



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**  
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

17 January 2012

Trial Day 16

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

The Accused: NUON Chea  
IENG Sary  
KHIEU Samphan

Lawyers for the Accused:

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Trial Chamber Greffiers/Legal Officers:

DUCH Phary  
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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
MR. CHAN DARARASMEY	Khmer
MR. DE WILDE D'ESTMAEL	French
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NEKUIE	French
MR. PAUW	English
MR. PICH ANG	Khmer
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	Khmer

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 [09.03.35]

6 Yesterday, before the adjournment, we did not finish the schedule

7 that we intended for that day. And today we will continue from

8 where we left off, that is the time for the Prosecution to

9 respond to the objections raised by the three defence teams.

10 [09.04.08]

11 I now hand over to the Co-Prosecutors. You have one hour to

12 respond to those objections. You may proceed.

13 MR. SMITH:

14 Good morning, Your Honours. Good morning, Counsel. Good morning,

15 general public.

16 Your Honours, as we mentioned yesterday, today I will be

17 addressing generally the Prosecution's general objections to the

18 Defence objections to the admissibility of the documents. And

19 then my learned colleague, Mr. Dararasmeay Chan, will look at a

20 few of the documents types and provide some examples of how that

21 indicia of reliability can be - can be found within the

22 documents.

23 Briefly, Your Honour, I think yesterday the Defence and the

24 Prosecution, to a certain extent, were in general agreement with

25 the legal test for admissibility, that documents should be prima

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1 facie relevant -- on its face, relevant -- and prima facie  
2 reliable -- on its face, reliable.

3 [09.05.28]

4 But I think the differences arose in how that test would be  
5 applied, and the difference may have arisen with the manner in  
6 which that test be applied.

7 But firstly, if I can make -- I'll make four points in terms of  
8 our general response to -- four general objections have been  
9 raised to the documents.

10 But prior to making to those four points, I'd like to mention a  
11 couple of preliminary matters as to how each of the Accused or  
12 their counsel are approaching the issue of admissibility. And our  
13 view would be, is that that approach that's been put forward by  
14 the defence teams, is not completely in accordance with the  
15 practice and the law as agreed.

16 [09.06.27]

17 Firstly, in relation to Khieu Samphan.

18 Khieu Samphan's counsel raised the obligation with Your Honours  
19 that the Prosecution had the responsibility to prove the  
20 Prosecution case beyond a reasonable doubt. And that's absolutely  
21 clear. The Prosecution doesn't shy away from that. These are  
22 incredibly serious proceedings, and the burden of proof is very  
23 high for the Prosecution.

24 However, what the counsel for the Khieu Samphan team did was try  
25 and equate the burden of proof at the end of the case with the

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1 burden of proof to have documents admitted. And it's submitted on  
2 the law that we presented yesterday, and the law that was placed  
3 in our pleadings, that clearly that's not the case.

4 At the admissibility stage, the -- all that need be shown is its  
5 prima facie relevant and prima facie reliable. There's a reason  
6 for that, of course, that if each piece of evidence had to be  
7 proved beyond all reasonable doubt, we would have trials within  
8 trials within trials, and the process will never end. The  
9 safeguard for the Accused is that the material facts and the  
10 indictment must be proved beyond reasonable doubt. And, Your  
11 Honours, we submit, can only arrive at that if Your Honours  
12 looked at the full compass -- the full scope -- of the evidence,  
13 to determine if all of those pieces add up -- on any particular  
14 primary allegation -- to find that fact proved beyond reasonable  
15 doubt.

16 [09.08.17]

17 If Your Honours have a higher standard for the admissibility of  
18 evidence, the problem that will be faced is that Your Honours  
19 will never get to look at any evidence, because a far too onerous  
20 inquiry would occur for each piece of evidence. So the safeguard  
21 is still there, but the test is much lower, for those obvious  
22 reasons.

23 If we move to Nuon Chea, again there was general agreement on the  
24 test. However, Your Honours were asked to steer away from  
25 international practice in terms of international tribunals

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1 dealing with cases of this type, with their approach on  
2 admissibility.

3 Counsel for Nuon Chea stated that the approach of the  
4 international tribunals is perhaps a more liberal approach than  
5 in national courts, whether it be Cambodia or any other court.  
6 And the reason for that, of course, is that these cases are so  
7 big that, if Your Honours applied a strict approach to the  
8 admissibility of evidence, you would not see the full breadth of  
9 the evidence that Your Honours have to take in to determine  
10 whether or not mass crimes against humanity across Cambodia in  
11 fact occurred.

12 [09.09.49]

13 You can't call in every witness. You can't have an original for  
14 every document. You can't prove the chain of custody for every  
15 piece of evidence. There must be other ways in which you can --  
16 Your Honours can fully comprehend the evidence so that your  
17 judgement is based on a rich set of facts rather than isolated  
18 pieces that perhaps would not connect and would take away from  
19 the integrity of the judgement.

20 So, although the Nuon Chea agreed generally with the legal test  
21 for admissibility, they've asked Your Honours to steer away from  
22 the international practice, and we suggest you should not do  
23 that, because it's the international tribunals that have -- that  
24 are working with cases of these size, and such liberal approach  
25 is important if Your Honours want to see all the evidence.

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1 [09.10.52]

2 That said, we agree with the Nuon Chea team that it's important  
3 that this Court applies fundamental principles which apply to the  
4 Cambodian Courts, because that's required under the law. But also  
5 this Court needs to set an example.

6 And by applying fair process or fair trial rights, protecting the  
7 interest of the Accused, making sure civil parties' interests are  
8 protected, and also making sure that Your Honours get to see all  
9 of the evidence, you can adopt those principle that are the same  
10 as the - at the National Courts, and so it can be very  
11 instructive for the National Courts as to how trials should  
12 progress.

13 But when it comes to the technicalities of admissibility of  
14 evidence and some of those international standards that are  
15 adopted, we submit Your Honours should adopt them because the  
16 National Courts are not dealing with cases of this size.

17 [09.12.01]

18 Finally, in relation to the Ieng Sary defence.

19 Again, there's general agreement on tests of admissibility.

20 However, I think the test that was specifically put forward was a  
21 little academic and not quite practical or workable in a court --  
22 this Court or any court. And as Your Honours remember, the Ieng  
23 Sary team put forward -- or counsel put forward that the  
24 admissibility tests should be in three stages: one, that Your  
25 Honours should first look at authenticity of the document, and

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1 then, if it's authentic, you should move to the next stage -- is  
2 it reliable -- and then, then and only then, you should look at  
3 whether or not the evidence is relevant.

4 Apart from the fact that we agree with the Ieng Sary counsel that  
5 those elements are a part -- they're a part of the test, but as  
6 we have said yesterday, and the international jurisprudence  
7 shows, that authenticity is in fact an element of reliability. So  
8 it's incorporated with that analysis. And the idea that you only  
9 look at authenticity and reliability first, and then relevance,  
10 what that can lead to is a prolonged process where, if the  
11 evidence is clearly irrelevant at the outset, much time has been  
12 wasted to get to that point.

13 [09.13.38]

14 So Your Honours have adopted a different approach. Your Honours  
15 have adopted -- you've asked the Prosecution and the other  
16 parties to put in their documents -- document lists in April last  
17 year, and you've asked the parties to establish the relevance,  
18 which has been done.

19 And so we would say that the approach is that the relevance and  
20 reliability is largely done at the same time, and that's how this  
21 process can be workable.

22 Moving now, Your Honours, to the four general objections -- or  
23 the four general responses we have to the Defence objections to  
24 the documents.

25 I think either singularly or combined, the Defence raised four



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1 points as to why these documents, or the majority of the  
2 documents that are supporting the Closing Order should not be  
3 admitted.

4 [09.14.33]

5 Firstly, it's been put forward by the Defence that the Accused  
6 has an absolute right to summon any author of any document at  
7 all, pursuant to Rule 84.1. And as Your Honours are aware, Rule  
8 84.1 gives the Defence the right to summon any witness that they  
9 haven't had the opportunity to question during the investigation  
10 phase.

11 We would submit, Your Honours, the interpretation of that rule is  
12 such that that relates to witnesses that have provided statements  
13 or written records to the Co-Investigative Judges.

14 It doesn't apply to other types of documents, like media  
15 statements, or books, or academic articles, or academic reports,  
16 because at the international courts, when they apply the  
17 evidentiary rules to cases of this size, rather than asking for  
18 the authors to come, they allow hearsay evidence, they allow  
19 out-of-court statements made by others to be taken into account  
20 by Your Honours, because of the sizes of the case, they allow  
21 media reports produced at the time of the events --  
22 contemporaneous with the events -- to be used as corroborative  
23 evidence to the other evidence in the case, they allow books,  
24 they allow academic articles, and they allow analytical reports.  
25 And the reason why they allow them is because those reports and

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1 books provide Your Honours with guidance and very informed advice  
2 as to the context, the historical background, the general  
3 policies of the background to the indictment.

4 The effort that is required to put all that evidence into a  
5 cohesive form is massive; it's people's life's work. And as a  
6 result of that, the courts have allowed these types of documents  
7 to come in as an exception to the right to question every  
8 witness, because they are valuable, they allow Your Honours to  
9 see how the context in which the evidence that you are  
10 particularly hearing, whether it be oral testimony or other  
11 documentary evidence, can be put into place.

12 [09.17.22]

13 That said, normally, documents of that type are used as  
14 corroboration, rather than the primary evidence, rather than the  
15 oral testimony or other very significant contemporaneous  
16 documents. And we've provided those cases in the pleadings that  
17 support that, and we would ask Your Honours to follow that  
18 international practice. Otherwise, what will happen is you will  
19 rob yourself of the opportunity to see how the matrix of evidence  
20 fits together.

21 But the way the international courts have looked at that type of  
22 evidence, it is a question of weight rather than admissibility.  
23 So, for example, if an accused makes 50 statements during, say,  
24 the Democratic Kampuchea period, and all those statements are of  
25 a similar type, of a similar policy, if they all come from

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1 different media source or different outlets but they're all  
2 saying the same thing, at the end Your Honours can place great  
3 weight on them, subject to any substantive challenge by the  
4 Defence.

5 [09.18.39]

6 So we would ask Your Honours to follow the international  
7 jurisprudence on these other types of documents. Allow them in,  
8 so that Your Honours can have that context, and allow them in, so  
9 that Your Honours can see all of the evidence that's available,  
10 rather than just the memory of a witness 40 years later that  
11 comes into the courtroom.

12 Secondly, Your Honours, the Defence generally have objected to  
13 documents going in, unless the original transcripts or tape  
14 recordings of a witness or an Accused statement contained in any  
15 document is placed before the Court or whether they have access  
16 to it.

17 We would submit that there isn't an express right for that. To  
18 demand media report that were produced, say, for example, back in  
19 '75 to '79, to demand that original transcripts of those reports  
20 or original notes of those reports -- those many, many reports --  
21 to be brought forward, we would say, is far too onerous and far  
22 too costly for the Court.

23 [09.19.49]

24 Your Honours can look at the reliability of that evidence by  
25 looking at how it fits with the context of other evidence: Is it

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1 consistent? Does it -- is it internally consistent? And does it  
2 externally -- is it externally corroborated by events?

3 Your Honours, we went through all the different criteria that we  
4 proposed that can be used to determine that minimum level of  
5 reliability, but we would say that demanding notes, and tape  
6 recordings, and transcripts of interviews done years earlier is a  
7 far too costly exercise, but without much benefit in terms of  
8 being able to determine its reliability.

9 But as Your Honours know, under the Rule, under Rule 25, in  
10 relation to the written records, the Defence have a right to look  
11 at the tape recordings of all the witness -- the written  
12 statements of the witnesses in the case file, and if there's an  
13 anomaly, they can bring that up to Your Honours .

14 [09.21.01]

15 Ideally, as the Prosecution have said, it would be useful if all  
16 of those tape recordings were transcribed and if all of those  
17 tape recordings were available, but it's a lengthy exercise. And  
18 we are saying that Your Honours should not not allow the  
19 admission of those written records just because that transcript  
20 of that statement hasn't been provided, because, remember, the  
21 witness has, at the bottom of that statement, signed and said:  
22 This is a true and accurate account of what I've told the  
23 investigators. So any small nuance between a question and answer  
24 method and the summary of the evidence is counterbalanced by the  
25 fact that the witness has had an opportunity to read the

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1 statement and say -- sign it as a true accounting of event.  
2 Your Honours, if I go back one step, we do -- there is -- we do  
3 agree with the Defence that there is a right for the Defence to  
4 request the presence of witnesses that have given written records  
5 to the OCIJ as to the acts and conduct of the Accused. And the  
6 reason why we agree with that: because that's the state of the  
7 law at the international tribunals. As Your Honour is aware, at  
8 these tribunals, evidence is allowed to be presented to the Trial  
9 Chamber in statement form, without calling the witness, if -- as  
10 long as they don't relate to the acts and conduct of the Accused.  
11 And if so, before Your Honour places any reliance on that  
12 evidence, that witness should be available to be called.

13 [09.23.02]

14 So we -- that's the position the Prosecution have in relation to  
15 written records. So we would submit that Your Honour accepts the  
16 written records in the Historical Background section of the  
17 Indictment, where they purport to show the historical background,  
18 policies, structure, etc., but don't accept it on the basis that,  
19 where it shows -- provides evidence of the acts and conduct of  
20 the Accused, that Your Honours put that evidence aside and not  
21 take that into account. But for every other reason, we submit  
22 those statements should be accepted.

23 [09.23.38]

24 Thirdly, Your Honours, there seems to be a general objection  
25 that, unless a significant chain of custody for all of these

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1 documents can be proved, that the documents should in fact not be  
2 admitted.

3 As explained yesterday, Your Honours, the international  
4 jurisprudence on admissibility, in terms of reliability, it  
5 doesn't require any one criteria of reliability to be a  
6 prerequisite for the admission of any particular document. It  
7 doesn't require that it be shown to the Court that the chain of  
8 custody from the discovery of the document to the admission into  
9 the courtroom be proved every step of the way over the last 30  
10 years -- 35 years. It doesn't require that.

11 It doesn't require that because, largely, it can often be too  
12 difficult and too time consuming, and in fact the proceedings  
13 will take far too long, when what the ultimate goal is, in terms  
14 of admissibility, is determine whether it's got that minimum  
15 level of reliability. So the argument is: Why do you take the  
16 long road when there's a shorter road to take in terms of looking  
17 at the internal characteristics and the external characteristics  
18 of the document? If we take the long road to every piece of  
19 evidence, and finding the reliability for every piece of evidence  
20 to that nth degree, this Trial, of course, won't end. And it's  
21 not necessary. It's not required under the law.

22 [09.25.31]

23 In terms of the Prosecution -- There was some criticism that the  
24 Prosecution somehow wasn't concerned with chain of custody, or  
25 perhaps there was not much evidence of file about the chain of

13

1 custody of these documents.

2 I think it's quite clear that there are many witnesses on the  
3 case file -- for example, telegram witnesses, witnesses that can  
4 testify to telegrams showing the authenticity of those documents.

5 There's a witness from the printing house that produced the  
6 "Revolutionary Flag" and the "Red Flags". That witness is on the  
7 case file, we've asked for that witness to come to Court. We have  
8 statements from Youk Chhang, the director of the Documentation  
9 Centre of Cambodia, as to the authenticity, or at least the  
10 custody of those documents. I mean, the director's opinion on any  
11 particular test for authenticity is one thing, but really it's up  
12 to Your Honours to decide how you would determine the reliability  
13 of a document.

14 [09.26.42]

15 Your Honours, the Prosecution has put forward in the witness list  
16 -- and Your Honours have decided to call someone from the  
17 Documentation Centre of Cambodia. And that witness that Your  
18 Honour has decided to call is quite able to testify to the  
19 custody of documents. That witness has been at DC-Cam for 15  
20 years. That witness has been at the organization for about the  
21 same length of time as Youk Chhang.

22 So we would submit, as much as a chain of -- Your Honours require  
23 some further proof of some custody of documents, the witness you  
24 have selected, which we have put forward, is quite able and quite  
25 appropriate to provide that extra information.

14

1 [09.27.32]

2 The Prosecutions hasn't shied away from the fact that Youk Chhang  
3 does have valuable information, but so do -- so does the other  
4 witness that Your Honour has selected. And we would suggest that  
5 before any decision about calling anyone else in relation to  
6 chain of custody of documents from DC-Cam, that Your Honour hear  
7 the testimony as you've decided to -- again, chain of custody not  
8 being an essential requirement to prove reliability. But  
9 ultimately, Your Honours have to be satisfied, and so we welcome  
10 that evidence.

11 [09.28.09]

12 Just one general comment about the Defence's views that,  
13 regardless of whether or not chain of custody can be provided to  
14 the Court in relation to a number of the documents, any document  
15 that was housed by DC-Cam, or stored by DC-Cam, or under their  
16 custody should not be admitted into this courtroom is just  
17 illogical. It doesn't make any sense because what the Defence is  
18 saying is that, because the Documentation Centre of Cambodia --  
19 one of its - one of its goals or mandates is to look at and  
20 search for the truth during the Democratic Kampuchea period --  
21 because they have said that genocide -- that's a layperson's term  
22 often used in that way, even though it got a specific legal  
23 meaning -- but because crimes against humanity have occurred in  
24 Cambodia, or there's a recognition of that, somehow or not -  
25 somehow or another, they biased.



15

1 To be fair -- Your Honours, that is a ludicrous point to make. Of  
2 course they are not acting for any particular defence or any  
3 particular victim, but they are searching for the truth. And so,  
4 whatever the mandate of the organization, that doesn't relate,  
5 any bias or any sort of goal of that organization, that can't be  
6 imported to the documents that they house. The question of  
7 admissibility relates to the documents, but not to the  
8 organization itself.

9 By saying that any organization -- for example, a police force --  
10 that investigates crimes is necessarily biased and, because of  
11 that fact, any of the evidence they collect should not be placed  
12 before the Court just doesn't make sense. I mean, everyone has an  
13 ethical obligation, of course, to ensure that whatever  
14 investigations are carried out are carried out appropriately.

15 [09.30.22]

16 That would be like the Prosecution saying that any document put  
17 forward by the defence team -- by the Nuon Chea or the Ieng Sary  
18 defence team is biased because they had interests in protecting  
19 -- they have a responsibility to protect their clients'  
20 interests. Of course, that's not the case, and of course we  
21 wouldn't object on that basis. The bias -- or the lack of  
22 reliability has to relate to the document, but not to the  
23 organization.

