of witnesses, including Duch,
20 state that their understanding is that "Committee 870" or "Office
21 870" could include any of Pol Pot, Nuon Chea, Ieng Sary, Vorn
22 Vet, Son Sen, and other senior leaders, including Khieu Samphan,
23 depending on the content.

24 Paragraph 59: Evidence of other K offices shows that K-6 was a
25 meeting place known as "Borei Keila", K-8 was responsible for

1 growing vegetables, K-11 was a medical clinic, and K-12 was a
2 unit organizing vehicles and drivers for the Party Centre.
3 Paragraph 60: Though the evidence clearly demonstrates that Khieu
4 Samphan had a role within the Offices of 870, the evidence
5 concerning his exact role is not clear. Duch and other two
6 witnesses state that in and/or around 1977, Khieu Samphan became
7 the Chairman of the Political Office 870 previously headed by
8 Doeun, whilst other witness states only that Khieu Samphan would
9 meet with Pang of Office S-71 to discuss matters and that Pang
10 would receive his orders from Khieu Samphan as well as from other
11 senior leaders. Khieu Samphan himself denies taking over as
12 Chairman of Doeun's office, stating that he was merely
13 responsible within it for a number of national logistical matters
14 such as distribution amongst the zones of salt, rice, grain,
15 clothes, materials and supplies, as well as for maintaining
16 relations with [redacted]. The performance of his role is
17 confirmed to some extent by witnesses who confirm that telegrams
18 sent to or received from Office 870 regarding equipment or
19 logistics would bear the name of Khieu Samphan on behalf of
20 Office 870, as well as within Minutes of the Standing Committee.
21 However, Khieu Samphan made a statement in 1980, admitting
22 involvement in following up and investigating allegations against
23 cadres in the zones, a function previously performed by Doeun.
24 [09.37.52]
25 Paragraph 61: Finally, Khieu Samphan, Duch, and numerous other

1 witnesses confirm that the terms "Office 870", "Organization
2 870", "Committee 870" or "Angkar" were used indifferently to
3 designate the leading bodies of the Party Centre. Duch states:
4 "Office 870; what I can say is that it was the headquarters of
5 the Party leading bodies."

6 E. Ministries -- or Government -- of Democratic Kampuchea
7 Paragraph 62: By a decision of 30th March 1976, the Central
8 Committee decided the composition of the organs of state called
9 to replace, as the official government, the Royal Government of
10 National Union of Kampuchea. It was said that the government
11 "must be a proper party organ and it must be our own state". The
12 ministers were publicly announced on the 14th April 1976.

13 Paragraph 63: Though this composition was subject to changes
14 during the course of the DK regime, the government was broadly
15 structured along the following lines: Pol Pot as Prime Minister
16 with general responsibility of the military and the economy; Ieng
17 Sary as Deputy Prime Minister for Foreign Affairs; Son Sen as
18 Deputy Prime Minister for National Defence; Vorn Vet as Deputy
19 Prime Minister for Economics; Nuon Chea as Chairman of the
20 People's Representative Assembly; Hu Nim as Minister for
21 Propaganda; Yun Yat as Minister for Education; Touch Phoeun as
22 Minister for Public Works, Transport and Post; Koy Thuon as
23 Minister for Commerce; Cheng An as Minister of Industry; Ieng
24 Thirith as Minister for Social Affairs; and [redacted] as
25 Minister for Health; and Khieu Samphan as Chairman of the State

1 Presidium and responsible for commercial tasks relating to
2 accounting and pricing.

3 [09.40.19]

4 III. Administrative Structures -- National

5 Paragraph 64: Below the level of the Centre, Democratic Kampuchea
6 was subdivided into a series of hierarchical administrative
7 entities, all reporting up a vertical chain-of-command,
8 culminating at the Centre. Immediately below the Centre were a
9 number of large "zones". They were subdivided into "sectors" with
10 each of these containing a number of "districts" within which
11 were a series of "sub-districts" and "cooperatives". At each
12 level, the zone, sector, district, and sub-district tiers of this
13 national structure were each governed by a committee, each of
14 which was headed by a secretary.

15 Paragraph 65: Immediately after April 1975, there were six zones:
16 North Zone, Northwest Zone, Northeast Zone, Southwest Zone, West
17 Zone, and East Zone. In 1977, the North Zone was renamed the
18 Central Zone, and a new North Zone was created.

19 Paragraph 66: In addition to the zones which reported directly to
20 the Centre, the CPK created a number of "autonomous sectors"
21 which bypassed the zone level to report directly to the Centre.
22 These were: Autonomous Sector 103 -- Preah Vihear; Autonomous
23 Sector 105 - Mondulhiri; Autonomous Sector 106 -- Siem Reap;
24 Autonomous Sector 505 - Kratie; and the Kampong Som Autonomous
25 City -- Cambodia's principal seaport. In addition, Phnom Penh

1 itself was categorized as a distinct territory within -- not
2 within the formal national administrative structures, which
3 reported directly to the Centre. Autonomous Sector 106 -- Siem
4 Reap -- was merged with Autonomous Sector 103 -- Preah Vihear --
5 to create the New North Zone in 1977.

6 [09.42.38]

7 Paragraph 67: The facts of which the Co-Investigating Judges have
8 been seized of were located in all of the zones of the CPK
9 national structure and two of the autonomous sectors. Sang
10 Security Centre, Kraing Ta Chan Security Centre, Tram Kak
11 Cooperatives, Srae Ambel Worksite and Prey Sar - or S-24 --
12 Worksite were located in the Southwest Zone. Wat Kirirum Security
13 Centre, Tuol Po Chrey Execution Site, and the Trapeang Thma
14 Worksite were all located in the Northwest Zone. Steung Tauch
15 Execution Site and Wat Tlork Security Centre were located in the
16 East Zone. The North Zone Security Centre was located in the New
17 North Zone. The 1st January Dam Worksite was located in the
18 Central Zone -- Old North Zone. The Au Kanseng Security Centre
19 was located in the Northeast Zone. Prey Damrei Srot Security
20 Centre, Koh Kyang Security Centre, the execution sites in
21 District 12, and Kampong Chhnang Airport Construction Site were
22 all located in the West Zone. S-21 Security Centre was located in
23 the territory of Phnom Penh. Finally, the Phnom Kraol Security
24 Centre was located in Autonomous Sector 105 and Kok Kduoch
25 Security Centre was in Autonomous Sector 505.

1 [09.44.21]

2 Paragraph 68: The appointment of zone secretaries would typically
3 be made by the Centre. Implementation of decisions of the Central
4 and Standing Committees was performed by secretaries of the zones
5 and the autonomous sectors. Policies and instructions of the
6 Central and Standing Committees were disseminated to the zones
7 and autonomous sector secretaries, who in turn would disseminate
8 them amongst sector and district level secretaries for
9 implementation. Conversely, the districts (sic) reported back up
10 to the district committees, which reported to the sector
11 committees, which in turn reported to the zone committees.

12 Paragraph 69: The Statute of the CPK states that the tasks and
13 functions of the zone committees were to "lead the implementation
14 of tasks", according to CPK policies, in the sectors, districts,
15 and sub-districts. As such, they were empowered to "designate new
16 work according to the Party line", meaning that the Party line
17 should be implemented "according to the political lines of
18 national defence and the construction of [the] Democratic
19 Kampuchea", in other words that the zones were responsible for
20 the internal security situation within their territories. Further
21 to this, the zone committees were authorized to "administer
22 discipline in the zone framework". Furthermore, the zone
23 committees were empowered to select new members for the zone
24 leader -- level leadership, subject to the approval of the
25 Central Committee. They were also statutorily required to

1 maintain a "system of reporting to the Central Committee on the
2 situation and work of the Zone".

3 [09.46.10]

4 Paragraph 70: The Statute of the CPK gave similar tasks and
5 functions upon the sector committees, the district committees,
6 and the sub-district committees, providing for the implementation
7 of instructions and the reporting back to the administrative tier
8 above.

9 Paragraph 71: In addition to the six monthly meetings of the
10 Central Committee, there was an annual meeting in Phnom Penh
11 between the secretaries of the zones and the CPK Centre as well
12 as frequent meetings in Phnom Penh between the Centre and members
13 of the zones, sectors, and districts. In addition, direct
14 meetings would be held between the zones and the sectors, and the
15 sectors then invited – the sector then inviting the secretaries
16 of the districts and sub-districts to meetings, who would in turn
17 disseminate instructions to their units.

18 MR. PRESIDENT:

19 Thank you, Ms. Se Kolvuthy.

20 Now, Mr. Phary, you may continue reading the relevant paragraphs
21 of the Closing Order.

22 THE GREFFIER:

23 IV. Communication Structure

24 [09.47.24]

25 Paragraph 72: The CPK Standing Committee was at the top of the

1 Party's nationwide communications. It was at the centre of a
2 system of constant information between each part of the
3 administrative hierarchy. It issued the instruction: "Send
4 general reports through various spearheads. Propose short reports
5 by telegram, (all this so) the Standing Committee knows the
6 situation in order to provide timely instructions."

7 A. Channels of Communication

8 Paragraph 73: The channels of communication were meticulously
9 organized at the level of the Centre -- among ministries and
10 offices around the Centre, within the Centre armed forces and
11 within the Centre's S-21 security apparatus -- between the Centre
12 and the zones -- with no inter-zone Communication allowed -- and
13 between zones and sectors. Communication between sectors and
14 districts depended on available means but was less formalized.
15 Communication Within the Centre.

16 [09.48.48]

17 Paragraph 74: The distribution of messages that arrived at the
18 Centre from outside entities was coordinated by Office K-1, where
19 it was decided which of the leaders were to receive copies of
20 messages which were subsequently delivered to them. This decision
21 was taken by Pol Pot and his staff, who, for this purpose,
22 received ingoing messages several times per day. According to one
23 witness, Nuon Chea always received a copy of the messages Pol Pot
24 had read.

25 Paragraph 75: There was also frequent written communication

1 between individual CPK leaders, most notably between Pol Pot and
2 Nuon Chea, who used to exchange letters every one or two days.
3 Zone to Centre Communication.

4 Paragraph 76: Zones and autonomous sectors reported to the
5 Standing Committee primarily on the agricultural situation, such
6 as the rice harvest and on irrigation systems, the livelihood of
7 the people, and the enemy and military situation. One witness --
8 the Secretary of Autonomous Sector 105 -- mentions that he sent
9 telegrams to the Centre and that Pol Pot would send comments back
10 to him about the arrests of cadres and about confessions.

11 [09.50.38]

12 Paragraph 77: Surviving telegrams reported matters such as
13 desertion and lawlessness, the conflict with Vietnam -- detailing
14 enemy numbers killed and equipment captured and advising Office
15 870 of planned offensives and enemy movements -- questions on
16 internal security activities in general terms or in detail,
17 sometimes referring to those under suspicion, Vietnamese "spies"
18 and their interrogations -- mentioning the use of torture -- or
19 "traitors" -- while mentioning them by name.

20 Paragraph 78: The Zone sent and received between one and several
21 telegrams per day on an irregular basis from the sectors.
22 Communication was only established between the Centre and the
23 sectors, but not between the Centre and the districts.

24 Paragraph 79: A zone secretary had a schedule table prepared by
25 the Centre that indicated the times to make contact with the

1 Centre. Telegrams were sent out from the zone at least once a
2 day, sometimes twice a day -- morning and evening - or, in
3 special occasions, telegrams were sent at other hours of the day.
4 One of the sector telegram operators in Central Zone -- former
5 North Zone -- mentions that he received about four to five
6 messages a day from the Centre -- 870.

7 [09.52.58]

8 Paragraph 80: The schedule for telegram activity in the sectors
9 was developed by the zone, thus making it easier to distinguish
10 between telegrams that came in from the Centre and those that
11 were received from different sectors. Receipt -- the receipt of a
12 telegram was confirmed by a code word from the other side. In
13 1978, communication between the Centre and the zones increased,
14 due to technical improvements.

15 Paragraph 81: Witnesses indicate that there was a strict policy
16 of no communication between the zones: the communication between
17 the zones would be sent via the Centre. No contact schedule table
18 or decoding table existed for telegram communication from zone to
19 zone, thus making such contact impossible. However, one telegram
20 operator states that zone-to-zone communication took place by
21 letter sent by messengers and had to be stamped with the seal of
22 the zone.

23 Zone to Sector and District Communication.

24 Paragraph 82: Each sector had its own telegram office, but any
25 outgoing communication had to go through the zone.

1 Paragraph 83: Only the Autonomous Sectors communicated directly
2 with the Centre and not via the zone. One witness, who worked as
3 a telegram operator in Autonomous Sector 105, states that the
4 district offices mostly reported on irrigation projects,
5 healthcare, the monitoring of forces, and on "good or bad
6 elements, traitorous or peaceful alliance elements". The Sector
7 Secretary's Office would prepare a district performance report
8 and send it back to the Centre on a daily basis.

9 [09.56.08]

10 Paragraph 84: Messengers were mainly used for communication
11 within the sectors and districts, as indicated by American
12 sources -- Stony Beach report: "Each District and Sector within
13 the Eastern Region ([or] Zone) had a messenger network. The
14 networks followed a rigid structure that mirrored the region
15 (Zone) chain of command. For example, even if a district
16 messenger unit was stationed near a regional unit, the district
17 unit would first send messages to their headquarters, then on to
18 the region messenger office. The message would then enter the
19 region (Zone) network. The messengers carried high priority
20 military, party and security messages, as well as personal
21 correspondence for deployed personnel."

22 External Communication.

23 Paragraph 85: Democratic Kampuchea had the technical means to
24 communicate with foreign countries. CPK senior leaders sent
25 telegrams to other -- mostly socialist friendly -- states

1 throughout the duration of the regime to comment or congratulate
2 them on events in their respective countries or to explain that
3 everything was going fine.

4 Paragraph 86: According to [redacted], external communication was
5 channelled through the embassy in Beijing, and communication
6 could either come from the Party or the government or directly
7 from Pol Pot to the Party cell in Beijing. Inside the country,
8 there was no access to any foreign information service. However,
9 the Ministry of Propaganda was instructed to give senior leaders
10 daily briefings about world news. Furthermore, [redacted] states
11 that Ieng Sary had charged [redacted] with listening to the news
12 from foreign broadcast services.

13 [09.59.22]

14 Meetings to "Study at the Centre".

15 Paragraph 87: Cadres from the zone committee and sector level,
16 including the military, were invited to "study meetings" in Phnom
17 Penh or at "the Centre". Witnesses name Nuon Chea or Office 870,
18 or 870, or Pol Pot as the sender of such invitations.

19 Paragraph 88: In several cases, when cadres were called to the
20 Centre, they would be arrested and never returned back to their
21 zones.

22 Paragraph 89: Monthly meetings at the Centre were held at K-1, to
23 which various leading cadre of district committees, sector
24 committees and zone committees were invited. These meetings were
25 regularly headed and attended by senior Party cadre. Military

1 meetings gathering military commanders were held at the Olympic
2 Stadium and were chaired by Pol Pot and Son Sen. Sometimes,
3 special meetings were held with only a few attendees, and these
4 meetings took place on an irregular basis.

5 B. Means of Communication

6 Paragraph 90: Based on reports from lower-ranking officials to
7 their superiors, directives from superiors to subordinates, and
8 requests for assistance of information that were discovered among
9 other evidence, it appears that the main interpersonal or
10 interoffice communication was by letter, telegram and messenger.
11 Official communication also took place in meetings and at
12 gatherings at each administrative level as well as at larger
13 rallies in Phnom Penh. Invitations to such official meetings were
14 generally distributed by messenger or telegram. Furthermore, the
15 CPK disseminated a number of directives and political education
16 material throughout the country. Such material was sent from the
17 Centre to lower administrative ranks. Lower ranks would in turn
18 disseminate the material among the population in the zones and
19 sectors.

