



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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

19 January 2012
Trial Day 18

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

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IENG Sary
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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ANG UDOM	Khmer
MR. ABDULHAK	English
MS. DEBNATH	English
MS. FENZ	English
MR. HONG KIMSUON	Khmer
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
MR. LOR CHUNTHY	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PESTMAN	English
MR. PICH ANG	Khmer
MR. SON ARUN	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 0901H)

3 MR. PRESIDENT:

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

5 Yesterday, before the adjournment, it was time for the
6 Prosecution to respond to the defence team's objections. Half an
7 hour was taken by the national prosecutor and another 30 minutes
8 remains for the International Co-Prosecutor. So we will continue
9 with that time allocation, and for that reason, I would like to
10 inquire with the Prosecution in regards to the questioning time
11 for the two witnesses -- that is TCW-766 and 542 -- for early
12 next week.

13 [09.03.11]

14 How much time does the Prosecution need to question these two
15 witnesses?

16 MR. ABDULHAK:

17 Thank you, Mr. President. And good morning, Your Honours.

18 We anticipate, in relation to TCW-766, that we will take
19 approximately two sessions, or half a day. And this is obviously
20 on a basis that -- I believe the Chamber has indicated that Your
21 Honours will lead the examination of this witness, and the
22 Prosecution will follow. We'll obviously try and compliment your
23 examination, and not repeat any of the areas you've covered. So
24 we anticipate about half a day should be sufficient for that
25 purpose.

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1 And with respect to TCW-542, again, here, we will try to be as
2 efficient as we can. We believe not more than three sessions will
3 be required, approximately four hours. There again, we'll try and
4 be as quick as we can. It may well be possible to complete that
5 examination in half a day, but if a level of flexibility could be
6 accommodated, we'll certainly try and be as quick as we can.

7 [09.04.22]

8 And also, Your Honours, while I'm on my feet, you indicated
9 yesterday that it might be helpful if Prosecution would provide a
10 new -- an updated version of the -- of the evidence lists from
11 the Prosecution, indicating which of the documents originate --
12 or were received from DC-Cam.

13 We believe that we're in a position to do this by Tuesday, which,
14 I think, was the time requested by my learned friend. We will
15 attempt to, in fact, do that even earlier, but we believe that by
16 Tuesday we can have all of those lists provided to the Chamber
17 and the other parties, indicating, as I said, for each document,
18 how many of them came from DC-Cam.

19 MR. PRESIDENT:

20 Thank you, Prosecutor.

21 We would like now to inquire from the Lead Co-Lawyers for civil
22 parties for the two witnesses.

23 [09.05.28]

24 How much time do you anticipate for questioning each of the
25 witnesses?

1 MR. PICH ANG:

2 Good morning, Mr. President. Good morning, Your Honours. And good
3 morning, everyone. For the Lead Co-Lawyers, in questioning the
4 two witnesses, we would need two hours for each witness.

5 Therefore, for TCW-542, we need two hours. Likewise, for TCW-766,
6 we need two hours as well.

7 MR. PRESIDENT:

8 Thank you. What about Nuon Chea's defence? How much time do you
9 anticipate?

10 MR. PESTMAN:

11 Thank you for the -- I had a brief discussion with my colleagues
12 on -- for the Defence.

13 [09.06.28]

14 I -- we envisage that for the first witness -- 766, if I'm
15 correct -- all defence teams together will need one or one and a
16 half days. And we can divide the time amongst each other. That's
17 a very rough estimate, of course, because we are last in the
18 queue and we don't know how many questions will have been asked
19 and how many points will need further clarification. It's a very
20 rough estimate.

21 And for the other witness, I estimate half a day, for my own
22 cross-examination. Sorry, we haven't discussed that particular
23 witness yet with the other teams.

24 MR. PRESIDENT:

25 Thank you, Defence Counsel.

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1 What about Ieng Sary's defence team? How much time do you
2 anticipate for TCW-542?

3 MR. ANG UDOM:

4 Mr. President, for TCW-542, we need roughly one to one and a half
5 hours.

6 As for TCW-766, we support the suggested time by Nuon Chea's
7 defence that all the defence teams would need one to one and a
8 half day.

9 MR. PRESIDENT:

10 Thank you.

11 [09.08.15]

12 What about Khieu Samphan's defence? How much time you anticipate
13 for TCW-542?

14 MR. KONG SAM ONN:

15 Thank you, Mr. President. For TCW-542, we need between 15 minutes
16 to one hour.

17 As for TCW-766, I agree with what has been suggested by Mr.
18 Pestman. All the defence teams agreed to that time suggestion.

19 MR. PRESIDENT:

20 Thank you. Thank you for the estimation of time for these two
21 witnesses that we plan to schedule for early next week. This will
22 facilitate us in the scheduling of the two witnesses.

23 We now hand over to the Prosecution to continue with their
24 arguments in response to the objections raised by the defence
25 teams regarding A4 annex.

5

1 [09.09.47]

2 I remind the Prosecution, you have a remaining 30 minutes.

3 MR. ABDULHAK:

4 Thank you, Mr. President. Time is short, and our learned friends
5 obviously made a number of objections to this document category
6 yesterday. What I intend to do is deal as quickly as I can with
7 some of the issues that were raised -- perhaps the most important
8 issues that were raised by the Defence, and then, in the
9 remaining time, show a few documents that, in our submission --
10 from which you can see in our submission that reliability and
11 relevance are established in all cases, simply by looking at the
12 documents and conducting basic due diligence in reviewing the
13 case file.

14 [09.10.40]

15 So, turning first to the objections made by Nuon Chea's team, I
16 think the core set of objections, I think, relate to the issue of
17 relevance, whether or not all of these documents are relevant to
18 the first trial in this case. It's always a little bit
19 unfortunate, Your Honours, when we find that facts are misstated
20 by our learned friends.

21 There was an implication, I think, that the prosecutors were
22 suggesting -- had filed this list in relation to the first trial,
23 and that this was at least prepared following the severance
24 order, which of course is not true. These lists were filed in
25 April -- to be more exact, on the 19th of April, and of course a

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1 second version of that -- of those same lists was filed in July,
2 and that list indicated documents which we considered relevant to
3 the first phase of the trial.

4 [09.11.42]

5 It was only following the submission of those lists that Your
6 Honours issued the severance order on the 22nd of September. And
7 of course, in that severance order, Your Honours indicated that,
8 although this first trial will deal with the two specific sets of
9 crimes that you have indicated -- that additional crimes may be
10 added. And furthermore, in your decision

11 on our request for reconsideration of severance -- and that is
12 document E124/7, Your Honours indicated that, in considering the
13 addition of further crimes -- in addition to those first two
14 criminal episodes -- that you would be guided by the OCP's
15 recommendations. And you attached to that decision a list of
16 relevant paragraphs for this first trial. And those paragraphs
17 include all of the sections of the indictment dealing with the
18 structure -- the authority structures, communications mechanisms,
19 the ministries of Democratic Kampuchea, the authority structures
20 of the Communist Part of Kampuchea, and so forth.

21 [09.13.00]

22 All of the parts of the indictment dealing with the establishment
23 and operations of this regime are relevant. They are a part of
24 this first trial, whether the Defence like it or not. In no less
25 than 142 paragraphs of the indictment, the Investigating Judges

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1 dealt with the operations and the structure of this regime, and
2 of course all of these documents go to proving the existence of
3 an authority structure, the communications within that authority
4 structure, and the ways in which the Accused issued their orders
5 and were able to ensure the implementation of the criminal plan
6 which is alleged in the Closing Order.

7 Your Honours further indicated that, of course, the Accused must
8 confront all allegations containing the indictment, and of course
9 you did that in the Scheduling Order for the opening statements
10 -- and that was document E131. There can be no suggestion that
11 these documents, which relate to the operations and the structure
12 of the regime and the communications systems, are somehow not
13 relevant to this first trial.

14 [09.14.09]

15 I'll try and deal very quickly with some of the examples that my
16 learned friend gave, but before I do that I'd like to also just
17 make reference to the way in which the Defence has approach its
18 obligations in this respect.

19 The Nuon Chea team, in fact, has refused to submit any list of
20 evidence -- has indicated, in fact, that they will -- I apologize
21 to the interpreters -- they have in fact indicated that they will
22 file any documents which they considered relevant at any time
23 that they consider appropriate, and they did so in their
24 observations -- document D109/3 -- and it was disappointing, I
25 think, to hear our friends yesterday indicate that are here at a

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1 risk of drowning in evidential material, which has been
2 classified, catalogued, summarized, and provided -- and which has
3 been on the case file for two or three years, and in many cases
4 longer.

5 The Prosecution has done its due diligence, and we simply invite
6 the Defence to do the same. With respect to the specific examples
7 that was cited -- again, it was unfortunate that counsel, in
8 referring to the specific example, didn't read the entire entry
9 that was being referred to.

10 [09.15.42]

11 For example, there was reference to document number 165 in our
12 list. This is fact document -- Introductory Submission 21.16. Of
13 course, this document, like the other telegrams, is proffered, in
14 many cases, simply because it shows the existence of a regular,
15 structured, and hierarchical communications system which was in
16 place throughout the period covered by the indictment. And if my
17 friend had looked at the page that he was citing -- for entry
18 165, relevance is, of course, indicated, in the very line in
19 which he was reading.

20 And we indicate there that the relevance is the operation of
21 officers of 870 and the communications structures. Furthermore,
22 Your Honours, had our friend done a simple word search in the
23 Closing Order, he would have found that this document is in fact
24 referred in paragraph 77 of the Closing Order, which as I
25 indicated earlier, is of course a part of this -- of the section

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1 to the indictment which are the subject of this first trial.

2 [09.16.53]

3 We have limited time, so I'm unable to go through all of the
4 examples, but, again, a simple due diligence search indicates,
5 for each document, its relevance -- and ultimately, as we've
6 indicated, telegrams show the existence of a structured
7 communications system through which the Accused ensured the
8 implementation of the common criminal plan.

9 Another example. Document 359 was cited. Again, Your Honours, the
10 list clearly indicates the relevance of that document to be the
11 communications structure, and the -- Nuon Chea's involvement in
12 the common criminal plan -- the document itself is cited again in
13 the Closing Order at paragraph 876, which, again, is before Your
14 Honours in this first trial.

15 [09.17.40]

16 And lastly I'll just refer to one more document, document 365 on
17 our list. Again, relevance is indicated in the document from
18 which my friend was reading. It relates to the operations of
19 officers of 870, and again to the existence of structured
20 channels of communication.

21 And furthermore, a basic search of the case file would have
22 indicated that this document was, in fact, an attachment to a
23 witness statement. This witness was interviewed by the Office of
24 the Co-Investigating Judges. This witness is TCW-604, and the
25 witness has been identified by Your Honours as a trial witness.

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1 So, again, in relation to that document, there is more than
2 enough indication, both of its relevance and the way in which it
3 can be further examined by the Court and the other parties.

4 [09.18.33]

5 In response to Ieng Sary's team, I'll again try and be very
6 brief. There was indication that it would be appropriate -- and
7 certainly international practice indicated that -- in -- where a
8 telegram communications or radio intercepts are at issue -- that
9 it is appropriate to call either the authors of those
10 communications, or, if the authors are not available, then in
11 some cases, people who are familiar with the systems can be
12 called. Of course, that's exactly the approach Your Honours have
13 taken in this case.

14 There are several telegram operators who have been schedule to
15 testify. This is in fact the next group of witnesses who will be
16 testifying, so my friend is correct in saying that it is
17 appropriate to hear telegram operators.

18 I'll just give a few examples -- we have TCW-695, TCW-398,
19 TCW-480, TCW-307, etc. All of these witnesses are either telegram
20 operators or telegram decoders -- they're former junior cadre or
21 staff of various offices of Democratic Kampuchea, both in Phnom
22 Penh and in other parts of the country.

23 [09.19.56]

24 With respect to the documents that were referred to by my friend,
25 counsel for Mr. Ieng Sary, there was a reference -- a number of

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1 questions were asked as to who are the people mentioned in these
2 documents. Of course, in many cases, the witnesses will provide
3 such information, but even more immediately that information is
4 available in the Closing Order. It is available on a very basic
5 search of the case file.

6 In relation to 21.14 -- my friend asked: Who is Hang? Well, Your
7 Honours, if you do a search of the Closing Order, the answer is
8 there. Hang, was of course Bou Phat, former secretary of sector
9 103. He's referred in paragraphs 425 and 943 of the Closing
10 Order. His confession, from S-21, is on the case file, and that
11 document is D159/5.4.

12 [09.20.51]

13 Not only that, Your Honours, the secretary who replaced this
14 individual is himself a witness, has been called by Your Honours,
15 and he is TCW-4208.

16 Another example given by friend was D366/7.1.793, authored by an
17 individual called Nhim. Our friend was asking who Nhim was. Your
18 Honours, a basic search of the Closing Order -- numerous
19 references to Ros Nhim, secretary of the Northwest Zone, who is
20 described at paragraph 1262 of the Closing Order.

21 In fact, at paragraph 958 of the Closing Order, the Investigating
22 Judges quote Duch's statement -- and I quote: "Nuon Chea also had
23 Ros Nhim arrested, who was his brother-in-law and secretary of
24 the Northwest Zone."

25 Plenty of information about these individuals in the case file.

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1 I'll skip a couple of examples and just deal with one which
2 perhaps may have appeared at face value to be unusual.
3 My friend referred to D199/14.2. This was a postcard -- or, copy
4 of a postcard. The question was asked as to, perhaps, why this is
5 relevant. Of course, Your Honours, this again is an item which is
6 referred to in the Closing Order. Not only is it referred to in
7 the Closing Order, it's actually described in some detail.