24 Finally, Your Honours, just -- In relation to a general objection  
25 by Khieu Samphan, it appears that counsel for Khieu Samphan are

16

1 complaining, somehow or another, that they're not getting an  
2 opportunity to examine the documents, and demanding that at some  
3 stage or another we need to have the opportunity to examine the  
4 documents.

5 [09.31.26]

6 Your Honours, Your Honours are doing this now. We're doing this  
7 right now, and we've being doing it for the last four years.  
8 Defence counsel for Khieu Samphan and others have had access to  
9 this case file for four years. Their responsibility -- our  
10 responsibility -- has been to examine those documents over that  
11 period.

12 Then, Your Honours, we have provided, in response to your order,  
13 a list of the documents that we are going to rely on or put  
14 forward to the Chamber. And as Your Honours are aware, we've  
15 provided a list of about four and a half thousand documents -- or  
16 about six and a half thousand, but about four and a half thousand  
17 relating to the first phase -- and we've described every  
18 document, we've dated it, we've referenced it, we've said how  
19 it's relevant. We provided that on the 19th of April, in 2011.

20 [09.32.38]

21 The Defence is aware of the rules, that at some point in the  
22 trial they actually have to have an opinion on the documents. The  
23 rules say that, they give Your Honours the right to ask the  
24 parties to object to documents prior to the trial -- or shortly  
25 after the trial begins.

17

1 To then, Your Honours -- Your Honours have invited the parties to  
2 object to the documents in writing; everyone has taken that  
3 opportunity. And then Your Honours have provided for these  
4 hearings, where people can put their comment forward.  
5 Your Honours have seen the Prosecution's Rule 92 statement.  
6 Basically, it's a 40 or 50-page statement outlining indicia of  
7 reliability for all different document types. We can go on  
8 forever and ever providing this indicia of reliability, but at  
9 some point, Your Honours, we would submit that the Prosecution  
10 has undertaken its burden, that minimum burden that's just  
11 identifying to Your Honours that prima facie, on its face, the  
12 documents are reliable.  
13 We have done that through the pleadings; Your Honours have  
14 provided us an opportunity this week to discuss Annexes 1 to 5.  
15 As Your Honours are aware, we have another 15 annexes which we  
16 would like to put before the Court, and we welcome the  
17 opportunity and we recognize Your Honours' scheduling of other  
18 documentary hearings.  
19 [09.33.59]  
20 But, Your Honours, we would submit, if it's a complaint from the  
21 Khieu Samphan team that they're not getting enough opportunity to  
22 examine the documents, we would submit, it's wholly unfounded.  
23 The opportunity is now, the opportunity is this week, and the  
24 opportunity is through those pleadings. If the parties don't take  
25 that opportunity, that's really a question for them, but you've

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1 allowed for the opportunity for examination of the documents.

2 We would submit that does not mean that the parties sit day in

3 and day out reading document after document after document. I

4 mean, we will be here for years. The opportunity has been

5 provided. And we would ask Your Honours to accept that fact and

6 then make your findings on those documents.

7 [09.34.50]

8 And then, to conclude, at the end, Your Honours, we would say

9 that it's really a question of weight for these documents. Once

10 you've found that their prima facially admissible, once your

11 first impression is that the document is what it intends to be,

12 then Your Honours should admit those documents so that we can

13 look at and understand the evidence that is already in this trial

14 and determine what is necessary in terms of further witnesses.

15 We submit that Your Honours have a duty, of course, to ascertain

16 the truth of the indictment and also a duty to protect the

17 Accused's rights. We ask that the duty to ascertain the truth

18 requires you to look at the evidence broadly and requires you to

19 look at the admissibility rules of the international

20 jurisprudence so that you can get a full impression of the

21 evidence and then, at the end of the case, determine the weight

22 that should be placed on each piece of evidence.

23 [09.35.58]

24 Your Honours, I would now turn to my colleague, Mr. Dararasmey

25 Chan, and he will just provide, in relation to a few groups of

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1 documents, some of the indicators that we've recognized already  
2 in our written pleadings as to the authenticity of those  
3 documents.

4 And as Your Honour's aware, many of the documents in the  
5 Background section of the Closing Order are also included in  
6 Annexes 1 to 5, and so some of those responses in relation to,  
7 perhaps, the interview of Khem Ngun will be put forward by a  
8 colleague in the next hearing.

9 But if for now I can turn to my colleague. Thank you.

10 [09.36.51]

11 MR. CHAN DARARASMEY:

12 Good morning, Mr. President, and good morning, Your Honours, and  
13 good mornings, everyone in and around the courtroom.

14 My name is Chan Dararasmey, I am the Deputy Co-Prosecutor, and I  
15 would now like to respond to what the defence teams have argued.

16 I would like to bring up some of the important evidence.

17 The first response is concerning with the video, the second one  
18 on the history of the Democratic Kampuchea, the third one on the  
19 meeting minutes of the Democratic Kampuchea in Attachment 3,  
20 fourth on the Democratic Kampuchea communications, Attachment 4  
21 -- that includes the FUNK and GRUNK. And then I will look at the  
22 Democratic Kampuchea media and public statements in Attachment 5.  
23 And as for the document relating to video, I will address Ieng  
24 Sary's objections to the two videos, these documents: E3/81 or  
25 D108/32.2, and E3/1245 or D299.1.46R.

1 The first video, entitled "Pol Pot's Shadow", is objected on the  
2 basis that it is an annex to an OCP request seeking for the  
3 material to be admitted in Case 001.

4 The Defence argue that, as the request to which the video relates  
5 is not relevant to the case, the attached video is therefore  
6 inadmissible.

7 This objection lacks any substance. The fact that this video is  
8 attached to an OCP request in Case 001 is an irrelevant  
9 consideration for admissibility. The relevance of this evidence  
10 attaches to the video, particularly the interview with Nuon Chea  
11 on his position and role in the Democratic Kampuchea period.

12 [09.40.00]

13 The second video, the BBC's series "Cambodian Report", including  
14 Nuon Chea interview, is objected on the basis that the video only  
15 contains portions of the full interview with Nuon Chea and that  
16 the original responses are unable to be heard. These, they state  
17 -- makes it difficult to ascertain how contextually accurate the  
18 interview is. Although it is not ideal that Nuon Chea's voice  
19 cannot be heard over the translation, there is nothing to suggest  
20 that the BBC, a reputable news organization, selectively or  
21 misleadingly edited or mistranslated the interview.

22 Consequently, it is, on its face, admissible. The objection  
23 should be rejected, particularly on the basis that Nuon Chea has  
24 not claimed that the interview has been inaccurately translated.

25 [09.41.25]

21

1 Both videos are clearly relevant, as they are interviews with  
2 Nuon Chea, providing relevant information on his role during the  
3 Democratic Kampuchea period.

4 Your Honours, for the CPK publication in Annex 2, I would like to  
5 respond as follow.

6 I will address Ieng Sary's objection to the nine Communist Party  
7 of Kampuchea publications. These are documents E3/5 or D243/21.1,  
8 E3/99 or IS6.2, E3/12 or IS6.3, E3/50 or D366/7.1.61, E3/4  
9 (D123/21) or IS11.9, and D123/3.1, E3/10 or D243/21.7, E3/25 or  
10 D243/21.9, E3/11 or D243/2.1.12, and E3/23 or D135/1.

11 Seven of these documents are CPK publications which include five  
12 additions of the "Revolutionary Flag" plus one directive and one  
13 DK Government document.

14 [09.43.46]

15 Ieng Sary has generally objected on the basis that the  
16 reliability and authenticity of the documents have not been  
17 substantiated and they had no opportunity to confront the author  
18 of the documents. However, the Defence have failed to show how  
19 the relevancy of the documents, as stated in the Closing Order,  
20 and the Co-Prosecutors' document list is in error. The  
21 Prosecution relies on the statement of relevance in both  
22 documents.

23 These documents are clearly relevant to the history, structure,  
24 and policies of the Communist Party of Kampuchea and the  
25 Revolutionary Army of Kampuchea.

1 As to their reliability, these documents focus on CPK economic,  
2 strategic, and military policies and activities. They contain  
3 distinct expressions that are commonly associated with the CPK  
4 and in keeping with the CPK ideology.

5 For example, the articles use expressions such as "Revolutionary  
6 Army", "American imperialist", and "smash". The purpose of the  
7 publication is clearly to indoctrinate Party members in known  
8 policies and the objectives of the CPK.

9 [09.45.31]

10 The "Revolutionary Flag" was officially published and distributed  
11 by the Ministry of Propaganda out of various offices. Various  
12 witnesses, including Nuon Chea, have confirmed that the  
13 "Revolutionary Flag" was a CPK publication and that members of  
14 the Standing Committee, including Nuon Chea and Pol Pot, wrote  
15 articles for it.

16 Your Honours, the editions of the "Revolutionary Flag" contained  
17 consistent markings and have similar layout. The front cover page  
18 displays two or more flags, the Communist hammer-and-sickle  
19 symbol is displayed at the beginning of each chapter and on the  
20 back cover page. Similarly, one of the CPK publications also  
21 contains the same hammer-and-sickle symbol throughout.

22 A number of editions of "Revolutionary Flag" included on the  
23 document list were admitted into evidence in Case 001. All  
24 editions of the "Revolutionary Flag" are practically identical.  
25 As such, the characteristics of reliability of the documents



1 identified and authenticated by witnesses and/or admitted into  
2 evidence in Case 001 are shared by all other editions of this  
3 publication on the document list.

4 [09.47.23]

5 The CPK directive E3/12 entitled "Decision of the Central  
6 Committee Regarding a Number of Matters", dated the 30th of March  
7 1976, is relevant to showing the establishment of the  
8 organizational structure of the CPK, including the legal  
9 authority of the accused Nuon Chea as Chairman of the Democratic  
10 Kampuchea People's Assembly, Khieu Samphan as the Chairman of the  
11 Democratic Kampuchea State Presidium, and Ieng Sary as the Deputy  
12 Prime Minister for Foreign Affairs.

13 [09.48.06]

14 The directive also shows the Accused's knowledge of and  
15 participation in CPK policy making, including unlawful killing.  
16 Your Honours, the title of the directive confirms the document is  
17 from the Central Committee. As with other CPK publications, the  
18 directive uses distinctive terminology associated with the CPK,  
19 such as "smash" and "imperialist America", and the content of  
20 this document consistent with known CPK policies. The document  
21 has been identified as authentic by DC-Cam director, Chhang Youk,  
22 and was admitted as evidence in the Duch Trial.

23 Your Honours, I would like to respond to the meeting minutes in  
24 Annex 3, and this meeting minutes we have already submitted our  
25 arguments. And I will address Ieng Sary's objection to the

1 Revolutionary Army of Kampuchea meeting minutes, document E3/13  
2 or IS13.34. This document was produced by the Revolutionary Army  
3 of Kampuchea on the 9th of October 1976, and entitled "Meeting of  
4 Secretaries and Deputies of Divisions and Independent Regiments".  
5 Ieng Sary objects to the admission of this document unless its  
6 authenticity, reliability and relevance can be sufficiently  
7 demonstrated and its author can be examined. If admitted, the  
8 Defence argue that only limited evidentiary weight, if any,  
9 should be given to it, unless the content of the document can be  
10 verified and supported through independent indicia of  
11 reliability. This is in fact the prosecutors' position, that the  
12 author of a document should not necessarily be called if its  
13 authenticity can be established in another way. This will assist  
14 in expediting the proceedings.

15 [09.50.44]

16 As to relevance, in light of Ieng Sary's defence's failure to  
17 explain why the relevance identified in the Closing Order  
18 allegation and that identified by the Prosecution in its first  
19 phase document list is not valid, this aspect of the objection  
20 should be dismissed.

21 It is not a good use of the Court time to repeat the relevance of  
22 the documents that have been provided in great detail in our  
23 document list provided to the parties in April and then again in  
24 July last year.

25 [09.51.25]

1 As to its reliability, there are many characteristics which tend  
2 to prove that the document is authentic, such as:

- 3 1) the source -- it has a known author, the RAK;
- 4 2) the form -- the page layout and type face are identical or  
5 very similar to other military meeting minutes, including those  
6 identified by Kaing Guek Eav, alias Duch; and
- 7 3) the content is consistent with the CPK activities of  
8 arresting, interrogating or removing traitors, and the uses of  
9 terms common to the CPK, such as "smashing".

10 Further, custody of a copy of the document was handed over to the  
11 OCP from the DC-Cam during the OCP's preliminary investigations.

12 It is admitted these indicia of authenticity are sufficient,  
13 particular in the absence of indicators to the contrary, to  
14 satisfy the prima facie reliability test for admission.

15 Consequently, the author need not be called for questioning.

16 Now I would like to respond to the issue concerning Democratic  
17 Kampuchea Government statements, and FUNK or GRUNK publication,  
18 in Annex 5.

19 [09.53.14]

20 Ieng Sary objects that the probative value of the document is  
21 outweighed by the prejudicial effect, and that the document is  
22 unreliable and unsuitable to prove facts it purports to prove,  
23 and that the Accused has not had the opportunity to confront the  
24 author of the document.

25 Again, Ieng Sary does not provide a factual basis for this

1 objection.

2 For this reason, it is requested this particular objection be  
3 dismissed.

4 As to relevance, this document assists in providing factual legal  
5 authority of the Accused in the pre-DK period. For example, they  
6 name Khieu Samphan as prime minister as interim and detail  
7 various visits by all of the Accused to foreign countries as part  
8 of the official delegation.

9 [09.54.20]

10 These documents assist in proving the Accused's membership in a  
11 joint criminal enterprise.

12 As to reliability, indicators of authenticity include:

13 1) the source of document -- they are marked as being official  
14 publications of the FUNK or the Royal Government of National  
15 Union of Kampuchea Department of Press and Information;

16 2) the date, which is contemporaneous with the events they  
17 record; and

18 3) official markings such as a coat of arms;

19 4) the purpose of the document, namely to indoctrinate people in  
20 the policy and objectives of the FUNK or GRUNK and to criticize  
21 Vietnam, is clearly identifiable and is consistent with the known  
22 policies and objectives of the authors; and

23 5) all of the documents were provided by DC-Cam, an organization  
24 whose purpose is to collect and analyze evidence from the DK  
25 regime.

1 For example, the authenticity of E3/114, an issue of the  
2 "National Union of Kampuchea Front", a publication entitled  
3 "Nouvelles du Cambodge", can be seen by its title page. This page  
4 identifies the document as being a publication of "Agence  
5 Kampuchéa d'information" and contains a specific address. It  
6 includes an issue number as well. It can be seen that the format  
7 of this document, with the title and a table of contents on the  
8 front page, it is consistent with the other issues of the  
9 "Nouvelle du Cambodge".

10 [09.56.45]

11 In light of Ieng Sary's failure to state why the document was not  
12 relevant, as indicated by the reference to the factual  
13 allegations in the Closing Order, and as indicated specifically  
14 in the Prosecutions' list phase document -- document list, we ask  
15 that these specific objections be dismissed.

16 [09.57.08]

17 Your Honours, I would like to now present on the DK media  
18 reports.

19 Ieng Sary objects to the admission of these documents on the  
20 basis that the probative value on the document is outweighed by  
21 their prejudicial effect. They state they are unreliable and the  
22 authors of the documents are unknown.

23 Again, the Ieng Sary defence failed to substantiate why the  
24 relevant -- relevance identified in the Closing Order and the  
25 Co-Prosecutors' first phase document list is not valid. With that

1 failure, the Prosecution relies on relevance of these documents  
2 as indicted in the Closing Order and first phase documents listed  
3 to avoid repetition.

4 [09.58.15]

5 As to reliability, as discussed already, it is not necessary for  
6 the author of any document to be called if the authenticity of a  
7 document can be satisfied in other ways. In general, these DK  
8 media reports comprises of a group of contemporaneous reports  
9 dealing with issues relevant to this trial. These documents  
10 assist in proving the administrative structure of the CPK and  
11 relate to the first phase of the population movement.

12 The documents originate from an official source, the media  
13 apparatus of the CPK, and they are consistent in style with each  
14 other and employ a distinctive syntax appropriate to the nature  
15 of the documents, for example frequent use of the terms "US  
16 imperialist" and "the traitorous Lon Nol clique".

17 And the information contained in the document is corroborated by  
18 various other documents on the case file and is clearly  
19 consistent with the known policies and practices of the CPK  
20 during this period. Specifically, document E3/119, also known as  
21 D262.9, discussed the fact of phase one of the forced population  
22 movement, the reasons behind the policy, and also the appointment  
23 of individuals to positions within the Party. This document  
24 clearly goes towards issues that are relevant to the current  
25 phase of the proceedings and provide important contextual

1 information.

2 [10.00.17]

3 In response to the Defence's assertion that evidence is  
4 inadmissible where the author is unknown, it shall be noted that  
5 all the proof as to the origin of the documents and general  
6 custody is relevant in considering whether a document has  
7 sufficient indicia of reliability. It is not a prerequisite for  
8 admission.

9 As stated by the Trial Chamber at the International Criminal  
10 Tribunal of the Former Yugoslavia, in the case of Prosecutor  
11 versus Oric, in their Judgement dated 30th June 2006, at  
12 paragraphs 27 through 28 - quote:

13 "The Trial Chamber does not consider that proof of chain custody  
14 is a sine qua non or an essential requirement for admissibility.  
15 Therefore, gaps in the chain of custody are not fatal, provided  
16 that the evidence as a whole demonstrates beyond reasonable doubt  
17 that the piece of evidence concerned is what it purports to be."  
18 End quote.

19 [10.01.57]

20 Your Honours, as discussed above, the practice of the ECCC has  
21 been to admit media reports having the minimum levels of  
22 relevance and reliability.

23 [10.02.12]

24 In Case 001, Your Honours admitted 85 DK media reports and 135  
25 international media reports admitted into evidence. This practice

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1 is in line with the international tribunals, where press reports  
2 are often admitted and are generally treated as documentary  
3 evidence rather than witness statements, particularly if they are  
4 contemporaneous reports.

5 The documents in this group clearly meet the minimum level of  
6 reliability threshold required, and in the absence of any  
7 specific factual doubt as to the authenticity of the document,  
8 there is no basis upon which these types of documents should be  
9 excluded. So they should be considered as evidence and so be  
10 admitted.

11 Your Honours, what I raised earlier is our response to the  
12 objections raised by the defence teams.

13 If my colleague has anything further to add to my speech, then he  
14 may proceed.

15 I'm grateful, Your Honour.

16 MR. PRESIDENT:

17 Thank you, the Prosecution.

18 The Chamber would now hand the floor to the Lead Co-Lawyers to  
19 respond. You have 15 minutes to do so. You may now proceed.