20 [10.03.02]

21 Letters.

22 Paragraph 91: Letters were sent from senior CPK leaders such as
23 Pol Pot, Nuon Chea, Khieu Samphan, and Ieng Sary. Letters were
24 reportedly delivered through messengers to zone and sector
25 secretaries. One of the telegrams sent from the Central Zone --

1 ormer North Zone -- indicates that letters were sometimes carried
2 in person by higher officials such as Zone Secretary Ke Pauk
3 himself.

4 Messengers.

5 Paragraph 92: Messengers were primarily used to deliver reports
6 and telegrams from the radio telegraphic unit to ministries or
7 for communicating information about arrests. Within the different
8 zones, "messengers carried correspondence by hand on bicycles and
9 motorcycles. Messengers were very busy and spent only a short
10 time in each location before returning to their home base.

11 Messengers were not tied to one single link but worked all the
12 different links serviced by their station". One witness states
13 that messengers from the Centre would use a speed boat to get to
14 Kratie, in Autonomous Sector 505.

15 Telegram Communication.

16 [10.05.23]

17 Paragraph 93: After the fall of Phnom Penh, in 1975, the central
18 telegram unit that had operated in the "liberated areas" was
19 moved to Phnom Penh. About 40 children were recruited from the
20 provinces and were taught the basic working techniques of
21 telegram communication -- coding, typing, etc. -- as well as
22 sometimes French and English. On 9 October 1975, the Standing
23 Committee decided on the functioning of the telegram unit.

24 Paragraph 94: The telegram unit, which was divided into two
25 sections -- one responsible for transmitting and receiving the

1 telegram, and the other for the encoding and decoding -- was code
2 named K-18 and was located in Phnom Penh at the old United States
3 Embassy -- now the Fishery Administration. Office K-18 was
4 composed of an internal communications section with [redacted] in
5 charge and an external communications section with [redacted] in
6 charge. Approximately 20 to 30 persons worked in each of the two
7 sections. Subsequent chairmen of the telegram unit were
8 [redacted] -- also mentioned as deputy chief -- and, in 1979,
9 [redacted].
10 [10.07.52]

11 Paragraph 95: Within the zones, a telegram unit consisted of a
12 telegram coder, a transmitter or operator and a typist or
13 secretary.

14 Paragraph 96: Outgoing messages from the Centre were first sent
15 to the telegram coding unit which was located at the Party Centre
16 office K-1 to be encoded into number codes. The encoded message
17 was then forwarded to the operation group at K-18 that
18 transmitted the messages to the recipients in coded form, where
19 they decoded it into plain text. Incoming telegrams from the
20 zones arrived at K-18 and were written down by the typist group.
21 The encoded message was then sent to K-1 for decoding and
22 transmitted to the receiving Party cadre. Incoming telegrams were
23 forwarded to other cadre upon the decision of Pol Pot and his
24 staff, who received copies of all messages. Where the word
25 "document" was attributed to a message, this implied that it was

1 to be kept in the archive of the respective telegram translator.
2 Copies of the coded and the text versions of the telegram had to
3 be kept for six months before they were burnt.

4 Paragraph 97: The following recipient code names were frequently
5 used in telegrams: "Grand Uncle" for Pol Pot; "Grand Uncle Nuon"
6 for Nuon Chea; "Grand Uncle Van" for Ieng Sary; "Grand Uncle
7 Vorn" for Vorn Vet; "Uncle Hem" for Khieu Samphan; "Respected
8 Brother" for Pol Pot; "K-3" for Office of Khieu Samphan and Nuon
9 Chea; and "K-1" for Office of Pol Pot.

10 [10.10.56]

11 Paragraph 98: The number "870" was identified by several
12 witnesses as the code number of the Centre. Charged person Khieu
13 Samphan states in this regard: "Pol Pot signed documents by
14 writing 870." The word "M-870" was identified by witnesses as the
15 code number for the Central Committee Office or for Nuon Chea and
16 Pol Pot interchangeably. The word "Committee 870" referred to the
17 Central Committee. According to Charged person Duch, "any fax or
18 letter with the name 'Pol', '870' or 'Office 870' referred to Pol
19 Pot."

20 Political and Education Material -- Print Media.

21 Paragraph 99: The "Revolutionary Flag" and "Revolutionary Youth"
22 magazines were the most important CPK propaganda magazines and
23 reflected the views of the senior Party leaders, in particular
24 the views of the Standing committee, although there were also
25 other magazines produced during the regime. They were produced in

1 Office K-25 by the Ministry of Propaganda. From April 1975 until
2 his arrest in 1977, Hu Nim was the Minister of Propaganda.

3 Following his arrest, Yun Yat took control of the Ministry of
4 Propaganda.

5 [10.13.23]

6 Paragraph 100: "Revolutionary Flag" had existed as an underground
7 "secret magazine" during the struggle prior to 1975 and remained
8 the official Party publication during the CPK era.

9 Paragraph 101: The "Revolutionary Flag" and the "Revolutionary
10 Youth" magazines were a propaganda tool used to reflect the Party
11 policy on a monthly basis. Only Party members had access to the
12 magazines themselves, and they were used to educate political and
13 military cadres. They had to study the magazine, disseminate its
14 policies to those under their charge, and then implement them.
15 They also had to attend study sessions on them. "Revolutionary
16 Youth" was distributed among the members of the Youth League.

17 Paragraph 102: The magazines influenced all channels of
18 government public communication. The contents of radio
19 broadcasts, for example, were drawn from articles. Copies of
20 "Revolutionary Flag" were found in S-21 and at surrounding
21 houses. Duch himself stated that he used "Revolutionary Flag" for
22 information on the "general policy line of the Party". Evidence
23 also suggests that the magazines were received by 870 offices as
24 well as being disseminated abroad to the Cambodian embassy in
25 China.

1 [10.16.06]

2 Paragraph 103: The magazines were also used for teaching
3 purposes, in particular by Nuon Chea and Ieng Sary. More general
4 study sessions were held to rally the people and called for youth
5 - for "young men and women to join the revolution". According to
6 some witnesses, "the guidelines in the magazines were illustrated
7 in a very sharp way, and if a person would not adapt himself or
8 herself to that, then this person automatically would be
9 considered as an enemy", and a core message was that opponents to
10 the Party would be considered as enemies.

11 Paragraph 104: A witness states that, in one incident, leaflets
12 that were published at K-25 were dropped from planes in the East
13 Zone, and contained allegations against Sao Phim, and appealed to
14 the people to stay calm.

15 Film and Photography.

16 Paragraph 105: The CPK had a stringent policy on filming. The aim
17 of the film was to present the success of the agricultural
18 community. With this aim, films crews were established and clear
19 directions were given: "What we should shoot? (We) must capture
20 the movement of building up the country, country defence,
21 especially building up of country's rural areas. We shoot (films)
22 of their activities from start to finish."

23 [10.18.16]

24 Paragraph 106: Filming was seen as an important way to involve
25 the public in the policies of the Party, as explained at a

1 working meeting on 1st June 1976: "Generally speaking, filming is
2 an important matter. The public really demand it. If they see the
3 updated situation, they are happy because they show their
4 masterpiece and they represent their own story."

5 Paragraph 107: Photography was seen as second to filming, and the
6 only guidance given was to take pictures of ceremonies or foreign
7 guests for documentary purpose. There was a photography and
8 cinematography section at the Soviet Technological School under
9 the Ministry of Propaganda.

10 Public Radio.

11 Paragraph 108: Radio was seen as the principal method to
12 disseminate the revolutionary idea among the people by the
13 leadership. In this regard, guidelines were given on interviewing
14 people in the zones, on how news would be announced, and on what
15 other programs would be aired. Chinese experts were consulted for
16 the technical establishment of radio broadcasting.

17 [10.20.14]

18 Paragraph 109: Prior to 1975, the CPK possessed a mobile
19 broadcast radio in Steung Trang district. Songs were taped in
20 Steung Trang and then sent to the main radio station of FUNK in
21 Hanoi, which was headed by Ieng Thirith in 1973, while the
22 technical work was provided by the Vietnamese. The mobile radio
23 unit, which was in place and broadcasting during the evacuation
24 of Phnom Penh, was transferred to the capital and became the only
25 broadcast unit in the country.

1 Paragraph 110: The Ministry of Propaganda; there was a group of
2 writers, the interview section, the writing section, and the
3 editing section. Radio broadcasts featured international news
4 extracted from the international radio and domestic news
5 published by the Ministry, which circulated mainly around the
6 praise of rural cooperatives and the achievements of the regime,
7 the Party line, the leadership of the Party, and speeches, the
8 defence of the country, and followed an educational purpose.

9 Paragraph 111: News was also extracted from radio channels from
10 Vietnam, China, Laos, and Thailand. No news criticizing
11 Democratic Kampuchea was broadcast. Broadcasts also featured
12 English and Vietnamese speaking programs and there were
13 preparations to broadcast in Thai. Special programming intended
14 for Khmer in Vietnam – what the CPK called Kampuchea Krom – was
15 broadcast about the Khmer-Vietnamese border conflict, the
16 relocation of Khmer Krom to Phnom Den, in Cambodia, and the
17 alleged persecution of Khmer Krom by Vietnam.

18 [10.22.57]

19 Paragraph 112: Confessions of Vietnamese prisoners of war, who
20 had been interrogated at S-21, were broadcast over the radio in
21 an attempt to show that the Vietnamese had entered Cambodian
22 territory. One witness states that Vietnamese prisoners of war
23 were interrogated in the battlefield and the taped interviews
24 were sent to the radio for broadcast.

25 Roles and Functions -- Membership of the Central and Standing

1 Committees.

2 Paragraph 869: During the CPK regime, Nuon Chea was a full-rights
3 member of the CPK Central Committee. Nuon Chea had assumed the
4 role of Central Committee Deputy Secretary since 1960, was
5 confirmed in this role in 1963 and held it during the entire CPK
6 regime. Though he clearly assumed this role during the whole
7 period, he was only identified publicly as Deputy Secretary of
8 the Central Committee as of 29 September 1977 at the same time
9 that the existence of the Party was first made public.

10 Paragraph 870: As Central Committee Deputy Secretary, Nuon Chea
11 was second-in-command in the Party structure and was known as
12 Brother Number Two and Pol Pot's "right-hand man". As a
13 full-rights member of the Central Committee, Nuon Chea could
14 "consider and discuss and join in the decision making" with
15 regards to all matters. Duch states that Nuon Chea was
16 responsible for implementing decisions made by Pol Pot, while
17 senior B-1 cadre [redacted] explains that Pol Pot could not make
18 a decision alone. Nuon Chea states, in an interview conducted
19 after the CPK regime, that "everyone worked together. He [Pol
20 Pot] made his contribution, we made ours". In another interview,
21 however, Nuon Chea states: "Pol Pot was the Party Secretary. I
22 was just Deputy Secretary, and sometimes I had no influence."
23 [10.26.19]

24 Paragraph 871: Nuon Chea was also a full-rights member of the
25 Standing Committee of the CPK. The CPK Party Statute suggests

1 that, as the Secretary and the Deputy Secretary of a small Party
2 organ -- or branch -- such as the Standing Committee, Pol Pot and
3 Nuon Chea were in charge of operational direction during times
4 between meetings of the Standing Committee. Of the 19 surviving
5 Standing Committee meeting minutes, only 15 of which contain
6 records of attendance, he is listed as having attended 14. It is
7 therefore likely that he attended numerous if not all the
8 meetings. According to Khieu Samphan, the Standing Committee
9 convened every seven to 10 days, and even more regularly in
10 emergencies. During these meetings, Nuon Chea gave opinions,
11 guidelines, and instructions. When Pol Pot was not present, it
12 appears that Nuon Chea led the Standing Committee meetings.

13 Paragraph 872: In his roles as member of the Central and Standing
14 Committees, Nuon Chea attended regular CPK high-level meetings at
15 K-1 and K-3 and monthly meetings at K-1, lasting five to six
16 days, with leading cadres from various zone, sector or district
17 committees. Approximately 20 cadres would attend these meetings.
18 He also met regularly outside of Phnom Penh with zone and
19 autonomous sector leaders, in particular during their congresses.

20 [10.29.04]

21 Thank you, Mr. President.

22 MR. PRESIDENT:

23 Thank you, Mr. Duch Phary.

24 The time is now appropriate for a break. We will have a 20-minute
25 break, and then we shall return.

1 Defence Counsel, you may proceed.

2 MR. ANG UDOM:

3 Thank you, Mr. President. Good morning, Your Honours. My client,
4 Mr. Ieng Sary, would like to waive his right to participate in
5 these proceedings for today and would like to follow the
6 proceeding in the waiting room, downstairs, due to his poor
7 health. Thank you.

8 (Judges deliberate)

9 [10.30.45]

10 MR. PRESIDENT:

11 Having heard the request made by the accused Ieng Sary through
12 his counsel to waive his right to participate directly in the
13 proceeding and to follow it in the waiting room, downstairs, due
14 to his health, the Chamber is of the view that today's proceeding
15 is about the allegations against the Accused for the facts within
16 the second segment in Case 002/01. The presence of the Accused is
17 a must.

18 Therefore, the request by the Accused through his counsel is
19 denied - that is, the request for this morning's proceeding. For
20 that reason, the Trial Chamber requires Mr. Ieng Sary to present
21 during the read-out by the greffier the portions of the
22 allegations regarding the second segment of Case 002/01.

23 We now adjourn.

24 THE GREFFIER:

25 All rise.

1 (Judges exit the courtroom)

2 (Court recesses from 1032H to 1056H)

3 THE GREFFIER:

4 All rise.

5 (Judges enter the courtroom)

6 [10.57.22]

7 MR. PRESIDENT:

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

9 I'd like Mr. Dav Ansan, the greffier, to continue reading out the
10 paragraphs allocated to him for the facts in second segment of
11 Case 002/01.

12 THE GREFFIER:

13 Paragraph 880: Nuon Chea was in charge of the Centre's
14 Organization Committee, which was empowered to monitor and
15 inspect Party members and oversee the induction of new members in
16 offices and ministries. Duch states that Nuon Chea was in charge
17 of "the recruitment and appointment of new members, the
18 appointment of cadre and the naming of members to various
19 positions [...] when certain persons were appointed or promoted
20 this meant that others were excluded and therefore smashed". Nuon
21 Chea participated in the appointment of zone and sector
22 secretaries in particular: the appointment of [redacted] as the
23 Secretary of Autonomous Sector 105; the appointment of Kang Chap
24 alias Se as Secretary of the New North Zone, the creation of
25 which he also announced; and the appointment of [redacted] as

1 Secretary of Sector 103. In an interview after the CPK regime,
2 Nuon Chea answered the question "how did you deal with the bad
3 comrades?" by saying: "I re-educated them and did not allow them
4 to stay in their positions."

5 [10.59.50]

6 Paragraph 881: At the Standing Committee meeting of 9 October
7 1975, Nuon Chea was tasked with responsibility for "party work,
8 social, welfare, culture, propaganda and formal education". Duch
9 understands that this decision effectively made Nuon Chea
10 responsible for overseeing four ministries: the Ministry of
11 Propaganda; the Ministry of Education; the Ministry of Social
12 Affairs; and the Ministry of Culture. He explains that the reason
13 for this was because the four ministers heading the departments
14 were not full-rights members of the Central Committee.

15 Paragraph 882: With respect to Party work, propaganda, and
16 education, this decision meant that Nuon Chea had primary
17 responsibility within the CPK for disseminating political lines
18 decided by the Party to CPK Party members, to the military, and
19 to the masses.

20 Paragraph 883: The first Minister of Information and Propaganda
21 in the CPK regime was Hu Nim, who was arrested and sent to S-21
22 in April 1977. The Ministry was then reorganized and merged with
23 the Ministry of Culture, Training, and Education, at which time
24 Yun Yat alias At -- Son Sen's wife -- who was the minister for
25 the latter, became the minister for both. Furthermore, while

1 official media described Yun Yat as holding the ministry
2 portofolio until at least January 1979, two witnesses working in
3 the ministry recall that Nuon Chea served as minister from late
4 1978 until the end of the regime.