8 [09.22.24]

9 And if you look at paragraph 1094, the second part of that
10 paragraph explains that this individual was, in fact, a diplomat
11 in Senegal -- a Democratic Kampuchea cadre who was recalled,
12 according to the indictment, back to Cambodia and of course found
13 himself arrested and imprisoned at S-21 within four days of
14 arrival.

15 The relevance of the postcard, of course, as the Closing Order
16 explains, is that it was sent from Beijing en route back to
17 Cambodia, where this gentleman was informing his family about his
18 intended arrival in Phnom Penh. Tragically, of course, he was
19 killed. Further information about that case is contained in a
20 witness interview of that gentleman's wife, and that witness
21 interview is D199/14.

22 Your Honours, clearly, for any of these documents that were
23 referred to by the Defence, a simple due diligence exercise and a
24 review of the case file provides both the indicia of reliability
25 and clearly the indicia relevant to the issue that we're dealing

1 with.

2 [09.23.46]

3 Turning now to some examples that weren't raised by my friends
4 but which, in our submission demonstrate how these collections
5 must be viewed as a whole, and how these documents must be
6 examined in light of other evidence which supports their -- both
7 their relevance and reliability. I'll do -- I'll deal with as
8 many documents I can in the time that is remaining. Just by way
9 of overview, the Annex 4, DK Communications, there are 393
10 documents which we identified as relevant to the first phase of
11 the trial. I think Your Honours' memo might have indicated 394 --
12 there might be a difference there of one. We think the number
13 might be 393.

14 [09.24.33]

15 Out of these 393, a total of 168 documents were admitted by Your
16 Honours in Case 001, so based -- obviously, an exercise of review
17 of relevance and reliability was undertaken in that case, and we
18 would say, certainly for the purposes of reliability, that where
19 an exhibit was admitted in Case 001, there is a strong
20 presumption that those documents are reliable, that they are what
21 they purport to be -- and of course, the test being prima facie
22 reliability. And as I've indicated before, relevance, again, is
23 indicated for each of them.

24 The communications, as my friend indicated yesterday, are
25 comprised of five types of documents. They are DK telegrams,

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1 reports, letters, notes, and orders. With respect to each
2 subcategory, there are a number ways of ascertaining relevance
3 and reliability. They include, of course, the testimonial
4 evidence that is on the case file, witness statements from
5 telegram operators and former cadre, including those whom I
6 referred to earlier, and a few examples that I will show.

7 [09.25.48]

8 And of course these documents, when you consider them, we would
9 submit that you need to consider them as a whole, as a series of
10 documents. And I will give just one example. I believe some 13
11 documents were authored by an individual called Leng (phonetic).
12 And, in fact, he authored some of the documents with his alias
13 Leng (phonetic) and then some of them are authored with his name
14 -- with his alias Chhan. Of course, Your Honours, this was the
15 secretary of independent sector 105. The circumstances of his
16 death and his responsibilities for sector 105 are described in
17 the Closing Order, they're described in numerous witness
18 statements, and as it turns out, two witnesses who have been
19 called are his close family members. They are TCW-695 and
20 TCW-307.

21 And when you look at those 13 telegrams, you see that they deal
22 with a series of events. There's a certain internal consistency
23 as to the events being described, and there's obviously
24 reliability through testimonial evidence on the case file -- and
25 so documents must, Your Honours, be viewed, we submit, in groups

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1 and, of course, in relation to other evidence which indicates or
2 corroborates their contents.

3 [09.27.25]

4 I will now try and demonstrate that by referring to a few
5 examples in the time that we have remaining, and dealing first
6 with the DK telegrams. Mr. President, if we could now show a
7 document that is on our screen -- or should be on our screen
8 shortly.

9 MR. PRESIDENT:

10 Yes, you're authorized to do so. You still have 12 minutes left.

11 MR. ABDULHAK:

12 Thank you, Mr. President.

13 This is an example of a telegram. In this case, it appears that
14 we have -- the Co-Investigating Judges have in fact obtained an
15 original -- or a photograph of the original document. And of
16 course a senior staff member of DC-Cam has indicated that this
17 document is available in its original form. This is the Khmer
18 version, of course. The statement of the DC-Cam staff member is
19 D311/2.

20 [09.28.46]

21 If we scroll down to the bottom of this page, we've actually
22 redacted, I believe, the name of the author of this telegram.
23 That's because the author is, in fact, TCW-604, a witness whom
24 Your Honours have scheduled to appear before you. In his
25 statement, D201/5, he indicates that he wrote this document

1 himself.

2 Again, Your Honours, looking to the relevance of this document.

3 The contents of the document are of some interest, but certainly
4 insofar as they relate to the searching for, as they were called,
5 "Yuon spies". But, more broadly, as I indicated earlier, the
6 relevance again is the establishment of a regular and structured
7 reporting system which was in place throughout the period covered
8 by the indictment. Mr. President, if I could move on to another
9 document -- and this is D175/6.13 -- if we can show that document
10 on the screen, if that's appropriate?

11 MR. PRESIDENT:

12 Yes, you may proceed:

13 MR. ABDULHAK:

14 Again, Your Honours, I'll only show the Khmer version, given that
15 the time is limited.

16 [09.30.18]

17 Again, in this case, this appears to be an original. Again, at
18 D311/2, senior staff member of DC-Cam indicates that original --
19 an original is available.

20 Another document authored by the same cadre, who happens to be
21 the secretary of the Northeast Zone was admitted by Your Honours
22 in Case 001. So another document from the same series has already
23 been admitted; that document is D175/6.15.

24 And lastly, in relation to this document, it has in fact been
25 authenticated by a witness, and that witness is TCW-480 -- he is

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1 scheduled to testify shortly before Your Honours. In fact, not
2 only does he discuss the telegram, he was able to discuss the
3 handwriting on the telegram which indicates that this document
4 was to be -- a copy of this document was to be given to Ieng
5 Sary.

6 If I may move on to another example of a telegram; if we could
7 show on the screen document Introductory Submission 21.146, if
8 that's appropriate. Thank you, Mr. President. This is, in fact--
9 If we could have that document on the screen please-- Thank you.
10 Again, I will show only a Khmer version, given that we have
11 limited time. This is a document from the Commerce Committee in
12 Phnom Penh addressed to comrades Krin and Nat. Comrade Nat was in
13 fact Phal Va, as other evidence on the case file indicates. She
14 was the wife of an individual called Ing Sok.

15 [09.32.22]

16 Together, Ing Sok and his wife Phal Va were located in Hong Kong
17 where, again as evidence indicates, they were in charge of the
18 Ren Fung company through which Democratic Kampuchea conducted its
19 international trade and, of course, a reference was made
20 yesterday to the fact that these -- these officers were very much
21 under the authority of the Accused, Khieu Samphan.

22 [09.32.50]

23 The contents of this document are interesting, insofar as other
24 documents then indicate what happened after this telegram was
25 sent. This telegram was, in fact, directing Nat and her children

18

1 to return -- to return to Phnom Penh; that the husband, Ing Sok
2 was also to return.

3 And, Your Honours, if we can again show two documents on the
4 screen. We have a prisoner sheet which is document IS 3.1. If we
5 could have that on the screen, Your Honour.

6 If we could show that document, this is Introductory Submission
7 3.1. This is the prisoner sheet of Ing Sok, alias -- I apologize,
8 of Phal Va, alias Nat, and that indicates that she entered S-21
9 on the 30th of December 1972, only 20 days after that telegram
10 was sent to Hong Kong. I'll -- we will show another prisoner
11 sheet, which is that of her husband. This is -- this is
12 Introductory Submission 3.1. I apologize, the wife's prisoner
13 sheet was 3.5, and the husband's is 3.1.

14 If we could return back to our screen just for a moment to show,
15 again, how these documents come together. I would like to show
16 you some photographs which are in the case file, again as part of
17 IS 3.5. If we could show that on the screen, Your Honours. I
18 think we have about two minutes left. If we can -- this is 3.5.
19 There on the left hand side, you see Phal Va, alias Nat, a
20 photograph taken in Hong Kong and on the right hand side her
21 photograph taken at S-21.

22 [09.34.48]

23 And last, but not least, the circumstances of the arrest -- of
24 the return to Cambodia, any arrests of these individuals are
25 discussed by Duch in his written record before the

1 Co-Investigating Judges, document D119.

2 Your Honours, I had anticipated -- or had intended to deal with

3 each of the subcategories, and we have numerous more examples

4 like these, where telegrams, letters, orders and notes, as well

5 as reports, contain information that is corroborated by other

6 documents -- that contain information that is often discussed by

7 witnesses. And, of course, in as far as we're dealing with

8 telegrams or letters, reports specifically several cadre explain

9 the circumstances in which such documents were prepared. They

10 describe the systems that were used and they will, of course,

11 describe for Your Honours specific markings that illustrate that

12 these are Democratic Kampuchea and Communist Party of Kampuchea

13 documents and records.

14 [09.35.55]

15 I think that brings me to a conclusion, given that -- I think

16 I've run out of time, Your Honours. I'm happy to discuss any of

17 the other categories if Your Honours deem that appropriate, but I

18 will -- I will stop here for now. Thank you.

19 MR. PRESIDENT:

20 Thank you, International Co-Prosecutor.

21 Next, the Chamber hands over the floor to the Lead Co-Lawyers to

22 respond to the objections by the defence teams against documents

23 in Annex 4. You may now proceed.

24 MR. PICH ANG:

25 Good morning, Mr. President. We would like to delegate this

20

1 submission to Mr. Lor Chunthy, the lawyer from the Legal Aid of
2 Cambodia, to make the response.

3 [09.37.11]

4 MR. PRESIDENT:

5 Your request is granted. So, Mr. Lor Chunthy, you may now
6 proceed.

7 MR. LOR CHUNTHY:

8 Good morning, Mr. President. Good morning, Your Honours. And good
9 morning, everyone.

10 My name is Lor Chunthy. I am a civil party lawyer in Case 002,
11 and I would like to respond to the objection raised by the
12 Defence against documents listed in Annex 4.

13 [09.37.58]

14 According to the document E19.8, document E9/31.3, in that
15 document there are -- document E109/4.4 and there are 394
16 documents in this annex. I would like to make observation on two
17 points.

18 First, I would like to look at the overall context so that we can
19 examine the potential of having all of those documents before the
20 Chamber, and we can ensure that those documents' authenticity and
21 reliability can be proved before the Chamber.

22 Then I will look at:

23 a) the reality of the document; and

24 b) I am going to point to the sources of those documents; and

25 c) the custody of the document.

21

1 Now, a, we look at the reality of the document. What is the
2 general format of the documents put before Your -- put before the
3 Chamber?

4 As the prosecutor has expressly mentioned in their submission
5 that these documents had an instruction from the management and,
6 of course, that -- those document, as well, also indicated the
7 purpose of the document and why it was produced in the first
8 place.

9 [09.40.30]

10 So, when we see the format of those documents as well as the
11 purpose of producing those document, they reveal the reliability
12 of those documents that can be used as evidence before the
13 Chamber.

14 And then, b, we are going to look at the sources of those
15 documents.

16 Of course, those documents were originated from the Democratic
17 Kampuchea period, between 1975 to 1979.

18 Then we will -- should continue to look at the very reason why
19 those document was produced. What agents produced this document?

20 As the prosecutor pointed out, there were witnesses who can
21 testify on this document as to how it -- or they were produced.

22 [09.41.33]

23 And what is the overall characteristic of those documents; was it
24 the directive or a communicated message? Actually, those
25 documents are the administrative documents used to share

1 information amongst members of the Democratic Kampuchea. They can
2 be reports, they can be telegrams and various other documents.
3 This is a demonstration that during that regimes there was a
4 clear structure -- administrative structure in the Democratic
5 Kampuchea.
6 Now, I move on to point c. There have been collection of those
7 documents and a chain of custody of those documents. In 1995,
8 Documentation Centre of Cambodia -- an organization collects the
9 various documents from the Democratic Kampuchea. Of course, in 19
10 -- immediately following the fall of the Democratic Kampuchea,
11 Cambodian people did not -- or were not interested in collecting
12 information because they had to do something in order to fill
13 their stomach rather than collecting those documents. So at first
14 this institution, the Democratic -- the Documentation Centre of
15 Cambodia, which strived to locate the remaining documents in
16 search for truth. And of course, when there was a cooperation
17 between the Government of Cambodia and the United Nations --
18 jointly established this tribunal -- then we would have to look
19 for assistance from these organization to provide necessary
20 information. And we also received information from the National
21 Archive, as well as the Tuol Sleng Archive, and from individual
22 donation, because those people may have, at hand, the documents.
23 So they send those documents to the Documentation Centre of
24 Cambodia.
25 [09.43.50]

1 So the points I would like to make here is that, if we tried to
2 find the individuals who proffered those documents, it may be
3 more than difficult in this context.

4 And as for the custody of documents from those days until now, of
5 course it can be established.

6 Now I move to the second point, which is the direct response to
7 the objection raised by the Defence.

8 The Defence referred to the jurisprudence from the ICTY and, in
9 the ICTY Trial Chamber, the Defence argued that they summoned
10 those who prepared the telegram to testify in court.

11 [09.44.59]

12 Of course, here we can ask them to come to Court as well, but if
13 you look at the context we have now, it has been some 30 years or
14 so already and some of those responsible for telegram
15 communication might have passed away or they may be too old. So
16 as the prosecutor says, certain lucky individuals who survived
17 the regimes and survived until today can, of course, appear
18 before this Chamber to testify.