20 [10.04.32]

21 MR. PICH ANG:

22 Thank you, Mr. President. Good morning, Your Honours. Good  
23 morning, everyone, and good morning to the public gallery.

24 We will use the 15-minute time allocation to respond to the  
25 objections raised by the defence teams, in particular on the



1 admissibility of the documents.

2 We are of the view that this Court consists of a body of the  
3 Investigative Judges. All the documents raised and submitted by  
4 the Co-Prosecutors as well as by the Co-Investigating Judges have  
5 been used by the Co-Investigating Judges during the investigative  
6 phase and that they have been examined on its reliability.

7 If the documents have already been used by the Co-Investigating  
8 Judges, in particular in their Closing Order, they shall be  
9 considered admissible before the Trial Chamber.

10 [10.06.13]

11 Our Internal Rules also give the express right to the defence  
12 teams to raise their objections to the inadmissibility of those  
13 documents during this hearing, if they are of the opinion that  
14 those documents cannot be admitted. That is the burden of the  
15 defence team to prove that the documents should not be admitted,  
16 and it is not a burden of the Prosecution to prove so.

17 Another point that I'd like to raise that is regarding the  
18 authenticity of the documents. I support the arguments raised by  
19 the Prosecution, and I'd like to add that there is a distinction  
20 between the authenticity of the documents and the original  
21 documents.

22 Nuon Chea and his defence team raised on a couple of occasions  
23 that they demand the original copy of the documents when the  
24 Prosecution raised the issue of a "Revolutionary Flag" or an  
25 extract from that magazine.

1 The original copy of a document and the authenticity is not one  
2 same thing.

3 Authenticity refers to a document which is proper and official.

4 It could be an original copy or a copy of the original copy with  
5 a proper custodianship.

6 Therefore, the request for the original copy of a document which,  
7 as we all know, has been more than 30 years old, is extremely  
8 difficult or impossible for the Prosecution to do so.

9 [10.08.40]

10 For that reason, a proper copy of the original document without  
11 any alteration shall be considered admissible, and that has been  
12 stipulated in our Internal Rules regarding the minimal standard  
13 of admissibility of documents.

14 As for the request to summons witnesses to appear before the  
15 Chamber, or the authors of documents are articles or books or  
16 various other reports, would mean it's going to delay the  
17 proceedings.

18 This would mean the large volume of documents, books or articles  
19 written by journalists or researchers, if there is a need to  
20 demand its author of every piece of documents to appear before  
21 the Chamber, can you imagine how long it will take to proceed  
22 with the hearing in this case?

23 It is unlikely that it's possible to do so and, as we all know  
24 from the Internal Rules, the proceedings shall be expeditious,  
25 and it is not possible to call every author of a book or article

1 to appear in this regard.

2 [10.10.38]

3 This is our submission, Your Honour, and I would like now to get  
4 a permission from Mr. President for my colleague to continue with  
5 our statement. Thank you.

6 MS. SIMONNEAU-FORT:

7 Good morning, Mr. President. Good morning, Your Honours, and good  
8 morning to everyone. A few very brief remarks.

9 The first is relative to Nuon Chea's defence request to summon  
10 Mr. Youk Chhang. We share the opinion of the Co-Prosecutors  
11 according to which the summoning of Mr. Youk Chhang's colleague,  
12 who has been working at DC-Cam for more than 15 years, is timely,  
13 appropriate, and sufficient to providing this Court information  
14 on how DC-Cam has collected certain documents.

15 [10.11.43]

16 However, in order to forestall any discussion that may go on for  
17 several more weeks or several more months as to whether or not  
18 Mr. Youk Chhang should be summoned, perhaps it would be  
19 appropriate to summon him.

20 My second observation is this. It pertains to criteria of  
21 admissibility. Once again, I do not wish to add to what the  
22 Co-Prosecutor has already laid out before you. The Trial Chamber  
23 has already had the opportunity to examine criteria for  
24 admissibility, it will apply them, and I defer to the  
25 Co-Prosecutor in what he articulated with respect to those

1 criteria.

2 My third observation is this. With respect to how these criteria  
3 will be enforced and as to how the objections will be ruled upon,  
4 I would suggest that a very clear distinction be made between two  
5 categories of evidence.

6 [10.12.51]

7 You have, on the one hand, evidence that has already been  
8 assessed by the Co-Investigating Judges. And I insist on this,  
9 I'm talking about the written records of witness interviews, PVs,  
10 as well as other documents.

11 And the second category of documents would be documents that have  
12 been brought forward by other parties and were not necessarily  
13 admitted by the Co-Investigating Judges.

14 I believe that the undertaking of this Bench must take into  
15 account those two separate categories, categories of documents  
16 contained in the footnotes and those brought forward by other  
17 parties.

18 [10.13.34]

19 Once again, I will recall that, subject to any appeal the Closing  
20 Order does cure any procedural defects in the judicial  
21 investigation. I, therefore, implore Your Honours to take this  
22 into account while making your determination.

23 My last remark is as follows. With respect to the indicia of  
24 reliability as we have discussed -- have already been taken into  
25 account by the Co-Investigating Judges, I believe that, to this

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1 date -- and I'm referring strictly to the E3 category of  
2 documents, we shall be deal with the other categories at a later  
3 point -- I believe that some of the objections raised by the  
4 Defence are indeed challenges that are far too broad, far too  
5 general, they are not serious objections, that have any degree of  
6 accuracy or precision, that can actually challenge the threshold  
7 by which the Co-Investigating Judges conducted their work. I  
8 thank you, Your Honours.

9 MR. PRESIDENT:

10 Thank you, Lead Co-Lawyers.

11 Each defence team now has a 15-minute right of reply -- that is  
12 to both, to the Prosecutions and to the Lead Co-Lawyers replies.  
13 So it means for the three teams, you can divide the time amongst  
14 yourself.

15 I'd like to state again the time allocation. The time allocation  
16 for the three defence teams, you have 15 minutes all together to  
17 reply. So it means for each team you only have 5 minutes to reply  
18 to the responses of the Co-Prosecutors and the Lead Co-Lawyers,  
19 except in the case where you re-allocate the times amongst  
20 yourselves.

21 The Chamber now gives the floor to the Nuon Chea's defence.

22 [10.16.44]

23 MR. PAUW:

24 Thank you, Your Honours. Good morning, everyone.

25 The Nuon Chea defence team will take its 5 minutes. I don't think

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1 we can be much shorter than that, and I will limit my response to  
2 one point that the OCP made this morning.

3 And I want to address this because--

4 MR. PRESIDENT:

5 I repeat, all the three teams have only 15 minutes in total, and  
6 your team has 5 minutes in response. If you need to use more than  
7 5 minutes allocated for your team, you need to discuss among  
8 yourselves.

9 MR. PAUW:

10 Thank you, Your Honour. I hope my 5 minutes start now. And I will  
11 hurry up speaking.

12 [10.17.46]

13 Again, we think that the OCP, this morning, misrepresented the  
14 Defence's position. We have not stated that all DC-Cams must be  
15 declared inadmissible because they stem from DC-Cam, which is, in  
16 our view, a biased organization.

17 What we have stated yesterday is that, if Mr. Youk Chhang is not  
18 heard, only in that case should those documents be declared  
19 inadmissible. And I will explain this.

20 We think that there are numerous very valid questions, with  
21 regards to the DC-Cam documents, that have not been addressed  
22 appropriately in the earlier interviews of Youk Chhang. There are  
23 very valid questions as to the problems of numerous documents.

24 There are valid questions as to the transfer to DC-Cam of  
25 numerous documents. There are valid questions as to earlier

1 custodians of these documents. There are valid questions as to  
2 later additions to DK-era documents by other people, other people  
3 than Khmer Rouge officials.

4 [10.18.59]

5 As I mentioned yesterday, it seems that, for example, Tuol Sleng  
6 Museum staff has added to these documents, and DC-Cam personnel  
7 may have added to these documents. Those are all valid questions.  
8 One last point with regard to those questions: Youk Chhang has  
9 also stated that, to get certain documents, he needed to work  
10 with the permission of the Government, with the permission of Hun  
11 Sen personally, and this means that Mr. Hun Sen had personal  
12 control over certain documents. And we need to be able to  
13 question Youk Chhang on those issues as well.

14 Again, it is imperative that we hear Youk Chhang on those issues  
15 because he is so personally involved with the collection of the  
16 documents. I already explained yesterday that he personally  
17 accepted each and every document, and I would like to quote one  
18 statement that he made in document number D311/2.

19 He is questioned, so he's asked by the Investigating Judges:  
20 "Could you give your personal notes about the receipt and types  
21 of documents?"

22 And the answer of Youk Chhang is: "I have my personal notes, but  
23 other people do not understand its meaning, and it only means to  
24 me." Translation by me.

25 We need to hear Youk Chhang on these issues.

1 [10.20.20]

2 And the other witness that has been called may be able to testify  
3 about some issues of custody, but it is clear that Youk Chhang is  
4 the right party to ask about the much broader issues; he knows  
5 more about custody, but also he knows more about the authenticity  
6 and the reliability of documents.

7 I think that's the last point I want to make. We are not just  
8 focussing on the custody of the documents; we are also focussing  
9 on the authenticity of these documents.

10 [10.20.54]

11 I feel that, so far, the position seems to be, of the OCP, that  
12 these documents are authentic because DC-Cam has stated that they  
13 are authentic. And this can be translated to: these documents are  
14 considered to be authentic because Youk Chhang says that they are  
15 authentic.

16 [10.21.14]

17 For that reason, we need to question Youk Chhang on his training,  
18 on his approach, on his technical knowledge.

19 And also, again, I repeat, he stated preference for a handwriting  
20 sample and perhaps forensic testing of documents.

21 May I remind you that he, himself, first has stated that he  
22 considers all these documents to be authentic because he has  
23 verified them, but then, in this article that I mentioned  
24 yesterday, he states that forensic testing and handwriting  
25 samples may be needed to truly authenticate these documents. In



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1 other words, he, himself, is not that convinced of his own  
2 approach.  
3 So, to summarize our position, if we don't get this clarification  
4 on the approach by DC-Cam on the authentication of these  
5 documents, if we do not hear Youk Chhang, then these documents  
6 cannot be considered to be authentic and reliable. There will  
7 just be this black box called DC-Cam of which we do not know the  
8 approach, and the Defence needs to be able to test this approach.  
9 That's why we ask for Mr. Youk Chhang, and that is the Defence's  
10 position as to the admissibility of evidence.

11 And I hope I have not spoken more than 5 minutes. I give the  
12 floor to my colleagues.

13 MR. PRESIDENT:

14 Thank you, Defence Counsel.

15 Ieng Sary defence, now it's your turn.

16 [10.23.00]

17 MR. KARNAVAS:

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

20 I apologize if I may be speaking a little bit faster than  
21 normally, but I have a lot of territory to cover.

22 First, let me work backwards.

23 The civil parties talk about the threshold that was used by the  
24 OCIJ in determining that the documents were authentic, reliable,  
25 and of course relevant. What threshold?

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1 I remind that we filed a third investigative request requesting  
2 from them their methodology and modalities. No answer was ever  
3 provided, nothing was ever provided by the OCIJ suggesting as to  
4 how they went about in testing the authenticity and reliability  
5 of any of the documentary evidence. And therefore, to simply say:  
6 OCIJ did it, therefore we must trust it, is, in my opinion,  
7 ludicrous.

8 And keeping in mind the constant battle that is going on now with  
9 respect to that particular organ of this particular institution,  
10 I don't think that we can just simply say that it has that much  
11 credibility and we should therefore accept it blindly.

12 Let me talk about, very briefly, the examples that were raised by  
13 the National Co-Prosecutor, who, in my opinion, simply made an  
14 offer of proof or, put it more bluntly, testified as to why he  
15 believes these documents are authentic and reliable.

16 [10.24.37]

17 He claims that the content is consistent with -- and he gives  
18 examples of various words or phrases or what you have. That's his  
19 testimony. That's an offer of proof that was made by the  
20 prosecutor themselves, but obviously they've come to the  
21 conclusion, somehow, that these particular words or phrases are  
22 consistent with certain individuals or certain organizations. If  
23 that is the case, then why not bring those people or show exactly  
24 why they're consistent through some sort of evidence? To simply  
25 file a motion, a submission where they make an offer of proof is

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1 insufficient.

2 The -- And then it seems to be that, simply because they made  
3 this offer of proof in writing, in their submission, they want to  
4 reverse the burden on the Defence, and somehow we have to now  
5 carry that burden. We submit, Your Honours, that, in the  
6 international jurisprudence, it works the other way around.

7 [10.25.41]

8 And that brings me to what the International Co-Prosecutor  
9 indicated. And yesterday, we heard about the Prlic Case. Now, it  
10 was déjà vu for me because I spent 5 years litigating Prlic,  
11 representing Dr. Prlic. And the procedure that was used in that  
12 case -- Granted, it's adversarial primarily, it's a hybrid  
13 system, but in that particular system -- and now I'm making an  
14 offer of proof, but I will provide the Trial Chamber with all of  
15 the decisions concerning the admissibility of evidence -- the  
16 Prosecution had to present some witness, not necessarily with a  
17 chain of custody, but a custodian, as to how the documents were  
18 generated. We then heard witness testimony. At the conclusion of  
19 the witness testimony, the Prosecution would then make an offer  
20 of admission of certain documents. The Defence could object. The  
21 Trial Chamber would then make a decision.

22 [10.26.52]

23 If documents, due to time limitations, were not presented to  
24 witnesses, then, through the bar table, we were able, as a last  
25 resort, to make an offering. And then the parties would have the

1 right to object, and the Court would make a decision.

2 It's a simply -- it's a totally different process. I'm not  
3 suggesting that we adopt that here, but if we're going to talk  
4 about international standards, I don't think the standard is as  
5 the Prosecution claims it is, and what they're suggesting is that  
6 you only look at relevance.

7 If it purports to be relevant on its face, then accept it,  
8 because authenticity and reliability are, in and of themselves,  
9 one thing that can be determined later on, and that goes to the  
10 weight.

11 We submit that is not the case. And while I appreciate the  
12 compliment paid to me, that I was somewhat academic yesterday --  
13 although I hardly think that my presentation was academic if at  
14 all -- I am not suggesting that we sort of -- that Your Honours  
15 ruminates over, you know, whether it's authentic and then after a  
16 while go to whether it's reliable. It is a quick process, it is a  
17 very quick process.

18 [10.28.08]

19 What we are suggesting, Your Honours, what we are suggesting, is  
20 that there has to be some sort of a methodology for Your Honours  
21 to look at all of the evidence. And to simply say that it comes  
22 from this institution or that it has this logo and, therefore,  
23 from this logo, take it from us, the Prosecution, it means that  
24 it's a reliable, authentic and relevant document, is  
25 insufficient.

1 And finally, with respect to articles in newspapers -- actually,  
2 that's my second-to-last point -- in some courts, in some --  
3 before some chambers -- and I believe it was the Boskoski  
4 Chamber, I'll have to look it up -- in that instance, Judge  
5 Parker, who presided over that particular case, did not rely on  
6 any newspapers, newspaper articles. The Trial Chamber, in that  
7 case, determined that that was insufficient. Now, I can  
8 understand that, in this - in this particular tribunal, we may  
9 wish to look at, but I don't think that, simply because it says  
10 "Reuters", it comes in -- or Washington Post, it comes in and  
11 everything in it can be used for the truth asserted therein.

12 [10.29.30]

13 Finally -- and this is my final point, Your Honours -- with  
14 respect to Duch and the Duch Case, I wasn't in the Duch Case. He  
15 was represented by another team that had another strategy, that,  
16 in essence, came in and plead -- he plead guilty and there was an  
17 eight-month trial process to determine whether he was indeed  
18 guilty, which is the civil law system.

19 But to simply say that, because we did this in Duch, where -- we  
20 should automatically do it in this case, I would respectfully  
21 suggest that this is not the test. We are in a new case and we  
22 have to approach this evidence from a different standpoint.

23 And I'm here representing Mr. Ieng Sary, and I'm entitled to make  
24 my objections, and I'm entitled to request that the Prosecution  
25 meet its minimum burden in tendering the documents.

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1 [10.30.35]

2 I wasn't at Duch and I shouldn't be -- not me, but my client, Mr.  
3 Ieng Sary, should not be penalized because the Duch lawyers  
4 decided that it wasn't in their interest or it wasn't within  
5 their theory of the case to challenge certain documents.

6 I apologize for speaking too quickly; 5 minutes was clearly not -  
7 is not enough for my presentation, but I appreciate nonetheless  
8 the opportunity to give rebuttal in this instance.

9 Thank you very much.

10 MR. PRESIDENT:

11 Thank you.

12 Finally, we hand over the floor to the defence for Khieu Samphan.

13 You may now proceed.

14 [10.31.25]

15 MR. KONG SAM ONN:

16 Thank you, Mr. President, Your Honours. I would like to object to  
17 the response by the Prosecution that the time for the -- the  
18 four-year time for examination of documents in the case file is  
19 more than sufficient. But in reality it is not the case.

20 [10.31.54]

21 The reason why I raised my argument earlier on, because I was  
22 based on the solid ground. We, are human being, we are not  
23 (unintelligible), we are not machine, so the examinations of  
24 documents, in certain cases, we can do it with years, but in  
25 other instances it may not.

1 [10.32.10]

2 And the Prosecution was erroneous when they pointed out that  
3 those documents, thousands of documents in the case file was  
4 available at one specific time, some four years ago, but it was  
5 not the case because many documents has been added to the case  
6 files and it has gone through translation, and-- So, it does  
7 not-- And we have some problems finding certain document in the  
8 language that we converse in with. That is also an issue  
9 confronting the Defence.

10 Secondly, the Prosecution, just now, mentioned by themselves that  
11 this is a large case. So this case involve voluminous documents,  
12 and the standard approve must meet certain defined criteria.

13 [10.33.19]

14 If legally speaking, when we talk about the standard of  
15 admissibility of the documents, it regards -- regardless of the  
16 size of the case, but we will have to have the minimum standard  
17 of admissibility. And in this case, before us is a large case,  
18 and there should be a standard of admissibility.

19 And the Prosecution, in their respond, said they - they make an  
20 analogy that the gathering of evidence, for example the police  
21 gathered evidence, we - they say that police might be biased, and  
22 the document gathered by the police may not be admissible by the  
23 Chamber.

24 Well, actually, the police are the public offices and they  
25 protect the interest of the public. However, the DC-Cam is a

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1 privately run organization. It may serve the interest of the  
2 public by keeping the custody of the document, but it was not  
3 actually an office or function of this organization.