5 [11.02.11]

6 Paragraph 884: Nuon Chea attended a CPK Standing Committee
7 meeting on 9 January 1976, during which the "good qualities" and
8 "deficiencies" of propaganda and education programs were
9 discussed. It also appears from remaining minutes of meetings on
10 propaganda work that the CPK Centre followed closely and decided
11 on matters related to the CPK methods of propaganda. On 8 March
12 1976, at a meeting on "propaganda work" where Nuon Chea was
13 present, the question of the radio broadcast of the election of
14 20 March 1976 was discussed in detail, including the contents of
15 the broadcast and its frequency. This demonstrates that Nuon Chea
16 was involved in the decision-making process regarding broadcasts.
17 At another meeting, on 1st June 1976, where Nuon Chea was also in
18 attendance, all aspects of CPK propaganda work, such as radio
19 broadcasts, publications, and propaganda films, were discussed
20 with cadres from the Ministry of Propaganda. During this meeting,
21 Nuon Chea provided instructions and views on specific aspects of
22 propaganda work. It also appears that Nuon Chea had the authority
23 to instruct subordinates on media and propaganda issues.
24 Paragraph 885: During an interview, Nuon Chea acknowledges that
25 he was also fully aware of and involved in the production and

1 writing of the CPK magazine "Revolutionary Flag" before 17 April
2 1975. During the CPK regime, Nuon Chea made direct requests of
3 CPK cadres to write articles for the other propaganda magazines.
4 [11.04.52]

5 Paragraph 886: At his initial appearance before the
6 Co-Investigating Judges, Nuon Chea states that he was in charge
7 of educating cadres and Party members. Duch understands that Nuon
8 Chea's responsibility for "party work" meant that he was in
9 charge of "daily activities within the Party. I recall that the
10 political work of the Party was focused on annual training
11 sessions (political and psychological training and education on
12 organizational matters)". Nuon Chea conducted numerous mass
13 political training in Phnom Penh, where he taught the policies of
14 the CPK. These meetings were mainly held at Borei Keila. They
15 were organized for Party cadres and workers in Phnom Penh, as
16 well as for cadres from virtually all areas of Cambodia -- zone,
17 sector and district committee members, cooperative chairmen, and
18 sometimes sub-district committee chairman. He participated in
19 similar trainings for RAK members. These mass political training
20 sessions could involve hundreds of participants, and Party
21 members were supposed to attend a session at least once a year.
22 Cadres or members of the military located outside of Phnom Penh
23 were invited to attend these political training sessions by
24 telegrams or letters sent by Nuon Chea. Witnesses also report
25 that Nuon Chea presented the CPK lines to CPK cadres and RAK

1 members during zone and autonomous sector conferences. The former
2 deputy commander of Division 1 states that "Ta Nuon Chea or Ta
3 Pol Pot were usually present [at] the Zone congresses". Witnesses
4 state that similar training sessions would then be conducted by
5 Party members in order to instruct the people under their
6 authority on the lines of the Party.

7 [11.07.36]

8 Paragraph 887: With respect to social affairs, Ieng Thirith would
9 go to K-3 or K-1 once or twice a month to meet with leaders of
10 the Party Centre, and in particular with Nuon Chea. Nuon Chea was
11 present at a meeting on Health and Social Affairs on 10 June
12 1976. During this meeting, Ieng Thirith and other leading cadres
13 in the Ministry of Social Affairs reported in detail on the
14 activities of the ministry and its various sections, and Nuon
15 Chea expressed views on the topics discussed. Nuon Chea visited
16 and held meetings at some of the hospitals under the authority of
17 the Ministry of Social Affairs and provided political training
18 sessions to personnel of the ministry.

19 Acting Prime Minister of the Democratic Kampuchea Government.

20 Paragraph 888: Nuon Chea was officially appointed Acting Prime
21 Minister of the Democratic Kampuchea Government on 27 September
22 1976, replacing Pol Pot, who, according to the official Party
23 version of events, took temporary leave in order to take care of
24 his health. Nevertheless, from that date to December 1976, the
25 decision does not seem to have been fully implemented. During

1 this period, CPK media repeatedly referred to Pol Pot as prime
2 minister and only described Nuon Chea as acting prime minister on
3 very few occasions. Between January and September 1977, Nuon Chea
4 was publicly and repeatedly identified as acting prime minister,
5 in particular on the occasion of a speech he delivered to mark
6 the 9th anniversary of the RAK, on 16 January 1977. The
7 subsequent year, this same anniversary speech was delivered by
8 Pol Pot. There is almost no public reference to Pol Pot acting in
9 the capacity of prime minister during this period until 25th
10 September 1977, when he is publically identified as secretary of
11 the CPK for the first time. Duch understands that, when Nuon Chea
12 was the acting prime minister, it meant that "he was the acting
13 secretary of the Party".

14 [11.11.15]

15 Chairman of the People's Representative Assembly and Chairman of
16 the Standing Committee of the People's Representative Assembly.
17 Paragraph 889: Throughout the Democratic Kampuchea regime, Nuon
18 Chea served as chairman of the People's Representative Assembly
19 and chairman of its Standing Committee. He was selected as
20 chairman of the Standing Committee during the legislature's first
21 plenary session, from 11 to 13 April 1976.

22 Paragraph 890: It is in the roles of chairman of the People's
23 Representative Assembly and chairman of its Standing Committee
24 that Nuon Chea was most commonly known publically. In these
25 roles, Nuon Chea led a CPK delegation on an official visit to

1 China and North Korea from 2 to 16 September 1978, corresponded
2 and otherwise interacted with leaders of other countries, and
3 issued official statements. However, these roles had little
4 practical significance other than for endorsing decisions such as
5 the 31st December 1977 Statement by the Government of Democratic
6 Kampuchea on "Cambodia's Temporary Severance of Relations with
7 Vietnam".

8 [11.13.17]

9 Other Roles.

10 Paragraph 891: In addition to the above, Nuon Chea became de
11 facto secretary of two zones after the arrest of their
12 secretaries. It appears that, following the arrest on 20
13 September 1976 of the Northeast Zone Secretary, Men San alias Ya,
14 this role was filled by Um Neng alias Vy alias Vong until
15 mid-1978, and then by Nuon Chea for a short period. Duch and
16 other witnesses also state that Nuon Chea became secretary of the
17 East Zone for a period in June 1978, after Sao Phim committed
18 suicide.

19 Paragraph 892: As a full-rights member of the Standing Committee,
20 Nuon Chea shared responsibility for Political Office 870 and
21 Office S-71.

22 Roles and Functions -- Membership of the Central and Standing
23 Committees.

24 Paragraph 1001: Ieng Sary joined the Central Committee of the
25 Cambodian Communist Party in 1960 and its Standing Committee, in

1 1963. During the CPK regime, he was a full-rights member of both
2 committees. As a full-rights member of the Central Committee,
3 Ieng Sary could "consider and discuss and join in the decision
4 making" with regard to all matters.

5 [11.15.20]

6 Paragraph 1002: Of the 19 surviving Standing Committee meeting
7 minutes, only 15 of which contain records of attendance, Ieng
8 Sary is listed as having attended 10. He is also listed as having
9 attended one ad hoc high-level meeting of the Centre. In reality,
10 it is likely that he would have attended significantly more
11 meetings as Khieu Samphan says that the Standing Committee
12 convened every seven to 10 days, and even more regularly in
13 emergencies. During these meetings, there are records of Ieng
14 Sary making presentations on diverse issues such as: industry,
15 commerce, and transport; participation in the Non-aligned
16 Countries Colombo Conference; foreign aid; the conflict with
17 Vietnam; the recall of overseas based Cambodians; and diplomatic
18 relations with other countries. With regard to those meetings he
19 did not attend, he would have had access to their minutes, which
20 appear to have been routinely taken.

21 Paragraph 1003: In his roles as member of the Central and
22 Standing Committees, Ieng Sary attended regular CPK high level
23 meetings at K-1 and K-3, including monthly meetings at K-1,
24 lasting five to six days, with leading cadres from various zone,
25 sector or district committees. Approximately 20 cadres would

1 attend these meetings. He also attended annual meetings with the
2 Centre and zone secretaries.

3 [11.17.37]

4 Paragraph 1004: Ieng Sary remained on the Standing Committee
5 throughout the CPK regime and when Party leadership subsequently
6 took refuge along the Cambodia-Thailand border.

7 Deputy Prime Minister for Foreign Affairs.

8 Paragraph 1005: Steps were taken to create the Ministry of
9 Foreign Affairs, code-named B-1, almost immediately after the CPK
10 took control of Phnom Penh, on 17 April 1975. It was officially
11 inaugurated in December 1975. Originally, B-1 was located in two
12 buildings on Sisowath Street, on Phnom Penh's riverside. However,
13 in 1976, it was relocated to the Soviet Federation Boulevard. B-1
14 also operated two visitor reception houses: House Number 1, near
15 Wat Phnom, and House Number 2, at the Hotel Le Royal.

16 Paragraph 1006: One witness claims that more than 1,000 people
17 worked at B-1. Initially, personnel were selected from a pool of
18 suitable people that the 870 offices, headed by Pang and Doeun,
19 had selected from various zones on the grounds of class,
20 qualification, or whether they came from old revolutionary bases
21 such as Preah Vihear or Kampong Cham. B-1 was also staffed by a
22 number of "intellectuals", many of whom had returned from
23 overseas to Cambodia. Additionally, Ieng Sary recruited a number
24 of "child cadres", who were uneducated children aged between
25 eight and 15. At one point, B-1 supervised the education of

1 "revolutionary cadres" children who had been sent there to study.
2 [11.20.20]
3 Paragraph 1007: Initially, B-1 did not have different
4 departments. However, cadres were given official titles whenever
5 they met overseas guests. For example, former B-1 cadre
6 [redacted] says he was introduced at the United Nations as being
7 a member of the "General Affairs Section", which did not exist.
8 It appears that later B-1 became more structured. Former B-1
9 cadre [redacted] says that B-1 was the only ministry structured
10 like a classic ministry, which was not the case for the others. A
11 document, which appears to be the 152-page handwritten notes of a
12 senior B-1 cadre who could not be identified, records that, by
13 July 1976, B-1 was divided up into seven sections: Education;
14 Growing Crops; Office -- including a "Secrecy Sector"; Politics;
15 Protocol; Secretary; and Civil Aviation. This document -- "B-1
16 diary" -- was shown to a number of witnesses during the
17 investigation, none of whom disputed its authenticity.
18 Paragraph 1008: On 12 August 1975, a Phnom Penh radio broadcast
19 said that Ieng Sary had been appointed Deputy Prime Minister for
20 Foreign Affairs. His appointment was recorded in the Standing
21 Committee meeting minutes of 9 October 1975 as "Foreign Affairs
22 work, both Party and State". On 30 March 1976, the Central
23 Committee also recorded the appointment in its document "Decision
24 of the Central Committee Regarding a Number of Matters". It was
25 formally endorsed by the People's Representative Assembly of

1 Kampuchea the following month. Ieng Sary has admitted being
2 Deputy Prime Minister for Foreign Affairs during the CPK regime,
3 saying that he assumed the role in around April 1976. However, he
4 does not recall the exact date. In this role, he also sat on the
5 Council of Ministers.

6 [11.23.35]

7 Paragraph 1009: The B-1 diary records, under the heading "The
8 Cell Congress 22 May 1976", that Ieng Sary chaired the Party
9 Section and, administratively, the General Leadership Committee
10 and the Political Section. Later in the same document, under the
11 heading "The Cell Plan of 1977", Ieng Sary is named as the
12 Secretary of the Cell Committee of the ministry, with [redacted]
13 as his deputy.

14 Paragraph 1010: There were many different aspects to Ieng Sary's
15 role at B-1. One of his roles was to supervise the CPK embassies
16 abroad. As of May 1976, CPK-appointed diplomats were assigned to
17 four DK embassies: in China; North Korea; Vietnam; and Laos. The
18 last residual GRUNK-appointed diplomats were present at DK
19 embassies in Albania, Yugoslavia, and Romania. According to
20 [redacted], who held various senior roles within B-1, including
21 Chairman of the Propaganda and Information Department, Ieng Sary
22 also: chaired the Political Section, which was staffed by various
23 intellectuals, including [redacted]; chaired meetings of the
24 whole ministry; chaired meetings of the Party within the
25 ministry; supervised the work of the Kampuchea Information Agency

1 and Radio Democratic Kampuchea Foreign Language Broadcast
2 Section; and provided instructions to subordinates about the
3 conduct of education sessions for ministry staff, based on daily
4 broadcasts of Radio Democratic Kampuchea.

5 [11.26.05]

6 Paragraph 1011: According to [redacted], who also held various
7 senior roles at B-1, including Chief of Security, Ieng Sary was
8 "in overall charge" of B-1, which meant he: headed the ministry's
9 Party branch; was responsible for the ministry's internal
10 affairs; disseminated orders from the upper echelon, including
11 from Pol Pot and Nuon Chea; met almost daily with intellectuals
12 on the staff; supervised the ministry's branch re-education
13 offices, such as Chraing Chamres and Prek Pra; received visitors;
14 travelled abroad on official visits, including to meetings of the
15 United Nations; and escorted foreign delegations on visits to the
16 countryside. [Redacted] also says that Ieng Sary was responsible
17 for internal security affairs at B-1, in consultation with
18 Political Office 870 and Pang. This fact is confirmed by Duch.

19 Paragraph 1012: In his role as Deputy Prime Minister for Foreign
20 Affairs, Ieng Sary regularly travelled abroad to countries such
21 as Sri Lanka, Romania, China, Myanmar, Pakistan, Laos, France,
22 Mexico, Cuba, Vietnam, Singapore, North Korea, Indonesia,
23 Thailand, Philippines, Peru, Malaysia, Japan, the United States
24 of America, Hungary, Yugoslavia, and Bulgaria. A former B-1 staff
25 member recalls that Ieng Sary most often travelled to China,

1 Vietnam, and North Korea. While overseas, Ieng Sary retained
2 control of B-1 through the 870 office chaired by Pang. [Redacted]
3 was usually appointed caretaker manager in his absence. However,
4 [redacted] did not have power to make decisions and acted under
5 the direction of "the Centre". In those instances where Ieng Sary
6 and [redacted] were both absent, B-1 was managed by other senior
7 members of the ministry or occasionally by Khieu Samphan.

8 [11.29.06]

9 Paragraph 1013: In Cambodia, Ieng Sary regularly received
10 overseas delegations, entertained them at banquets, attended
11 meetings to discuss international relations and trade, and
12 escorted them on trips throughout Cambodia.

13 Paragraph 1014: While Ieng Sary undoubtedly had authority over
14 B-1, former staff members say that important decisions were made
15 by the CPK Standing Committee.

16 Other Roles.

17 Paragraph 1015: In addition to the above, Ieng Sary had a number
18 of other roles in the CPK regime. These roles included: the power
19 to induct people into the Party; chairing the CPK Central
20 Committee Commission on Foreign Affairs; writing correspondence
21 on behalf of [redacted]; and sitting on various committees
22 established to address diverse issues such as banks, the purchase
23 of merchandise, and the Phnom Penh Warehouse. He may have been
24 involved in the preparation of the CPK propaganda magazines.
25 However, one witness disputes this was part of his role. As a

1 full-rights member of the Standing Committee, Ieng Sary also
2 shared responsibility for Political Office 870 and Office S-71.
3 [11.31.25]

4 Roles and Functions -- Membership of the Central and Standing
5 Committees.

6 Paragraph 1131: Khieu Samphan was admitted as a reserve or
7 candidate member of the Central Committee of the Cambodian
8 Communist Party in 1971 and was confirmed as a full-rights member
9 in 1976. As a full-rights member of the Central Committee, he
10 could "consider and discuss and join in the decision making" with
11 regard to all matters.