19 So the reliance on the jurisprudence from the ICTY -- it is of
20 course good, as I said but, of course. we have to be objective in
21 our context. The witnesses that you are requesting or demanding,
22 they may be too old already or they have -- they might have
23 already passed away.

24 [09.46.01]

25 Another point of relevance: the Defence also raised the objection

24

1 against confession by torture. I think the Prosecution has
2 responded very well to this point, but I believe that there will
3 be more debate on this very subject at a later stage.

4 Now, I would like to talk about the civil parties. They mention
5 that there was some 4,000 civil parties in the case file, but
6 actually the actual number of civil parties in this case is
7 3,866. And civil parties who may be heard by the Court accounts
8 for around 150 civil parties -- and among 150 civil parties, only
9 a small minority of them will testify before this Chamber.

10 So I would suggest, my learned colleagues from the Defence, that
11 you should not be too worried about the number of the civil
12 parties to testify before this Court.

13 In addition, the civil parties that come to testify before this
14 Court, the party -- so please don't be confused; they are not
15 going to come here to testify as witness, but they are the civil
16 parties.

17 [09.48.00]

18 Another important point which I would like to also address in
19 respond to the Defence. You mentioned that, even if there was a
20 name of your client in the telegram -- but you were wondering
21 whether or not your client has actually received those telegrams
22 or letters. Of course, at that time, there were the so-called
23 messenger -- messenger received the letter from one institution
24 and convey it to another institution. So messenger is one of the
25 important and most reliable person to convey message. And the

1 messenger are generally loyal to their organization;
2 particularly, they were responsible for sending message from one
3 institution to another and, at times, some of them even used
4 horse in order to deliver message quickly.

5 As for the question whether or not the individual person has
6 received or not received the documents, we will have to question
7 that messenger. Of course, this is my response to the objection
8 raised by the Defence that there was a name of the client, but
9 you were still doubtful whether or not your client has received
10 that message. Of course, the person must have received, to my
11 understanding.

12 [09.49.43]

13 Document D366/7.1.338. By reviewing this document, we note the
14 format, the content of the document, and there was also a date on
15 that document. So it means that this kind of document is quite
16 clear.

17 So we can respond to the Defence that, by a mere looking at this
18 paper, we know that, of course, the person who prepared this
19 document must have been trained or skilful in preparing this
20 reports or documents. Of course, if they were illiterate or did
21 not know anything, they could not prepare such a document.

22 [09.51.09]

23 Telegram D108/28/.1. And the first line on the left, there is a
24 number, 31, and this telegram was addressed to "Beloved M870".
25 So, this was the language used during that period, and it was

1 copied to Brother Nuon, Brother Van, Brother Khieu, and archives.
2 So this is procedure by which the documents was kept during that
3 period.

4 Another document, D108/226.81 (sic); the Defence said it was
5 illegible. Of course, this document was type-written more than 30
6 years ago, and it may have been some quality deterioration.
7 However, the upper part of this document was quite clear because
8 there is a salutation which mention the person whom this letter
9 or this telegram was addressed. And it referred to May 1976 and
10 the person who sent this telegram was also mentioned in the
11 bottom -- on the bottom of the telegram. So it means that this
12 was consistent.

13 So this are some of the realities concerning the documents in
14 Annex 4, and I would like to ask the Chamber to exam -- to
15 consider these documents, particularly taking into account the
16 facts which I have presented. And I believe that those documents
17 are reliable and they are, of course, relevant to the case before
18 Your Honours and, of course, those documents can, therefore, be
19 admitted before the Chamber. Thank you.

20 [09.53.54]

21 MR. PRESIDENT:

22 Thank you, Counsel.

23 Now, we continue hearing the objections regarding contemporaneous
24 DK documents that the Trial Chamber intends to place before it.
25 We will continue with the objection relating to documents in A5

1 category.

2 The Defence has been allocated one hour to present its objection,
3 and it was left to the discretion of the Defence how to divide
4 its time among themselves. I, therefore, now hand over to Nuon
5 Chea defence first. You may proceed.

6 [09.55.04]

7 MR. PESTMAN:

8 Thank you, Your Honour. I'll keep it brief in order to avoid
9 unnecessary repetition.

10 DC-Cam documents, we've discussed those at length. We welcome the
11 announcement the Prosecution made this morning that they will
12 provide everyone with a list of documents received from DC-Cam,
13 and we're looking forward to studying that.

14 Of course, the admission of those documents, as we have said many
15 times this week, is subject to the hearing of Youk Chhang in
16 Court and us, the Defence, given the opportunity to cross-examine
17 him.

18 As far as the relevance is concerned, the prosecutor made some
19 remarks on the relevance of certain documents, and we agree the
20 scope of the first mini-trial is not limited to the evacuation of
21 Phnom Penh or the first movement of people from North -- or from
22 South to North.

23 The topic of the first trial is also the hierarchy of the Party
24 -- the command structure, communications within the DK. We take
25 the position, however -- and we disagree with the prosecutor --

1 that when your Trial Chamber will look at those topics, at those
2 additional issues relevant for the structure of the country, the
3 Party and the government, that emphasis should lie on the
4 relevant periods -- the period relevant for the evacuation of
5 Phnom Penh and the phase two movement of population.

6 [09.56.59]

7 Just to give you one example, the Prosecution was giving examples
8 this morning, whether Ieng Thirith was informed in July 1978 --
9 which is two years after the relevant period -- whether she was
10 informed on the political consciousness of midwives in a
11 particular, hospital, we maintain is completely irrelevant for
12 the first mini-trial; it doesn't say anything of any relevance to
13 the first mini-trial. And even if it says something about the
14 structure of that particular ministry in 1978, it only confuses
15 the things that we have to discuss in the first mini-trial. So we
16 maintain that the emphasis should lie -- when we discuss
17 structure of the Party and the government -- the emphasis should
18 lie on the first period, the period relevant for the evacuation
19 of Phnom Penh and the subsequent movement of people from South to
20 North.

21 [09.58.10]

22 What we are afraid of -- what we are afraid is going to happen is
23 that the prosecutor will take this opportunity to introduce
24 evidence into this first mini-trial in order to extend the scope
25 of this first mini-trial. I think a very good example was given

29

1 this morning by the OCP when they showed us several documents
2 related to S-21 and the alleged purge of a person who worked in
3 Hong Kong for an office established by DK for trade purposes.
4 Whether this office was purged, whether cadres from this office
5 were sent to S-21, S-21 was established, as you know, after the
6 evacuation of Phnom Penh, and whether any of the Accused knew
7 about this, is absolutely, we maintain -- is completely
8 irrelevant for this first mini-trial. It is not on your agenda.
9 We will discuss this later to a great extent, without any doubt.

10 [09.58.33]

11 I again invite the Trial Chamber to look at the list of documents
12 provided by the prosecutor with a very critical eye and to
13 discard as irrelevant all evidence which really has nothing to do
14 with the scope of the first mini-trial.

15 With regard to the other documents, documents which are prima
16 facia relevant for the first mini-trial and documents which have
17 not been provided by DC-Cam, we repeat our position as explained
18 earlier this week that evidence is admissible, but if those
19 documents contains evidence on the role of our client or evidence
20 on key issues in the first mini trial, then we maintain that
21 those documents should be put before our client -- our client is
22 testifying -- and that if necessary the author of that particular
23 document should be heard in court. Thank you very much.

24 [10.00.50]

25 MR. PRESIDENT:

1 Thank you, Counsel. The national defence counsel you may proceed.

2 MR. SON ARUN:

3 Thank you, Mr. President. Good morning, Mr. President, Your
4 Honours. Good morning, everyone. In Annex 5, there is document
5 89/31.4. There are various report from one individual to another
6 from the upper hierarchy to the Lower hierarchy, from the upper
7 offices to the lower cadres, from one institution to the other
8 institution, or from one region to another region. The GRUNK
9 statements made by Norodom Sihanouk on the composition of the
10 GRUNK government on the 5th of October '74 was published in the
11 FUNK, regarding the information from Cambodia. That is document
12 D366/71.455.

13 There is also IS 18.1 to IS 12.3. There are also reports from
14 the DK government -- that is D -- document D262.13 and various
15 other reports, as well as the statements by the government
16 including the media report by the Democratic Kampuchea talking
17 about the aggression by the Vietnamese soldier and the report was
18 made by Tran Van Tra, that is the Vietnamese soldier arrested by
19 the DK government during the Vietnamese aggression, who confess
20 on the 24 January '78, that is IS 12.26.

21 [10.03.45]

22 Regarding the DK -- the FUNK, the GRUNK, rather, telegrams made
23 by Norodom Sihanouk and the statement by the DK government, plus
24 various other reports, talked mainly about their daily
25 activities. If those documents are genuine document, with

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1 verified authenticity from the original copies, -- whether they
2 were obtained by DC-Cam or verifiable sources -- then my client,
3 Mr. Nuon Chea, would respond to the allegations made by the
4 Prosecution without any hesitation. As we repeatedly urge the
5 Chamber to order the Prosecution to present the original
6 documents so that my client is in a position to compare the
7 copies we have at hand to the original documents before he can
8 acknowledge whether they are actually the documents produced
9 during the DK period, and he will respond to those allegations.

10 [10.05.26]

11 My clients, Nuon Chea, as well as the defence team, plus all
12 other defence teams have similar view on this very topic -- that
13 is to have our hands on the original copies regarding all those
14 allegations made by the Prosecution, and not just relied on
15 unverifiable sources to incriminate my client. I have observed
16 that since 16 January 2012 the Chamber scheduled Annex 1 through
17 5 in order to put them through debates in order to find justice
18 and ascertain the truth.

19 I categorically denied or object to any allegations without basis
20 by the Prosecution, without any authentication of those documents
21 by the Prosecution, and, as I already requested the Chamber
22 yesterday to present those documents put forward by the
23 Prosecution. Those documents are not verifiable and we are not
24 sure they are the actual copy of the original document.
25 Furthermore, during these four days, the Prosecution have failed

1 to provide any concrete testimony as to how they obtained these
2 thousands of documents, and from whom or from where and under
3 what circumstances. We, representing the Accused, cannot accept
4 this circumstance. The Prosecution acknowledged those documents
5 -- put the sequence of members on those documents at their own
6 discretion in order to incriminate my client.

7 [10.07.50]

8 They do not take into account the fact of trying to ascertain the
9 truth for everyone and for the general public. On behalf of the
10 Accused, I urge Your Honours to consider and to reject those
11 ungrounded allegations by the Prosecution. And we, the Nuon Chea
12 defence team, still insist that the Prosecution present the
13 original documents in order to verify the authenticity and to
14 find truth in this very Chamber. Most of the documents the
15 Prosecution have in their hands cannot be verified. We do not
16 know the exact custodians of those documents with no thumbprints
17 or signature as how they were obtained or maintained. They were
18 circulated and gathered from everywhere around the country. How
19 could the Prosecution understand that there could be a opposed
20 factor of the DK who could manufactured those documents in order
21 to incriminate or to put the blamed on the DK government. If they
22 take that factor into consideration they might have a different
23 view.

24 [10.09.40]

25 For the Lead Co-Lawyers of the civil parties, in their response

1 to Annex 4, that the people who can testified before this Chamber
2 are those who are already too old to testified, or some have
3 already passed away and those who can have already made their
4 testimony -- that is not true at all, Your Honour. I agree that
5 there are people who can't come here to testified and, of course,
6 there are old people and there are people who passed away, but
7 those who can testified are numerous, and they are not too old to
8 testify regarding the very subject matter before us today.
9 Nuon Chea's defence already made several request to the OCIJ for
10 the past four years and OCJ only selectively made some interviews
11 with certain people we requested. For the aforementioned reasons
12 I urge Your Honours to reject the allegation raised by the
13 Prosecution in Annex 5, and we still maintain that -- we urge the
14 Prosecution to present the original documents in order to verify
15 the authenticity of those documents before this very Chamber and
16 the general public -- so that my client, Mr. Nuon Chea, can
17 responds to the allegations by the Prosecution. I'm grateful to
18 Your Honour.

19 MR. PRESIDENT:

20 Thank you, Defence Counsel.

21 [10.11.47]

22 Ieng Sary's defence you now have the floor.

23 MR. KARNAVAS:

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

1 I believe we have already amply noted our objections as to these
2 types of evidence in our general remarks, as we noted that media
3 reports are, in and of themselves, unreliable unless some sort of
4 indicia of reliability can be shown, especially when statements
5 are attributed to our client or to the other Accused, and then
6 those purported statements, or paraphrasing what our clients may
7 have said is taken at face value.

8 We noted, for instance, one example in the past, with respect to
9 Elizabeth Becker, which dealt with the 1975 Mayaguez incident. We
10 then noted, or informed that we should simply look at Elizabeth
11 Becker's notes that are in the case file, and therein would lie
12 the answers.

13 Well, if you were to go to the case file and look at her notes,
14 you would not find anything with respect to that particular piece
15 of evidence that is being sought to be introduced.

16 Now, that said, we understand that the Prosecution intends to
17 introduce these sorts of - types of evidence for various reasons,
18 and of course it would be up to you, Your Honours, to determine
19 whether those - that piece of evidence can come in, limited to
20 the purpose for which the Prosecution intends to use that
21 information. Of course, it would be up to the Prosecution to
22 inform the parties exactly the purpose.

23 We submit, Your Honours -- and this is something that I will
24 touch upon later this afternoon when we do our wrap-up remarks
25 concerning our responses to all of these specific types of

35

1 evidence -- is that simply because something is in the case file,
2 or simply because something is referenced in the Closing Order
3 doesn't make it necessarily admissible for trial. If that were
4 the case, then why are we bothering with this entire exercise?
5 The entire case file can simply be used by any party.