4 [10.34.46]

5 And I observe that the Prosecution does not argue that the  
6 Chamber should summon Mr. Chhang Youk to testify before the  
7 Court. Even in the domestic jurisdiction, the police are, at  
8 times, summoned to testify before the court as well. So Mr.  
9 Chhang Youk has to appear before this Chamber upon summoned by  
10 the Court.

11 As for the use of time, the Prosecution and the representative of  
12 the civil party argued that, if we have to summon each and every  
13 witness, then it will lead to the prolonged proceedings. But  
14 Defence takes the position that in search for truth and justice,  
15 if it is necessary to ascertain the truth, we will have to summon  
16 those important witnesses. If we do not have the indicia of  
17 reliability or relevance of the document, it is more than  
18 necessary to summon those witnesses. Otherwise, the Chambers  
19 would make a decision based on the document that will not  
20 substantiate it.

21 For example, the argument raised by a national prosecutor just  
22 now. He said Mr. Khieu Samphan used to be the President of State  
23 Presidium. So of course, if we look at the time for the  
24 Prosecution to work, they actually had work on the document for  
25 four years already. He was not the head of the State but he was



1 the President of the State Presidium.

2 So I think that the Prosecution may be erroneous, let alone the  
3 journalists. They are sometime foreign journalists or foreign  
4 officers; they did not understand the historical context and the  
5 actual context of Cambodia overall, so they were subject to  
6 erroneous statement or -- statement as well.

7 [10.37.23]

8 And in that document, it also pointed that Mr. Khieu Samphan used  
9 to be the prime minister as well. But Mr. Khieu Samphan had never  
10 been an acting prime minister at all. But there was some news  
11 articles which printed the report that Mr. Khieu Samphan had been  
12 the acting prime minister. So, once again, if we fail to look in  
13 depths into the documents, then we would not be able to assess  
14 its reliability.

15 [10.38.06]

16 There are a number of other points which I already presented  
17 yesterday, and I think the Prosecution failed to respond to the  
18 points I made yesterday as to whether or not there was existence  
19 of those kinds of things.

20 Once again, the earnest request of the Defence to examine the  
21 reliability and relevance of the document is indispensable to  
22 ascertain the correctness and properness of the documents which  
23 serve as the solid basis for the -- for the decision of the  
24 Chamber.

25 So long as we have a specific clarification of the source of

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1 document, the reliability of the document, as well as the  
2 reliability of the content of the documents, the Chamber may make  
3 a prejudicial decision on the admissibility of those documents.

4 Thank you.

5 [10.39.20]

6 MR. PRESIDENT:

7 Thank you, Counsel.

8 It is now appropriate to take an adjournment of -- and we will  
9 take a 20-minute break. We will resume at 11.00. Thank you.

10 (Court recesses from 1039H to 1101H)

11 MR. PRESIDENT:

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

13 We will now continue our hearing on the objections on documents.

14 Yesterday, we heard objections concerning documents that have  
15 been already granted and E3 classification.

16 We will now hear objections regarding contemporaneous DK  
17 documents that the Trial Chamber intends to place before it.

18 According to our direction in Memorandum E159, we will hear  
19 objection -- let me repeat, the memorandum is E159 -- we will  
20 hear objection on the A1 documents first.

21 The Defence has been allocated two hours to present its  
22 objections, and it was left to the discretion of the Defence how  
23 to divide its time between them. If the three defence teams do  
24 not share the time amongst themselves it would be -- would have  
25 45 minutes. If you reallocate the times amongst yourself, please

1 inform the Chamber, otherwise it will be allocated the 45 minutes  
2 time, as I just said.

3 And Nuon Chea's defence have the first time allocation.

4 [11.04.09]

5 MR. PICH ANG:

6 Mr. President, regarding the A1 document, the Lead Co-lawyer  
7 would give the floor to my other lawyer within the team.

8 MR. PRESIDENT:

9 Thank you for the National Lead Co-Lawyer for informing the  
10 Chamber of this decision. And, yes, we agree to that request.

11 Once again, Nuon Chea's team you may proceed.

12 MR. IANUZZI:

13 Thank you, Your Honour. Good Morning. I will be handling the  
14 general objections and a few specific objections with respect to  
15 the documents contained in Annex 1.

16 I imagine I'll take about 15 minutes maximum. I'm informed that  
17 Mr. Son Arun has no remarks, so we're happy to cede the remaining  
18 time to our colleagues on this side of the stage.

19 I'd just like to start off by incorporating, by reference, the  
20 general submissions that were made yesterday, the general remarks  
21 with respect to the general issues made in the morning, and the  
22 remarks made, with respect to DC-Cam, by my colleague, Pich Ang,  
23 in the afternoon.

24 We do submit that those objections, those issues that we raised  
25 yesterday apply across the board, to the Accused's statements

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1 contained in Annex 1 and in fact all the documents which will be  
2 put before the Chamber.

3 [11.05.58]

4 I'll be making reference to document E109/4.1. Again, that's  
5 Annex 1, the Prosecution's submission, the Accused's statements.  
6 By my count, there are 19 statements attributed to Nuon Chea on  
7 this list, out of a total of 233 documents. Of those 19, there  
8 are three sub-categories, there are seven DK speeches, 10  
9 interviews with the Accused, including, among the interview  
10 group, a letter, and two OCIJ documents.

11 So, first, I'd like to start off with some specific objections.  
12 My colleague, Michiel Pestman, yesterday, made reference already  
13 to one of the documents on this list. That's the 9th document on  
14 Annex 1. Coincidentally, that also refers to Hun Sen's spy number  
15 9 -- that's Khem Ngun. Mr. Pestman has already made an objection  
16 to that document yesterday, so we stand by that objection.

17 [11.07.11]

18 Two of the documents on the list, two of the interviews,  
19 specifically number 15 on the list -- that's D366/7.1.664 -- and  
20 document number 16 on the list -- that's IS20.33 -- are two  
21 interviews by unknown persons, the first one by simply an unknown  
22 person, the second one by a Japanese journalist.

23 We submit, we take the position that these two documents in  
24 particular fail to satisfy even the prima facie showing, the  
25 prima facie standard that was discussed yesterday, so we would

1 specifically object to those documents as being inadmissible.  
2 Generally - generally -- with respect to all of these statements,  
3 with respect to the 19 statements, we would submit that, to the  
4 extent that the Chamber intends to rely on any portion of them,  
5 that goes to the acts and conduct of the Accused or to key issues  
6 in the case, those documents, in their original form, should be  
7 brought into Court, put to Nuon Chea for his comment, and if he  
8 objects, if he lodges an objection with respect to authenticity  
9 or anything else, then we submit the interviewees of those  
10 statements should come in, should be subject to  
11 cross-examination.

12 [11.08.46]

13 Now, touching upon an issue that was raised yesterday and again  
14 today, that the trial will be brought to a standstill by the  
15 production of original documents, putting them all to the  
16 Accused, I note these are 19 documents; that will hardly bring  
17 the trial to a standstill. It's practicable, it's possible. As  
18 far as I know, many of the originals are available. In any event,  
19 Nuon Chea's still with us, he's still testifying. Those documents  
20 can and should be put to him.

21 For example, one of those documents -- that's number 11 on the  
22 list, the Prosecution's list -- it does not have a document  
23 number, it's a new document -- that is a letter to Hun Sen from  
24 Nuon Chea -- allegedly a letter to Hun Sen from Nuon Chea. So,  
25 for example, that document should be put to Nuon Chea for his

1 confirmation and comment, and if he challenges that document,  
2 then Hun Sen should be brought to Court to the extent that the  
3 Chamber intends to rely on that document for any reason.

4 [11.09.46]

5 Another special category: the last two of the 19, that's 18 and  
6 19 on the list, one is C8 and one is D20. These are two documents  
7 that were prepared by the OCIJ. It's the initial appearance of  
8 Nuon Chea, the written record of the initial appearance, and the  
9 written record of the adversarial hearing with respect to his  
10 provisional detention.

11 Now, obviously, we don't object to these documents prima facie,  
12 they are case file documents, we accept that statements have been  
13 taken by the OCIJ, but we would like to mention -- I would like  
14 to mention, that Nuon Chea, when making these statements, was not  
15 represented by counsel. As I recall, if I recall correctly, Mr.  
16 Son Arun had been appointed but was in Battambang, was unable to  
17 attend, no international counsel had been -- or had been  
18 appointed at that point, and the OCIJ went ahead anyway, took the  
19 statement of Nuon Chea, took a waiver, took a waiver of Nuon  
20 Chea, who was, as we said, as we argued, coerced -- coerced --  
21 into exercising his right to remain silent.

22 We did litigate that and we don't intend to re-litigate it, we  
23 don't intend to suggest that Your Honours may somehow overrule  
24 the decision that were made below, but we do suggest -- we do  
25 suggest -- that you may take into consideration all the

1 circumstances surrounding those interviews.

2 [11.11.14]

3 So, for example, if you choose to give any weight to anything  
4 that was said during those statements, you do need to take into  
5 account that Nuon Chea was unrepresented and that his waiver, as  
6 we said time and again, was uninformed and indeed coerced.

7 With respect to all of the documents, as I said, we do -- we do  
8 -- we do take the position that they should be put to Nuon Chea.

9 As to the remaining documents on the list -- that's number 20 to  
10 233 -- those are statements of the remaining Accused.

11 And again we would reassert our general position: to the extent  
12 that the Chamber intends to rely on those statements or anything  
13 to do with the acts and conduct of the Accused, key issues in the  
14 case, then you may only do that should those individuals, the  
15 makers of those statements, the other co-accused be brought to  
16 Court and be made available for cross-examination.

17 [11.12.09]

18 I'm looking at the clock. That's all I have, in fact, so I do  
19 cede the time to my colleagues on this side of the stage. And I  
20 thank you very much.

21 MR. PRESIDENT:

22 Thank you, Nuon Chea's defence team.

23 Ieng Sary's defence team, you now have the floor to present your  
24 objections.

25 MR. KARNAVAS:

1 Good morning again, Mr. President. Good morning, Your Honours.

2 And good morning to everyone in and around the courtroom.

3 Much of what I was planning on covering during this period was --  
4 has already been discussed yesterday and today, in my rebuttal  
5 remarks, so I'll make it brief.

6 I don't see the point in going through every single document. You  
7 will recall that, back in 5 January 2012, we did file our  
8 objections with a comprehensive annex where we went through a  
9 litany of documents presented by the Prosecution, and we provided  
10 detailed responses in block form. That is, depending on the type  
11 of document, we fashioned a general response and, when necessary,  
12 we changed that response or amended it to fit the particular  
13 document.

14 As I noted yesterday, the Prosecution lumps everything into one  
15 category that is "statements". So, if something is reported in a  
16 newspaper article, it is presumed to be a statement; if it is a  
17 speech that allegedly was given by Mr. Ieng Sary, it is a  
18 statement.

19 [11.14.28]

20 We, of course, feel that - our primary objection is, first and  
21 foremost, the Prosecution needs to be extremely precise on what  
22 it is that they're claiming. Is it an article? Is it a speech? Is  
23 it an actual statement? And what are the circumstances?

24 So for instance, if you were to look at just one example -- and  
25 this would be D312.2.8 -- this is a -- they claim this is a



1 statement of Mr. Ieng Sary, and when we look at it, it's actually  
2 an article. And we've indicated yesterday, as we have in our  
3 annex, that, unless we have the opportunity to confront the  
4 individual who is summarizing, or making this article, or  
5 attributing words to Mr. Ieng Sary, our primary position is such  
6 evidence should not be admitted, and if it is admitted, that it  
7 be subject to very little weight unless independent indicia can  
8 be provided.

9 [11.15.45]

10 Let me go -- give you another example. For instance, here, this  
11 is D366/7.1.633. This is -- they characterize it as a statement  
12 of Ieng Sary in a "Washington Post" article entitled "Ship  
13 Seizure Order Denied by Cambodia". And this happens to be an  
14 article by Elizabeth Becker, concerning the Mayaguez.

15 What we don't have is Mr. Ieng Sary's actual comments, but rather  
16 excerpts of what purportedly he's indicated.

17 And of course one has to ask the question: Why is this  
18 significant? Is this plead in the indictment? And if so, how does  
19 it connect to Mr. Ieng Sary?

20 But we would submit having an article by Elizabeth Becker, in the  
21 "Washington Post", from 8 September 1975, in and of itself to  
22 bring it in and to somehow use the content of what Becker alleges  
23 Mr. Ieng Sary said as substantive evidence is unreliable and,  
24 therefore, cannot and should not be admitted into evidence.

25 Of course, if Elizabeth Becker were to testify, then she could be

1 shown this article that she purportedly authored and can be asked  
2 to give evidence if indeed the Trial Chamber feels that this  
3 particular article and the content or the subject matter through  
4 the article is relevant.

5 [11.17.48]

6 And we assume that, if that is the case, then we should be  
7 entitled to litigate the entire Mayaguez incident, which is the  
8 U.S. behaviour, because there's ample evidence to suggest that  
9 the U.S. went ahead and deliberately attacked, knowing full well  
10 that no harm was being made to their -- to those who -- the  
11 Americans that had been captured. And in fact a lot of American  
12 soldiers lives were lost in that. But now we're off to a  
13 litigation of an incident that may or may not necessarily have  
14 anything to do with what is really at stake in this particular  
15 tribunal.

16 [11.18.31]

17 So if I just point this out, it's just a mere example. Because of  
18 our annex, I don't wish to go through every single example, Your  
19 Honour. We've made our objections, you have them, and I think  
20 that it would -- it's a better use of time for me to simply just  
21 show you a sampling, and then you can - you can decide how you  
22 wish to approach these documents.

23 Another example is 366/7.1.363 (sic). This is titled "Statement  
24 of Ieng Sary, Phnom Penh, Domestic Service Broadcast of Speech  
25 entitled Ieng Sary Economic Progress". And then, when you look at

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1 it, this document is an excerpt of a broadcast version of the  
2 speech. Again, it is not the entire speech. Supposedly, it is the  
3 broadcast itself; we don't know.

4 We submit that some sort of testimony should come in, some sort  
5 of proof should be provided by the Prosecution as to whether this  
6 particular document is what they purport it to be. Certainly  
7 we're not asking for the impossible.

8 [11.20.06]

9 Let me give you another example, Your Honours. There is the  
10 example of D56-Doc.124. This is purportedly a statement of Ieng  
11 Sary interview by Pal Steigan and Elisabeth Eide from Norwegian  
12 Communist Party. This is a -- we submit that this is not a  
13 statement; this is a partial English translation of the book "The  
14 Assault on Kampuchea -- Why Vietnam Attacked".

15 Now, obviously, we don't think that this has any probative weight  
16 at this point in time, particularly because it's outweighed by  
17 any prejudicial effect, given that, unless the Prosecution can  
18 bring the authors in and verify to some degree what the actual  
19 nature of the statement, if a statement was gathered from Mr.  
20 Ieng Sary, and for us to cross-examine, to test that particular  
21 testimony. Simply bringing in a partial English translation of a  
22 book and trying somehow to attribute the content of it to Mr.  
23 Ieng Sary is insufficient.

24 Another example -- and this, perhaps, may be my last example  
25 because, again, I think we've made comprehensive submissions

1 already, so there's no need, simply because you gave us the 40  
2 minutes each, to actually take it -- is D366/7.1.589. This is  
3 titled by the Prosecution "Statement of Ieng Sary and Ieng  
4 Thirith in Email from Peter McGuire Containing Partial  
5 Transcripts of Documents Entitled 'Kampuchea -- Death and  
6 Rebirth'". And if we look at this particular document, Your  
7 Honours, one has to question why it is being presented. This is  
8 -- this document postdates the temporal jurisdiction of the ECCC,  
9 it is not relevant to the proceedings in this particular case --  
10 this is what we submit. The document is unsuitable to prove the  
11 facts it purports to prove. It is an email to DC-Cam, where the  
12 author provides certain insight, which he's entitled to. But we  
13 submit that, if this document comes in, there has to be a showing  
14 why the document, in and of itself, can come in. And for the  
15 content of it to be used by the Prosecution in proving something  
16 in the Closing Order without giving the benefit to the Accused to  
17 cross examine the actual author, especially if the author is  
18 indeed - is available.

19 [11.24.06]

20 Simply admitting an email to Mr. Youk Chhang, where -- For  
21 instance, it begins with:

22 "Dear Youk:

23 "Below are some quotes of Ieng Sary and Thirith Sing saying  
24 ridiculous things."

25 I'm not going to go on any further. Now, he's entitled to -- this

1 individual is entitled to his opinion, but I'm entitled to  
2 question that opinion. What the Prosecution is not entitled to,  
3 we submit, is to simply bring this in – this document in through  
4 the bar table without giving the opportunity to the Defence, and  
5 to Mr. Ieng Sary in particular, to cross-examine this gentleman,  
6 which goes back to my initial point of view that I wanted to make  
7 this morning, Your Honours, and this is why I don't want to take  
8 up the time to go through every document.

9 To simply say that, in a document, something might be in it that  
10 purports to be somewhat relevant to something that's in the  
11 Closing Order, that, in and of itself, is an insufficient basis  
12 for admitting a document. And then to say: It doesn't -- don't  
13 worry about authenticity and reliability, you can deal with that  
14 when you get to the weight of it, in -- especially when you  
15 determine how probative the document may be.

16 [11.25.36]

17 We submit that, before having these sorts of documents in, which  
18 are mischaracterized as statements -- should not come in unless  
19 the Prosecution is prepared to demonstrate the reliability of the  
20 content they're in.

21 Obviously, if you have a copy from the "New York Post", we're not  
22 challenging the fact that this did not appear in the newspaper.  
23 We're not suggesting, for instance, that authenticity, in this  
24 instance, needs to be proved. They can certainly bring in the  
25 "New York Post", or the "Washington Post", or the "New York

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1 Times" as a copy of the newspaper, that's sufficient. But the  
2 content itself, we could say, is reliable in a sense that it  
3 hasn't been tampered with, so the article is what it purports to  
4 be. But does it automatically come in? And do we take this piece  
5 of evidence, which we submit is hearsay, an out-of-court  
6 statement offered for the truth of the matter asserted therein,  
7 or do we reject it?

8 We submit the better principle is for the Prosecution to try to  
9 establish how this sort of an article is actually relevant, first  
10 of all.