12 Paragraph 1132: Khieu Samphan has stated that he was not a member
13 of the Standing Committee. Regardless of whether he was formally
14 a member, records demonstrate that he attended and participated
15 in many of the Standing Committee meetings. Of the 19 surviving
16 Standing Committee meeting minutes -- only 15 of which contain
17 records of attendance -- he is listed as having attended 13 as
18 well as at least two ad hoc high-level meetings of the Centre.

19 Khieu Samphan has stated that: "During open meetings of the
20 Standing Committee, as in the meetings of the Party Central
21 Committee, I never stated any opinions." However, there are
22 records of him presenting reports to the Standing Committee on
23 two occasions. With respect to those meetings that Khieu Samphan
24 did not attend, he would have had access to their minutes, which
25 appear to have been routinely taken.

1 [11.33.28]

2 Paragraph 1133: Although the Case File only contains Standing
3 Committee meeting minutes dating from mid-1975 until mid-1976,
4 Khieu Samphan gave evidence that the Standing Committee convened
5 every seven to 10 days, or even more regularly in emergencies.
6 One witness, who was Khieu Samphan's driver from 1978, stated
7 that he drove Khieu Samphan from K-3 to K-1 two or three times a
8 week and that Nuon Chea and Ieng Sary would be brought to K-1 at
9 the same time. Another witness confirmed that Khieu Samphan, Ieng
10 Sary, and Nuon Chea would have secret meetings at K-1.

11 Paragraph 1134: Khieu Samphan interacted with and supervised
12 lower-level cadres by his attendance at monthly meetings at K-1
13 along with Pol Pot, Nuon Chea, Ieng Sary, and S-71 Chairman Pang.
14 These meetings lasted five or six days each, and approximately 20
15 leading cadres from various zone, sector or district committees
16 would attend.
17 President of the State Presidium.

18 Paragraph 1135: At the first session of the Cambodian People's
19 Representatives Assembly, held between the 11 and the 13 April
20 1976, Khieu Samphan was appointed as the President of the State
21 Presidium. In this role, he took over from [redacted] as the Head
22 of State.

23 Paragraph 1136: Chapter 8, Article 11 of the Democratic Kampuchea
24 Constitution states that "the State Presidium is responsible for
25 representing the State of Democratic Kampuchea inside and outside

1 the country". Khieu Samphan stated: "With regard to chapter 8 on
2 the State Presidium, the decision to create this body is for the
3 purpose of implementing the principle of collectivism in all
4 fields." However, Khieu Samphan has repeatedly declared that his
5 role as the President of the State Presidium was merely honorific
6 and symbolic and that he had no de facto power. Several witnesses
7 have stated that they believed that Khieu Samphan was not a
8 powerful figure in the CPK regime.

9 [11.37.06]

10 Paragraph 1137: Khieu Samphan has further declared that his work
11 was only to make speeches, receive letters of accreditation from
12 international ambassadors, and participate in and preside over
13 receptions for various heads of State. Even in this limited role,
14 one of Khieu Samphan's primary responsibilities appears to have
15 been promoting policies of the CPK internationally. He sent and
16 received many communications and credentials from various world
17 leaders and ambassadors. He travelled to various countries as a
18 representative of the Democratic Kampuchea, such as China, Sri
19 Lanka, the Democratic People's Republic of Korea, Yugoslavia, and
20 Romania. He also made a speech at the Fifth Summit Conference of
21 Non-Aligned Countries in Colombo, in 1976, although he states
22 that Ieng Sary wrote this speech for him. He received many
23 foreign delegations and ambassadors in Cambodia, sometimes taking
24 them on tours around Cambodia and informing the delegations about
25 the country's reconstruction, cooperatives, and agricultural

1 revolution.

2 Paragraph 1138: Khieu Samphan also conducted the following
3 activities in his capacity as President of the State Presidium:
4 promulgating a regulation setting out the functioning of the
5 People's Representative Assembly of Kampuchea and the Standing
6 Committee of the People's Representative Assembly of Kampuchea;
7 and being sent communications by telegram about the living
8 conditions, arrests, and detentions in Preah Vihear Province.

9 [11.39.58]

10 Offices of 870.

11 Paragraph 1139: From the 9th of October 1975 until the end of the
12 CPK regime, Khieu Samphan was a leading cadre of the CPK Centre
13 unit officially designated the Political Office 870. He has
14 stated that he was one of only two cadres assigned there, the
15 other being the office's original chairman, Sua Vasi alias Doeun,
16 a fellow Central Committee member who also regularly attended
17 Standing Committee meetings. Duch states that Khieu Samphan took
18 over the role as Chairman of Political Office 870 in 1976, when
19 Doeun left the role to take control of the Ministry of Commerce.
20 Duch further states that Khieu Samphan's position as chairman was
21 secured in 1977, when Doeun was arrested and sent to S-21.

22 [Redacted], who held various senior roles in B-1 and who
23 regularly personally delivered messages from B-1 and Ieng Sary to
24 Khieu Samphan, corroborates that Khieu Samphan replaced Doeun as
25 the chairman in late 1977 or early 1978. Another witness who

1 worked within B-1 also corroborates this. In an interview in
2 1999, Ieng Sary confirmed that Khieu Samphan was the head of
3 Political Office 870, although he has recently denied making this
4 statement.

5 [11.42.17]

6 Paragraph 1140: Additionally, Khieu Samphan may have had
7 responsibility within Office S-71. One witness states that Pang,
8 the Head of S-71, took his orders from Khieu Samphan and other
9 senior leaders according to their expertise.

10 Paragraph 1141: Khieu Samphan has consistently denied that he was
11 ever the Chairman of Political Office 870. He has stated that his
12 duties within the offices of 870 were limited to economic
13 matters, the distribution of goods around Cambodia, and the
14 maintenance of relations with [redacted]. One witness who worked
15 as a telegram translator in Sector 105 and a courier for the
16 Party Centre stated that he was required to send all telegrams
17 relating to "equipment, healthcare or social affairs and matters
18 other than security" directly to Khieu Samphan, at Office 870.
19 Ministry Of Commerce.

20 Paragraph 1142: Khieu Samphan was appointed to be responsible for
21 "commerce for accounting and pricing" during the Standing
22 Committee's meeting of the 9th of October 1975, apparently
23 working alongside Central Committee member Koy Thuon, who was
24 named in charge of "domestic and international commerce". In this
25 role, Khieu Samphan may have sat on the Council of Ministers.

1 Paragraph 1143: Khieu Samphan has publically stated that his
2 responsibilities included working with the Department of Foreign
3 Trade for the import and export of goods, implementing the
4 Permanent Committee's decisions regarding the distribution of
5 goods around Cambodia, and setting prices for products from
6 cooperatives. Witnesses confirmed that he was responsible for
7 commerce and the distribution of goods and food around Cambodia,
8 and several witnesses state that he regularly visited the
9 Ministry of Commerce. The Secretary of Sector 105 recounted that:
10 "I used to give a commerce list requesting for equipment to Khieu
11 Samphan personally and used to talk with him about economic
12 matters during meals time or outside official meeting." Duch gave
13 evidence that Khieu Samphan also had control over electrical
14 power plants, water works, and state warehouses.

15 [11.45.43]

16 Paragraph 1144: Khieu Samphan received a large number of
17 telegrams and communications from the Commercial Committee and
18 the Phnom Penh Foreign Trade FORTRA Company, covering topics such
19 as the import and export of food and goods, the economic
20 relations with foreign countries, and the fact that members of
21 the Commercial Committee travelled to the Cambodian countryside
22 to collect crops. One witness who worked in the Ministry of
23 Commerce and who was asked to comment on a telegram to Khieu
24 Samphan stated that Van Rith did not have the authority to make
25 decisions about purchasing goods from overseas and that

1 communications had to go to Khieu Samphan for a decision.
2 Although the Commerce Committee under Van Rith also answered to
3 Vorn Vet, Van Rith's subordination to Khieu Samphan is clearly
4 evidenced by the fact that he regularly annotated copies of
5 commerce-related reports to be sent to "Brother Hem," using the
6 fraternal greetings which Duch has indicated was normally
7 reserved for addressing superiors. A witness who worked on
8 foreign and domestic trade matters has confirmed Khieu Samphan's
9 authority over Van Rith. In February 1977, Khieu Samphan received
10 a foreign economic and trade delegation from Yugoslavia, and he
11 states that he travelled to Yugoslavia twice.

12 Foreign Affairs and Returnees.

13 [11.48.00]

14 Paragraph 1147: There is also evidence that, when Ieng Sary was
15 outside of the country, Khieu Samphan took responsibility for the
16 Ministry of Foreign Affairs. Khieu Samphan was involved in the
17 recall of overseas-based Cambodian people to Cambodia, educating
18 them upon their return. Three witnesses recall Khieu Samphan's
19 role in giving political education sessions to the returnees. One
20 witness who returned to Cambodia in late 1975 with a group of ten
21 students stated that Khieu Samphan informed them that the only
22 two special (sic) groups existing in Cambodia were the workers
23 and peasants and that "the country needed us to rebuild it,
24 adding that, first, we had to go to the countryside to learn
25 those things that we had not done before, such as how to plant

1 rice, and experiencing what it is like to have only one bowl of
2 rice". Many of these returnees were sent to S-21 after a period
3 of re-education.

4 Speeches and Political Education.

5 Paragraph 1148: In addition to the above, Khieu Samphan was
6 responsible for making speeches on behalf of the CPK and the
7 education of the people. Khieu Samphan made many speeches
8 promoting and disseminating CPK policy throughout the period of
9 the CPK regime. He made speeches at each of the mass CPK meetings
10 celebrating the anniversaries of the 17 of April victory and for
11 the Khmer New Year celebrations. One witness who worked in the
12 telegram office for the Party Centre stated that Khieu Samphan
13 would give him directives about events marking various national
14 ceremonies. Many witnesses gave evidence that they listened to
15 his speeches at mass rallies and meetings held in venues such as
16 the Olympic Stadium and Borei Keila. Some stated that Khieu
17 Samphan addressed up to 20,000 people from around Cambodia during
18 these rallies and meetings.

19 [11.51.22]

20 Paragraph 1149: Khieu Samphan stated that he "generally" agreed
21 with the content of the speeches but that he disagreed "on
22 certain points, for instance for the elimination of the
23 currency", but did not dare to reveal his disagreements for fear
24 of being killed. He stated that his speeches "were not very
25 important" and that only Pol Pot and Nuon Chea gave important

1 speeches. Khieu Samphan went to B-1 to ask for material and
2 discuss what kind of issues should be addressed in his speeches.
3 Paragraph 1150: Khieu Samphan was also responsible for conducting
4 regular political education and study sessions with workers and
5 cadres from varying ranks from around Cambodia. Many witnesses
6 gave evidence that they were required to attend these sessions
7 with Khieu Samphan. The content of these speeches and political
8 education sessions covered topics such as: the accomplishments of
9 the revolution; the armed conflict with Vietnam; the agricultural
10 and economic policies of the CPK; administrative matters such as
11 care for supplies and equipment; the need to eliminate feudalists
12 and capitalists; the overthrow of the traitorous Lon Nol regime
13 and the elimination of certain members of the regime; and the
14 situation in Phnom Penh.

15 Mr. President, we have all read the relevant paragraphs of the
16 Closing Order.

17 MR. PRESIDENT:

18 Thank you, Mr. Dav Ansan. Thank you, all greffiers.

19 (Judges deliberate)

20 [11.54.12]

21 Now the reading of the relevant paragraphs concerning the alleged
22 facts concerning the communication and administrative structure
23 of the Democratic Kampuchea and certain paragraphs concerning the
24 roles of the Accused is done, and according to the information we
25 received through email, we have learned that the civil party

1 lawyers wishes to object against the oral argument.

2 But this issue has not been clear, so I would like to now give
3 the floor to the Lead Co-Lawyer for the civil parties to raise
4 your motion, particularly concerning the schedule of hearing the
5 evidence to be put before the Chamber.

6 And can – you may raise any challenges you are facing and give
7 the grounds for your objections, so that it is clear for the
8 Chamber to decide before we open the floor for parties to raise
9 their objections.

10 MS. SIMONNEAU-FORT:

11 Good morning, Mr. President. Good morning to everyone in the
12 courtroom. I beg your forgiveness; we are not entirely sure of
13 the subject that you are asking for specifications and
14 explanations on. I'm sorry; can we please have some
15 clarifications? Do you wish to receive information on our
16 situation with respect to documents, or do you wish to provide
17 those specifications at this point or after the lunch break?

18 [11.56.37]

19 MR. PRESIDENT:

20 I now hand over to Judge Jean-Marc Lavergne to clarify this
21 matter. This is in response to the electronic email sent. The
22 floor is now given to Judge Lavergne.

23 JUDGE LAVERGNE:

24 Yes, indeed. You had addressed a letter to Ms. Lamb with respect
25 to a certain number of documents that you intend to admit into

58

1 the proceedings and that are not available in all the three
2 official languages of the ECCC. What the Chamber wishes to know
3 is whether or not, indeed, you have put in your translation
4 request of those documents so that they are translated and the
5 status of -- the state of affairs.

6 Can you please tell us whether or not those documents have been
7 translated and at what point the Chamber should anticipate
8 receiving them?

9 MS. SIMONNEAU-FORT:

10 Thank you very much, Your Honour, for those clarifications. Those
11 translation requests have indeed been submitted by the Lead
12 Co-Lawyers' Office. Perhaps I can provide some clarifications
13 following the break with respect to the exact date we expect to
14 receive those translations and when we had originally put in our
15 request, because I don't have them at hand.

16 [11.58.10]

17 JUDGE LAVERGNE:

18 I just did want to confirm that those documents have been
19 requested for translation; is that the case?

20 MS. SIMONNEAU-FORT:

21 Yes. We have many documents to translate, specifically 10
22 documents that figure in our list of documents that we had
23 submitted in April, July, and February. Those documents relate to
24 several books as well as several articles. We have submitted
25 translation requests and, based on the importance of those

1 documents -- we have submitted our request based on their
2 priority, but we've yet to receive a response from ITU.

3 [11.59.05]

4 MR. PRESIDENT:

5 It is now appropriate time to adjourn for lunch. The Chamber will
6 adjourn from now until 1.30 p.m.

7 The defence counsel is on his feet. You may proceed.

8 MR. ANG UDOM:

9 Thank you, Mr. President. Since the reading of relevant
10 paragraphs has been finished, Mr. Ieng Sary, through his counsel,
11 once again, would like to waive his right to participate directly
12 in these proceedings. However, he will participate through remote
13 means, in the holding cell, downstairs, due to his health reason.
14 For this reason, we would like to request that the Chamber grants
15 leave for him.

16 MR. PRESIDENT:

17 The Defence Counsel for Nuon Chea, you may proceed.

18 MR. PESTMAN:

19 Thank you, Mr. President. I have the same request for my client;
20 he would also like to remain downstairs after the break.

21 [12.00.20]

22 MR. PRESIDENT:

23 Having heard the requests by Nuon Chea and Ieng Sary through
24 their counsels, requesting the waiver of their right to
25 participate directly in this proceeding in this courtroom, due to

60

1 their health reasons, and that they be allowed to follow the
2 proceeding from the holding cell, downstairs, through
3 audio-visual means, the Chamber grants leave for the two Accused.
4 They are directed to participate through remote means from the
5 holding cell, downstairs, this afternoon.

6 However, the defence teams shall submit the letters of waiver to
7 the Chamber with the signature or thumbprint of the two Accused.
8 The security guards are instructed to bring the Accused to the
9 holding cell, downstairs.

10 And this afternoon, only Khieu Samphan is to be brought to this
11 courtroom, as for Nuon Chea and Ieng Sary will remain in the
12 holding cells, downstairs, to follow the proceedings through
13 audio-visual means.

14 [12.01.57]

15 And the audio-visual equipment technicians are instructed to
16 arrange the equipment so that they can participate from the
17 holding cell.