6 [10.14.45]

7 And so simply to say: Well, it's reference in this paragraph,
8 therein lies the answer-- Our position is: be that as it may, at
9 some point, since the Prosecution bears the burden of proof, they
10 will have to demonstrate why this particular document is -- aside
11 from being relevant -- but why it should be relied upon by this
12 Trial Chamber and why, at some point, it should have any weight
13 to this particular phase of the indictment that we're trying,
14 that is trial number 1 -- limited to that.

15 [10.15.26]

16 And so we would -- we respectfully submit that we have provided
17 our answers in our annex. They're general in nature, but over the
18 course of the last two or three days, we've amply noted why we
19 believe that the Prosecution cannot simply say: Well, it's in the
20 Closing Order, therefore it should be admitted.

21 There's nothing in international standards that says if something
22 is in the indictment, or if something is referenced in the
23 indictment, and because the indictment was based on something
24 that was shown to the judges as part of the process of
25 determining sufficient evidence exists to indict-- That, in and

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1 of itself, does not make that piece of evidence admissible. It
2 merely means that it was used by the Trial Chamber or the
3 presiding judge who was involved in the indictment process in
4 factoring that as part of the test as to whether some evidence is
5 sufficient to indict, that's all. And therefore, for the
6 Prosecution to say, well it's in the Closing Order and,
7 therefore, it has credence, we submit that's not enough. That's
8 the first step. Now that we've started the trial they will have
9 to lay more of a foundation, and it's up to you to determine
10 whether it should be admitted and then whether it should -- how
11 much weight, if any, to give to it. Thank you.

12 [10.17.07]

13 MR. PRESIDENT:

14 Thank you, Defence Counsel.

15 We would now hand the floor to Khieu Samphan's defence to present
16 their objections to documents in A5 annex. You may proceed.

17 MR. KONG SAM ONN:

18 Thank you, Mr. President. Good morning, Your Honours. Good
19 morning, everyone. Regarding Annex 5, there is the DK media and
20 public statements put forward by the Prosecution, and there are
21 343 documents in total. In document E158, as put forward by the
22 Prosecution, they attempt to give weight to the reliability in 60
23 documents of the 343 in this annex. Fifty-three of those
24 documents were obtained by the Swedish collection, or from FBIS.
25 There are five other remaining documents which are the media

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1 report received by DC-Cam. What we demand, as well as what the
2 object to, regarding all the documents in this annex, are the
3 same as what we have already raised for the previous annexes. So
4 I will not touch upon those grounds of objections in details. Our
5 position is the same.

6 Let me give you an example, Your Honour. For the documents that
7 we received as part of the Swedish collection, they have only
8 been received recently. And the question we also ask is how the
9 Swedish government received those documents, and from whom? This
10 is a -- one important question, and it should have been explained
11 to us by the Prosecution as part of the indicia of reliability of
12 each document, so that we can put them in our debate before your
13 Chamber.

14 [10.21.29]

15 Once again I still maintain our position, Mr. President. Thank
16 you.

17 MR. PRESIDENT:

18 Thank you, Defence Counsel. Since the Prosecution has one hour to
19 reply to these objections, and as the time is now appropriate for
20 the break, the Prosecution may take the floor after we resume. We
21 will now have 20-minute break, and we shall return at 20 to 11.

22 (Court recesses from 1022H to 1042H)

23 MR. PRESIDENT:

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

25 Now, I hand over to the Co-Prosecutors to respond to the

1 objections raised by the Defence against the document in Annex 5.

2 The Co-Prosecutors have one hour to make their submission.

3 You may now proceed.

4 [10.43.52]

5 MR. SENG BUNKHEANG:

6 Thank you, Mr. President. Representatives of the Prosecution,

7 myself and Ms. Falguni Debnath, has one hour to make a submission

8 and I'm going to make my submission first, with my colleagues.

9 And the last remaining session, we would like to hand it over to

10 Mr. William Smith.

11 The representative for Prosecution would like to inform Your

12 Honours, Members of the Bench, that documents in Annex 5 of the

13 list of document of the Office of Co-Prosecutors include the DK

14 media and statements and this document has different types;

15 however, they have been grouped into one category. These document

16 include radio broadcast reports, various statement made by

17 officer of the DK as well as various Ministries, and there are

18 also news bulletins published by the DK embassy overseas.

19 [10.45.17]

20 A sheer number of foreign broadcast service report were also

21 placed in Annex 5 and Your Honour have already been informed of

22 the availability of the Foreign Broadcast Information Service

23 reports, FBIS.

24 FBIS was run by the Central Intelliget Agency of the United

25 States starting from 1941 to 2004 and the CIA managed, translated

1 and transcribed news as well as commentaries on foreign policy
2 speeches, the radio broadcast reports and TV report as well as
3 other news transmission, newspaper and other magazines. The
4 report of the foreign information service is generally accessible
5 through internet, in the website of various libraries of
6 different university, including Harvard University.

7 [10.46.36]

8 Reports of the Foreign Broadcasting Information Service starting
9 from 1975 to January 1979, with the exception of the report for
10 December 1977, were placed in the list of documents in a request
11 the -- OCP request to admit Foreign Broadcast Information Service
12 reports to the case file filed on the 12th of November 2009, and
13 this request were registered with document number D262 as for the
14 report for December 1977 was also placed in case file already on
15 the 31st of July 2009.

16 The transmission of the news by the Foreign Broadcast Information
17 Service was screened by many other news agency, including the
18 BBC.

19 BBC record -- records world news in English language and they
20 created the so-called SWB, Summary World Broadcast, so that they
21 can broadcast the transmission from various foreign radio station
22 from 1939 to 1997.

23 In addition to the reports by the Foreign Broadcast Information
24 Service as well as the SWB, Annex 5 also includes various
25 documents produced by the Government of the Democratic Kampuchea

1 and Annex 5 also includes various documents produced by the FUNK
2 and GRUNK.

3 [10.48.45]

4 The general documents include new bulletins, statement of the
5 government as well as news bulletin produced by the embassy.

6 Evidence in these Annex include a contemporaneous event involving
7 the role of the Accused as well as the condition and situation of
8 the Accused during the Democratic Kampuchea as well as the
9 duration after the period. And it also include detailed
10 information corroborating this evidence.

11 And I would like to bring up some examples relating to the
12 statement made by the Ministry of Foreign Affairs of the
13 Democratic Kampuchea to which the Defence has objected. Example
14 is in the Annex 5, number 130 with the document number IS 19.38
15 and number 135, document D108/43/9.

16 These two documents are a very classical example -- classic
17 example which indicate the reliability of the document because
18 the statement made by the Ministry of Foreign Affairs of the
19 Democratic Kampuchea is exactly the same as the report produced
20 by International Broadcasting Information Service such as BBC
21 SWB.

22 [10.50.34]

23 Document number 130 in Annex 5 in the list of document of the
24 Office of Co-Prosecutor is the statement made by the Ministry of
25 Foreign Affair of the DK, which was issued on the 31st of

1 December 1977, announcing the severance of diplomatic relations
2 provisionally with the Socialist Republic of Vietnam and also
3 setting the deadline for the diplomatic corps and diplomatic
4 personnel of Vietnam to leave Cambodia. And I would like to bring
5 up the excerpt of this statement as follow:

6 "The Ministry of Foreign Affairs of Democratic Kampuchea, with
7 the permission from the Government of the Democratic Kampuchea,
8 makes the following statement: 1) the Government of Democratic
9 Kampuchea decides temporarily to severe diplomatic relations with
10 the Socialist Republic of Vietnam as from the 31st December 1977
11 until the aggressor forces of the Socialist Republic of Vietnam
12 withdraw from the sacred territory of Democratic Kampuchea and
13 until the friendly atmosphere between the countries is restored;
14 2) the diplomats and embassy personnel of the Socialist Republic
15 of Vietnam accredited to the Democratic Kampuchea must leave
16 Democratic Kampuchea before the deadline of the 7 January 1978."

17 [10.52.30]

18 This is the statement made by the Foreign Ministry of Democratic
19 Kampuchea.

20 If you look at document in -- Number 135 in the Annex 5 of the
21 Office of Co-Prosecutor, we extracted information from the
22 international broadcasting service, the BBC SWB, dated the 3rd of
23 January 1978, which reported the statement of the Democratic
24 Kampuchea, Ministry of Foreign Affairs, issued on the 31st of
25 December 1977.

1 [10.53.19]

2 If we look closely at the excerpt from the International
3 Broadcasting Service, it was identical to what was -- what
4 contains in the statement of the Ministry of Foreign Affairs of
5 the Democratic Kampuchea.

6 I would now like to extract the statement of the Democratic
7 Kampuchea Ministry of Foreign Affairs which the SWB quoted:

8 "The Ministry of Foreign Affairs of Democratic Kampuchea makes
9 the following statement:

10 "1) the Government of Democratic Kampuchea decides provisionally
11 to sever diplomatic relations with the Socialist Republic of
12 Vietnam from the 31st of December 1977 until the aggressor forces
13 of the Socialist Republic of Vietnam withdraw from the sacred
14 territory of Democratic Kampuchea and until the friendly
15 atmosphere between the two countries is restored;

16 "2) the diplomats and embassy personnel of the Socialist Republic
17 of Vietnam accredited to Democratic Cambodia must leave
18 Democratic Kampuchea before the deadline of the 7 of January
19 1978."

20 [10.54.46]

21 So, once again, these two documents are very consistent so that
22 it establishes the reliability of documents of this type, so
23 there is no reason by the virtue of this argument that there is a
24 need to summon the author of such document to testify before this
25 Chamber.

1 Now, I would like to hand over to my international colleague to
2 add in our submissions.

3 Thank you, Your Honour.

4 MR. PRESIDENT:

5 Yes, the International Prosecutor, you may now proceed.

6 MS. DEBNATH:

7 Thank you, Mr. President. Good morning, Your Honours. Good
8 morning to everyone in the courtroom and to anybody watching
9 these proceedings.

10 [10.55.37]

11 Annex 5 contains 343 documents. Over one-third of them emanate
12 from the FBIS , the Foreign Broadcast Information Service. Fifty
13 of these reports were placed on the case file by the OCIJ and
14 were also admitted in Case 001.

15 The FBIS reports follow a standard format. At the top of the
16 page, there will be a date, the word "Cambodia" and the letter
17 "H" followed by a number. Some of the reports contain a table of
18 content. The table lists the countries being monitored for that
19 report. A letter is ascribed to each country. Cambodia's letter
20 is always "H".

21 The FBIS reports provide translations and transcriptions of daily
22 broadcasts from dozens of locations. They monitored broadcasts
23 from Hanoi, Algeria, Peking, Aden, Algiers, Hong Kong. The FBIS
24 also monitored broadcasts in Cambodia. By translating and
25 transcribing the actual broadcasts made on a specific date at a

1 specific location at a certain time, the reports provide an
2 invaluable snapshot of the past.

3 [10.57.19]

4 Let's go back in time. What was happening in Cambodia on 26
5 February 1975? Let's listen in.

6 Before we do so, let me provide you with the document number and
7 ERN numbers. I refer to document D108/43/1. The ERN number for --
8 in Khmer is 00242308; in English, it is 00166772; in French, it
9 is 00281432.

10 Now we can listen in to what was happening in Phnom Penh February
11 26 1975:

12 "Khieu Samphan chairs NUFC Congress Session; communiqué issued.

13 "[Text] On 24 and 25 February in 1975, the great national
14 congress held its second session in an area of the liberated zone
15 under the chairmanship of Mr. Khieu Samphan, RGNUC deputy prime
16 minister, minister of national defense and CPNLAF commander in
17 chief.

18 "[...]This second session of the great national congress was held
19 at a time when military, political and economic conditions have
20 altered significantly in an extremely favorable manner for the
21 Cambodian nation and people's liberation struggle. Now that we
22 are launching our offensive from all sides, the enemy is on the
23 verge of collapse in every field. Phnom Penh is completely
24 surrounded and the enemy is suffering agonizing military,
25 political and economic setbacks and ammunition shortages.

1 "In these extremely favourable circumstances, the great national
2 congress deliberated seriously and thoroughly for 2 days and
3 issued pronouncements on various important matters including the
4 following:

5 "1. Concerning the seven traitors in Phnom Penh, the national
6 congress has decided as follows: Traitors Lon Nol, Sirik Matak,
7 Son Ngoc Thanh, Cheng Heng, In Tam, Long Boret and Sosthène
8 Fernandez are the chieftains of the traitors and ringleaders of
9 the treacherous antinational coup d'état which overthrew the
10 independence, peace and neutrality of Cambodia. They are the ones
11 who induced the US Imperialists to invade and set Cambodia aflame
12 bringing unprecedented, untold destruction and suffering to
13 Cambodia and death to many monks and people, including men, women
14 and children.

15 [11.00.33]

16 "On behalf of the NUFC, RGNUC and CPNLAF, the national congress
17 declares it absolutely necessary to kill these seven traitors for
18 their treason against the nation and their fascist, corrupt,
19 original acts -- criminal acts unprecedented in Cambodian
20 history."

21 The fourth page of that document:

22 "For the second session of the national congress of the NUFC and
23 RGNUC

24 "Chairman of the national congress

25 "[Signed] Khieu Samphan."

1 The ERN numbers for that last quotation: in Khmer 00242314,
2 00166775, 00281435.

3 Their denunciation of these seven permeates the broadcasts and
4 can be found in many FBIS documents.

5 Finally, after the fall of Phnom Penh, those of the seven that
6 remained in the country were executed. This was reported in
7 various documents, including an Amnesty International Report of
8 '75 and '76 stating that Ieng Sary had discussed the fate of
9 these seven.