11 But second of all, and most importantly, if the article itself,  
12 as the Becker article, contains excerpts of Ieng Sary's  
13 statement, what was the rest of his statement? What else did he  
14 say? What questions were posed to him? What were his actual  
15 answers, as opposed to the paraphrasing that was done by  
16 Elizabeth Becker, that was then looked at by an editor who then  
17 edited it because they might have had - because this is how the  
18 newspaper business goes, because usually they're worried about  
19 space, and how the article actually came out. Not to mention, as  
20 I've indicated, if the content of the article would lead us into  
21 another area of litigation that's not necessarily relevant to  
22 this tribunal, then what's the purpose of admitting it?

23 [11.28.03]

24 So, to wrap up, Your Honours, we urge you to look at our annex.  
25 We made our specific objections as to why we believe these sorts

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1 of documents should not come in. We've argued how we believe --  
2 or what we believe the test should be in the process by which you  
3 need to go through the documents.

4 And we submit that the better process, here, is for the  
5 Prosecution to actually identify who are the witnesses they  
6 believe can lay certain basic foundations as to certain types of  
7 documents, whether they're telegrams, whether they're minutes of  
8 meetings, whether they're UN documents. If they have such a list,  
9 then perhaps the Prosecution should invite the Trial Chamber to  
10 call those individuals at some point - as early as possible or at  
11 some point, in order to lay the proper foundation. And I think  
12 that, if that were done, perhaps we wouldn't be going through  
13 this exercise.

14 But getting back to Mr. Youk Chhang, since a great deal of the  
15 documents based on the Prosecution's motion, where they listed  
16 what I called the offer of proof on all the 26 categories of  
17 different documents, they heavily rely on Mr. Youk Chhang and the  
18 DC-Cam. And we submit that it is insufficient to simply say: This  
19 document came from DC-Cam and, therefore, it has a certain - it  
20 is reliable, in and of itself.

21 [11.230.03]

22 Simply because a document came from an archive, that doesn't mean  
23 that the document is authentic or reliable unless, unless -  
24 unless and until you can establish that the archive does its own  
25 screening process and, through that screening process, made a

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1 determination that the document was authentic and reliable.

2 What normally happens is an archive is developed, such as DC-Cam,  
3 by simply collecting. If in fact DC-Cam has indeed gone through  
4 the process of actually screening the documents, then of course  
5 that's something to be considered.

6 But we submit simply saying here's a document that says "UN", and  
7 it should automatically come in, we submit that's insufficient.

8 The Prosecution needs to establish certain other indicia. And  
9 where we have articles or documents that are called "statements  
10 of Mr. Ieng Sary", and they're merely excerpts, or summaries, or  
11 paraphrasing Mr. Ieng Sary, we would submit that, if they are to  
12 be admitted, that you do so with a proviso that at some point,  
13 unless you have independent indicia that would validate the  
14 content of whatever it is that Mr. Ieng Sary is alleged to have  
15 said in those summaries, in that paraphrasing, unless you have  
16 that independent indicia, that little or no weight be given to  
17 it.

18 Thank you very much, Your Honours. I have no further remarks to  
19 make on this, unless there are any questions from the Bench.

20 Thank you.

21 [11.32.11]

22 MR. PRESIDENT:

23 Thank you, Defence Counsel.

24 Khieu Samphan's defence now has the turn to present your  
25 objections to the A1 documents. You may proceed.



1 MR. KONG SAM ONN:

2 Thank you, Mr. President. Good morning, Your Honours. Good  
3 morning, everyone in and around the courtroom.

4 I'd like to make my remarks in regards to Annex 1, as it's the  
5 base for the prosecutors' allegation.

6 In document E158, which indicates the reliability of various  
7 other documents, it is only a mere indication of reliability by  
8 the Prosecution. They also indicate the categories of documents  
9 which are only the indicia, but nothing else indicating the  
10 authenticity or reliability of those documents.

11 [11.34.14]

12 As there are huge volumes of documents in the list, it would be  
13 excessive, as claimed by the Prosecution, so they relied on the  
14 sheer volume of documents that they would not be able to act upon  
15 the request for authenticities and reliability of these  
16 documents.

17 So, with regard to such act of not revealing the details of those  
18 documents, it is not the onus of the defence team to prove the  
19 authenticity or reliability of those documents. If there are the  
20 view of the large volume of documents under their list, then they  
21 should review and select the documents which are of interest for  
22 this trial.

23 Among 233 documents in Annex 1, only less than 70 documents which  
24 -- have been indicated the indicia of reliability by the  
25 Prosecution. However, they are weak. We can assume that the

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1 Prosecution are erroneous in two points in regards to the  
2 authenticity and the reliability of those documents.

3 [11.36.41]

4 We also present our suggestions as the indicia for the  
5 reliability of those documents to be debated before this Chamber.

6 I submit that there is a distinction as to the weight of the  
7 document, based on its authenticity.

8 As to the reliability of a document, I submit that the statement  
9 by the Prosecution is that we shall consider whether they are  
10 related or relevant to the case file. If, in their view, they are  
11 relevant, then they should prove the authenticity of those  
12 documents.

13 For example, if it is a type of a media report or media article,  
14 then the question is whether is it the original article from a  
15 proper verifiable source of the author and the newspapers, rather  
16 than a mere clip of the article or a retype of such an article.  
17 This is in order to prove the authenticity of the document.

18 [11.38.21]

19 And number two, when we examine the content of such newspaper  
20 article, we need to consider its reliability, whether they are of  
21 interest to the substance of the Court. Sometimes it is -- of  
22 course, seems to be of interest, but it is not a genuine piece of  
23 information; it might be a fabrication.

24 So it is important that these two aspects need to be examined for  
25 these types of documents.

1 Another example: in document E158 of the Prosecution, which  
2 presents the statements by the Accused -- and there are 31  
3 documents in total which have been published in the newspapers,  
4 including "Newsweek", "New York Times" and "Washington Post" --  
5 the question we need to consider is how those articles were  
6 obtained.

7 [11.39.55]

8 The Prosecution stated that some of the articles were obtained  
9 from public sources, and others from DC-Cam, and the rest were  
10 included in a case filed by the Co-Investigating Judges. This  
11 information is insufficient to indicate the authenticity or  
12 reliability of those documents. Furthermore, this information is  
13 immaterial for these types of documents. In particular, the  
14 debate of these documents is not the main focus on the articles  
15 published in those newspapers. What we need to consider is the  
16 reliability on the content of those articles, not on the format.

17 [11.41.15]

18 It is also likewise for the interviews of the Accused or the --  
19 during the preliminary appearance. The Prosecution explains that  
20 those documents were produced by the Office of the  
21 Co-Investigating Judges, including the thumbprint or signature of  
22 the Accused, as stipulated in the Internal Rules, and it was  
23 officially stamped by the ECCC.

24 Of course, we applaud the endeavour by the Prosecution in showing  
25 us those articles and the interviews of the Accused as to its

1 authenticity. However, this is a rather long, tedious exercise at  
2 this stage. What we want for type of documents is that, whether  
3 the content is reliable -- it means whether what is said by the  
4 Accused is reliable -- and the content or what is written by a  
5 journalist is reliable.

6 The Prosecution failed to provide any indicia as to the  
7 reliability beyond a reasonable doubt. So, literally, it means  
8 that the examination is not right on the issue we wish to  
9 discuss.

10 So it is very important that there be an actual examination  
11 before the Chamber so that parties can confront the witnesses, so  
12 that evidence available are admissible or not.

13 [11.44.06]

14 My final point. I would like to refer to the interview of the  
15 Accused with other individuals, for example Co-Investigating  
16 Judge.

17 In document E158, the Co-Prosecutor describes broadly this  
18 document. However, the prosecutor failed to provide the indicia  
19 of relevance and reliability. The prosecutor could only specify  
20 as to which organ or office of this tribunal have included this  
21 document into the case file and this document was recognized or  
22 admitted in the -- in Case 001.

23 Earlier on this morning, the Chamber must have heard counsel  
24 Michael Karnavas presenting his position on the documents  
25 admitted to Case 001; he said that it was independent from the

1 document admitted in Case 002. It can never be automatically be  
2 admitted into Case 002; it must be subject to examination by  
3 parties concerned because the position as well as the methodology  
4 of the Defence, in the two cases, may differ greatly. Therefore,  
5 the document admitted in Case 001 was completely independent and  
6 separate, and it served the purpose of Case 001 separately. When  
7 we were arguing in Case 002, those document must be subject to  
8 re-examinations.

9 These documents include the records of interviews or interviews  
10 with journalists or historians, and certain of – certain records  
11 of those interviews were summarized, and they were not even  
12 summarized by the interviewers by themselves. The interviewers  
13 conducted interview, but the summary was done by someone else, so  
14 it does not necessarily correspond to the original content or  
15 intended message of the interviewee.

16 [11.47.17]

17 For these documents, the issue of reliability can be classified  
18 in two levels, as I pointed out earlier: on the authenticity as  
19 well as the reliability of such documents.

20 Therefore, we submit that the Chamber should take into  
21 consideration each and every document submitted by the  
22 Prosecution to incriminate the Accused.

23 As for the interviews conducted by journalists or historians, we  
24 submit that we reserve our right to remain doubtful of the  
25 reliability of the content of these records or the summary of

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1 those records are accurate. And the words or messages placed in  
2 those reports might not reflect the accurate intention of the  
3 interviewee.

4 [11.48.40]

5 It is the responsibility of the Co-Prosecutor to prove that those  
6 records were gathered properly, and they had to -- they have to  
7 prove that the record gathered by the Office of Co-Investigating  
8 Judges was properly stamped by the competent organ of this  
9 tribunal.

10 And we have to be sure that those records was prepared  
11 contemporaneously when the interview was conducted or it was  
12 actually summarized days after the interview. And we have to  
13 question whether or not those records was based on a person  
14 interpretation or it was based verbatim on the words of the  
15 interviewee.

16 [11.49.40]

17 And if this is the case, what can be a verifiable means to ensure  
18 that the interpretation of the person responsible for recording  
19 the interview corresponds or reflects the words of the  
20 interviewee?

21 These are the legitimate questions that we wish to hear. That's  
22 why we would like to confront and examine each and every piece of  
23 evidence submitted in this case file. Unless -- until we can do  
24 that -- we can be sure that those evidence can be the basis for  
25 the decision -- there are various questions that the Chamber

1 should put on those evidence so that evidence can be given  
2 probative values.

3 So we submit that we object to any presumption of reliability of  
4 documents, and we also object to any admission or acceptance of  
5 documents without having the opportunity to examine those piece  
6 of evidence -- pieces of evidence.

7 [11.51.30]

8 And I would like to give an example for the Chamber to be extra  
9 careful on your consideration on the articles published in  
10 newspapers.

11 For example, document E165 in Annex 1, with a code D313/1/2 --  
12 sorry .2.310. This particular document concerns the statement  
13 made by Mr. Khieu Samphan. This document entitled "Interview by  
14 Paola Brianti", intitulé: "Khieu Samphan Interviewed on  
15 Executions, National Problems" in English Language.

16 According to the Prosecution, they submit that Mr. Khieu Samphan  
17 may have been interviewed in the article which I mentioned  
18 earlier, on the 22nd of October 1976. It was in October 1976, but  
19 this document was published on the 26th of September 1976, so it  
20 means that the submission of the prosecutor that Mr. Khieu  
21 Samphan was interviewed, it seems that this newspaper was  
22 published even earlier than Mr. Khieu Samphan interview; that was  
23 impossible.

24 [11.53.56]

25 In addition, the venue for the interview, in that particular

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1 article of that newspaper, indicates that this interview was  
2 conducted in Colombo City. But according to a letter of Mr.  
3 François Ponchaud -- F-R-A-N-C-O-I-S, Ponchaud, P-O-N-C-H-A-U-D  
4 -- sent to Mr. Noam Chomsky -- N-O-A-M C-H-O-M-S-K-Y -- Mr.  
5 Ponchaud sent a letter to Mr. Noam Chomsky, dated the 17th of  
6 August 1977. In that letter, he indicated that:

7 "I did not mention 'Famiglia Cristiana' in September in 1976  
8 because I am well aware of the precise source, that the Italian  
9 journalist had never interviewed Mr. Khieu Samphan. She came  
10 along with a French journalist and she did not stay a step away  
11 from the French journalist."

12 So we found a contradiction here. The submission that there was a  
13 journalist interviewing Mr. Khieu Samphan back then, actually  
14 there was no journalist interviewing him at all. So, if we rely  
15 entirely on that newspaper, that Mr. Samphan was saying this and  
16 that, that would not be conducive to asserting the truth before  
17 this Chamber. Therefore, it is imperative that there is  
18 examination and confrontation on the reliability of such  
19 documents.

20 [11.56.47]

21 Mr. William Shawcross indicated that there was no journalist  
22 present in the conference in Colombo who was allowed to meet with  
23 Mr. Khieu Samphan. So this was the assertion by the two  
24 well-known journalists who were present at that conference. So,  
25 at that time, the journalist was not able to conduct the



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1 interview, so it was a false report, it was a make-up report,  
2 because what was written in that report was not accurate.

3 As well, Mr. Noam Chomsky, he assessed the document -- that  
4 article to this effect. I would like to read in English. Probably  
5 it was fabricated. I would like to spell "Famiglia Cristiana":  
6 F-A-M-I-G-L-I-A C-R-I-S-C-R-I-N-A (sic).

7 This is a clear example that the Chamber should consider the  
8 documents submitted by the Prosecution one by one.

9 [11.58.46]

10 Finally, due to -- in the interests of time, since the  
11 Prosecution have not provided the clear indicia of reliability of  
12 those documents, we have not been able to object to each and  
13 every document presented in the annexes of the prosecutors in  
14 this week hearing. But due to the aforementioned reasons, I would  
15 like to repeat once again that the assessment of the  
16 admissibility of the evidence shall be subject to examination,  
17 and it shall be done before the Chamber. Thank you very much,  
18 Your Honours.

19 MR. PRESIDENT:

20 Thank you, Counsel.

21 It is now time to adjourn for lunch. So the Chamber will adjourn  
22 from now until 1.30, so we will resume at 1.30 to continue the  
23 proceedings.

24 The security guards are instructed to bring Mr. Khieu Samphan to  
25 the holding cell, downstairs, and bring him back to this

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1 courtroom before 1.30. Thank you.

2 (Court recesses from 1200H to 1333H)

3 MR. PRESIDENT:

4 Please be seated. The Chamber is now back in session.

5 We now hand over to the co-prosecution.

6 You have one hour to present your arguments.

7 You may now proceed.

8 MR. SENG BUNKHEANG:

9 Thank you, Mr. President. The Prosecution would like to present  
10 our arguments as follows.

11 [13.35.25]

12 The documents in Annex 1, including a number of categories of  
13 documents, mainly they are the statements of the interviews of  
14 the Accused, Nuon Chea, Ieng Sary, and Khieu Samphan. Those  
15 statements or interviews of the Accused, including the speeches  
16 made by the Accused during the Democratic Kampuchea regime, which  
17 were broadcast by the Phnom Penh radio and through the broadcast  
18 of the Foreign Broadcasting Information Service, FBIS, or the BBC  
19 SWB, or through the CPK broadcast system. It -- they also include  
20 the speeches of the Accused during the time which they made  
21 overseas trips, including the speeches made at the United Nations  
22 Headquarters and during their visits to China and other  
23 countries, which were subsequently broadcast by FBIS, or BBC SWB,  
24 or other international broadcast.

25 [13.37.01]

1 Also, they include the press conferences made by Ieng Sary or  
2 Khieu Samphan while overseas, and which were broadcast by  
3 international media. They also include interviews or statements  
4 by the Accused with the journalists, historians or other  
5 individuals. These also include documents, books or letters  
6 written by the Accused themselves. Finally, they also include the  
7 statements by the Accused -- that is, the official statements  
8 during the judicial proceedings before this ECCC.

9 In order to touch upon the objections raised by the Accused,  
10 apparently only the Ieng Sary defence team who presents their  
11 objections to the annexes as instructed by the Trial Chamber. The  
12 objection to Annex 1 by Ieng Sary defence team stated in two  
13 documents -- that is: document number 1, E131/1/10.1, filed in  
14 January 2012, in which it objects to 167 of the documents listed  
15 in Annex 1 of the OCP; number two, document E131/21.2, filed in  
16 December 2011, which objects to 68 documents listed in Annex 1 of  
17 the OCP.

18 [13.39.08]

19 Through these two documents filed by Ieng Sary documents -- and  
20 if we review them carefully, it means they object to all the  
21 documents under Annex 1. These objections were repetitious, in  
22 each form, to all the documents, without looking at the fact or  
23 the indicia of reliability of any particular document. This form  
24 of repetitive objection is without any clear description on the  
25 basis of such objections to the document in order to make their

1 objections meaningful.

2 Regarding these objections raised by Ieng Sary's defence for the  
3 documents made at ECCC, just one of the many shortcomings of this  
4 defence team of Ieng Sary, as it can be viewed that their  
5 objections are against those statements or interviews of the  
6 Accused, which have been officially recorded by the ECCC,  
7 including the records of interviews of the Accused -- the records  
8 of preliminary appearances.

9 [13.40.44]

10 An example of this objection is that: Ieng Sary objects to  
11 document number 18 and 19 of Annex 1, which are the records of  
12 confrontations of the Accused, Nuon Chea, made on 19th September  
13 2007, which is document number C8; and a record of initial  
14 appearance of Nuon Chea, made on 19th September 2007 -- that is  
15 document D20. These objections were raised in document  
16 E131/1/10.1, at number 16 and 17 respectively, of this Ieng  
17 Sary's defence team.

18 In the two documents that Ieng Sary's team objects -- that is  
19 documents C8 and D20 -- are the documents that Nuon Chea states  
20 about his role and his functions during Democratic Kampuchea  
21 regime and other events occurred during such periods, including  
22 the statements that allege CIA of America, KGB of the Soviet,  
23 Khmer Serey, and Vietnamese secret spies infiltrated the Party,  
24 as stated in - on page 4 of document B20, as well as the  
25 statements that the Military Committee had the duty of national

1 defence and the internal purge, stated on page 4 of document C8.

2 [13.42.43]

3 Furthermore, we can see that, even for his own statements before  
4 the Co-Investigative Judges, which have been recorded during the  
5 -- even during the judicial proceedings of the ECCC, they have  
6 been objected by Ieng Sary. These objections are in Annex 1, at  
7 number 133 and 134. They are the records of initial appearance  
8 made on the 12th November 2007 -- that is, document D38 -- and  
9 the record of confrontation, dated 14 November 2007. The document  
10 number is C19. These objections were raised in the document  
11 E131/21.2, at number 55 and 58 respectively.

12 In these documents, Ieng Sary describes his own personal  
13 biography and background, his roles and responsibility during the  
14 DK period, as stated in -- on page 3 of document C19 and page 2  
15 of document D38.