18 The Court is now adjourned.

19 (Court recesses from 1202H to 1331H)

20 MR. PRESIDENT:

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

22 Mr. Phary, you may proceed.

23 THE GREFFIER:

24 Mr. President, for this afternoon proceeding, we notice the
25 presence of the international defence counsel for Khieu Samphan,

61

1 Ms. Guissé. She already took an oath at the Courts of Appeals.

2 MR. PRESIDENT:

3 Thank you, Mr. Phary. As now the defence counsel for Khieu
4 Samphan is present, and as she already took an oath at the Court
5 of Appeals and she is not yet recognized by the Trial Chamber,
6 based on the Rule 22.2(a) of the Internal Rules, I request Mr.
7 Kong Sam Onn, the national defence counsel, to request for the
8 recognition of this international defence counsel.

9 [13.33.23]

10 You may proceed, Mr. Kong Sam Onn.

11 MR. KONG SAM ONN:

12 Good afternoon, Mr. President, Your Honours. On behalf of the
13 Khieu Samphan's defence, I'd like to seek the Trial Chamber's
14 recognition to recognize Ms. Guissé.

15 She is an experience counsel at the International Court in Rwanda
16 and she is also a member of the bar in Paris.

17 As the greffier just said, she already took an oath at the Court
18 of Appeals. Thank you.

19 MR. PRESIDENT:

20 Thank you, National Counsel.

21 [13.34.14]

22 Ms. Guissé, could you please stand?

23 Ms. Guissé, you are hereby recognized by the Trial Chamber as the
24 defence counsel for Mr. Khieu Samphan for the purpose of the
25 proceedings before this Chamber. As such, you now enjoy the right

62

1 and privileges as that of the national defence counsel for the
2 Accused.

3 My apology if I do not pronounce your name properly. Could you
4 please pronounce your name in French?

5 MS. GUISSÉ:

6 (No interpretation)

7 MR. PRESIDENT:

8 You may be seated.

9 [13.35.32]

10 The Chamber will give the floor to the parties for their oral
11 objections to the documents intended to be put before the
12 Chamber. Those documents are related to the first trial of Case
13 002/01, including those documents 109.1 to 109.6.2, and the rest
14 which have not yet been discussed before the Chamber.

15 The oral arguments will be dealt with the remaining documents,
16 which are already on the case file, as indicated in the third
17 paragraph of the memorandum of the Trial Chamber dated 2nd March
18 2012 -- that is, document E172/5.

19 First, we would like to give the floor to Nuon Chea's defence to
20 raise your oral objections to those documents as indicated in the
21 third paragraph of the memorandum, document E172/5.

22 Nuon Chea's defence, you are reminded you have one whole
23 afternoon session to make your oral objections.

24 [13.37.14]

25 You may proceed.

1 MR. SON ARUN:

2 Good afternoon, Mr. President, Your Honours. I am the defence
3 counsel for Nuon Chea. Since the beginning of the objections to
4 the documents, my colleagues and myself have made clear our
5 position to object to a number of documents. In addition, various
6 other defence teams also expressed their objections against the
7 documents requested to be put before the Chamber by the
8 Prosecution.

9 Regarding the copied documents or the scanned documents, as we do
10 not know its proper, clear source, we cannot, therefore, testify
11 to its authenticity.

12 And for the documents copied by DC-Cam, as they were sourced from
13 the Tuol Sleng Museum, it's not a sufficient ground.

14 We still urge the Chamber to make sure that the documents are
15 authentic and contemporaneous of the DK regime. It needs to be
16 verified against the original documents so that we can prove
17 their authenticity.

18 As for document A7, the documents from DC-Cam are mainly from the
19 National Archives. We need to find the original documents in
20 order to verify its authenticity. We'd also like to put a request
21 to the Trial Chamber for the archivists at the National Archives
22 to provide a testimony regarding the authenticity of these
23 documents against the original ones.

24 [13.40.08]

25 As for A8, the poor quality of the copied documents -- they are

1 not legible. For that reason, we do need the original documents.
2 And as for A10, regarding the documents at S-21, as Duch stated
3 that the documents were the confessions as a result of torture,
4 for that reason, the contents of the confessions clearly do not
5 reflect the facts, and they will not, in any way, assist in
6 ascertaining the truth in this Court at all. The accused Duch
7 made a statement during the proceeding in Case 001 that, as Duch
8 was the chairman of S-21, with his many roles -- and it was only
9 within the framework of S-21, and why Duch knows more details
10 about the Standing Committee, about the Central Committee and
11 various other major confidential documents. It seems that he
12 purported his role to that of Pol Pot. For that reason, we urge
13 the Trial Chamber to reject all the statements made by Duch
14 during the proceedings in Case 001.

15 As for document A14 -- that is, document D232/108 -- it was a
16 document by the Office of the Co-Investigating Judges. As Nuon
17 Chea stated earlier, this document -- this office, rather, is
18 biased. It is supported by the Office of the Co-Prosecutors.

19 [13.42.36]

20 In its report -- that is, document D369/38 -- it is clearly seen
21 that the Office of the Co-Prosecutors -- of the Co-Investigating
22 Judges tried to work hand-in-hand with the Office of the
23 Co-Prosecutors in order to put the inculpatory evidence on my
24 client.

25 When it comes to trying to find the evidence to identify

1 individuals, and they relied mainly on one person; that is, Mr.
2 Toch Vannarith, who is a member of the Office of the
3 Co-Prosecutors, and he started working since the beginning of
4 this office. So it is clearly seen that he has a bias or tendency
5 toward this office, in order to put inculpatory evidence against
6 the Accused. His experience at the Office of the Co-Prosecutors
7 as well as his knowledge in drawing the sketch do not derive from
8 his personal experience during the Khmer Rouge regime.

9 MR. PRESIDENT:

10 I notice the prosecutor -- the prosecution is on his feet. You
11 may proceed.

12 [13.44.18]

13 MR. ABDULHAK:

14 Your Honours, first of all, this is not a proper objection; it
15 does not fall within any of the grounds on which a document may
16 be objected to at this stage.

17 Your Honours have indicated clearly the prima facie standard for
18 admissibility of documents, it being prima facie relevance,
19 reliability, and authenticity, issues that my friend is now going
20 to have nothing to do with that standard. They may ultimately go
21 to weight that Your Honours may ascribe to individual documents.
22 Additionally, in our submission, it is improper for counsel to
23 make submissions about the qualifications of individual staff and
24 to name them as such. I don't think it's proper for that to be
25 done in an open setting, and certainly I can't recall a single

1 instance where that's been -- that type of practice has been
2 engaged in, in this Court.

3 MR. SON ARUN:

4 I'd like to respond to the objection raised by the International
5 Co-Prosecutor.

6 [13.45.29]

7 I mentioned the name because Nuon Chea's defence do not recognize
8 and accept the documents prepared by this member of the OCP
9 office.

10 With your permission, Your Honour, I'd like to continue.

11 (Judges deliberate)

12 [13.46.54]

13 MR. PRESIDENT:

14 Defence Counsel, you may continue with your objections.

15 MR. SON ARUN:

16 Mr. Toch Vannarith started working for the OCP since it commenced
17 its initial investigation. Therefore, there is no doubt that his
18 tendency is toward that which supports the position of the OCP in
19 order to charge the Accused. His long-term experience at the
20 office of OCP assists him in drawing the map, and of course the
21 map does not reflect his personal experience during the Khmer
22 Rouge regime. He was born on the 27 of January 1965, according to
23 D369/18, which -- by 1975, he was only 10 years old. At that
24 young age, how could it be possible for him to remember in such
25 vivid details?

67

1 [13.48.17]

2 So his work is therefore -- cannot be relied upon, and I urge the
3 Bench to reject the copied document and the scanned document
4 accordingly. All these documents are as a result of the
5 investigation by the OCP and the OCIJ, which are not clear and
6 are not beyond reasonable doubt, and it cannot be used as
7 reliance on its authenticity.

8 As I mentioned earlier, I'd like the Bench to reject all those
9 documents that its authenticity cannot be proved, and as they
10 were repeatedly raised by the Prosecution.

11 Next, I'd like my national counsel to continue. Thank you.

12 MR. PRESIDENT:

13 Thank you, National Counsel.

14 The International Defence Counsel for Nuon Chea, you may proceed.

15 MR. IANUZZI:

16 Thank you, Major Son Arun. Thank you, Your Honours. Good
17 afternoon.

18 [13.49.41]

19 I'll begin by stating that I hope to hold a promise I've made to
20 my friends in the translation booth; I will speak as slowly as
21 possible today. I don't intend to use up all the available time.

22 I will also note that I've made a promise to my friends on this
23 side of the stage that we would donate the balance to them. So I
24 will take my time in any event.

25 To begin, I would like to make a few general remarks. First of

1 all, I'd like to simply adopt, by reference, some of the previous
2 submissions that we've made regarding the admission of
3 documentary evidence.

4 Very, very briefly, as previously stated, we submit -- we submit
5 - that, where a particular document goes to either the acts or
6 conduct of the Accused or a key issue in the case, then the
7 author of that document must be made available in Court for
8 examination. And this is a position we've - we've stated several
9 times. This is something that the Prosecution, I believe, agrees
10 with, so I'll leave it at that for now.

11 [13.50.42]

12 I will focus the bulk of my attention today on relevance -- on
13 the issue of relevance.

14 And I will slow down.

15 And with respect to relevance as a general matter, I'd like to
16 read from something that the Chamber has - has issued -- and this
17 was last year. And I'm referring now to document E141, page 2 of
18 that document. I'll simply quote from this:

19 "Regarding the examination of policies other than those related
20 to forced evacuation, the purpose of including reference to them
21 in the first trial is to enable the manner in which the policy
22 was developed to be established. What is therefore envisaged is
23 the presentation in general terms of five policies..." And those
24 are the policies referred to in paragraph 157 of the Closing
25 Order. I think we're all familiar with those.

1 Quoting again: "...although the material issue for examination in
2 this first trial is limited -- I repeat, limited -- to the forced
3 movement of the population (phases 1 and 2)."

4 And this -- this last point, I'd like to emphasize very much: "It
5 follows--" Quoting again: "It follows that there will be no
6 examination of the implementation of policies other than those
7 pertaining to the forced movement of the population (phases 1 and
8 2)."

9 [13.52.07]

10 And I simply quote that language because I think it needs to take
11 an overarching sort of standpoint in respect of this document
12 here, and this needs to be the groundwork from which we're
13 assessing all of the submissions to date.

14 So, further, along those lines, I would repeat something that we
15 have also previously submitted, and that's following the
16 severance of Case 002. The central thread -- the central thread
17 -- of this first mini-trial is, again -- it's the alleged
18 evacuation of Phnom Penh and the subsequent population transfer
19 from the South to the North of the country. Little else, as we
20 have said, little else is now relevant in this Chamber, and the
21 parties should adhere strictly -- strictly -- to that central
22 thread.

23 As we've said, Nuon Chea's position with respect to these issues
24 is clear. He's made it clear. He will continue to make it clear.
25 And we simply reiterate today that the Co-Prosecutors need do

1 little else, in this case, apart from establishing that Nuon
2 Chea's actions with respect to those issues, those two alleged
3 population transfers, were not justified under international law.
4 [13.53.22]

5 So, therefore, it follows, we submit, that the Chamber should
6 adopt the exact same surgical approach it took in severing the
7 case and crafting the modified indictment, it should apply that
8 very approach to limit, to strictly limit the number of documents
9 deemed relevant to the assessment of issues at stake in Case
10 002/01.

11 Now is the time -- now is the time, as the Chamber has rightly
12 notified us -- now is the time to separate the wheat from the
13 chaff so that when it comes time, down the road, to debate the
14 probative value of these documents, all of us -- the Chamber, all
15 the parties -- will be faced with a reasonable, limited, and
16 practicable task, a task strictly in line with the terms of the
17 Severance Order.

18 I will now turn to the specific documents tendered by the
19 parties. And if I may, let me begin today with the civil party
20 submissions.

21 I won't say much about the translation issue which, I believe,
22 was discussed this morning briefly, and I believe we made our
23 position known already to the Chamber through "Dottore" Crippa by
24 email last week.

25 [13.54.38]

71

1 Simply to reiterate, we do not object to the tabling of those
2 documents for discussion today, but we do however reserve our
3 right to make any further submissions if necessary, once those
4 translations are finalized. And we, of course, acknowledge the
5 translation difficulties experienced by everyone.

6 Turning to the substance of these documents-- Again, I start with
7 these -- I start with the civil party submissions today in light
8 of what I've said earlier regarding relevance.

9 I'm looking now at revised Annex 7A -- and that was circulated
10 last week, and even prior to that -- and this is a list of 10
11 specific documents, the 10 specific documents for debate today.

12 And again, I begin with these because, with a single exception --
13 that being the last document on this list - it seems to me and I
14 submit that all of these documents, the first nine of the 10, are
15 irrelevant to issues raised in Case 002/01. That is to say nine
16 of the 10 documents are clearly aimed at establishing the
17 implementation of alleged DK policies other than - other than --
18 the population transfers. And this is apparent from a facial
19 review of this annex, Annex 7A, and indeed it is confirmed in the
20 letter of the Co-Lead Lawyers of 8 March, in which they indicate
21 that the 10 documents "may not relate" -- and I'm reading from
22 the last page of this letter - "may not relate to the scope of
23 Case 002/01". And I submit that they do not relate. They do not
24 relate, with the exception, as I've said, of the last document,
25 which clearly seems to go to historical background, which, as we

1 submitted at the end of the last session, is still open for
2 debate, is still on the table, so to speak. So we do not object
3 to that final document.

4 [13.56.41]

5 So I am slightly confused, which seems to be my natural state at
6 these hearings, but I am slightly confused as to their inclusion
7 on the list at all. But I'm sure we'll hear from my colleagues
8 across the stage on that point later this week.

9 Turning now to the OCP documents, again I would just like to make
10 some general points concerning the relevance of these documents.

11 And today I'll be making reference to the various E109/4 lists.

12 Those are the various annexes which are listed in the Trial
13 Chambers memo on the agenda today.

14 [13.57.25]

15 And in particular, I'd like to point out that the submissions, in
16 general -- in general -- under their columns headed "Description
17 and Points of the Indictment" on most, if not all, of these
18 annexes, from a review of those submissions, it's apparent that a
19 number -- a large number, in fact, of the tendered documents, we
20 say, also fall outside the scope of Case 001 -- 002/01 -- excuse
21 me.

22 While some of the documents are indeed clearly relevant to
23 communication and administrative structure, a great number of
24 them, again, as the civil party list, relate to the
25 implementation of policies other than the single one that forms

1 the basis of this first mini-trial. And again, that's of course
2 the forcible transfers.

3 So we submit -- we submit -- along these lines, the Chamber
4 should take pains to exclude this extraneous material, lest it --
5 and the rest of us are left to deal with an unnecessarily
6 unmanageable dossier at the end of the case. We urge the Chamber,
7 given its positive obligation to manage these proceedings in an
8 effective manner, to cull and discard as many documents as
9 possible, as many irrelevant documents as possible.

10 [13.58.40]

11 And in this regard, we intend to give you some guidance - we
12 intend to give you some guidance -- but in order to avoid the
13 tedium of going through every single document on each and every
14 one of these lists, I'm going to make some general points, and at
15 a later stage, probably first thing tomorrow morning, I will
16 circulate to the parties, in writing, an indication of precisely
17 the documents on each of those lists that, we suggest, fall
18 outside the scope of Case 002/01. And the OCP then may make any
19 submissions in response later this week.

20 I will, as I've just said, make some general remarks regarding
21 the various categories and I'll take these in turn.

22 And I'll begin with A6. Those are the DK biographies. And this is
23 of course further to the comments of Major Son Arun just a few
24 moments ago. It is our position that these documents, these
25 biographies, need to be treated as -- in the same manner --

74

1 excuse me -- as confessions; they are clearly -- or were clearly
2 made under torture, the threat of torture or, in any event, some
3 type - some type of inducement or coercion prohibited by Rule
4 21.3, and accordingly they should be treated like confessions.
5 And as my colleague mentioned, that is to say that they should be
6 considered prima facie torture-tainted and, therefore, subject to
7 the Chamber's previous ruling with respect to the use of such
8 material.