10 [11.02.11]

11 The report from Amnesty International is D84-AnnexA-01. The Khmer
12 ERN is 00597825; English, 00004213; French, 00607934. The report
13 states:

14 "Earlier reports concerned seven leaders of the former Lon Nol
15 government termed 'super traitors' and condemned to death by the
16 Second National Congress of the Cambodian people in February
17 1975. Four of the seven had fled the country before the
18 liberation army entered Phnom Penh. In November 1975, Deputy
19 Premier Ieng Sary confirmed during a visit to Bangkok that three
20 leaders of the former regime had been executed. They were former
21 premier Long Boret, Prince Sisowath Sirik Matak and Lon Nol --
22 brother of former president Lon Nol."

23 [11.03.34]

24 The second subset of Annex 5, containing approximately 60
25 documents, emanate from the BBC. You can never be sure who's

1 listening. It's not just the FBIS, it's also the BBC. It
2 monitored broadcasts. Its report's, known as the Summary of World
3 Broadcasts, often captured similar information to that found in
4 FBIS and in other public declarations and statements contained in
5 Annex 5.

6 These documents also provide invaluable glimpses into the
7 Cambodia of 35 years ago. Given the broad range of material facts
8 that need to be proven at an international criminal trial and,
9 particularly, one of this breath and magnitude, these summaries
10 contribute to creating a vista of detailed facts. Among other
11 things, they tell us who the leaders were, what role they played,
12 what they said, and when.

13 Annex 5 contains over 60 such documents; more than one-third of
14 them were admitted in Case 001. The summaries also follow a
15 similar -- a standard format. The letters SWB appear at the top
16 left hand corner; sometimes the letters are preceded by the full
17 title. There is a notation in the middle and the date at the top
18 of the right hand corner.

19 [11.05.16]

20 I will take Your Honours to one document, document D56-Doc.084.

21 This is an SWB Report. The Khmer ERN is 00725158 and 59, English
22 00008307, French 00741908.

23 The SWB Report heading is "Ne Win's Visit to Cambodia -- Abstract
24 of Reports":

25 "U Ne Win, president and chairman of the State Council of the

1 Socialist Republic of the Union of Burma, left Rangoon on 26
2 November for Cambodia."

3 And the following paragraph:

4 "Ne Win and his delegation were welcomed on arrive in Phnom Penh
5 by several thousand people including Khieu Samphan, Chairman of
6 the State Presidium, Nuon Chea, Chairman of the Standing
7 Committee of the Cambodian People's Representative Assembly, Ieng
8 Sary, Deputy Premier for Foreign Affairs, Vorn Vet, Deputy
9 Premier for Economic Affairs, Son Sen, Deputy Premier for
10 National Defence."

11 [11.06.38]

12 In honor of this visit, Khieu Samphan later gave a speech
13 welcoming Ne Win on behalf of the people, government and State
14 Presidium of Democratic Kampuchea. He also articulated the key
15 concerns of the regime at that time.

16 A day later, on 27 November, Ne Win visited Siem Reap accompanied
17 by Ieng Sary. They were welcomed at Siem Reap Airport by Khieu
18 Samphan.

19 Domestic broadcasts of this visit were monitored by FBIS. That
20 FBIS report can be found at document D262.36; the English ERN
21 00168603; the French ERN D262.36. The FBIS Report states:

22 "Phnom Penh, 30th November 1977. Radio reports Ne Win trip to
23 Siem Reap Angkor area.

24 "Phnom Penh Domestic Service in Cambodian, 2300 GMT 28 November
25 '77.

1 "[Text] On 27 November, his Excellency President U Ne Win, of the
2 Socialist Republic of the Union of Burma and his delegation
3 accompanied by comrades Deputy Prime Minister Ieng Sary and met.
4 Chairman of the Air Department went to the Siem Reap Angkor area
5 by special plane. President Ne Win was warmly welcomed at Siem
6 Reap Airport, which was decorated with the colours of the two
7 countries and many red flags, by comrades State Presidium
8 Chairman Khieu Samphan, Deputy Prime Minister Son Sen, Chairman
9 of the Northern Region Committee Kang Chap and cadres of the
10 Northern Region."

11 [11.08.43]

12 A third document that also talked about this visit can be found
13 in document D133.2.

14 François Ponchaud, author of the book "Year Zero", discussed this
15 visit at a conference on Cambodia in Oslo, in 1978. The French
16 ERN for that is 00236352; English, 00610802. The translation for
17 the last two documents are not yet available in Khmer.

18 Mr. President and Your Honours, there are various subcategories
19 under Annex 5. I believe you have heard enough for now.

20 My colleague Mr. William Smith will now address the Court.

21 Thank you.

22 [11.09.43]

23 MR. SMITH:

24 Good morning, Your Honours. Good morning, Mr. President. Good
25 morning, counsel, civil parties, and the general public. Your

1 Honours, my colleagues have referred to some specific documents
2 showing again the specific indicia of reliability of these
3 documents, by cross-referencing them with other documents and
4 showing that internal consistency within them.

5 I would now like to address some of the objections by the Defence
6 in the specifically and in the more general manner they raised
7 today. In relation -- there seems to be an issue that with the
8 Defence -- particularly with the Nuon Chea team and the Ieng Sary
9 team -- that the Prosecution somehow hasn't shown the relevance
10 of these documents. As Your Honours are aware, on the 19th of
11 April 2011, we have submitted this Court 20 annexes and in those
12 annexes we've submitted a description of the document and the --
13 a column stating the relevance to the various parts of the
14 indictment.

15 In that column, we relate each document to the paragraph number
16 and the page number of the indictment; and we relate it to the
17 issues that Your Honours have said would be dealt with in the
18 first trial.

19 And just so everyone is aware, the issues in the first trial are
20 historical background, administrative structures, communication
21 structures, military structures and the factual findings of the
22 Joint Criminal Enterprise, and at this stage it's limited to the
23 implementation of one of those policies, namely the forcible
24 transfer.

25 [11.11.56]

1 And I note that -- it was raised by my colleague earlier -- in
2 Severance Order, Your Honours have stated the Trial Chamber did
3 not exclude the possibility of adding additional charges or
4 counts to the first trial in phase two where circumstances
5 permit, but in relation to the documents raised by the Nuon Chea
6 team in questioning their relevance, they refer to a document
7 that related to the -- to S-21 and a document that related to the
8 Ministry of Social Affairs.

9 [11.12.25]

10 The way the CPK authorities communicated through to their
11 security apparatuses as to any other places is part of the
12 communication structure. It gives us an idea of how the
13 organization worked.

14 The fact that it's talking about the document is referring to a
15 security centre policy or security centres that relate to the
16 general policies of the CPK which is subject to the -- to this
17 first trial. There was an objection raised that, somehow or
18 another, if a document made reference to communication structures
19 or structures after the forced transfer, somehow or another, they
20 were not relevant.

21 As Your Honours are well aware, we look at structures before the
22 particular crime and we look at the structures after the
23 particular crime to try and determine what was that communication
24 structure, when that forcible transfer occurred. Your Honours,
25 that's why they're being put forward.

1 [11.13.35]

2 Particularly, in relation to the Ieng Sary defence, his main
3 objection, certainly, to this group of documents -- and it seems
4 to be to all of them - is: What is the relevance of all the
5 documents we've put forward?

6 We have stipulated that in our filings, nearly a year ago. It was
7 up to the Defence this week, Your Honours, to put forward to the
8 Chamber why our stipulation of relevance somehow wasn't valid,
9 why it wasn't prima facie valid, and that hasn't been done, Your
10 Honours.

11 And for us to go through every document in Annex 5 and -- Annex 1
12 to 5 again -- and read out the particular relevancy is really --
13 would be a ludicrous situation and not a good use of Court time.
14 We've established the relevance; it was up to the Defence to say
15 that we had got it wrong. And we would submit that -- because of
16 that detailed analysis that was provided to the Chamber -- that
17 in fact that, prima facie, the position put forward by the
18 Prosecution and the fact that it's being related to those areas
19 of the indictment in the first trial, Your Honours, should accept
20 that at face value.

21 [11.14.51]

22 The Nuon-- In terms of reliability, the Nuon Chea team keep
23 demanding for the originals of documents and say that if the
24 originals are not produced, none of these documents can be
25 admitted. Your Honours have recognized this fact that you've

1 ruled on this issue that originals are not required to be
2 produced before this Court.

3 And the decision that Your Honour's made is not alone; it's a
4 decision that's supported by the practice at international
5 tribunals. And the reason why it's supported is that, if
6 originals were brought before the court or had to be -- where
7 necessary for admissibility, for every single document in the
8 case, the case would never end. It's not a legal requirement. And
9 the fact that the Nuon Chea defence would like to see every
10 original in the courtroom is not your consideration. Your
11 consideration is do you believe there's a minimum number of
12 indicators to conclude that that document is reliable.

13 [11.16.00]

14 The Nuon Chea team today, particularly in relation to Annex 5,
15 and seemingly by the National Council, tended to expand this
16 objection to all of the documents from Annex 1 to 5 is that -- he
17 put forward the issue that, how do we not know that all of these
18 documents are manufactured? All of them, Annex 1 to 5.

19 And yet, at the same time, there's no factual basis that he puts
20 forward to give Your Honours a -- any doubt that what you see is
21 somehow manufactured. And yet, because of all of these documents
22 relate to documents that the Accused would have a familiarity
23 with because they were at the head of the CPK between 1975 to
24 1979, the Accused's statements -- we would expect that any one of
25 the counsel would come forward and say: Our clients state that

1 these statements are false. He didn't make those statements.

2 [11.17.07]

3 No one has said that. In relation to the CPK publications, none
4 of the defence have said that these publications are false. And
5 they would know. I mean, the Accused would know. And none of them
6 have said that.

7 Similarly, with the DK Communications, the meeting minutes and
8 the DK media public statements¹ as -- Your Honours, as we've put
9 forward earlier, the test is: Are the documents prima facie
10 relevant? We have put that relevancy in our document list, and
11 none of the Accused have shown that the documents are not
12 relevant.

13 And secondly, in relation to their reliability, I think it's
14 probably fair to say now, that -- listening to the presentations
15 of the prosecutors this week, that internally the documents are
16 consistent within themselves.

17 Nearly all of the groups show all the hallmarks of authentic
18 documents. And then, when you look at those documents and you
19 compare them to all of the other documents, all of the documents
20 are saying the same thing; they're reiterating the same policies;
21 they're reiterating the same roles and positions of the Accused.

22 [11.18.33]

23 It's very hard to find any document that's completely
24 inconsistent with the other body of documents. And the
25 Prosecution would be asking Your Honours to be looking at that,

1 the broad context of the documents rather than just one document
2 individually, because, under the international jurisprudence,
3 it's clear that to prove the chain of custody from discovery to
4 the courtroom, it is not required. It may well be the case in
5 other cases; we may hear this afternoon, from the Ieng Sary team,
6 what he did in his case at the ICTY.

7 [11.19.20]

8 And in many cases, witnesses will come before the Court to show a
9 chain of custody of certain documents, but not necessarily all of
10 them.

11 And Your Honours have decided, at --certainly at a request of the
12 Prosecution that we bring someone from DC-Cam; and Your Honours
13 have decided to do that on Monday. And Your Honours have decided
14 to call the telegram operators. Your Honours have decided to call
15 a person from the printing house to show that the "Revolutionary
16 Flags" are accurate. Not only have Your Honours decided to call
17 these people to assist in establishing the reliability but this
18 evidence, in fact, is already on the case file which is now
19 before you.

20 So the Prosecution's position is that there's enough indicia of
21 reliability even in relation to partial change of evidence on the
22 case file now to have them admitted now.

23 But in any event, if there was no chain of custody of many of
24 these documents -- as much as it is an interesting fact to find
25 out where they were discovered -- if there were no people around

1 to provide that chain of custody, it's still up to Your Honours
2 to decide: Do they have that minimum indicia of reliability?
3 And as we've discussed earlier, international courts -- and I'm
4 sure national courts as well -- they look at that internal
5 factors of the documents, of those internal characteristics, and
6 they look at those external characteristics, how they relate to
7 other events. Have other people said: Yes, that looks like the
8 type of document we produced? And when you weigh all those
9 conclusions up together, we would submit, certainly based on the
10 brief demonstration we put forward this week, that Your Honours
11 can find that minimum indicia of reliability is there.

12 [11.21.26]

13 I would just wonder how many documents that Your Honours may have
14 picked up, or the parties may have picked and applied-- Sorry,
15 Your Honour, I thought something was said.

16 But I just wonder how many documents in this case file and
17 certainly in the list the Prosecution has put forward have Your
18 Honours picked up, have the Defence picked up, have the
19 Prosecution picked up, or civil parties, and said: This document
20 looks like a fake to me, it just doesn't look genuine, it's
21 completely out of synchronization, or out of harmony with the
22 other types of documents.

23 I would submit -- and certainly it's the Prosecution's position
24 -- that every single document we have put forward is consistent
25 with that whole body of evidence, and we would submit that,

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1 despite what we've heard this week about -- we need this person,
2 and particular from the Nuon Chea team -- the documents cannot be
3 admitted unless Youk Chhang testifies.

4 [11.22.38]

5 That's not a legal test. They would just like to talk to Mr. Youk
6 Chhang in the courtroom. But it's not a legal test. And Your
7 Honours have decided already to call someone from DC-Cam, with 15
8 years experience. And, as Your Honours know, on our list, we put
9 Mr. Youk Chhang, as many -- as well as many other people that can
10 authenticate documents if necessary.