16 [13.44.19]

17 Ieng Sary also objects to the records of interview of Khieu  
18 Samphan, conducted by the OCIJ in the objective document number  
19 227, 228, and 229, objecting to the records of interviews of  
20 Khieu Samphan done by OCIJ in December 2007. And this document is  
21 in the case file, including documents number D46, D48, D47, and  
22 D49. These objections were raised in document E131/21.2, at  
23 number 63 through 65. As the Chamber has already aware of, these  
24 documents are the records of interviews of Khieu Samphan, when he  
25 provides his evidence regarding his personal biography, the

1 structure of DK, and the role and his functions during the  
2 regime.

3 I would also like to provide some information regarding the  
4 reliability of the records of interviews in Annex 1, for example  
5 document number 25 and 27 of Annex 1 of the OCP.

6 Document 25 of Annex 1 of the OCP is a report by the Xinhua  
7 regarding the press conference made by Ieng Sary when he went to  
8 New York, in late August 1975.

9 [13.46.26]

10 Ieng Sary made comments regarding reasons of the evacuation of  
11 people from Phnom Penh. And document number 27 of Annex 1 of the  
12 OCP is an interview of Mr. Ieng Sary, which was broadcast --  
13 which was published in the "Newsweek", dated 8th September 1975,  
14 which were extracted from the meeting of the Non-Alliance  
15 Countries of the previous week, when Ieng Sary was in Lima, in  
16 Peru. In such time, Ieng Sary described the reasons of the  
17 evacuation of people from Phnom Penh.

18 These two documents are the perfect examples indicating the  
19 opposing opinions raised by the defence team in their objections.  
20 That is: it is not necessary to summon the author or the writers  
21 of the report in order to make the report reliable. In this case,  
22 the reliability of the interviews or statements made by Ieng Sary  
23 had been supported by various other documents.

24 For example, regarding the explanation of the evacuation of  
25 people from Phnom Penh, as stated by Ieng Sary in New York, in

1 late August 1975, as well as the report by the Xinhua, are almost  
2 identical to the explanation made by Ieng Sary to the "Newsweek"  
3 in Peru.

4 [13.48.19]

5 In these two documents, Ieng Sary stated that there are two  
6 reasons for the evacuation of people from Phnom Penh: the first  
7 reason is due to the food supply, and number two is due to the  
8 situation of the enemy. In the press conference made by Ieng  
9 Sary, he stated the situation regarding the food supply. And let  
10 me present you with his quote:

11 "After liberation, our country faced two immediate tasks, that is  
12 to resolve the food issues for the people and to maintain  
13 security and peace.

14 "Regarding the first issue, we expect that we would find food for  
15 people -- for almost 3 million people around Phnom Penh and in  
16 other towns, who used to receive food of 300 to 400 tons from  
17 America every month, before the liberation. And after the  
18 liberation, if they are still to live in Phnom Penh, they would  
19 face starvation and hardship.

20 [13.49.38]

21 "While considering these factors and due to the unfavourable  
22 circumstances of transporting food from country-side to Phnom  
23 Penh, we have the duty to evacuate the people from Phnom Penh to  
24 country-side which have been well prepared with sufficient food  
25 in order to receive those people." End quote.

1 And during the subsequent the week -- that is, in the interview  
2 with "Newsweek" -- when he was questioned why there was  
3 evacuation of people of Phnom Penh after their control of Phnom  
4 Penh on the 17th April 1975, Ieng Sary states that:

5 "There are two reasons. "One is the food issue. And we think  
6 there are still 2 million people in Phnom Penh, but when we  
7 arrived, we found that there were more than 3 - more, there were  
8 3 million. Previously, the United States transported 300 to 400  
9 tons of food to Phnom Penh per month.

10 [13.50.58]

11 "We do not have sufficient means of transporting food to the  
12 city. For that reason, people had to travel to where the food  
13 were take."

14 In New York, Ieng Sary also provided an interview regarding the  
15 enemy situation, for - quote -- "for national security. We seized  
16 a document indicating that the enemies were preparing their  
17 political and military plan in order to retake the control within  
18 six months. We smashed their headquarters and their  
19 organizations." End quote.

20 In the subsequent week, Ieng Sary also provided an interview with  
21 "Newsweek", and when he was questioned for the second reason for  
22 the evacuation of people from Phnom Penh, Ieng Sary replied --  
23 quote:

24 [13.51.58]

25 "We found a document which talked in detail about the secret



1 military plans by the Central Intelligence Committee of America  
2 and the Lon Nol regime. In order to cause confusions after our  
3 victory.

4 "There were three points in the plan.

5 "Number one. If we could not resolve the food supply issues for  
6 the people, they will cause trouble and they will have their  
7 agents infiltrated within the people.

8 "Number two. Majority of the Lon Nol soldiers who raised their  
9 white flags. In fact, they hide their weapon; they have intention  
10 to attack us after we liberate Phnom Penh.

11 "And number three. They had the plans to corrupt our soldiers and  
12 to demerit our soldiers by providing them with women, with  
13 alcohols, and money."

14 Your Honours, in all these cases, we can clearly see that a huge  
15 number of press report so -- very similar situations regarding  
16 the statements by Ieng Sary for the evacuation of people from  
17 Phnom Penh, and these documents certainly described the  
18 reliability of the press reports.

19 It can be stated that the statements made by Ieng Sary are proper  
20 as he made various statements during his trips overseas, and then  
21 he also gave interviews to international media regarding the  
22 evacuation of people from Phnom Penh.

23 [13.53.58]

24 These examples clearly states that the position of the defence  
25 team, which demands to summons the authors of the articles

1 writers to provide a statement before this Chamber is not  
2 warranted.

3 Also, the examples above clearly indicate that there is no likely  
4 reason for the Chamber to invite an author or a writer of report  
5 to provide testimony before this Chamber.

6 Another reason why there is no need to summons or to invite the  
7 author, or the writers, or the journalist to appear before the  
8 Chamber, is that those authors who report about those documents,  
9 they did not make their personal statements, but they add the  
10 statements of the Accused themselves.

11 And here we have the Accused present before this very Chamber.

12 For that reason, the Accused can exercise their rights to remain  
13 silent, not to respond to any questions if they choose to do so.

14 Nevertheless, they still have the opportunity to object to these  
15 statements if they believe that the reports or the statements are  
16 incorrect; and they can provide their corroboration on these  
17 reports.

18 [13.55.42]

19 Thus, there is no need for the Chamber to invite the authors, or  
20 the report writers, or journalists to provide a testimony for  
21 every document. It is not possible to do so in such a large scale  
22 case, as there are thousands of relevant documents, and this  
23 matter is also not required by the international tribunal in such  
24 a sheer scale of case.

25 Your Honours, similarly, there are other examples which prove the

1 reliability of the statements of the Accused in number 31 and 32  
2 of Annex 1 of the OCP. Documents 31 is a media report by  
3 "Washington Post" on 1st November 1975, regarding the press  
4 conference made by Ieng Sary in Bangkok, whereby Ieng Sary  
5 officially states, regarding the killing of the three leadership  
6 label of the former Phnom Penh governors, including Long Boret,  
7 the former prime minister of the Lol Nol regime, the killing of  
8 Lon Non, the younger brother of Lon Nol, and the killing of Sirik  
9 Matak.

10 [13.57.18]

11 At that time, Ieng Sary also rejects the report by the refugees  
12 who lived in the Thai camps regarding the starvation, the  
13 disease, and the killing inside the country, as he states that  
14 the report by the refugees cannot be trusted as those refugees  
15 who were living in Thailand were the ones who committed the  
16 crimes.

17 In this case, how can the Chamber believe that these documents  
18 are reliable without having to summons the author or the writer  
19 of the reports? The response is that - and the reports  
20 consistently show similarity during the press conference in  
21 Bangkok, regarding the statement of Ieng Sary.

22 Another example is document number 32 of Annex 1 of the OCP,  
23 which is a report by "Bangkok Post". This document includes the  
24 photograph of Ieng Sary meeting with the Thai prime ministers  
25 regarding the relationship between these two countries and the

1 discussions of the meetings, in the press report entitled

2 "Acknowledgement That There Were Killings".

3 [13.58.57]

4 This report also stated the statement by Ieng Sary regarding the

5 killing of the former officials of the Lon Nol regime, as Ieng

6 Sary was in the press conference made in the conference room of

7 Erawan Hotel, which started from 8.30 a.m. on that day.

8 The article describes the reasons why Ieng Sary states that the

9 people who evacuated from Cambodia were the one who committed the

10 crime. And when asked about the reports by the refugees that there

11 were killings inside Cambodia, Ieng Sary states that this

12 information cannot be trusted.

13 The Office of the Co-Prosecutors identifies these reports of Ieng

14 Sary's, and we consider they are important and relevant for the

15 Trial Chambers for the two reasons.

16 [14.00.04]

17 One, as the Chamber has already known, Khieu Samphan made his

18 statement in the congress and on behalf of the GRUNK, which were

19 made in late February 1975, appealing for the killing of the

20 seven traitors who were the former officials of the Lon Nol

21 regime, including Long Boret and Sirik Matak.

22 In addition, in -- the confessions and the relevant documents in

23 the case filed indicate that Long Boret was defeated by the Khmer

24 Rouge soldiers on the 17 April 1975 at the counsels of the

25 Ministry of Information, and Sirik Matak was removed from the

1 French Embassy a few days later. For that reason, the statement  
2 by Ieng Sary is an official confirmation by the Government of the  
3 Democratic Kampuchea about this killing.

4 [14.01.15]

5 Number two, these reports, which were dated 1st November 1975,  
6 regarding the killing, regarding the starvation inside the  
7 country, as raised by Ieng Sary and also in his response that, on  
8 behalf of the Minister of Foreign Affairs and as a member of the  
9 Standing Committee, the five standing committees of the CPK, they  
10 did not take any measure to stop the killing or to tackle the  
11 starvation. He merely rejects these issues before the  
12 international community, and in fact he participated in this  
13 criminal enterprise for a period of more than three years as a  
14 leader of the Democratic Kampuchea regime.

15 With the President's permission, I'd like my colleague to  
16 continue with our argument. Thank you.

17 MR. PRESIDENT:

18 The International Co-Prosecutor, you may proceed.

19 [14.02.30]

20 MR. LYSAK:

21 Thank you, Mr. President. In my time, I will try to address both  
22 some of the general objections that have been made by the Accused  
23 and also to try to respond to some of the specific issues and  
24 documents that were raised today, as best I can, in my time.

25 Just following up on my colleague's point, one of the objections

1 we've heard repeatedly here is that none of these documents can  
2 be considered unless the actual authors of the documents are  
3 brought in. And what we've tried to demonstrate by the examples  
4 we've just shown is that, in addition to that statement being  
5 legally incorrect, as Bill Smith has discussed, that it is not  
6 necessary to bring in the authors of each of these documents to  
7 see the reliability.

8 We have, as shown by these examples, statements that were made at  
9 press conferences and interviews by Mr. Ieng Sary, for example,  
10 as the representative of the Democratic Kampuchea Government,  
11 where he made the same statements over and over again to  
12 reporters. And we can look at multiple reports to see the  
13 consistency of the statements made by Ieng Sary. That, itself,  
14 shows the prima facie of reliability.

15 [14.04.02]

16 The second common point, here, is that the Accused say that they  
17 want to be able to examine -- confront and examine the reporters.  
18 One of the points we would like to make here is we are submitting  
19 these media reports because they contain statements of the  
20 Accused. The relevant statements that are being offered here are  
21 not the statements of the reporters but the statements of the  
22 Accused. The Accused themselves are here, and as my colleague has  
23 pointed out, they have the opportunity to comment on these  
24 statements if they wish.

25 Another objection that is contained in the Ieng Sary defence

1 written objections, that I do not believe has been discussed in  
2 the last two days, is an incorrect objection made by them to  
3 documents that are listed in Annex 1 and the other annexes as new  
4 documents because they were not on the case file. The Ieng Sary  
5 defence objects to these as being subject to the particularly  
6 high standards of Rule 87.4.

7 [14.05.17]

8 The reason this objection is incorrect is that the annexes, Annex  
9 1 and all the others, were submitted in April of this year,  
10 before the start of trial. The standard of Rule 87.4 only applies  
11 to new documents that are offered after the start of trial, in  
12 which case the party is required to demonstrate that they could  
13 not, without reasonable effort, have obtained that evidence  
14 before the start of trial.

15 So, it is simply incorrect, in the written objections of Ieng  
16 Sary's defence, to be objecting to the documents and these  
17 annexes on that basis, and I wanted to make that clear while  
18 we're - while we're responding orally to those written  
19 objections.

20 And another general point that I heard has been discussed  
21 yesterday and today concerns FBIS reports.

22 Many of the documents, the speeches, statements of the Accused  
23 come from contemporaneous broadcasts by the Phnom Penh radio of  
24 the Democratic Kampuchea Government that were picked up by  
25 multiple sources and then published. One of those sources is the

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1 Foreign Broadcast Information Services, known as FBIS, which, as  
2 Mr. Karnavas told you yesterday, was part -- an operation of the  
3 Central Intelligence Agency, not a secret operation, but it was  
4 an operation of them.

5 [14.06.59]

6 But FBIS was not the only entity that monitored radio broadcasts  
7 from countries around the world and published them. You've also  
8 heard reference to reports from the BBC SWB. SWB is a reference  
9 to the Summary of World Broadcasts. And this is another source --  
10 another entity that also monitored broadcasts coming from the  
11 radio in Phnom Penh and reported on them.

12 So, where we have particularly important speeches or statements,  
13 we've endeavoured to try and include both the FBIS and the BBC  
14 Summary World of Broadcasts versions because, in order to assess  
15 the reliability, one can compare the two documents and look at  
16 them.

17 We're not -- the point, here, is that one need not only rely on  
18 FBIS, one need not only rely on BBC's reports.

19 [14.08.03]

20 Moreover, as we've seen in the proceeding so far, in a number of  
21 cases, these same speeches were published by the Party themselves  
22 within Democratic Kampuchea, in "Revolutionary Flag". So, in some  
23 cases, we have a third source where we can check and look at the  
24 same speech.

25 So there's many ways, here, to assess the reliability and



1 establish the reliability of these speeches of the Accused  
2 without bringing in authors or the – or the means that the  
3 Defence assert are necessary. And it is because of this that it  
4 is very important for the Court to view the totality of the  
5 evidence when assessing these speeches.

6 Let me give just one example of how the case file record and the  
7 documents that have been proposed by the Co-Prosecutors contain  
8 such multiple corroboration of key speeches.

9 Your Honours may recall that one of the documents that was put to  
10 Mr. Nuon Chea the least few weeks was a speech that was made on  
11 the 16th of January 1977, commemorating the 9th anniversary of  
12 the Revolutionary Army of Kampuchea. And this is a perfect  
13 example of what I was just discussing.

14 [14.09.45]

15 We have three versions of this speech in the case file: we have a  
16 version that was broadcast by the BBC's entity, Summary of World  
17 Broadcasts, which is document number 1 in Annex 1, and case file  
18 number D248/6.1.14; we have the FBIS version of that speech as  
19 well, which is the version that I was using in the Court, which  
20 comes from document D262.26, and that is -- that is part of a  
21 collection of FBIS reports for the entire month of January 1977,  
22 so the relevant pages are, in English, 00168465 to 168470, French  
23 ERN 00698444 through 698450, and Khmer ERN 00679792 through  
24 679802.

25 [14.11.14]

1 And the same speech was also published in the "Revolutionary  
2 Flag", and that is document number D243/2.1.9.

3 So when it comes time for the Chamber to assess the reliability  
4 of this information, it has multiple sources who have published  
5 these speeches that it can look to in determining the accuracy  
6 and assessing the reliability of the information.

7 And if you follow -- you can take these three documents and  
8 follow through and see how they correspond and match each other.

9 And that is another way that we -- that we can confirm that these  
10 were accurate reports of the speech.

11 Another example of this is a speech that was given by Khieu  
12 Samphan on the second anniversary of the 17 April capture of  
13 Phnom Penh. In our Annex 1, we have listed this speech as  
14 document 167. In the case file, it is IS20.24. And one of the  
15 reasons -- ways that the Court can confirm that this was -- the  
16 speech was given and that statements in the speech are correctly  
17 reported is that there are other media entities that also  
18 reported on the same speech. And in our annex, if you look at the  
19 subsequent documents, which are documents 168 and 169, you will  
20 find reports from the "International Herald Tribune", and also  
21 reports -- a report picked up from the "AFP Press Service" that  
22 discuss the speech by Khieu Samphan and repeat some of the key  
23 statements in that speech.

24 [14.13.44]

25 In the time that I have left, now, I would like to turn to try to

1 address some of the specific documents that have been brought up  
2 by the Accused in their comments, today.

3 Starting with the Nuon Chea defence team, they have repeated  
4 their objection to the document reporting the discussion -- or  
5 chit-chat, as Mr. Nuon Chea has characterized it -- between  
6 himself and Khem Ngun. That is document number 9 on our Annex 1,  
7 and IS20.28.

8 And if I can just make a few comments or observations regarding  
9 that document.

10 First of all, in terms of establishing reliability, the prima  
11 facie showing of reliability, Mr. Nuon Chea has already done that  
12 himself. He has acknowledged that he had a discussion with Khem  
13 Ngun in this time period. So he has confirmed that they met.

14 [14.14.55]

15 The issue that he is challenging is whether some of this --  
16 whether or not he made some of the statements in this document.  
17 That is the very function that the Chamber serves, though, is to  
18 assess the credibility of the Accused and to read this document  
19 in its - in its totality.

20 A couple of comments in passing. I have not argued with the  
21 Accused when he has characterized this as a chit-chat, but I  
22 would note to the Chamber that, from the very first page of this  
23 document, it is quite clear that this was much more than a  
24 chit-chat.

25 The opening statement, here, in the document, reads as follows --

1 And it is all written in the first person, as if it is a verbatim  
2 report of a speech that Mr. Nuon Chea gave. The very first  
3 statement in the Khem Ngun document reads as follows -- quote:  
4 "The objective of my presentation is aimed at letting you see the  
5 history of building the Party from the bare hands all the way up  
6 until the present."

7 And later on in the same opening comments, attributed to Mr. Nuon  
8 Chea is the following statement -- quote:

9 "So, if there is anything you comrades wish to ask, if I can, I  
10 will explain. I will respond immediately. If I cannot respond,  
11 wait for me to think further. This thinking is done without any  
12 documents, just my recollection, and this document I consider as  
13 unofficial, not yet official or complete, a living document of  
14 one individual who joined in the resistance movement." End of  
15 quote.