9 [14.00.05]

10 In this, perhaps, for the benefit of the public and for all of
11 us, in fact, I would just like to read briefly from the ruling
12 made some time ago by both the President and Judge Cartwright.
13 This is from Case 001, in trial transcript of 20 May 2009, at
14 page 6 -- and this is the President speaking:

15 "The parties are reminded of Article 15 of the Torture
16 Convention, which says: 'Each state party shall ensure that any
17 statement which is established to have been made as a result of
18 torture shall not be invoked as evidence in any proceedings
19 except against a person accused of torture as evidence that the
20 statement was made.'"

21 [14.00.45]

22 And this is the general position. We're all familiar with this,
23 so I'll leave it at that.

24 Judge Cartwright then, a few days later, went on to expand a bit
25 on this. And now I'm reading from, again, Case 001 trial

1 transcripts, 28 May 2009, at page 9, and again this is Judge
2 Cartwright: "The Chamber wishes to emphasize the importance of
3 the fact that [the] Court is bound by the provisions of Article
4 15 of the Torture Convention..."

5 Additionally, she noted:

6 "This provision is reflected in Article 38 of the Cambodian
7 Constitution and also in Rule 21.3 of the Internal Rules which
8 states: 'No form of inducement, physical coercion or threats
9 thereof, whether directed against the interviewee or others, may
10 be used in any interview.'

11 "In practice," Judge Cartwright went on to say, "this means that
12 the fact that a confession has been made and that it was made
13 under torture is an admissible fact. However," and this is the
14 important point, "the contents of a confession cannot be accepted
15 as a truthful statement."

16 [14.01.53]

17 And this, of course, supports what my colleague has said a few
18 moments ago.

19 "If", Judge Cartwright continued, "any party wishes to refer to
20 the truthfulness or otherwise of the contents of [that]
21 confession, it will be necessary first to establish if the
22 confession was made under torture or the threat of torture."

23 So, further to what Major Son Arun has said, I would like to
24 additionally submit that, where the Chamber intends to make some
25 secondary use of this type of material -- for example, to somehow

1 link a biography or a confession to the Accused or to attempt to
2 do that -- then, in keeping with this approach of extreme caution
3 and in keeping with our general position, a competent individual
4 -- that is, someone with proven knowledge and understanding of
5 the document -- should come into Court -- should come into Court
6 -- and be subject to examination.

7 [14.02.43]

8 Very quickly moving on to A7, the DK commerce records, it seems
9 to me that nearly all, if not all, of these documents appear to
10 be relevant to the communication structure. And we're quite happy
11 to concede, in fact, that the DK was engaged in trade of a
12 beneficial nature with other nations, as many of these documents
13 appear to suggest.

14 Category A8, the so-called Tram Kak district records; it is my
15 submission that, with the exception of one of these, they appear
16 to be concerned with the treatment of targeted groups in
17 cooperatives and security centres. That is, we submit, the
18 implementation of a policy outside the scope of Case 002/01.

19 A9, S-21 prison records; again, only a handful, a very small
20 subset of these appear relevant to administrative, communication
21 structures, to other relevant issues. The remainder, again, are
22 meant to address the implementation of policies other than those
23 that form the subject of this trial.

24 Moving on to A10, that's S-21 confessions. Of course, the
25 comments I made originally with respect to torture-tainted

1 material apply here, and once more, it seems only a handful
2 appear relevant.

3 [14.04.06]

4 Case 001 transcripts, category A11; I have no objections beyond
5 the ones Major Son Arun made, general ones that we've made
6 already. Again, I would note that only about a third of these
7 appear relevant to this trial.

8 A14; these are the site identification reports. These appear to
9 have absolutely no relevance to this trial. I haven't been able
10 to detect any.

11 A15, maps and photographs; these are of varied relevance.

12 A16; this is a potentially problematic category, audio and video
13 records. Again, some of these appear prima facie relevant,
14 especially with respect to the historical background, but I would
15 submit that a cautious approach is needed here, especially with
16 respect to any audio or video recordings of the Accused, who, we
17 submit, has the right to confront the maker in Court, the maker
18 of those -- the producer, I should say, of those records, of
19 those audio and video records, and that is because a proper
20 context may have been edited out of the recordings. We just might
21 not know about it.

22 So, in this regard, we may -- and we reserve our right to do so
23 to seek the admission of any unedited footage, should the Chamber
24 be interested in admitting these documents.

25 [14.05.29]

1 A17, A18, and A19 are batched together. Those are the
2 international communications, international media reports, and
3 academic articles. Again, I would just say these appear to be of
4 varied relevance. But to be perfectly clear, as we, the Defence,
5 have sought to rely on such material, I want to make it clear, we
6 do not object to the admission of these types in any categorical
7 sense. We don't want to suggest any double standard, and we do
8 believe that our general objections, if implemented properly,
9 will safeguard our rights with respect to these documents.
10 Finally, the rogatory reports, that's category A20. And I have to
11 submit, as we've consistently done since the start of the trial,
12 that any material generated by the OCIJ must be handled with
13 extreme caution. And this is due to what we have submitted was a
14 biased and otherwise flawed approach to the judicial
15 investigation. In this regard, I simply make reference to our
16 previous objections, our preliminary objections, where we
17 extensively briefed this issue.
18 And that takes me to the end of the Prosecution's documents.
19 I'll very, very briefly move on Ieng Sary's.
20 [14.06.35]
21 There's only one document tabled for discussion today; that's a
22 book by Michael Vickery, "Cambodia 1975-1982". We, of course,
23 have no objection to that document being placed in the record.
24 That's D22/1.17.
25 We would of course, as we've indicated before, prefer to hear Mr.

1 Vickery as a witness in conjunction with this - with his book
2 being used as evidence, and I reiterate that request today.
3 Finally -- not quite finally, but in terms of the last group, I'm
4 looking now at the Khieu Samphan Annex, and again, as was the
5 case with the Ieng Sary documents, we have no general objections
6 as such for this material. We support our colleagues.

7 [14.07.27]

8 We do would like -- we would like to make one caveat with respect
9 to four of the documents on this list. And I'll just put the --
10 read those.

11 The first is D210/5, and I'm reading the French, E109/1.1 --
12 that's all I've got, it is the French. This seems to be a
13 transcription of an interview with Ouk Bunchhoeun on 14 August
14 1990, with Steve Heder. Ouk Bunchhoeun, of course, is a CPP
15 senator who refused to appear before the OCIJ pursuant to a
16 summons.

17 Next document is listed as RI 19.58, and that's identified as an
18 interview with Im Chem -- DC-Cam. She, of course, is a suspect in
19 Case 004.

20 Third document, IS -- RI -- excuse me -- 21.74, telegram of Meas
21 Muth, Committee 870, dated 31 December 1977. Meas Muth, of
22 course, is a suspect in Case 003.

23 And finally RI 19.51; and that is an interview with Hor Namhong.
24 Again, obviously, the RGC Minister of Foreign Affairs, who
25 refused to appear before the OCIJ pursuant to a validly issued

1 summons.

2 With respect to these four documents, we submit that, given that
3 political interference is a key issue in this case, these
4 documents should not be admitted without the authors appearing in
5 Court for examination by the Chamber and the parties.

6 [14.09.17]

7 One note on the further hearings. We've been informed that
8 discussion of the so-called new documents will be schedule in due
9 course. That was notified in the same -- I believe in E1712/5
10 (sic). And I mention this because I'm confused slightly on a
11 point.

12 We would like an additional indication as to whether and when we
13 can expect to make substantive submissions as to the probative
14 value of the various documents that we've been discussing these
15 last few weeks. And I'm talking about, of course, what we're
16 dealing with today, what we've dealt with in the past, not the
17 new documents. We would like some indication when, whether, how
18 it's going to look like, if we're going to have a debate on the
19 probative value, not just the admissibility.

20 And, finally, last - last point I'd like to make today, I'd just
21 like to note that after the close of last session, there was an
22 attempted escalation by Hun Sen with respect to document E176.
23 And that, of course, is our application for summary action
24 against the prime minister for his remarks that our client is a
25 "deceitful killer and a perpetrator of genocide".

81

1 In late February, it was reported that Hun Sen was considering
2 retaliatory legal action against an individual he described as an
3 arrogant member of the Nuon Chea defence team.

4 [14.10.38]

5 So, in disposing of E176, we do urge the Chamber to take this
6 into account, to take the prime minister's latest position, which
7 can only be construed as an inappropriate threat, into account.

8 In our submission, such thuggish behaviour is to be condemned,
9 and we hereby request the Chamber to do so. And you may consider
10 this to be a new request pursuant to Rule 35 for summary action
11 against the prime minister, as it is based on new information.
12 And that's all I have for today. I'd gladly cede the balance of
13 our time to Mr. Karnavas. Thank you very much.

14 MR. PRESIDENT:

15 Thank you.

16 Was there any other oral submission the defence counsel for Nuon
17 Chea wishes to make?

18 MR. IANUZZI:

19 No, Your Honour, we're -- we've concluded. Thank you.

20 [14.11.57]

21 MR. PRESIDENT:

22 How about the defence team for Ieng Sary? Do you have any oral
23 submission to make? You may proceed.

24 MR. KARNAVAS:

25 Good afternoon, Mr. President. Good afternoon, Your Honours. And

1 good afternoon to everyone in and around the courtroom.

2 Yes, indeed, we do have some remarks concerning the various types
3 of documents that are being sought to be admitted by the
4 Prosecution and the civil parties in particular.

5 I'll begin with some general remarks, Mr. President, and then
6 I'll go through each category. It is impossible to go through
7 every single document that we object to, so I will just do it by
8 topic, and on occasion I will bring some examples so that you can
9 all see what exactly I'm referring to.

10 Suffice it to say, it is our fundamental position and our
11 starting point that the Prosecution is attempting to try its
12 case, by and large, without any witnesses, by simply admitting
13 the documents, documents which come under topics that - that not
14 always are representative of what exactly is in the bundle of
15 documents.

16 [14.13.24]

17 In fact, I would say that it occurs to such a degree of frequency
18 that one has to question the motives and, perhaps, even the
19 professional ethics behind that.

20 So, for instance, if you are submitting a biography, and along
21 with the biography is a statement, a statement is not a
22 biography, is a statement of a witness. Or, if you are, for
23 instance, trying to introduce a rogatory report but the report
24 contains summary of statements, that's another clear indicator.
25 Our position is that of course, as indicated by the Nuon Chea

1 team, that anything -- any documents that go to the acts and
2 conducts of the Accused cannot be admitted and should not be
3 admitted without viva voce testimony, without a witness being
4 here and being confronted.

5 The Prosecution, on numerous occasions -- in fact, on every
6 occasion that it can think of -- cites the jurisprudence of ICTY,
7 and that is exactly the jurisprudence of ICTY. So, in this
8 instance, at least we are in the same mind-set, that where any
9 statements, any summaries, anything that may go to the acts of
10 conducts of the Accused, unless the witness comes in to be
11 subjected to cross-examination, that material cannot and should
12 not be admitted.

13 [14.15.06]

14 Now, let me begin by going through some of the categories of
15 documents. I will start off with the biographies. And there may
16 be some repetition, some repetition from what we heard from the
17 Nuon Chea team. I will try to edit as I go along my thoughts and
18 what I - what I've prepared to present to the Trial Chamber, so
19 as not to repeat what has already been said.

20 And in order that there not be any misunderstandings, let me
21 begin by saying we adopt the positions that have been advocated
22 thus far by the Nuon Chea team. In other words, we find
23 everything that they've indicated both factually and legally to
24 be correct and that we adopt that position. We incorporate it
25 into our remarks.

1 Biographies, we submit, in addition to being taken under
2 conditions which would amount to torture-tainted evidence, are in
3 fact statements; they are unsworn statements provided under
4 dubious circumstances where the authors are unavailable and are
5 -- cannot be confronted.

6 [14.16.30]

7 So our position is that these biographies should not be admitted.
8 Many of the biographies, for example D366/7.1.38 or D366/7.1.42,
9 state that they are prisoner biographies. Any biographies derived
10 from torture-tainted material must not be admitted, so they-- The
11 biographies themselves indicate that they are from prisoners, not
12 biographies written by individuals who are applying for a job as
13 if they were submitting a C.V. or were merely recounting, as part
14 of the self-criticism process that might have been going on at
15 the time, as to what they might have been doing.

16 Some biographies appear to be relevant to Case 002/1, but only if
17 Ieng Thirith was still in the case; in other words, she had not
18 been severed from the case. One example is D366/7.1.40.

19 I raise this, and I think this is something that at some point
20 the Trial Chamber may need to grapple with -- and perhaps now is
21 the time to plant the seed -- that there may be instances where
22 evidence may be relevant to Ieng Thirith, but since she is not in
23 this case any longer, the question is to what extent such
24 evidence should come in and, if it does come in, would it in any
25 way impact the rights of the other Accused, or are we to, then,

1 be in a position where, perhaps, we are acting as her defence.
2 That's something that I raise at this point in time. I leave it
3 up to Your Honours to think about it, but at some point, I think
4 there may be some evidence which might need to be addressed and
5 excluded or admitted subject to discussions as to whether it
6 would be fair to the Accused to have such evidence admitted,
7 knowing that Ieng Thirith is no longer in the case, or at least
8 in 002/1.

9 [14.19.13]

10 Some of the documents numbered -- numbers listed as biographies
11 have multiple documents with the same number in English on the
12 case file. Some of these documents appear to be biographies, but
13 others actually appear to be DC-Cam interviews, or summaries of
14 biographies made by unknown authors, or photographs from the
15 DC-Cam publication. An example of these include IS 19.46, IS
16 19.157, and IS 3.5.

17 We submit the documents, which are not actually biographies, must
18 not be listed as such and should not be -- there should be no
19 attempt to sneak them in as biographies.

20 For instance, if you look at one document, 19.46, we have here
21 what appears to be a document dated 10 October 2003, and it's an
22 interview; it's from DC-Cam. How could it possibly be a biography
23 when, in fact, it is a question-and-answer statement? It's in the
24 annex.

25 Perhaps it is an oversight, but along with this document, there

1 are biographies which may or may not necessarily be relevant, but
2 in any event I think it is up to the Prosecution to demonstrate
3 why every one of these biographies is necessary. It appears that
4 the burden is being shifted onto the Defence to have to establish
5 why this material should not be admitted, when it should be the
6 other way around. It should not be up to the Defence to look
7 through every single document and see that some are
8 mischaracterized. Perhaps there is a good explanation from the
9 prosecution as to why this is a biography, why they titled it as
10 a biography, and how it may be relevant to the case.

11 [14.22.00]

12 One document, D366/7.1.831, is an autobiography of Witness
13 TCW-724. This was translated by DC-Cam. It should not be admitted
14 unless -- and perhaps until -- the witness testifies. And that's
15 one of our other general objections: if documents are related to
16 witnesses who are scheduled to appear, then those documents
17 should not be admitted at this point in time, until the witness
18 appears. If, for instance, at some point, we learn that the
19 witness is unable to appear, then, of course, nothing prevents
20 the Prosecution from making an additional submission as to why,
21 now, documents related to a potential witness who did not show up
22 should be admitted in the - in the interest of justice.
23 So we would submit as one of our other general comments that any
24 document that's related to a witness which is currently scheduled
25 by the Trial Chamber should not be admitted. When the witness

1 comes, if it is necessary, they can then try to admit the
2 document. But we would submit that, as a matter of course, if the
3 witness is here and is testifying, the best evidence comes from
4 the witness' mouth. It may be necessary to present a document to
5 the witness for the purposes of explaining, or expanding, or
6 supporting what the witness says, but a statement given by a
7 witness should not come in if the witness is testifying, unless,
8 of course, segments of it could come in where the witness is now
9 being impeached by the very same document -- which the witness
10 produced -- or the document is being used to rehabilitate the
11 witness if his -- if he was challenged on cross-examination. But
12 simply to say: Well, isn't that what you said in your statement,
13 and then use the statement as a basis of bolstering the weight of
14 the witness' testimony, we submit that's improper, which is
15 another reason why we think, at this point in time -- and we
16 submit that any documents related to witnesses who are scheduled
17 to testify should not be admitted. And if they do not testify,
18 then the -- then the Prosecution can make a further submission as
19 to why, in the interest of justice, that -- those documents
20 should be admitted.