11 But our concern is-- If it's important to do that, it's important
12 to show some chain of evidence, we don't shy away from that fact,
13 but our concern is, is that if we go down the road of having to
14 prove the author of every document and show how that document was
15 discovered and passed through the many hands over the last 40
16 years, you're doing a lot more than you need to do, legally. And
17 it's taking Your Honours' minds away, or views away from the
18 evaluation of the evidence before you, and what does that really
19 mean.

20 [11.23.41]

21 And it's very clear, Your Honours, that the Prosecution -- and we
22 take great exception to the remarks of the national counsel of
23 Mr. Nuon Chea -- that somehow or another, the Prosecution doesn't
24 want to ascertain the truth in this case, somehow wants to
25 mislead you by producing copies of documents. That is not the

1 case, whatsoever. We have an ethical obligation. It's our duty to
2 make sure that the evidence that is put forward in this Court is
3 of a certain reliability, and of a certain relevance, so that
4 Your Honours can ascertain the truth. Ultimately, it's a question
5 for Your Honours, but that is our ethical obligation.
6 Our concern is, if the Prosecution are not allowed, as is put
7 forward by the Nuon Chea team, to put forward copies of
8 documents, then we will not be able to get to the end of this
9 case and we will not be able to put the facts of what happened,
10 in light of this indictment, to Your Honours.

11 [11.24.48]

12 And the problem we have is we're not putting the public's case
13 forward, just on the basis that someone wants to see an original.
14 We find it very strange to hear that an accused can only decide
15 on whether a copy is a copy of an original unless he sees the
16 original. Mr. Nuon Chea held the second highest position in the
17 CPK. I would be innately, intimately familiar with all these
18 documents. But he's saying: I can't accept it unless I see a
19 colour version rather than a black and white.
20 Your Honours, that is not the legal test of reliability. It's not
21 a requirement that the Prosecution or the Court has to have an
22 admission from the Accused that that document is reliable, that
23 it is what it's purported to be. Your Honours obviously can see
24 his views on any one of a number of documents, but it is not an
25 essential requirement that the Accused determines whether or not

1 a document is authenticate or not. He is, just like any other
2 person, able to provide evidence to that.

3 [11.26.12]

4 And the suggestion, Your Honours -- we completely disregard that
5 every document -- we have to show every document to Mr. Nuon Chea
6 in the courtroom before Your Honours can make a decision on
7 whether or not they're reliable. That is not an accepted
8 practice, and that is not required under the law. It would take
9 forever to do that.

10 There is an obligation, we would submit, Your Honours, on the
11 Nuon Chea defence team, to talk with their client. They are aware
12 that the documents that the Prosecution have been putting
13 forward. They are aware, particularly, of the documents we have
14 been putting forward since April 2011, and the fact that they
15 can't come to Court and say; our client thinks they're genuine or
16 our client thinks they're a fabrication -- it's -- that's their
17 responsibility, to communicate with their client. We would submit
18 -- it's not up to the Court to sit through an accused, one by
19 one, of those 4,500 documents, and have him read them in front of
20 us and determine whether or not should be admitted

21 [11.27.30]

22 That is not a criteria of admission. Your Honours, the test -- I
23 think it's clear -- between the teams, except for the Khieu
24 Samphan team, that the test for admissibility of documents -- you
25 know, in essence, under Rule 87 -- is it prima facie relevant,

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1 and is it prima facie reliable.
2 Yesterday, the defence counsel for Khieu Samphan stated that the
3 admissibility of a document has to be proved by the Prosecution
4 beyond all reasonable doubt. Your Honours, that is -- that is not
5 correct, that is not the law, and it's not the law for many, many
6 reasons. The Prosecution ought -- it doesn't even relate to the
7 Prosecution. The test for any party is not to prove the document
8 beyond reasonable, in terms of reliability. It's not to prove it
9 on the balance of probabilities. It's to prove it -- is it prima
10 facie what it purports to be.

11 [11.28.35]

12 And all that needs to happen is those indicators be highlighted
13 when necessary by Your Honours, because the term "prima facie"
14 means "on its face", "at first sight", "first impression". And we
15 would submit nothing has been put forward by the Defence in
16 substance that these documents that are being put forward are
17 not, on their face, what they purport to be -- nothing
18 substantial whatsoever. They have asked the Court-- They want
19 more, and they would continue to ask for more and more and more.
20 And Your Honours are calling some witnesses in relation to chain,
21 but the test is: Do those minimum indicators suffice?
22 We would not expect, Your Honours, the Defence to look at the
23 documents and relate to the Court the indicia of internal
24 reliability. We would not expect, Your Honours, the Defence to
25 look at how those documents are corroborated by all of the other

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1 documents, which the Prosecution has done this week by many, many
2 examples, because it's not in their client's interest to do so,
3 because that shows the indicia of reliability.

4 [11.29.49]

5 And when counsel for Ieng Sary -- when they say that the
6 Prosecution is not submitting to the Chamber, but the Prosecution
7 is giving evidence about the document, that's just simply not
8 true. The fact that the Prosecution is identifying those
9 consistencies in the document that you can see on their face,
10 those stamping, those marks, that syntax, the language, the
11 serial numbers, and the fact that the Prosecution is linking that
12 evidence to other documents in the case file that support that
13 fact -- We are not giving evidence, we are just highlighting to
14 Your Honours how that evidence supports each other.

15 [11.11.35]

16 Obviously, the reason why that objection was put forward, that
17 the Prosecution were giving evidence, because that establishes,
18 or that highlights or demonstrates those indicia of reliability.
19 Now that's what the Defence would not like to happen. That's what
20 the defence for Ieng Sary would not like to see, that comparative
21 analysis looking at the evidence together because that
22 establishes the indicia of reliability and then that means the
23 evidence is admitted.

24 But I must say, I think it's fair to say, in relation to the
25 counsel for -- counsel for Ieng Sary, they have reflected the

1 jurisprudence well in a sense that they put forward to the Court
2 two alternative arguments. On the one hand, they say the
3 documents -- the reliability of the documents haven't been
4 established, but then they say: Look, if Your Honours believe
5 that that indicia of reliability and relevance has been
6 established, then you should only give it limited weight.
7 And the position put forward by the Ieng Sary team is really the
8 position at the international courts, where the issue of its --
9 the threshold test of admissibility is significantly low, but
10 it's there -- on its face, is it reliable -- but it leads to a
11 presumption of admissibility in these courts. And in fact, if we
12 turn the issue on its head and if we look at what the Appeals
13 Chamber, at the International Criminal Tribunal for Rwanda, said
14 about this issue, it will highlight the low threshold and, in
15 fact, the very high threshold of -- for a document to be
16 inadmissible.

17 [11.32.37]

18 I refer, Your Honours, to the Rutaganda decision in the Appeals
19 Chamber, May 26 2003, at paragraph 266, where the Appeals Chamber
20 states probative value is separate from admissibility: "As the
21 Appeals Chamber has previously indicated, the threshold to be met
22 before ruling that evidence is inadmissible is high. It must be
23 shown that the evidence is so lacking in terms of the indicia of
24 reliability [...] to be devoid of any probative value.

25 [11.33.13]

1 "In the opinion of the Appeals Chamber, this should not be
2 interpreted to mean that definite proof of reliability is
3 necessary for the evidence to be admitted. According to the
4 Appeals Chamber, provisional proof of reliability on the basis of
5 sufficient indicia is enough at the admissibility stage."
6 So the law is, Your Honours, that Your Honours should get to see
7 all of the evidence. You should get to see it, particularly in
8 cases of this size that if you don't see the forest for the
9 trees, if you don't see the full matrix of the evidence, it will
10 be very difficult for you to determine whether or not these
11 Accused have the roles that the indictments said they did.
12 Whether or not these Accused were members of the joint criminal
13 enterprise, whether or not there were structures and
14 communication structures that allowed these Accused to
15 communicate with people that perpetrated the crimes.
16 And so, when the Nuon Chea team says: Your Honours, how does this
17 document relate to the forced transfer, that's not really the
18 issue. The issue is in a case of this size with leaders at the
19 level that they were, is how is the leader connected to the
20 commission of the crimes. The Prosecution have never said that
21 Khieu Samphan or Ieng Sary or Nuon Chea were out herding people
22 out of Phnom Penh, but through their subordinates, through their
23 influence, through their structure, through their decisions, they
24 made that happen.
25 [11.34.38]

1 And so, most of the documents you will see will not be talking
2 about the forced transfer but will be talking about how the
3 Accused is linked to the crimes. And that is a complicated
4 exercise and it's important that Your Honours have the full body
5 of evidence before you, because if we just present or put forward
6 two or three documents to say that Khieu Samphan had an
7 influential position or Ieng Sary an influential position, that
8 would not be enough. The Prosecution would not find that
9 acceptable in terms of proof beyond reasonable doubt of that
10 fact, unless you had a consistent body of evidence that all
11 points in the same direction that each of these Accused held high
12 level positions, each of these Accused communicated on these
13 criminal policies, and that each of these Accused had access to a
14 communication and an administrative structure that allowed them
15 or allowed their subordinates to commit the crimes, because proof
16 beyond reasonable doubt is another aspect or the critical aspect
17 that the Prosecution takes particularly seriously.

18 [11.36.07]

19 We would not come to this court if there was not enough evidence
20 and submit to you that we have proved this case beyond reasonable
21 doubt. But what we are saying to Your Honours, you must let the
22 case be heard because if the evidence doesn't come in, unless
23 somehow or another it seems to be significantly problematic or
24 fake or a fraud, which we haven't heard from any of the Defence,
25 then you will not be able to work out what in fact -- you would

1 not be able to work out your decision on this indictment because
2 you won't have enough.

3 Your Honours, at the beginning of the week, we talked about --
4 and I am concluding -- we talked about the importance of
5 documentary evidence. Documentary evidence is seen, particularly
6 contemporaneous documents as you've seen today, is seen
7 particularly important in any court and particularly
8 International Courts. Because it captures the intent of the
9 Accused; it captures the workings of the organization; it
10 captures the facts on the ground so that they can't fade over
11 time; it's recorded. People's memories can be good, but other
12 people's can fade, other interests can make testimony something a
13 little bit less than perhaps what it could be and there are a
14 number of factors of that and Your Honours are aware of that.
15 That's why the value of documentary evidence is very high
16 because, as my colleague says, it takes us back in time and tells
17 us how people were thinking, how people were acting, and how the
18 organization was working. And that doesn't fade over time.

19 [11.38.09]

20 In relation to this matter, one could say -- and I think it's
21 been put forward by the Ieng Sary team that-- How do we sort out?
22 How do I find the needle in the haystack? How do I find that
23 piece of evidence that really is important compared to all the
24 documents that have been given by the Prosecution? How do we know
25 what is significant? How do we know what's not?

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1 Your Honours, what-- Those 20 annexes is the case that the
2 Prosecution is putting forward to say proves the crimes in the
3 indictment.

4 The Prosecution says: There is not one bit of straw in those
5 lists, they are all needles. They are all needles that point in
6 one direction, to the guilt of the Accused, and those needles are
7 not a mess, Your Honour, they're not a - they're not a pile; they
8 have been organized in a filing cabinet, an electronic filing
9 cabinet, they have been organized by description, by type, by
10 date, by author, by document number, and they have been pointed
11 in the direction of every allegation in this indictment. There is
12 nothing obscure about the case. There is nothing massive about
13 the case. The documents are there, they are ordered, their
14 relevance is there, and their reliability is to be seen by
15 stepping back from one document and seeing the forest for the
16 trees.

17 [11.39.44]

18 Your Honours, lastly, just one word about duty, duty in this
19 trial. As it's absolutely clear, Your Honours have the duty to
20 ascertain the truth to this indictment. That duty is there, of
21 course, because it's a public duty, it's a public duty, it's a
22 duty to the victims and it's a duty to the Accused. It's
23 important that their voice is heard, but to stick blinkers on and
24 not look at the evidence because we don't have an original, or we
25 don't have an author, or we don't have something like this for

1 every piece of evidence is not fulfilling the duty, and it's not
2 applying the legal test.

3 [11.40.34]

4 And secondly, Your Honours, the other duty -- and I do want to
5 concentrate on this one last minute -- there is a duty to the
6 Accused, there is a duty to the Accused to make sure that only
7 allegations that have been proven beyond all reasonable doubt are
8 held against the Accused. And if they can't be, there should be
9 no conviction or no finding on that matter. But as much as it's a
10 duty to the victims to look at all the evidence, it's a duty to
11 the Accused. So that if you make a finding that Khieu Samphan, or
12 Ieng Sary, or Nuon Chea are responsible for this joint criminal
13 enterprise, it must be based on a consistent body of evidence. We
14 are not going to become -- we haven't come before this Court and
15 said: Your Honours, here's an admission, there's his guilt; or:
16 Here's five documents, there's the guilt. What we've brought to
17 Your Honours, through the Investigative Judges' file, is a
18 pattern of evidence, a consistent body of evidence on every
19 single issue. And we would submit that unless we do that, unless
20 we show that consistent body of those needles, unless we do that,
21 we're not fulfilling our duty, so to ensure that whatever
22 judgement Your Honours - Your Honours find is a correct one.

23 [11.42.00]

24 And so, Your Honours, I think what we've put forward had the
25 correct answer in the memo in terms of this hearing. Your Honours

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1 said that we would -- the inclination is to accept the evidence
2 and then determine its weight. That is the international
3 practice. And unless Your Honours have any serious doubts about
4 any one of these documents on the file, the test is they must be
5 admitted.

6 And of course Your Honours satisfy your minds by calling someone
7 from DC-Cam, telegram operators, people that were at the printing
8 house of "Revolutionary Flag".