16 [14.16.48]

17 So it is clear, when you read this document, this is much more --  
18 was much more than a chit-chat. This was a presentation that Mr.  
19 Nuon Chea made on the history of the Party to Khem Ngun and a  
20 number of other comrades who were present.

21 And in addition to the other -- There are two ways that we know  
22 it's reliable, as I've indicated. Mr. Nuon Chea, himself, has  
23 already confirmed that this meeting took place, and second, when  
24 you read the document in its entirety, it is very clear that this  
25 information could have only come from Mr. Nuon Chea.

1 For the most part, 95 per cent of it is very -- is very much the  
2 same story that he has been telling this Court. What is different  
3 is that there is more details, which is not surprising, because  
4 this statement was made in 1998, much closer to the time of  
5 events. And there are a number -- a number of differences. But on  
6 the whole, when you read this document, it is very clear this  
7 could only have come from Mr. Nuon Chea.

8 [14.17.59]

9 Let me just read -- reference a couple of parts of it to show you  
10 what I -- what I mean by that. I'm reading here from a section of  
11 the document where -- that discusses the history back in the  
12 '50s, establishing the Party. And the quote is as follows --  
13 quote:

14 "So the Yuon, they used the tactic of pretending to dissolve the  
15 Indochina Communist Party and set up a party for each individual  
16 country in 1951. In Kampuchea, they gave it the name 'the Khmer  
17 People's Revolutionary Party.' In Lao, they called it the 'Lao  
18 People's Revolutionary Party'. But both these parties were under  
19 the supervision of the Yuon Workers' Party because the Yuon  
20 changed the name to the Worker's Party under the supervision of  
21 the Yuon Party, still under Yuon control like before, militarily,  
22 politically, economically, diplomatically, in every way."

23 [14.19.08]

24 Continuing on later: "As for our Cambodians as cadres, there were  
25 very few. There we not any, they were only the puppets of the

1 Yuon."

2 This statement is one we've heard repeatedly over and over by Mr.  
3 Nuon Chea in this courtroom.

4 And later on you will find, again, almost identical statements,  
5 here, to the ones that Mr. Nuon Chea has made in this courtroom.

6 You will find information that probably only he could have had,  
7 including matters such as the fact that the Second Party Congress  
8 was located on De Gaulle Street. That is in this document. There  
9 were very few people who attended that Second Party Congress and  
10 would have known that information. There's a detailed  
11 description, in here, of the death of Tou Samouth, including the  
12 same information that Mr. Nuon Chea provided to this Court. So  
13 there's many aspects of this document that confirm its  
14 reliability and confirm that it was indeed a report of a  
15 presentation made by Mr. Nuon Chea.

16 [14.20.26]

17 Counsel for Nuon Chea also raised a number of other documents,  
18 including documents 15 and 16 on our annex, which was correctly  
19 indicated as, the first one, being an interview by an unknown  
20 person altogether, and the second one, which is described as an  
21 interview by a Japanese journalist.

22 And in short -- I would certainly not quibble with the arguments  
23 made by counsel in relation to document 15. I looked at that  
24 document at lunch time. At this point in time, we can't - we  
25 can't tell who -- where this - where this statement came from.

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1 And certainly it is not a document that we place weight on, it's  
2 not a document that I've asked Mr. Nuon Chea about.

3 [14.21.16]

4 There are certainly some statements in this case file that the  
5 Court will look at and determine, if there is no further evidence  
6 that we come across during this trial, that are not documents  
7 that at most would be used for some sort of corroborative  
8 purpose.

9 I would disagree with him with regard to the Japanese journalist  
10 interview, which is document 16, simply because this document is  
11 clearly a report or a transcript of an actual tape recorded  
12 interview where you can follow along.

13 And, once again an interview related to the history of the Party,  
14 where, based on the information itself, it's very clear that this  
15 is information that came from Mr. Nuon Chea.

16 Now again, this is a document that I have not examined the  
17 Accused on; at most, I would say, it would be used for  
18 corroborative reasons, but it is part of the case file and  
19 something that the Court can look -- can look to if it wishes.

20 And in later phases of this trial, it may become significant,  
21 particularly if anyone's able to discover the tapes on which it  
22 was based.

23 [14.22.31]

24 But these are matters, I would submit, that go to the weight of  
25 the evidence. There is a sufficient reliability, when you look at

1 this document, to put it before the Chamber, and then it becomes  
2 a matter of the weight, based on the evidence, the totality of  
3 the evidence that is heard.

4 Turning to the objections that were stated here, today, by Mr.  
5 Karnavas on behalf of the Ieng Sary defence, one of the repeated  
6 complaints is that we have grouped different types of documents  
7 into Annex 1. I don't think that's a legal objection or a basis  
8 for the Court to reject these documents in any way. I will simply  
9 say this was a general grouping of documents that contained  
10 statements attributed to the Accused. And it is certainly clear  
11 when you read the annex, the nature of each document is very  
12 clearly identified, whether it is a report from a newspaper,  
13 whether it is a published speech.

14 So the assertion that -- the suggestion that we're trying to slip  
15 something by the Court, I think, is simply -- is simply  
16 ridiculous. We've grouped these documents together because they  
17 have a common element: they attribute statements to the Accused.

18 [14.24.03]

19 Turning to a few of the specific documents that were mentioned by  
20 counsel, counsel Karnavas raised document 26 on our Annex 1,  
21 which is case file number D366/7.1.633. And this was a report  
22 regarding the Mayaguez incident by Elizabeth Becker. And he  
23 asked: How is this relevant?

24 Well, certainly, we are not putting forth this document to get  
25 into a -- put before the Chamber the facts regarding that



1 military event. The reason this document is submitted is simply  
2 because it shows the role of Ieng Sary as Foreign Minister  
3 defending in the acts and policies of the regime, and that is  
4 all.

5 He has seized upon a few documents that I would described as  
6 corroborative in nature, and so I certainly – I would agree with  
7 counsel that we have no interest in -- by submitting this  
8 document, certainly we are not intending to litigate in this  
9 Court the Mayaguez incident.

10 Mr. Karnavas also referenced what is document 67 in our Annex 1  
11 -- in the case file, it is D56, document 124 -- which was an  
12 interview of Ieng Sary by a representative of the Norwegian  
13 Communist Party, Pal Steigan. And his complaint on this document  
14 is that it was simply excerpts.

15 In response, I would simply refer the Court later on in the  
16 annex, to document Number 70, which is case file number  
17 D108/28.306, which is the entire notes of the interview by that  
18 same person.

19 [14.26.26]

20 Mr. Karnavas also brought up document D366/7.1.589, which he  
21 described correctly as an email referencing and identifying a  
22 number of statements of Ieng Sary and Ieng Thirith. And certainly  
23 it is not the Prosecution's intent to rely on an email like that  
24 to prove this evidence. The email is discussing and identifying  
25 statements from a documentary film, statements that were pulled

1 out in a transcript of the film attributed to Ieng Sary and Ieng  
2 Thirith. And obviously, if the Prosecution intends to present  
3 this evidence and put it before the Chamber, we will play the  
4 actual film.

5 The document is submitted simply because it aids us and it would  
6 aid the Chamber in identifying the specific statements made by  
7 Ieng Sary and Ieng Thirith in that documentary film, should we  
8 play it -- should it be submitted and played in the Court.

9 [14.27.45]

10 And last and -- in terms of specific documents referred by Mr.  
11 Karnavas, he discussed the interviews conducted of Ieng Sary by  
12 Elizabeth Becker and asked, you know, where is the rest of Ieng  
13 Sary's -- where is his entire statement to Elizabeth Becker.

14 Well, as the Chamber may or may not be aware, the Investigating  
15 Judges wrote to Elizabeth Becker, requested copies of all her  
16 documents relating to her interviews of Ieng Sary, and those were  
17 put on the case file. And if you look at documents number 106,  
18 109, and 110 in Annex 1, you will find the full documents related  
19 to Elizabeth Becker's interviews of Ieng Sary.

20 Mr. Karnavas also asks that the Prosecution -- it is time now for  
21 the Prosecution, he says, to identify which witnesses can provide  
22 the foundation for documents such as telegrams and other  
23 documents that are included in our annexes.

24 And in response I would simply note that the prosecutors -- the  
25 Co-Prosecutors have already done that. I would refer counsel to

1 our witness statements and witness summaries that were provided  
2 at the start of the year, in which, very clearly, numerous  
3 witnesses who provide this purpose were identified, and indeed  
4 the Chamber has selected many of these witnesses as part of the  
5 group -- the first group of 56 witnesses. So we will be hearing,  
6 in this Court, from witnesses who provide that information.

7 [14.29.46]

8 And finally, in response to a couple of statements by Khieu  
9 Samphan's counsel, if I understood, he took issue with our recent  
10 Rule 92 filing on reliability of documents because we did not  
11 provide sufficient details about individual documents. And again  
12 this was a general filing that discussed principles; the details  
13 regarding individual documents are contained in our annexes,  
14 which provide extensive information about each document. And  
15 obviously counsel can also look at the documents themselves in  
16 the case file.

17 Counsel also argued that documents should not be admitted in Case  
18 002 merely because they were admitted in Case 001, and that they  
19 should have a right to challenge those documents here. And we  
20 would certainly agree with that, and the Court -- this Chamber  
21 has given no indication that it will automatically admit any  
22 documents merely because they were admitted in Case 001.

23 And in terms of the Accused's opportunity to challenge those  
24 documents, that is why we are here today and are here this entire  
25 week. So the Accused have been given every opportunity possible

1 to challenge and contest these documents, and it is incorrect to  
2 suggest that any documents will be admitted merely because they  
3 were admitted in Case 001.

4 [14.31.31]

5 Thank you for the time, Your Honours. And that ends my comments  
6 in response to the specific objections of counsel.

7 MR. PRESIDENT:

8 Thank you, Co-Prosecutor.

9 The time is now appropriate for a break. We will have a 20-minute  
10 break and we shall resume after that to recommence our session.

11 (Court recesses from 1432H to 1450H)

12 MR. PRESIDENT:

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

14 [14.50.57]

15 I now hand over to the Lead Co-Lawyers. That will be the turn of  
16 the lawyer who was requested earlier.

17 You have 30 minutes to make your response.

18 MR. NEKUIE:

19 Mr. President, Honourable Judges, I am most grateful for this  
20 opportunity to speak.

21 Upon listening to some of the arguments that were developed by  
22 all respective defence teams with respect to the annexes that are  
23 of concern to us this week, there's one observation that I must  
24 take note of with respect to the general line of Defence  
25 regarding the admissibility of documents being proposed.

1 All defence teams seem to be in agreement, because they are  
2 attempting to dictate to you, Honourable Judges, the requirements  
3 that they feel must be applied in order to admit these exhibits.  
4 These defence teams want to make you believe that, for each and  
5 every document that is being put before you and for each document  
6 that records a statement of their clients', they would have you  
7 believe that the author or source of those documents must be  
8 summoned before Your Honourable Chamber.

9 [14.53.03]

10 I believe that, upon listening to all of the arguments that have  
11 been laid out since the start of hearing, their main line of  
12 defence, their battle horse seems to only serve to protect their  
13 rights and preserve the rights to a fair trial.

14 We have cited a certain number of cases from international  
15 jurisprudence. The Co-Prosecutor has provided in detail the  
16 indicia of reliability that you must rely upon in admitting  
17 certain documents. We are of the opinion that it is our duty to  
18 make a few legal clarifications, and in doing so we are going to  
19 actually cite some of the arguments that the Defence had invoked  
20 themselves this morning.

21 Counsel for Ieng Sary cited the Prlic Case, during which, indeed,  
22 counsel Karnavas served to defend with ardour the interests of  
23 his client, and a case in which a certain number of principles  
24 emerged with respect to the administration of evidentiary  
25 material and documents. The Ieng Sary defence team had however

1 refrained or omitted from telling you of what these principles of  
2 administration of evidence are. And the Appeals Chamber clearly  
3 indicated that the right of the Accused to a fair trial was not  
4 and is not an absolute right. The Chamber held that this right  
5 had to be understood in tandem with a certain number of other  
6 rights. It is in fact listed in detail in paragraph 41 of its  
7 decision in November 2007.

8 Allow me to quote a very brief passage in which it is written --  
9 paragraph 41, line 2, in English:

10 (Intervention in English:) "While such a hearing generally  
11 entails the examination of evidence against the Accused, this  
12 principle is not absolute." (End of intervention in English)  
13 This is precisely one of the rules that the Appeals Chamber had  
14 recalled during the case that was cited by counsel for Ieng Sary.  
15 Further on in the same decision, the Appeals Chamber made an  
16 abundantly clear statement, which is the following, and I will  
17 quote it in the original English language:

18 [14.45.55]

19 (Intervention in English:) "Of even more relevance for the issue  
20 at hand, since the criminals first case, the jurisprudence has  
21 been constant in holding that, under the criminal system, a  
22 statement of a person made otherwise than in the proceedings in  
23 which it is tended, whether orally by a witness or in writing, is  
24 not inadmissible, in particular when the source of hearsay is  
25 known and subject to potential evaluation by a Chamber." (End of

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1 intervention in English)

2 Distinguished Judges, Mr. President, I think this focuses rather  
3 clearly on what has to be done when the acceptability of exhibits  
4 and documents has to be examined before this Court. For each  
5 exhibit to be received, it is not essential that its author be  
6 summoned here; that is not rooted in any kind of legal  
7 foundation.

8 And since, here, we are talking about the proof behind certain  
9 statements made by the Accused themselves, it also strikes me as  
10 interesting that we should draw to your distinguished attention  
11 the rules in the TPIY, in the Halilovic Case. This decision was  
12 handed down on the 19th of August 2005, and it's IT/01/48/AR76.2  
13 of the ICTY.

14 [14.59.46]

15 Your Honours, in this situation, Mr. Halilovic, the Accused, was  
16 opposing the submission by the prosecutor of declarations that  
17 had been gathered by the same prosecutor outside the Chamber in  
18 the absence of his own lawyer, before the trial. And during the  
19 trial, the prosecutor had decided to submit these declarations to  
20 a test of acceptability, and the -- submit them as evidence, and  
21 the Chamber that was examining that evidence decided to accept it  
22 without any need for the authors of the interview to be present  
23 in the court -- the interview given by Mr. Halilovic to the  
24 prosecutor's office -- although such people were available if  
25 necessary. Mr. Halilovic opposed that move by the Chamber and

1 decided that such proof could be accepted without the authors of  
2 the interview being present and the interview itself being given  
3 without the assistance of his lawyer.

4 [15.01.22]

5 These are the same complaints being put to the prosecutors here,  
6 on the subject of acceptability of evidence in this Court, but it  
7 is through that case, Your Honours, that the Chamber stated that,  
8 when it came to authenticate documents used as evidence, there  
9 was considerable discretionary power on the Bench to accept them  
10 or not. Once the Chamber had taken a decision on the  
11 admissibility of the circumstances concerned, then the evidence  
12 had to be accepted. There was no breach of the Defence's rights  
13 in so doing. I believe, therefore, that the juridical principles  
14 that have been certainly referred to at considerable length by  
15 the two prosecutors in this Chamber are precisely those which  
16 should be applied here. And when I use the word "should be" in  
17 the sense of a duty, I am certainly not levelling from a civil  
18 party any kind of injunction in your direction. Quite the  
19 contrary, this is an opportunity for me to recall to you and to  
20 the Defence that the power to judge and to appreciate matters  
21 lies entirely with you and all matters which are submitted to  
22 you. And in particular, when it comes to the administration of  
23 evidence, your discretionary power is extremely broad and is only  
24 defined by the limitations of the criteria of reasoning that you,  
25 yourselves, bring to bear in respect to any particular document.



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1 [15.03.45]

2 Now, apart from the Chamber's written memorandum, which has  
3 already provided considerable description of the criteria for the  
4 pertinence of a document, I think we have also heard explanations  
5 from the Prosecution on the basis of examples brought up by the  
6 Defence, what admissibility criteria will lead to a reasonable  
7 conclusion in the matter of admissibility of documentary proof  
8 before this Chamber. And accepting such documents, Your Honours,  
9 does not necessarily mean you are going to accept the fundamental  
10 -- see them as fundamental basis for handing down a sentence of  
11 any kind with respect to the Accused. It is simply in cases where  
12 the probative value is inferior to other forms of proof that such  
13 items are submitted to you.

14 There are Accused who have accepted here, including Mr. Nuon  
15 Chea, to testify on their own behalf, and a certain number of  
16 questions and answers are certainly going to be put in this Court  
17 on the facts at issue.

18 It is, therefore, not right to discuss the probative value of  
19 these documents submitted at this stage. It is simply a matter of  
20 checking whether the indicia of reliability and relevance are  
21 sufficient for them to be put before the Chamber.

22 [15.05.47]

23 We believe that the requirements asked of you by the Defence are  
24 not credible, and they are all the less serious in that the  
25 Defence itself attributed to these exhibits a kind of

1 reliability, in their own way.

2 And I will illustrate what I am saying. Let me refer to the book  
3 by Mr. Khieu Samphan, which is 00595365 -- that's its ERN in the  
4 French version -- in respect to which Judge Lavergne posed some  
5 questions the other day -- to Mr. Khieu Samphan the other day,  
6 asking him to confirm certain statements. And at that point in  
7 time, Mr. Khieu Samphan stated that he was indeed the author of  
8 the work, confirming that certain passages read to him were  
9 indeed written by his own hand.

10 And what I would like to say, Your Honours, is that it is very  
11 surprising, after having written towards the beginning of his own  
12 work -- and I quote:

13 "Most of the events that I'm going to refer to are generally  
14 well-known, and I have based myself on research already conducted  
15 to have the information and to record a certain number of facts  
16 that I had forgotten. Whatever disagreement I may have with the  
17 authors quoted below, each one of these texts were certainly very  
18 useful to me on this or that point."

19 [15.07.53]

20 And later on in the same book, Mr. Khieu Samphan contests a  
21 certain number of information -- this is page 143 in the French  
22 -- says that "in the absence of serious traces in the internal  
23 documents of the Khmer Rouge that have been brought together in  
24 the Cambodia Documentation Centre, we are obliged to base  
25 ourselves on assumptions -- based on assumptions".