21 [14.24.56]

22 And incidentally, Your Honours, this is the procedure normally --
23 or generally, I should say -- applied at the other ad hoc
24 tribunals. So I'm not that far off of what is normally the
25 practice and I'm not suggesting something that is not being done

1 elsewhere. I'm not saying something that is so unique, so
2 avant-garde that, perhaps, we would be improvising beyond the
3 scope of these - of these proceedings.

4 [14.25.31]

5 Some documents, and in particular one, I think, are not
6 translated; this is D2/15.36. It is our opinion -- or we are of
7 the opinion, I should say, that it hasn't been translated; we
8 cannot find the -- this document in English, and therefore the
9 document should not be admitted unless it is translated. If it is
10 that important, obviously, I'm sure efforts are being made to
11 have it translated. If it's an oversight, then perhaps the
12 Prosecution can look into all of the documents. Presumably,
13 they've gone through every single one and can articulate with
14 precision as to why each document that they've listed in their
15 annex is actually relevant to 002/1.
16 Therefore, we look forward to their explanations on this
17 particular document and others as well.

18 [14.26.42]

19 Now, let me move on to documents dealing with commerce records.

20 And I won't be long on this one.

21 Basically, it is our position that we leave it to the Trial
22 Chamber's discretion to go through these documents and determine
23 whether they wish to have them admitted and whether they are
24 actually relevant. So we leave it to your discretion -- any
25 documents dealing with commerce. There may be other -- other

1 parties that may have objections to these documents; our position
2 is we leave it to your wise discretion. Excuse me.

3 The next set of documents, Your Honour, deal with the Tram Kak
4 district records. And perhaps I will start with my -- by
5 remarking that there's credible evidence on the file thus far
6 that these records, these documents, the original ones, were
7 lost, that they were lost by Professor Kiernan -- and perhaps
8 he's not to blame, but nonetheless he took the documents, the
9 original ones, then supposedly gave them back to someone in the
10 Ministry of Interior, and there's no recollection of it.

11 [14.28.33]

12 There is -- there are some documents that we have. There was an
13 interview taken of Mr. Chhang, who described his knowledge of the
14 documents and what he learned from Mr. Kiernan. There are some --
15 there are some correspondence in the file between Professor
16 Kiernan and the Co-Investigative Judges, where he articulates his
17 position that he had turned over the documents, the original
18 ones, and it was years later -- I believe, nearly 10 years later
19 -- that he learned that they had -- the originals were actually
20 lost. He did indicate that he had made copies, and so--

21 In any event, I'll leave it up to Your Honours to determine what
22 to make of that. Suffice it to say, should -- should it be
23 necessary to hear evidence on this, Mr. Youk Chhang can be
24 recalled, and of course any -- with respect to these documents
25 and what might have -- what may have happened to the original

1 ones. If this issue is an important one, perhaps Mr. Kiernan can
2 address it, were he to appear as a witness in this case.

3 [14.30.06]

4 Now, with respect to some of these documents, it is our
5 submission that not all of them appear to be actually relevant to
6 002/1, at least when you look at the annex and you look at the
7 paragraphs to which are being cited; for example, D15.3 is -- is
8 listed as relevant to treatment of targeted groups, paragraphs
9 205 to 215 of the Closing Order; Tram Kak cooperatives,
10 paragraphs 302 to 322; and the Kraing Ta Chan -- my apologies for
11 the pronunciation, Mr. President -- security centres, paragraphs
12 489 to 515. And to our understanding, unless we are mistaken, to
13 our understanding, none of these paragraphs are listed as part of
14 Case 002/01. And I do understand and I do appreciate the constant
15 refrain we hear from the Prosecution that some of this is
16 contextual, obviously we're going to be spilling into some other
17 areas that may touch upon 002/02 or 3, or what have you. But, be
18 that as it may, we simply point out that when you look at what is
19 being represented by the Prosecution, on its face, it appears to
20 be outside Case 002/01.

21 And if, for instance, the treatment of targeted groups is not to
22 be discussed during this trial, then why is there an attempt to
23 bring that information in?

24 [14.32.09]

25 Of course, we know the Prosecution's position; they seem to be of

91

1 the opinion, or at least they suspect, if I could -- if I'm
2 interpreting what they've indicated in their past pleadings, but
3 they suspect that there will not be another case other than this
4 one. And, therefore, perhaps this is an attempt to get all the
5 evidence in that they think might assist them for the entire --
6 for the entire case, even though it has been severed.
7 And as -- as was indicated by the Nuon Chea team, we are of the
8 opinion and we submit that only documents that are strictly
9 relevant should be admitted for this case. When we get to the
10 next case, then they'll have an opportunity to admit those
11 documents in. But if we're going to manage this case, and try to
12 finish it within a reasonable period of time and, in doing so,
13 summarize the evidence, both testimonial and documentary, in a
14 manageable fashion, then I submit, Your Honours, now is the time
15 to be vigilant in admitting only documents that are strictly
16 relevant.

17 [14.33.34]

18 Now, some of these (unintelligible) documents, for example
19 D157.16 and D157.35, appear to be summaries of confessions, and
20 of course--

21 MR. PRESIDENT:

22 Defence Counsel, could you please repeat the ER number of the
23 last document?

24 MR. KARNAVAS:

25 My apologies; the two documents -- I'll start again -- is D157.16

1 and D157.35. They appear to be summaries of confessions and, as
2 such, should be inadmissible for the same reason as we hear
3 articulated both orally and -- and in written form as
4 torture-tainted evidence. And as you well know, Your Honours,
5 this matter has been briefed, and you've even made some rulings
6 on the matter.

7 [14.34.52]

8 Another example is D157.86. This document is illegible, and it is
9 our understanding that it was unable to be translated into
10 English because the original Khmer could not be understood by the
11 translators. So our position is this document should not even be
12 on the case file.

13 And of course, if we are -- if I'm making any misstatements or
14 errors, I apologize, but this is our understanding. We had to go
15 through a lot of documents in a very short period of time.

16 Your Honour, I see -- may I have some guidance as to when we will
17 be breaking for the afternoon, so I -- so I know? I'm afraid I'm
18 confused over the time.

19 MR. PRESIDENT:

20 Thank you, Defence Counsels, for your attention to the breaking
21 time.

22 The time is now appropriate for a break. We shall have a
23 20-minute break, and we shall return at 3 p.m.

24 THE GREFFIER:

25 All rise.

1 (Judges exit the courtroom)

2 (Court recesses from 1436H to 1503H)

3 (Judges enter the courtroom)

4 [15.04.02]

5 MR. PRESIDENT:

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

7 Now I hand over to the defence counsel for Ieng Sary to resume
8 his observation.

9 MR. KARNAVAS:

10 Thank you, Mr. President, Your Honours, and good afternoon again
11 to everyone.

12 The next category, Your Honours, are documents that are listed as
13 S-21 prisoner records. I think that this issue has been discussed
14 extensively. It's - I think our position is that anything dealing
15 with S-21 has to be viewed with a great deal of scepticism, and
16 if, indeed, Duch does come and testify, that documents can be put
17 to him for the purposes of cross-examination, or examination.

18 One, in particular, document, which is D108/26.135 - D108/26.135
19 -- appears to be relevant to Ieng Thirith. Again, we would object
20 to it, since she's been - object to it being admitted since she's
21 no longer in this particular case, but that's something that Your
22 Honours will need to decide on.

23 The next -- next, we have S-21 confessions. We filed extensive
24 written submissions on this issue. Our position hasn't changed,
25 and the Nuon Chea team has already expressed his -- its

1 reservations and objections to this sort of evidence; I don't
2 wish to repeat what we already have submitted in the past and
3 what has been mentioned already this afternoon, but our
4 fundamental position is that S-21 confessions should not be
5 admitted; they're tainted because they were obtained under
6 circumstances which, under international law, such evidence
7 should not be used in Court.

8 [15.06.42]

9 The next type of documents category are transcripts from 001. And
10 I may go into this a little bit more extensively. Our position,
11 Your Honours, is that 001 transcripts cannot and should not come
12 in under any circumstances. Any witness who testified in 001 can
13 certainly be re-invited to give evidence in this particular case.
14 The lawyers for Duch did not put up much of a defence, as far as
15 we are concerned, but one legal issue that they may have had --
16 the jurisdictional one - was raised parenthetically during
17 closing arguments. They had no need to challenge witnesses
18 because, effectively, their client had provided all sorts of
19 statements and effectively, or purportedly, was cooperating and
20 was - and was admitting to his entire guilt. So the strategy and
21 the tactics used in 001 by the Defence are certainly not the
22 strategy and tactics used by the Accused in this particular case.
23 And I raise this because I certainly don't wish to have the
24 lawyers for Duch - their examination of witnesses, that is, be
25 used as a basis for suggesting that perhaps the witnesses have

1 been confronted and, therefore, need not appear. In fact, it
2 would be the complete opposite. If the witnesses are available,
3 they should come in and provide evidence. If they're not
4 available, then proper submissions can be made. And perhaps, if
5 testimony was elicited that does not goad to acts and conducts of
6 the Accused, perhaps the Trial Chamber may consider, but our
7 position is that transcripts cannot come in.

8 [15.09.20]

9 You may recall that early on I filed numerous submissions
10 concerning this - I'll say "we", on - for the Ieng Sary defence.
11 We did so because we knew that this is the habit, or the process
12 by the prosecutors, especially at the ICTY. And the members over
13 here come from the ICTY. What they tend to do in minor cases,
14 they try to sneak in as much evidence as they possibly can
15 because the Defence, effectively, is not interested in whether
16 that evidence comes in or not because it may not necessarily
17 touch upon their clients. So they get in all sorts of background
18 information, all sorts of other information that goes
19 unchallenged. So then, when the next case comes in, the first
20 thing they do is they make a submission for the Trial Chamber to
21 accept adjudicated facts and also to accept testimony by way of
22 prior transcripts.

23 [15.10.35]

24 So, knowing the practice and knowing the players in the
25 Prosecution, we filed substantive - substantive submissions

1 concerning this issue. So our position is clear: no transcripts
2 unless - unless the witness comes in. And the transcript doesn't
3 come in unless it's used for impeachment or for rehabilitation
4 purposes.

5 The next item are site identification reports, and this was
6 briefly touched upon by the Nuon Chea team, in particular to
7 documents D232/108 - that's D232/108 -- and D369/38 - D369/38.
8 And our submission is that these site identification reports were
9 prepared based on the OCIJ witness interviews, the relevant
10 witnesses, and the OCIJ investigators who prepared the reports
11 can certainly come in, and provide evidence, and be subject to
12 cross-examination. This is nothing other than a statement, as far
13 as we're concerned, and therefore we're entitled to confront the
14 makers of these particular reports.

15 [15.12.33]

16 But the site identification reports are not merely photographs,
17 but contain also testimony which cannot be tested unless the
18 witness is here.

19 And one example, for instance, is D369/38 which discusses not
20 merely the locations of certain work sites, but also who
21 supervised it. I don't wish to belabour the point as to the
22 individual working for the OCP who was engaged in preparing this.
23 Suffice it to say, as was pointed out, the individual would have
24 been 10 years old or 11 years old in 1975, and therefore he could
25 not have an independent memory of these events. Unless, of

1 course, the individual comes and testifies that, back in 1975 to
2 '79, the individual was roaming around Phnom Penh, going from
3 ministry to ministry, from location to location, and it was based
4 on his personal knowledge and experience and personal
5 observations that he was able to provide this site identification
6 report. If that is not the case, then, obviously, this individual
7 would have relied on other documents and, therefore, that
8 individual should come in and give evidence if indeed the Trial
9 Chamber wishes to rely on this
10 [15.14.26]
11 Maps and photographs, that's the next topic. Normally -- normally
12 -- a map or a photograph, in order for it to be admitted, has to
13 be a fair and accurate representation of what it purports to be
14 at the time of the incident. That's the normal circumstances. So,
15 if we're talking about a particular building, having a photograph
16 of a building which sat on this particular location is not
17 necessarily relevant unless, of course, the only purpose of
18 submitting the photograph is to show that, at this particular
19 location where this building currently is located, a particular
20 site -- or particular event occurred. We see lots of photographs
21 of new buildings; I suspect -- and perhaps the Prosecution will
22 tell us the purpose of them, but if the purpose is to demonstrate
23 what the building looked like or what the site looked like at the
24 time, then a foundation would have to be established.
25 One particular document, D108/39/8 - D108/39/8 -- is titled

1 "Genocide Sites in Cambodia (1975-1979)", authored by Susan E.
2 Cook and Matthew Fladeland, of the Cambodian Genocide Program,
3 Yale University. Now, here's why we object to a document of this
4 nature. When you look at the introduction-- I will read parts of
5 it to give Your Honours a flavour as to why these sorts of
6 documents are inadmissible unless, of course, the author wishes
7 to come in and testify about the substance in the article of this
8 report.

9 [15.17.18]

10 So, in the introduction, very first line: "The Cambodian Genocide
11 Program (CGP) is a genocide documentation project based at the
12 Yale Center for International and Area Studies at Yale
13 University." So here we -- you see that they've already indicated
14 who they are, and it's a documentation of genocide.

15 Further on, they go on to say:

16 "Since 1994, the CGP has been working to document war crimes,
17 genocide, and crimes against humanity committed by the Khmer
18 Rouge Regime in Cambodia (1975-1979). [The] documentation is
19 intended to support the investigation and prosecution of
20 individuals who committed genocide, human rights violations, and
21 war crimes in Cambodia."

22 Now, further down, it says: "An important aspect of this
23 investigation has been the mapping of genocide sites throughout
24 Cambodia."

25 And I should say, Your Honours, as an aside, when I read the word

1 "genocide", I'm thinking of the legal term as opposed to a
2 political term or social term that often is used by journalists
3 or politicians. I'm thinking of it from the legal context
4 because, when this document is being introduced, we are in a
5 court of law.

6 [15.19.09]

7 It goes on to say that "this map collection presents the results
8 of field visits to more than 500 genocide sites in 22 of
9 Cambodia's 24 provinces", and so on and so forth.

10 Now, I don't wish to read any further than that, but I mean,
11 here, this document clearly should not come in. If they wish to
12 bring it in, they should have the authors-- Susan E. Cook, at
13 least according to the internet -- I googled her -- she's an
14 Anthropologist not a lawyer. The other gentleman, Matthew
15 Fladeland, he's a cartographer. Yet they're using these terms.
16 Now, if they wish to come in to show that they went -- they
17 visited these sites and this was what was found at these sites,
18 fine, but they've identified the sites as "genocide sites".
19 Of course, of course, another question is: Why is this document
20 relevant? And I leave it to Your Honours to decide whether it is
21 relevant or not.

22 [15.20.32]

23 Another document worth noting is D366/7.1.415. It's a booklet of
24 photographs which also contains interpretive comments. So it's
25 not just photographs, but there are also comments, comments, as

100

1 far as we are concerned and what we submit, are statements,
2 unsworn statements that will be coming in. And we would not have
3 the opportunity to cross-examine those individuals who made those
4 comments. So, if Your Honours were to rely on any photographs, we
5 certainly would object to Your Honours accepting at face value
6 anything that was represented as a - as an interpretive comment
7 to a photograph, unless, of course, there was independent indicia
8 of corroboration, the same objection that I've made on previous
9 occasions.

10 And I know, Your Honours, that I'm testing your patience with
11 some of this, but I want to make sure that our position is clear.
12 And to the extent that I'm repeating myself from the previous
13 occasion, I apologize, but such is the nature of these
14 proceedings. I do believe however that I will finish today, so
15 there is a silver lining on the horizon.