9 But what we would ask Your Honours: if Your Honours admit all
10 five annexes, and then, subject to any evidence that comes up to
11 take away from what we believe your first impression is that the
12 documents are reliable, that unless something like that came up,
13 that the documents remain admitted. And if there's limited weight
14 to be attached because you have some doubts later, Your Honours
15 would just say: We attach little or no weight to that.

16 [11.43.11]

17 So we ask Your Honours to reject all of the Defence objections to
18 the documents and admit Annexes 1 to 5.

19 Unless you have any further questions, Your Honour--

20 MR. PRESIDENT:

21 The Defence, you may proceed.

22 MR. KONG SAM ONN:

23 Mr. President, I would like to ask for clarification from the
24 International Co-Prosecutor which he stated that the lawyers
25 shall indicate that the accused Ieng Sary and other Accused that

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1 they were not be part of the joint criminal enterprise. I would
2 like just to ask for clarification whether or not the
3 International Prosecutor make mention that expression because I
4 heard it through the translation in Khmer and I don't know
5 whether or not it was what the prosecutor said.

6 [11.44.21]

7 MR. PRESIDENT:

8 International Prosecutor, could you clarify -- clarify that?

9 MR. SMITH:

10 Thank you, Your Honour. I didn't get completely clearly what you
11 said, but certainly I didn't put forward that the Accused have
12 admitted that they were in a joint criminal enterprise. I'm not
13 sure if there was a translation issue.

14 [11.44.56]

15 MR. PRESIDENT:

16 If the defence for Khieu Samphan is not clear about what the
17 prosecutor -- prosecutor said in their submission, you may check
18 with the transcription because we have the transcription
19 available for your verification purpose. You can verify it with
20 the English and Khmer version.

21 Now, I hand over to the co-lead lawyers to submit your argument
22 on the objection raised by the Defence.

23 And you have 30 minutes for your oral arguments.

24 You may now proceed.

25 MS. SIMONNEAU-FORT:

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1 Thank you, Mr. President. We would like Mr. Hong Kimsuon to take
2 the floor first, and then I will take the floor after him. Thank
3 you.

4 MR. PRESIDENT:

5 Yes, that request is granted.

6 Mr. Hong Kimsuon, you may now proceed.

7 MR. HONG KIMSUON:

8 Thank you, Mr. President. My name is Hong Kimsuon. I am the
9 representative of civil party lawyers.

10 [11.46.36]

11 My oral arguments against the objection by the Defence.

12 First of all, I would like to make it clear, opposition, that we
13 strongly support what the Prosecution has made. Before this
14 Chamber, the Defence and the Prosecution as well as civil party
15 lawyers have raised various arguments, objections and responses
16 to the various annexes from 1 to 5. And I observed that there has
17 been similar arguments in relation to the admissibility of the
18 documents in Annexes 1 through 5, but now I would like to only
19 make my observation in relation to Annex 5.

20 [11.47.34]

21 This morning, I noted that the Nuon Chea defence team raised
22 their objections which are identical to their arguments raised in
23 Annexes 1 through 4. They insisted that the original documents be
24 presented, otherwise those documents shall be declared
25 inadmissible. In regarding the documents whether or not they were

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1 published by the GRUNK or FUNK, and they reiterated that they
2 considered those document inadmissible because those document
3 does not have its original, and in addition, they do not have any
4 signature thumbprint.

5 I would like to make it clear that the documents that this
6 Chamber has received through the Investigating Judges, rarely do
7 we see the thumbprint of the Accused. And even if the Accused's
8 name appears in those document, but often times we see the code
9 name of the Accused, for example Pol Pot used Brother Secretary
10 of the Party or so.

11 So my question is: What constitutes the original of the document?
12 Do all National Courts or International Courts require the
13 originals of every piece of evidence to be presented before the
14 court before those document is declared admissible?

15 Secondly, I observed that all the objections raised by the
16 Defence are the overall objection to those documents.

17 I give an example here. For example, one of the defence teams say
18 that certain documents are illegible; they cannot be seen clearly
19 on the screen. But I would like to ask the Defence to make clear
20 in that position as to which document they find inconsistent. And
21 I still hold the position that, if you look at the documents
22 available in the five annexes, if he demands for the original,
23 whether it be the photos, or the document, or films, do we
24 consider those documents original? Most of the times, those
25 documents have been copied, so the copy document submitted to

1 this Chamber, whether it come from the Prosecution, or from the
2 Defence, or civil parties, they shall be admissible.

3 [11.50.42]

4 Does the Chamber consider those documents as authentic or
5 official documents? If the Defence believe that those document
6 are not official document or the defence for Nuon Chea say it may
7 be the fabricated document by the enemies, then the Defence
8 themselves are suspicious of their argument. And I listened to
9 the argument raised by Mr. Karnavas. He mentioned that the
10 presentation of the documents before the Chamber is to have the
11 Chamber believe that those documents are incriminating evidences
12 against the Accused. So in his position, Mr. Karnavas insists
13 that in order to give probative value weight to those documents,
14 he maintains his position to object against those documents.
15 So, overall, the defence for Khieu Samphan, he also reiterate
16 that document contained in annex A5, more than 300 of such
17 document, he maintains his position to object against the
18 authenticity of those document and he demands that the original
19 document be presented before this Chamber.

20 So again, what I would like to respond is the issue regarding the
21 publication of the Democratic Kampuchea. Of course, there are
22 many, many such publication. It is not only confined to the
23 Democratic Kampuchea. Various other governments, of course, they
24 have produced sheer volumes of documents and media outlets in
25 foreign country also have reports of those governments.

1 [11.52.50]

2 As we have listened to the debate throughout this morning, the
3 report from the Democratic Kampuchea was not only available in
4 Cambodia but also elsewhere. So the report from the BBC or news
5 broadcast in Australia or the US, they also monitor the news
6 report in this country. So those report can be the documentary
7 evidence for the Chamber to consider before they render a
8 decision, and they will look into the internal consistency of
9 those reports and the various other reports or document put
10 before the Chamber.

11 [11.53.35]

12 I would also like to inform the Chamber that the various
13 publication issued during the Democratic Kampuchea; they actually
14 published the articles but when it comes to the application, they
15 did it differently. That draws the attention. The Defence insists
16 that the Prosecution demonstrate the authenticity or reliability
17 of the document beyond all reasonable doubts. So I would like to
18 ask a question. When we talk about the beyond reasonable doubt,
19 to what extent is it considered beyond reasonable doubt?
20 So the documents that have been copied and placed in the
21 electronic system available before the Defence and this Chamber,
22 the President has declared officially ready as Mr. Nuon Chea
23 demanded last week that the regional document be placed before
24 the Chamber and in certain occasion he said that certain
25 interviews he had with Mr. Khem Ngun he said it was not clear.

1 Actually he did not object against the existence of the interview
2 with Mr. Khem Ngun but he said that it may not reflect the true
3 interview he had with him and he was also alleged Mr. Khem Ngun
4 as a spy of the Prime Minister, Hun Sen.

5 So I would like to ask you, what is your standard requirement for
6 the authenticity of the document?

7 May it please the Court, I would like to mention that document in
8 our next A5, if the Defence insists that the original document be
9 presented, as Mr. President says, there are more than millions or
10 so pages of document. So we can put a simple question, how long
11 will it take to examine each and every piece of such document?

12 [11.55.55]

13 So I would like to once again ask the Defence to point to a
14 specific document as to which one is not acceptable and should
15 not be admitted as evidence.

16 And so far there has not been a clear indication as to how many
17 documents they wish to object in the five annexes submitted by
18 the Prosecution.

19 [11.56.27]

20 My esteemed colleagues of the -- on this table also presented the
21 argument already about the authenticity of those documents and if
22 we assess the Rule of Evidence at the Clause 321 of the Code of
23 Criminal Procedures and Rule 87 of the Internal Rules provides
24 that.

25 Article 321 provides that, unless provided otherwise, all

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1 evidence is admissible. The Court will examine the evidence put
2 before them in good faith. The Chamber decides based on the
3 evidence in the case file or as presented in the hearing.
4 So the President may order any individual to bring the evidence.
5 So I have listened to the arguments by all parties and the
6 Defence demanded that Chairman of the Documentation Centre of
7 Cambodia be summoned to testify before this Chamber. And if I
8 listened to the President instruction correctly, next week the
9 Chamber would summon the official from the Documentation Centre
10 of Cambodia to testify.

11 [11.58.18]

12 And if the Defence believe that there is only one person who can
13 prove the chain of custody of this evidence, I don't believe so.
14 There are people who can actually testify before this Chamber.
15 So, as instructed by the Chamber, next week there will be
16 witnesses testifying, those various documents. But not every
17 single piece of evidence can be testified by the witnesses.
18 And once again, all the documents in the list of the Prosecution
19 are not always admissible, but it does not necessarily mean that
20 all of those documents are inadmissible either.
21 So I would once again suggest that the Chamber consider those
22 evidence admissible for your decision at a later stage. Thank
23 you.

24 [11.59.33]

25 MR. PRESIDENT:

1 Thank you.

2 Now I would like to give the floor to the Lead Co-Lawyer.

3 MS. SIMONNEAU-FORT:

4 Thank you very much. Good morning, Mr. President. Good morning,

5 Your Honours. Good morning to everyone present at today's

6 proceedings.

7 Now, if I have understood correctly, Mr. Co-Prosecutor has

8 explained to us exactly what constitutes Annex 5, which documents

9 all of the evils of the DK regime. They are press clippings, they

10 are contemporaneous documents in which confirm the existence of

11 those events and facts according to Ieng Sary. Their objections

12 to Annex 5 are the same as their objections to all of the other

13 categories of documents including the documents that were

14 produced by their objections to Annex 5 are the same as their

15 objections to all of the other categories of documents, including

16 the documents that were produced by Ms. Elizabeth Becker.

17 [12.00.35]

18 The objections that we have heard for the last four days have

19 been very general. Obviously, the documents in Annex 5 cannot be

20 studied based solely on those objections. Quite frequently, the

21 Chamber has notified all parties that it is futile to make

22 repetitious motions and objections. I believe that the Defence

23 has in fact abused its discretion by repeating its objections for

24 the last four days.

25 It is our view that, upon examination of Annex 5, we have heard

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1 for the sixth time the Defence's very general objections by
2 proceeding in such a way -- that is, to object almost
3 free-willingly and blindly.

4 The Defence is doing a number of things. Firstly, it is outright
5 neglecting and ignoring the Internal Rules and ignoring the
6 directives contained in E3. The Defence is ignoring the Cambodian
7 Criminal Code of Procedure. The Defence is ignoring international
8 jurisprudence that it only cites when it suits it. It is ignoring
9 international jurisprudence when they cite that the Defence is
10 not able to take advantage of the absolute right of
11 confrontation.

12 [12.02.43]

13 When the Defence does not enjoy the absolute right to look at
14 the originals of documents, the Defence is ignoring jurisprudence
15 that has already been cited in Annex 1, which clearly indicates
16 that the Judges enjoy discretionary power.

17 You, Your Honours, must also consider the decisions taken by the
18 Co-Investigating Judges. The Defence are ignoring what the
19 Co-Prosecutors, day after day, have detailed for us in very
20 meticulous fashion, the principles that they have applied in
21 admitting evidence which they have done so on an ongoing basis
22 for the last several months and years.

23 MR. PRESIDENT:

24 (No interpretation) -- counsel is on his feet.

25 [12.04.03]

1 MR. SON ARUN:

2 I would like to object against a word used by the civil party
3 Lead Co-Lawyer. I do not -- I would not accept the word
4 "desperate" to describe the Defence. It is actually the strategy
5 of the Defence, a party in the proceeding.

6 MR. PRESIDENT:

7 Lead Co-Lawyer, you may proceed.

8 I think the problem stems from the use of words in the
9 translation. I think that the Lead Co-Lawyer has not used any
10 words that is amounting to the word "desperate". Because in Khmer
11 -- the translation in Khmer, this word is not an appropriate word
12 in the context of the Court. But I would like to remind lawyers
13 as well as parties of the use of terms, because it may be
14 amounting contempting others. Thank you.

15 [12.05.27]

16 MS. SIMONNEAU-FORT:

17 Indeed, Mr. President, I do confirm that I did not use the word
18 "desperate". I would not permit myself to use such a term. I
19 believe perhaps it was a misinterpretation of the word
20 "stubborn".

21 If I may, I wish to continue my remarks, and they will be very
22 brief.

23 By raising constant objections, the Defence has been not taking
24 into consideration the very detailed elements that the
25 Co-Prosecutors have presented before you with respect to each

1 annex. The Defence have been even flouting the written records of
2 witness interviews by challenging the -- these documents as
3 though they were not official documents of the Co-Investigating
4 Judges if they were not part of the proceedings, if they were not
5 confirmed by the Closing Order.

6 [12.06.48]

7 I refer here to the written record of interview of Mr. Youk
8 Chhang, D59 (sic) and D204/3. Based on my recollection, I don't
9 believe one single request to re-interview this gentleman was
10 made in appropriate fashion.

11 The Defence is also flouting the role of the Co-Investigating
12 Judges, and the Defence has wasted much of our time dwelling on
13 the decision of the Extraordinary Chambers to try and have you
14 believe that these same issues have already been dealt with. It's
15 as though the Defence wishes to make the same claims and, for
16 example, by citing the pre-trial decision of D243/1/4 (sic),
17 which concerns DC-Cam documents.

18 [12.08.20]

19 In paragraph 25, the Pre-Trial Chamber specifies that during the
20 preliminary stage the Co-Investigating Judges have the power to
21 make a determination on the credibility and reliability of a
22 document. The PTC had, in fact, recalled to the Defence that
23 during the investigative phase the Co-Investigating Judges have a
24 certain number of duties to fulfil.