1 Mr. Khieu Samphan himself, in a work of which he is the author,  
2 is talking about research for documentary materials in DC-Cam,  
3 which he believes is a serious institution. He refers to  
4 publications that have helped him recall a certain number of  
5 events concerning the Khmer Rouge. And now the same Khieu Samphan  
6 wishes to persuade Your Honours that the fact of referring to  
7 documents without the authors of those documents standing before  
8 you in this Court will be a breach of his rights. There seems to  
9 be an absence of logic here, Your Honours, which would justify  
10 your accepting all of the documents submitted before you today  
11 without any further criteria being imposed.

12 [15.09.43]

13 In the same -- in our dossier, Mr. Ieng Sary, in a memorandum  
14 dated 1st of April 2011, entitled "Ieng Sary's Initial List of  
15 Documents Already on the Case File", a notice concerning his  
16 forthcoming initial list of new documents to put before the  
17 Chamber-- This is ERN 00659454 in the English ERN. In this  
18 document, Your Honours, Mr. Ieng Sary himself informed this  
19 Chamber that he intends to refer to all of the documents that  
20 have been collected by the Co-Investigating Judges, and he  
21 considers, in paragraph 12, that this Chamber has an adequate  
22 documentary charter, and he announced that he will be submitting  
23 further new documents. That's the purpose of the submission,  
24 which clearly shows us that Mr. Ieng Sary and his lawyers  
25 attribute sufficient reliability to the exhibits that are in the

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1 file, because they are being used.

2 [15.11.49]

3 And now we are hearing requirements that have never been foreseen  
4 or laid down in any kind of judicial way. The civil party  
5 co-lawyers wish to state that, apart from the responsibility that  
6 befalls you, Your Honours, to protect the rights of the Defence,  
7 you also have the duty to make sure that the civil parties --  
8 which includes victims who have suffered the crimes that we are  
9 discussing in their flesh and blood -- you have the duty to  
10 ensure that these civil parties are fully involved in the trial  
11 and enjoy the same rights as the other parties.

12 The evidence that is before you is aimed to ensure that  
13 particular balance. And I would conclude by saying, as regards  
14 prior statements by the Accused, given there is no breach of  
15 their rights and given that nobody is attempting to state that  
16 they are necessarily guilty, but simply to corroborate evidence  
17 which is going to be discussed here, there is absolutely no  
18 objective reason, given the reliability criteria, of course, to  
19 reject that evidence.

20 And we therefore conclude that your Chamber can exercise its  
21 discretionary authority to accept such documents, which have been  
22 sufficiently and adequately debated in this Chamber already.

23 Thank you very much.

24 [15.13.44]

25 MR. PRESIDENT:

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1 Thank you. We have heard the objection to document A1.  
2 Then, we will proceed to hear the objection on document A2.  
3 And the Defence has been allocated two hours to present its  
4 objections, and it was left to the discretion of the Defence how  
5 to divide its time between them. Unless there is a contrary  
6 agreement reached by the defence teams, I therefore hand over to  
7 the Nuon Chea defence first to present the objection to document  
8 A2.

9 You may now proceed.

10 [15.14.59]

11 MR. IANUZZI:

12 Thank you, Your Honour. Good afternoon.

13 I did hear Your Honour say "two hours". I was under the  
14 impression it was one hour.

15 MR. PRESIDENT:

16 Each team is allocated 40 minutes, unless there is an agreement  
17 among the defence team. Otherwise each defence team is allocated  
18 40 minutes.

19 MR. IANUZZI:

20 Thank you. In any event, I'll be extremely brief with our  
21 objections to the documents contained in-- Sorry.

22 (Judges deliberate)

23 [15.16.33]

24 MR. PRESIDENT:

25 The Chamber wishes to correct the time allocation just now, the

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1 time that is granted to the defence teams. The time allocation  
2 for the defence teams is one hour overall. In other words, each  
3 defence teams is allocated 20 minutes to make their submission.  
4 You may now proceed.

5 [15.17.10]

6 MR. IANUZZI:

7 Thank you. As I said, I'll be extremely brief. And in that case,  
8 I'll attempt to speak very slowly.

9 With respect to the documents contained in Annex 2 of the  
10 Co-Prosecutor's document list -- and that's E109/4.2 -- I have  
11 three points to make.

12 First of all, I would just make reference again to the general  
13 objections and observations that I made yesterday morning, and I  
14 would incorporate those by reference to all of the documents  
15 contained on the A2 list.

16 Second point I would like to make is to refer again to the  
17 submissions made by my colleague, Jasper Pauw, with respect to  
18 DC-Cam and the appearance -- the requested appearance of Mr. Youk  
19 Chhang.

20 I'm informed -- we are informed, as best we can tell, nearly all  
21 -- all or nearly all of the documents contained in A2 have passed  
22 through the hands of DC-Cam -- emanate from DC-Cam. So our  
23 objection, with respect to Youk Chhang, applies to all of these  
24 documents or nearly of all these documents.

25 So we would submit that, should Your Honours care to rely on any

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1 of these documents, that you would need to first hear Youk  
2 Chhang. Otherwise, those documents would be inadmissible.  
3 And my final point relates to one document on the list, which  
4 there seems to be a bit of confusion as to whether or not it was  
5 a DC-Cam document or not. But in any event, just an abundance of  
6 caution-- That's document number D200/2.12. That's a CKP  
7 directive entitled "Instructions of 870". Seems that that  
8 document was authenticated or attempted to be authenticated by a  
9 Mr. Seng Mon, or witness Seng Mon, the OCIJ.  
10 So, again, we would take the position that, should Your Honours  
11 be interested in relying on that document to prove the acts and  
12 conduct of the Accused or any key issues in the case, it should  
13 be brought to Court and it should be put to Nuon Chea. Should he  
14 object, Mr. Seng Mon - or, excuse me, witness Seng Mon should  
15 appear in Court for cross-examination.

16 [15.19.42]

17 And I cede the balance of time to my colleagues on this side of  
18 the stage.

19 MR. PRESIDENT:

20 Thank you, Counsel.

21 We now hand over to the defence team for Ieng Sary. You may now  
22 proceed.

23 MR. KARNAVAS:

24 Good afternoon, Mr. President. Good afternoon, Your Honours. And  
25 good afternoon to everyone in and around the courtroom.

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1 I will also be brief, primarily because we've already indicated  
2 the general nature of our objections, and we have filed an annex  
3 which we were told it was somewhat repetitive, but of course  
4 these are groups of documents. And if you look at our objections  
5 to these documents on Annex 2 -- and I believe there are three  
6 documents, and I'll list them in a moment -- our position is that  
7 they should be rejected unless - unless -- as a proviso the OCP  
8 can sufficiently demonstrate the authenticity, reliability, and  
9 relevance of the documents by demonstrating who is responsible  
10 for the content of these documents.

11 [15.21.05]

12 So, assuming they're able to meet those conditions, our position  
13 is they can be admitted. If they cannot, then we suggest that  
14 they be rejected.

15 In the event that they are admitted-- In any event, we also  
16 suggest, as we have in the past, that, when it comes time to  
17 assessing the weight, that you take into consideration these  
18 sorts of factors, that is the lack of ability to demonstrate who  
19 exactly was responsible for producing the documents and under  
20 what conditions they were produced.

21 In Annex 2, they indicated there were three documents. And I'll  
22 just read it for the record: D366/7.1.59, D366/7.1.62, and  
23 D366/7.1.23.

24 I don't think it's necessary for me to go into these specific  
25 documents, given that, as I've indicated, these are general



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1 objections.

2 [15.22.22]

3 And of course, going back to what I had said earlier, if the  
4 Prosecution does have witnesses, it is our position that simply  
5 listing them on some annex is insufficient. Now that they are on  
6 notice that they're going to be challenged on the admissibility  
7 of documents -- and they were on notice, and they were in fact  
8 the ones that called for this hearing -- I think it's up to the  
9 Prosecution to simply state: Through these witnesses, we're going  
10 to prove the admissibility -- or meet the criteria for the  
11 admissibility of certain documents.

12 I don't think it's sufficient to say: We've provided the  
13 haystack, now you go find the needle. They can simply state  
14 exactly how they intend to demonstrate the reliability and  
15 authenticity of these documents, and based on that, you'll be in  
16 a position to determine whether to admit it or not. Thank you.

17 MR. PRESIDENT:

18 Thank you, Counsel.

19 Next, we hand over the floor to Khieu Samphan's defence team.

20 MR. KONG SAM ONN:

21 Thank you, Mr. President. Thank you, Honourable Members of the  
22 Bench. Good morning, everyone in and around the courtroom.

23 I would like to present our point relating to document A2, which  
24 the prosecutor has brought forward to incriminate the Accused.

25 [15.24.18]

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1 In Annex 2, there are 86 documents. Document D158, the  
2 Co-Prosecutors indicate the indicia of reliability on the 36  
3 documents in Annex 2, and they have classified three categories  
4 of documents based on the publications. And the publication  
5 itself consists of "Revolutionary Flag" magazine and  
6 "Revolutionary Youth" magazine. And there were direct use of the  
7 Communist Party of Kampuchea and there were various other CPK  
8 publications.

9 [15.25.22]

10 The major question we have is the demonstration of the chain of  
11 custody of the document, and this remains the question as always.  
12 And I'm going to bring up a number of documents which manifestly  
13 reveals suspicion on those documents.

14 What contains in the Annex 2 submitted by the prosecutors-- They  
15 elaborated that there were content and substance in that annexes.  
16 Actually, the content was not that substantive. It is a very  
17 brief content and it lacked necessary information, which is  
18 conducive to ascertaining how the documents were obtained. Were  
19 the documents obtained by a reliable source or it was a make-up  
20 document?

21 I would like to touch upon the first category of document, the  
22 publication of the Democratic Kampuchea, consisting of 54  
23 documents.

24 In those documents, there are 24 volumes of "Revolutionary Flag"  
25 and 24 "Revolutionary Youth" magazines, and there are two other

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1 magazines.

2 The brief summary of the two magazines, the prosecutor have  
3 failed to provide any substantiation to ascertain that those  
4 documents was the actual copy of the original magazines, and  
5 there is no way in which we can believe that those documents was  
6 actually summarized properly from the original.

7 [15.28.00]

8 In addition, the Co-Prosecutors indicated that there was no copy  
9 of the documents. So there is no guarantee that the summary of  
10 those documents was actually the actual summary from the two  
11 magazines.

12 As for the "Revolutionary Flag" or "Revolutionary Youth"  
13 magazines, the Co-Prosecutor mentioned that 48 magazines out of  
14 52 magazines were collected by the Documentation Centre from  
15 various archives, namely from the Tuol Sleng archive, in 1979 -  
16 correction, 1999.

17 The information that we have at hand is not sufficient at all.  
18 Every time the prosecutor indicates the chain of custody of those  
19 documents, the Co-Prosecutor often limits its argument to the  
20 database available at the DC-Cam.

21 [15.29.52]

22 We need to look back further, as I mentioned on Monday, regarding  
23 the Tuol Sleng archives. All we can demonstrate regarding the  
24 uncertainty of those documents is that DC-Cam received those  
25 documents from an institution or an individual. The gap here is

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1 that the documents that were delivered by an individual or an  
2 institution, where did they receive those documents? There is the  
3 missing link, as DC-Cam only received information from the  
4 institution or the individual that delivered those documents. The  
5 source of the document could be from another location or at a  
6 different time, but it's uncertain and cannot prove its  
7 reliability or the content of those documents.

8 For the four editions of the magazine in the Tuol Sleng archives,  
9 there is no clear indication of its source. The Prosecution  
10 states that two editions were recorded as received from Samdech  
11 Hun Sen. As for the other two editions, the Prosecution fails to  
12 indicate the letter "H" in the code means. The word "H", on that  
13 letter, is not verified or confirmed by the Prosecution, so the  
14 question is whether it represents an authority, an individual or  
15 an institution; we don't know that.

16 [15.32.56]

17 The Prosecution also fails to provide any useful information  
18 regarding the circumstances where the documents were obtained,  
19 either through Samdech Hun Sen or through the source, "H", which  
20 we cannot identify. And the question is we do not know from whom  
21 the documents were received and from which location.

22 In addition, the Prosecution also fails to indicate that Chhang  
23 Youk, at the DC-Cam, has certain original documents of those  
24 documents and that Chhouk Rin confirms the authenticity of one of  
25 those documents.

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1 [15.34.06]

2 What we want is to make the presentation of those original  
3 documents and to call Chhouk Rin to appear before the Chamber.  
4 Otherwise, it would not possible to give any credible weight to  
5 those documents.

6 Your Honours, point number 2 is in relation to the decision by  
7 the CPK. For those certain documents which was given by the  
8 Prosecution, and -- they do not even have the numerical numbers  
9 by the DC-Cam. The Prosecution acknowledge that they do not know  
10 the original sources of those documents.

11 As for other documents, the Prosecution states that four  
12 documents were found at a Tuol Sleng archive. And I believe they  
13 are immaterial, as there is no indicia of reliability of those  
14 documents.

15 The Prosecution then stated that one of those documents could be  
16 given by Ben Kiernan to DC-Cam, and the other two documents were  
17 given to DC-Cam by David Hawk -- it's D-A-V-I-D H-A-W-K, David  
18 Hawk. And the document given by Ben Kiernan is IS6.3, which is a  
19 document of the decisions dated 30 August 1976.

20 [15.37.39]

21 There is contradictory event regarding the receipt of these  
22 documents, as I stated on Monday. We have issues with these  
23 documents because we receive contradicting information regarding  
24 the circumstances where the documents were obtained.

25 Based on the statement by the Director of DC-Cam, he states that

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1 the document is likely to be probably made by a representative of  
2 the Front to Excellency Khieu Kanharith after the judgement by  
3 the People's Tribunal already made in 1979.

4 [15.38.50]

5 On the contrary, Excellency Khieu Kanharith said he found the  
6 document by himself, along with the minutes of meeting of the  
7 Standing Committee, and that he found those documents in one of  
8 the residences of the Khmer Rouge leaders, along Kampuchea Krom  
9 Boulevard in Phnom Penh. So the source of obtaining the document  
10 is suspicious.

11 And then we have to also consider whether the content of the  
12 documents can be reliable and not fabricated. So we don't know  
13 the source of the documents as we have this contradictory  
14 information.

15 This is critical to the Defence because it could bring to light  
16 the suspicions regarding the obtaining of these documents.

17 Since Monday, we also read you the correspondence between Ben  
18 Kiernan and the Co-Investigating Judges regarding document  
19 D269/4. This document is considered the most confidential, and  
20 for that reason we don't know the content of that document at  
21 all.

22 [15.41.42]

23 Another point in relation to the decision -- that is, the  
24 decision of the Democratic Kampuchea Government. All the  
25 documents received have certain suspicious elements or

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1 characteristics as the source of the document, through which the  
2 documents were received by DC-Cam, was uncertain, and we do not  
3 know whether it was within 10 years that the documents reproduce  
4 or it was longer than that.

5 [15.42.58]

6 There are still many unresolved issues regarding the maintenance  
7 of those documents as well as the examination of the reliability  
8 of those documents. That would bring to our suspicion, and based  
9 on this suspicion of doubt, the Chamber cannot rely on these  
10 documents in order to use those documents as inculpatory evidence  
11 against my clients.

12 Another example of the documents, which is the ERN -- the ERN  
13 00079290 to 00079317, this document was obtained from the  
14 Ministry of Interior. DC-Cam received this document from the  
15 Ministry of Interior. The question is whether the document is an  
16 exact copy of the original document or it was a copy of a copy of  
17 a copy of the original document.

18 [15.45.24]

19 Your Honours, in summary, I submit that my position regarding  
20 these documents which are to be placed before the Chamber must  
21 have a clear indication of the linkage and a reliable source of  
22 its authenticity. I'm grateful, Your Honour.

23 MR. PRESIDENT:

24 Thank you, Defence Counsel for Khieu Samphan.

25 The Chamber observes that, during your presentation of arguments

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1 and objections, you mistakenly used the actual name of the  
2 witness in the witness list. The person was to be summoned by the  
3 Chamber during other parts of the proceedings. Regarding the  
4 witnesses of the civil parties who have been allocated pseudonyms  
5 by the Chamber, you're reminded to use the pseudonym of that  
6 relevant person or individual who will be summoned by the Chamber  
7 at a later stage to provide testimony.

8 [15.47.22]

9 Yesterday, we had a similar event, but then the Nuon Chea's  
10 defence team sought permission from the DC-Cam -- from the  
11 Chamber first, regarding the revelation of the name of the  
12 Director of the DC-Cam. And due to the special circumstances,  
13 even if the pseudonym is used, and as the DC-Cam is well known,  
14 the public would be able to identify the name of the Director of  
15 DC-Cam.

16 So please adhere to the instruction by the Chamber regarding the  
17 protection of the names of witnesses or civil parties who have  
18 not yet been summoned to appear before the Chamber. And for that  
19 reason, the pseudonyms shall be used.

20 The Chamber would like now to inquire with the Prosecutions,  
21 regarding the objections raised by the defence teams on the A2  
22 documents.

23 Do the Prosecution wish to make a reply to these objections? And  
24 if you wish to do so, can you indicate how much time you need to  
25 do so?



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1 [15.48.55]

2 MR. DE WILDE D'ESTMAEL:

3 Good afternoon. And thank you very much, Mr. President. Indeed,  
4 the Prosecution does intend to reply, and we intend to dispose of  
5 the entirety of the 40 minutes that have been allocated to us and  
6 perhaps exceed by two to three minutes. We wish to begin our  
7 statements tomorrow morning, and we shall be dividing our  
8 presentation into two parts.

9 We would also wish to make a PowerPoint presentation before this  
10 Chamber, and I do believe that we would not have sufficient time  
11 to do so this afternoon. Thank you.

12 MR. PRESIDENT:

13 Thank you for informing the Chamber of your position.

14 So, since you would need more time than the time left for this  
15 remaining of the afternoon, I don't need to ask the Lead  
16 Co-Lawyer--

17 MR. PICH ANG:

18 Mr. President, for the A2 document, the Lead Co-Lawyers would  
19 seek your permission to grant permission for the lawyer Ven Pov  
20 to represent us in making the arguments.

21 [15.50.29]

22 MR. PRESIDENT:

23 Yes, your request is granted.

24 The time is now appropriate for the adjournment for this  
25 afternoon's session. We shall now adjourn and we'll resume

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1 tomorrow morning, starting from 9 a.m.  
2 Security guards, you are instructed the three Accused back to the  
3 detention facility and, tomorrow morning, bring the three Accused  
4 back from the detention centre; and for Khieu Samphan, bring him  
5 to this courtroom; for the other two Accused, bring them to the  
6 holding cells downstairs, where the audio visual communication  
7 has been set up for them to follow the proceedings.

8 The Court is now adjourned.

9 (Court adjourns at 1551H)

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