16 [15.22.21]

17 Audio and - and video, that's the next topic. Our position is
18 that audio and video recordings must not be admitted, unless they
19 are demonstrated to be authentic, relevant, and reliable. I
20 think, with audio, it's rather important to ensure that they are
21 authentic. If they contain witness interviews, they must not be
22 admitted, unless we have the opportunity to confront those who
23 are being interviewed or those who are commenting on the videos.
24 And we say this because we think it's terribly important that, if
25 you show a video and someone is giving - is providing information

101

1 which can be interpreted as evidence, which goes to the acts and
2 conducts of the Accused, it would be a violation of our client's
3 right to confront that witness if he or she were not here in - to
4 give evidence.

5 One example, for instance, is D232/110/1.149R (sic). I'll repeat
6 again: D232/110/1.1.49R (sic). It's not available in English; it
7 should be rejected unless it's provided in all three languages.

8 [15.24.17]

9 This is a recording, as we understand it, of a witness, TCW-536.
10 I don't wish to mention the -- the individual. This is a classic
11 example of what I've indicated in -- before. If, for instance,
12 someone is on the list of witnesses, then, rather than have
13 evidence such as this come in prior to the witness, the better
14 practice would be for the witness to come in, give his or her
15 evidence, and then, if it's necessary to show the recording or
16 the video, then that's fine; if the witness does not come in,
17 then the Prosecution or the party who's trying to have the
18 evidence admitted can certainly make another submission for the
19 admission. That's -- that's our position, Your Honour.

20 Next category: international communications. And, again, I may be
21 repeating myself, but we have discussed these sort of documents
22 in the past in great detail and we have noted that these
23 documents should not be admitted, although, if they are admitted,
24 little weight, if any, should be given to them, unless they are
25 independently corroborated by other sorts of evidence.

102

1 One example, for instance, is D2-15.1. This is an interview
2 entitled "Ke Pauk's Autobiography". Our position is that this is
3 mislabelled and it shouldn't come in because it's not part of an
4 international communication to start with.

5 [15.26.51]

6 Another one is D366/7.1.191; it's labelled "International
7 Communication", but it actually is a royal decree pardoning Mr.
8 Ieng Sary.

9 There are 158 documents of international communications in this
10 sort of category; I certainly don't have time to go through every
11 single one of them. Again, I would submit, Your Honour, when
12 we're dealing with these large amounts of documents, it is not
13 sufficient enough for the Prosecution to provide a table and then
14 say: Let the defence object to any one of them, otherwise all of
15 them should come in. The Prosecution, since they are the moving
16 party to get these documents in, should go through every single
17 one and demonstrate why every single one of them is relevant and
18 reliable, and meets all other criteria, and therefore should be
19 admitted.

20 [15.28.01]

21 International media reports. Again, we've discussed this in the
22 past. It is our submission that these sorts of media reports
23 should not be admitted. In this sort of rubric of documents, you
24 have the FBIS reports, you've got articles by newspapers such as
25 "The New York Times" and the "Chicago Tribune". To what extent

103

1 these reports or articles from the media are accurate, no one
2 knows. We submit that the better practice would be not to have
3 them admitted; if admitted, they need to be corroborated.
4 With the FBIS reports, we understand it was the CIA that was
5 documenting this, and -- and there may be, for instance,
6 documents of a similar nature coming from the French Embassy in
7 Thailand or some other government because they may have been
8 listening at the same time. And to that extent, where you have
9 reports that are more or less saying the same thing, obviously
10 you have independent indicia and you can give those reports some
11 weight. But having an article by a journalist, for instance,
12 where the journalist doesn't come in to give evidence and it is
13 unknown how that -- what was actually seen and what was actually
14 reported, how accurate it might have been by the journalist, and
15 with no opportunity to cross-examine the journalist, we submit,
16 unless there's corroborating evidence, it shouldn't come in.

17 [15.29.54]

18 The next category deals with academic articles and analytical
19 reports and books. I think our position is rather clear, that
20 books and analytical reports should not be admitted unless the
21 authors come in to give evidence. It is as simple as that. Many
22 have written books about the period of '75 to '79, before that,
23 after that; some are historians, some are journalists, some are
24 actually eye-witnessed events, perhaps before '75 or after '79,
25 some conducted interviews with -- with various individuals, and

104

1 the product of those individuals -- the product of those
2 interviews are the books themselves.

3 We submit that these -- this sort of material should not be
4 coming in unless the witness -- unless the -- the author comes in
5 and is subject to cross-examination. Anything that was prepared
6 as an analytical report by the OCP should automatically be
7 excluded unless the author comes in, especially if the author is
8 only about 100 metres away from us, and comes here every day, and
9 is on the payroll. So, I think, to have someone who provided --
10 who prepared a report for the OCP, who may have even testified in
11 001 -- for an example, Craig Etcheson -- they should have to come
12 in and give evidence concerning those analytical reports.

13 [15.32.05]

14 And I'll go back on this -- on this matter for those who have --
15 for those documents that may have come in in 001 or for those
16 analysts from the OCP who may have testified in 001. It matters
17 not because, as I've indicated, we were not privy to that case,
18 we were not party to that trial. And what the lawyers for Duch
19 may or may not have done for their client, what may have been
20 appropriate for Duch is not necessarily appropriate for Mr. Ieng
21 Sary.

22 The next category, Your Honours, are rogatory reports. And as
23 I've indicated in my -- my previous remarks, some rogatory
24 reports actually contain witness statements and statements by
25 OCIJ investigators. So it's not just a report such as, Today we

105

1 went to such and such a province and we did x, y, and z -- see
2 attached interviews, but actually the reports themselves contain
3 witness summaries, or you have critical observations or
4 statements made by OCIJ investigators. And we would submit that
5 these reports should not be admitted. If they are to be admitted,
6 they can only be admitted or should only be admitted if those who
7 prepared the reports come in and give evidence.

8 [15.33.55]

9 For example, D91/29. D91/29 contains not only the identity and
10 location of potential witnesses, but also brief interviews with
11 four witnesses. These are statements. So, if the rogatory report
12 comes in, Your Honours, those statements come in. The witnesses
13 don't come here to be -- to testify, yet the Prosecution later
14 will be using those statements prepared by the OCIJ of a witness
15 who never came and testified as a basis of supporting something
16 in their closing argument or their final brief. And it makes it
17 virtually impossible for the Defence to go through every single
18 one of this -- these pieces of evidence to try to demonstrate how
19 prejudicial this sort of a -- of a blanket admission as the
20 Prosecution would want you to adopt would have on the Defence.

21 [15.35.07]

22 Another example is D91/27, which describes the interviews of MFA
23 staff relating to the role of Mr. Ieng Sary. Now, here, this is
24 clearly an interview; it's a statement, and it goes or touches
25 upon the acts and conduct of Mr. Ieng Sary. So, if we were to

106

1 allow this document to come in without those -- those individuals
2 who were interviewed to be -- to be cross-examined, it would be a
3 violation of Mr. Ieng Sary's right of confrontation.

4 Frankly, I have to confess, I don't see the purpose of these
5 rogatory reports coming in as evidence. If there's something in
6 them that was said by a particular witness that is available,
7 then it's for the moving party to make an application with the
8 Court and to suggest that a particular witness come in. If the
9 witness is coming in, then there's no need to have the summary
10 because the best evidence is the witness' testimony. But what --
11 how much weight -- or what sort of value can a rogatory report
12 have unless, of course, what you're trying to do is, for lack of
13 a better term, sneak in evidence through this sort of a document,
14 and to say, Well, it was -- it was prepared by the OCIJ and,
15 therefore, since they are an institution of this -- of this
16 establishment, it should be coming in? So that's our position on
17 rogatory reports.

18 [15.37.11]

19 The next topic, Your Honours, I'm on to the civil party
20 documents. So I finished with the Prosecution documents, and I
21 believe I may even finish 10 minutes ahead of schedule, so we may
22 have an early night off.

23 Now, I understand the civil parties are having some translation
24 problems, and we'll -- I support what was said by the Nuon Chea
25 team concerning that, but if you look at some of the documents

107

1 that they -- that they're presenting, Your Honours -- and I'm
2 just going to go through a couple of them because I have some
3 concerns here -- one document appears to be a paper prepared by a
4 student at Yale University; it's D250/3.37, "Genocide and
5 Irridentism Under Democratic Kampuchea (1975-1979)", by Kanika
6 Mak. And then, in a footnote, it shows that he "is currently a
7 second-year Masters candidate in International Relations at
8 Yale". Of course, who else is at Yale? Mr. Kiernan.
9 And when you read this and you read Mr. Kiernan's -- one of his
10 latest books, "Blood and Soil", which deals with genocide in
11 general, it appears that the theme from the opening paragraph of
12 this paper is one of Mr. Kiernan's theses' concerning genocide in
13 various societies.

14 [15.39.25]

15 But if you look at the beginning of this particular document, it
16 starts off with:

17 "In 'The Path to Genocide', Christopher Browning presents an
18 overview of the debate between intentionalist and functionalist
19 interpretations of the Holocaust." It talks about Hitler, and
20 then it goes on and tries to make a comparison between Hitler's
21 Nazi Germany and Democratic Kampuchea.

22 And, frankly, I'm wondering -- or we are wondering: Where does
23 this fit in to Case 002/1, let alone how can this possibly be
24 evidence? A paper prepared by a student, although albeit from a
25 very fine university, under, no doubt, some good guidance, but

108

1 nonetheless, why is this sort of document being tendered to be
2 admitted for Case 002/1? And if such a document is to come in,
3 effectively, this individual is being treated as a -- as an
4 expert, as a historian. The Defence should be entitled to
5 cross-examine this individual. And therefore we object to this
6 sort of document.

7 [15.40.48]

8 But another good example is D250/6 - I mean, /3.36 -- D250/3.36,
9 "The Khmer Krom and the Khmer Rouge Trials". How is that relevant
10 to our case? Now, who -- who prepared this? Well, this is a legal
11 advisor to DC-Cam, someone who has been promoting DC-Cam and
12 promoting -- and advocating and, in fact, noting -- giving legal
13 opinions out there. So he is biased, we submit. But be that as it
14 may, if we go at the first paragraph, which is sort of the
15 abstract of the article, towards the end it says:

16 "In this article, I briefly review the predicament of the lowland
17 Khmers under Khmer Rouge rule and ask a legal question relevant
18 to the proceedings at the Extraordinary Chambers in the Courts of
19 Cambodia (ECCC): should Khmer Rouge atrocities against Khmer Krom
20 be treated any differently than abuses against other segments of
21 the population?"

22 [15.42.29]

23 Now, let me be very clear on where the Ieng Sary defence stands
24 on this issue. It is our position that the trial -- the trials
25 before the ECCC should be as expansive as possible, as inclusive

1 as necessary. It is for the Prosecution, the OCIJ, and the Trial
2 Chamber to decide that. The Prosecution has the power and
3 independence to proceed. The Investigating Judges do their thing,
4 and you, Your Honours, have the discretion. So it is not our --
5 we are not trying to exclude any group of individuals, nor do we
6 wish to be perceived in that way. We do not want to victimize any
7 victims, and we certainly do not want to exclude any civil
8 parties. But as far as our understanding is concerned, what is
9 contained in this particular article is not relevant and does not
10 relate to the Case 002/1. Now, perhaps it may be relevant at some
11 other trial, down the road, but as I -- as far as I understand,
12 as far as I understand from reading the paragraphs of the Closing
13 Order to which we are here to litigate, this article and the
14 contents in this article are not relevant.

15 [15.44.15]

16 Another document, Your Honour, is D366/7.1.76. And this is titled
17 "The Samlaut Rebellion and Its Aftermath, 1967-70: The Origins of
18 Cambodia's Liberation Movement -- Part I", by Ben Kiernan. Now,
19 again, as I've indicated earlier, we would object to these sorts
20 of working papers coming in, unless they're relevant, but more
21 importantly, unless the authors were to come in and to be
22 available to be cross-examined. I leave it up to Your Honours to
23 decide whether this is actually relevant to the proceedings that
24 we have before us, but certainly we take exception to that.
25 And in a similar vein, we have another document by the same

110

1 author, "The Survival of Cambodia's Ethnic Minorities",
2 D250/3.212 (sic). And, again, it's by the Cultural Survival --
3 that's who published it -- and at the very end we find out that
4 it's Mr. Kiernan who actually published it in the fall of 1990.
5 Again, it is our respectful submission that this not relevant,
6 but the author should come in and be subject to
7 cross-examination. And the same thing goes with document 250/3.29
8 -- 250/3.29. This is an article, "Cambodia's Ethnic Vietnamese:
9 Minority Rights and Domestic Politics"; it's by Ramses Amer, a
10 political scientist.

11 [15.46.43]

12 So, Your Honours, I think, when you look at what the civil
13 parties are -- the 10 documents that they're trying to have
14 admitted, and plus the others we have yet to see, it is our
15 respectful submission that the documents need to be expressly
16 relevant to the paragraphs that you have singled out and selected
17 from the Closing Order for Case 002/1. And what I've shown you
18 thus far, in our humble submissions, are not relevant.

19 There is-- Concerning the documents that were submitted by the
20 Khieu Samphan team, they submitted 78 documents, and one
21 particular document that would definitely object to is the
22 interview of Ieng Thirith by Elizabeth Becker; and that's
23 D108/5.1, D28. For the obvious reasons, Your Honour, it is our
24 submission that, since Ieng Thirith is no longer part of this
25 case, that we have to be vigilant not to be going into areas

111

1 where we may not be able to confront certain witnesses concerning
2 what is being presented against Ms. Ieng Thirith -- I mean, Ms.
3 -- yes, Ms. Ieng Thirith. So that's our position.

4 [15.48.50]

5 We leave it up to your discretion to decide what if - for the
6 other documents presented by Khieu Samphan, to what extent they
7 are admissible, although, as we've indicated in the past, books
8 -- and they've listed Kiernan, Chandler, and -- any books, or
9 even Khieu Samphan's thesis, we submit that, by doing so, the
10 parties should be entitled to cross-examine, to confront the
11 authors. So that's our position, and we want to be consistent
12 with our position.

13 And as promised, Your Honour, I believe I'm finished today, and
14 10 minutes early. I have nothing further. I hope it wasn't too
15 tedious. Thank you.

16 MR. PRESIDENT:

17 Thank you, Defence Counsel.

18 The time is now appropriate for today's adjournment.

19 Before we adjourn, the Trial Chamber would like to inform Khieu
20 Samphan's defence team: as scheduled, your time is allocated for
21 tomorrow's afternoon. However, due to the early conclusions by
22 the two defence teams in their oral objections to the parties
23 (sic) submitted by the Co-Prosecutors and Lead Co-Lawyers for
24 civil parties, tomorrow morning, you will have the opportunity to
25 present your oral objections.

112

1 [15.50.42]

2 On another matter, the Trial Chamber would also like to inform
3 Nuon Chea's defence that a written submission of the objections
4 that you intend to submit before the Trial Chamber tomorrow
5 cannot be entertained, as Nuon Chea's defence has sufficient time
6 to make your oral objections this afternoon, but you did not use
7 the time allocated to you sufficiently.

8 Also, for Nuon Chea's defence, in regards to your request for
9 instructions by the Trial Chamber on the discussions on the
10 assessment of evidence, the Trial Chamber would like to inform
11 you that such instructions will not be issued. Parties can raise
12 their assessment on the evidence at the conclusion of the
13 proceeding, based on Internal Rule 94 of the ECCC Internal Rules.
14 We shall adjourn today's hearing, and we will resume tomorrow
15 morning, starting from 9 a.m.

16 Security officers, you are instructed to bring the three Accused
17 back to the detention facility and bring them back here tomorrow
18 morning, before 9 a.m.

19 The Court is now adjourned.

20 THE GREFFIER:

21 All rise.

22 (Judges exit the courtroom)

23 (Court adjourns at 1552H)

24

25