25 They are not obliged to provide details or clarifications

1 concerning the gathering of evidence when such exhibits come from
2 specific sources.

3 I cite this because it is not permitted for the Defence to
4 proceed in the way that they have proceeded for the last week
5 without taking into account the answers and decisions that have
6 already come out.

7 [12.09.37]

8 To conclude, I believe that this repetitious raising of
9 objections to Annexes 1 to 5 has at least one virtue.

10 Firstly, the Defence, little by little, has been forced to take
11 an almost absurd strategy by objecting constantly, just as the
12 Co-Prosecutor raised earlier.

13 This morning, Khieu Samphan told us that: Why not consider all
14 documents as being a forgery? Not only is this absurd, it's
15 shocking.

16 [12.10.30]

17 The second virtue of their repetitious objections, the Defence
18 seems to have convinced itself that we are no longer discussing
19 the matter of admissibility but, in fact, we're discussing the
20 issue of probative value.

21 [12.10.57]

22 Time and time again, the Defence has said the Chamber will have
23 to examine this once it assesses probative value and, once again,
24 this morning Ieng Sary was much clearer. They said that the
25 Co-Prosecutors had the duty to establish probative value and went

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1 on to further state that the Chamber had to make a wholesale
2 assessment on admissibility and probative value as if they were
3 one and the same.

4 Our discussion on admissibility has been concluded. I believe
5 that we can move on to the next issue.

6 And on that, Your Honours, I conclude, and I thank you for your
7 attention.

8 MR. PRESIDENT:

9 It is now time to adjourn for lunch.

10 But before we break for lunch, we would like to get confirmation
11 from the party as to the estimate of time for each party to put
12 questions to Nuon Chea for the first segment of hearing on the
13 history of the Communist Party of Kampuchea.

14 [12.12.45]

15 And parties have indicated that they are -- the Chamber wishes to
16 advise the parties that they have one half-day to put questions
17 to Nuon Chea, but we also want to get the sense of estimation of
18 time by parties so that the Chamber can determine the schedule
19 for the hearing so as to ensure that we have the expeditious
20 proceeding.

21 We do not want to get your response now, but before our
22 conclusion this afternoon, we hope to receive the indication of
23 the estimation of time needed to put questions to Nuon Chea from
24 all parties.

25 Now it is appropriate to take lunch adjournment.

1 JUDGE FENZ:

2 I believe there was a problem with the English translation.

3 When the President referred to the half day, he actually referred
4 to an indication already given by the prosecutors as to what time
5 they still need to conclude their questioning, so the Chamber is
6 open for estimates. The half day was repeating the Prosecution's
7 estimate.

8 [12.14.22]

9 MR. PRESIDENT:

10 The security guards are now instructed to bring Mr. Khieu Samphan
11 to the holding cells downstairs and bring him back to the
12 courtroom before 1.30.

13 The Court is now adjourned.

14 (Court recessed from 1215H to 1331H)

15 MR. PRESIDENT:

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

17 For this afternoon's session, the three defence teams have a
18 combined time of one hour to reply in relation to all objections
19 relevant to A1 through A5 categories.

20 Before the lunch break, the Chamber inquired from the Lead
21 Co-Lawyers and the three defence teams on the questioning time
22 for Nuon Chea in relation to Phase 1 -- that is, on the
23 historical backgrounds of CPK.

24 The Chamber wishes now to ask the Lead Co-Lawyers of the time
25 they estimate.

1 MR. PICH ANG:

2 Mr. President, we need a total time allocation of four hours.

3 MR. PRESIDENT:

4 Thank you.

5 What about Nuon Chea's defence; how much time do you anticipate?

6 [13.33.50]

7 MR. PESTMAN:

8 Your Honour, I assume that we will not need more than one day;

9 one day maximum, probably less.

10 And I was wondering whether I understood correctly that we will

11 be allowed to question our client last, after the other defence

12 teams? That would be -- in any case, that would be our request,

13 to be allowed to go last.

14 MR. PRESIDENT:

15 Thank you, Defence Counsel.

16 What about Ieng Sary's defence team?

17 MR. KARNAVAS:

18 Good afternoon, Mr. President. As of this moment, the decision

19 has not been made as to whether any questions would be posed --

20 would be put to Nuon Chea. However, if we did decide to put

21 questions, we would -- I would speculate that we would need no

22 more than 45 minutes to an hour. But at this time no decisions

23 have been made.

24 [13.35.10]

25 MR. PRESIDENT:

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1 Thank you, Defence Counsel.

2 And what about Khieu Samphan's defence team?

3 MR. KONG SAM ONN:

4 Thank you, Mr. President. As we do not know all the details, it
5 is difficult for us to anticipate the time. I submit roughly we
6 need between 45 minutes to one hour. Thank you.

7 MR. PRESIDENT:

8 Thank you.

9 I notice the defence team is on his feet. You may proceed.

10 [13.36.09]

11 MR. PESTMAN:

12 I now realize that my answer may have been ambiguous. I said "one
13 day". I meant an entire day, so two half days, not just one half
14 day.

15 MR. PRESIDENT:

16 Thank you, Defence Counsel.

17 We now hand over to Nuon Chea's defence to make a combined reply
18 to all the objections raised relevant to A1 to A5 categories of
19 the annex.

20 You have 20 minutes to make this presentation.

21 MR. IANUZZI:

22 Thank you, Your Honour. Good afternoon. I'll begin for our team.

23 I don't expect that I'll take more five to 10 minutes. I'll give

24 the balance of the time to my colleague, Mr. Son Arun, and if

25 there is any time remaining, of course we'd be happy to donate it

1 to our friends down the line.

2 [13.37.29]

3 I won't repeat the specific positions and arguments we've made
4 all week. I will just make three brief points.

5 Number one, with respect to our approach, it has been suggested
6 by our colleagues across the stage that we have spent far too
7 much time this week discussing the weight and the probative value
8 to be attached to potential evidence in the case. That is as
9 opposed to strictly the mere admissibility of such material.

10 However, we submit that this week's discussion and debate as to
11 how to handle, manage and assess evidence once it's been admitted
12 has been instructive and fruitful and we submit that the general
13 approach we articulated on Monday strikes an equitable balance
14 among the various interests of the parties to this case and,
15 indeed, it is consistent with Cambodian law, with common sense
16 and, most importantly, with Nuon Chea's fundamental right to
17 challenge the evidence presented against him. Naturally, of
18 course, that latter issue is our paramount concern.

19 [13.38.38]

20 The second point goes to the volume and the nature of the
21 documents submitted to date by the Co-Prosecutors, and on that
22 point, again, we rest on the submissions my colleague made this
23 morning, Michiel Pestman. We do note now that precisely what is
24 not needed in this case -- what is not needed -- is a detailed
25 historical tour of Democratic Kampuchea. We acknowledge the

1 International Co-Prosecutor's comments this morning regarding his
2 sewing kit. We're quite familiar with those needles; we've been
3 handling them for four years, and, indeed, our hands are well
4 scarred.

5 [13.39.14]

6 However, we do submit, we do submit that what is needed in these
7 proceedings are far fewer needles and much more thread. The
8 thread, of course, of this first mini trial is the alleged
9 evacuation of Phnom Penh and the subsequent population transfer
10 from the south of the country to the north in 1975 and 1976.

11 According to this Chamber's decision to sever the case, little
12 else is now relevant. And again, according to that decision to
13 sever, this Chamber and the parties should adhere closely,
14 strictly, rigorously to that central thread.

15 Our client, Nuon Chea, has already discussed his position with
16 respect to the evacuation of Phnom Penh. He will, as we stated,
17 in due course, discuss with equal candour his role with respect
18 to the second phase of the evacuation -- of the population
19 transfer, pardon me.

20 [13.40.13]

21 We do submit that the Co-Prosecutors need do little else in this
22 case from establishing that Nuon Chea's actions with respect to
23 those two discrete issues were not justified under international
24 law. And again, that, that is the thread of this case.

25 To date, none of the documents presented appear to be of any

1 relevance to this central question.

2 And in this regard, I would just note that the photographs of
3 Lenin and Stalin are no more relevant than the recordings of
4 Lennon and McCartney. Accordingly, we urge the Chamber to
5 strictly limit the number of documents admitted to those of
6 precise relevance, precise relevance to the limited issues at
7 stake in this trial, this first mini trial.

8 And finally a few more words about Mr. Youk Chhang.

9 We have submitted previously and publicly that a Khmer Rouge
10 trial without the participation of Norodom Sihanouk would be
11 unthinkable. Today, we now submit that that same sentiment
12 applies to Mr. Youk Chhang. Without his personal efforts, there
13 simply would never have been an ECCC. Youk Chhang is, quite
14 simply, the best man for the job of coming into Court and
15 discussing the DC-Cam documents.

16 [13.41.32]

17 We therefore urge the Chamber to hear him as a witness and we
18 equally urge him to grace us with his presence.

19 That's all I have. Thank you.

20 MR. SON ARUN:

21 Once again, good afternoon, Mr. President, Your Honours.

22 I would need about 10 minutes to make my final reply.

23 [13.42.17]

24 I'd like to reiterate on two points. I'd like to clarify that
25 Nuon Chea only requests to see the original copies of the

1 "Revolutionary Flag" and "Revolutionary Youth" magazines, not all
2 the other thousand documents as stated by the Prosecution.

3 And number two, for the documents that I stated yesterday -- that
4 is, those 17 documents which are illegible or could not be
5 figured out what they meant -- and I only requested the
6 permission from the Chamber to project on the screen only two
7 documents.

8 I submit Nuon Chea's defence still maintained our position to
9 present the original documents in order to verify its
10 authenticity and not to delay the proceedings, but to ascertain
11 the truth and to find the justice.

12 [13.43.47]

13 As a matter of fact, Mr. Nuon Chea would like an expeditious
14 trial. However, the trial must be fair -- that is, the evidence
15 used in the Court must be put through the debate on its
16 authenticity and we cannot ignore this factor and just to proceed
17 with expeditious trial in order just to try my client. Justice is
18 for all the parties, and not just for one party.

19 We have heard clearly the position of Mr. Nuon Chea in his recent
20 opening statement and the interview of Mr. Chhang Youk in
21 document D204/4 states that the Vietnamese experts provided
22 through the DC-Cam of -- a number of documents. And to us and to
23 Mr. Nuon Chea, he still has doubt over those documents, as
24 Vietnamese people still planned to control Cambodia before,
25 during and after 1979.

1 For that reason, it is possible that the documents could have
2 been fabricated.

3 Once again, Mr. President, only Mr. Chhang Youk and a few other
4 people who have been requested by my defence team to be summoned
5 by Your Honour to appear before this Court to provide testimony
6 on the authenticity and the original copies of those documents so
7 that Mr. Nuon Chea, my client, can respond to all the questions
8 before Your Honour as well as to explain to all Cambodian people
9 and to the world as he had explained to many people during the
10 interviews on this very same topic.

11 [13.46.33]

12 As a co-defence counsel for Mr. Nuon Chea, I appeal to Your
13 Honours and to the Bench for a fair and just trial of the former
14 Khmer Rouge that, number one, that Prosecution must provide to
15 Mr. Nuon any testimony so that he can provide his rebuttal
16 remark. That is for its authenticity and for the interests of the
17 Court.

18 And, number two, the Bench shall adjudicated the case fairly and
19 justly for the history of Cambodia either at present or in the
20 future so that it can act as a model for domestic and
21 international court and to reject any allegation without any
22 written evidence in its original form as we repeatedly appealed
23 to the Chamber and to the Prosecution.

24 I am grateful, Your Honour.

25 MR. PRESIDENT:

1 Thank you, Defence Counsel.

2 I now hand over to Ieng Sary's defence.

3 [13.47.59]

4 MR. KARNAVAS:

5 Good afternoon, Mr. President. Good afternoon, Your Honours. And
6 good afternoon to everyone in and around the courtroom. I would

7 like to begin this afternoon by picking up where the civil party

8 left off. She accused us of being absurd and abusing the process.

9 I find her characterization of what we have been attempting to do
10 insulting and unwarranted. Let's step back and ask ourselves: Why
11 are we here? And how did we get here?

12 It was the Prosecution that had suggested that a hearing be held
13 at some point, and this suggestion came prior to our break. Then,
14 on December 23rd, the Prosecution send us a courtesy copy, a
15 courtesy copy, of its 92 submission regarding the admissibility
16 and reliability of 978 documents.

17 [13.49.11]

18 Why they waited until everybody was out of town two days before
19 Christmas, who knows? But, nonetheless, they did provide us with
20 a rather comprehensive document which spells out at least what
21 they believe is indicia -- what they believe.

22 They don't connect all the dots, but what we did see on the 17th
23 of January, we did see a demonstration by the Prosecution where
24 they took several documents and they were demonstrating how the
25 documents are inter-connected and how one can view that.

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1 And let me be up front about it; we are grateful. We are grateful
2 to the Prosecution for having shared with us their methodology
3 and how they're going to go about in demonstrating that the
4 documents are authentic, reliable and relevant.

5 [13.50.20]

6 Our principal objection -- our principal objection, if I can say
7 that with some confidence -- is that the Prosecution wants
8 everything admitted now, admitted, weighed at the end, after
9 you've had an opportunity to hear some evidence.

10 It matters not whether all of the documents will be shown to
11 witnesses; it matters not whether we will be able to connect the
12 dots or establish foundation for all of the documents because
13 it's in the case file and because it's now in -- and then from
14 the case file into the Closing Order. It's all fair game. There's
15 no need for you to do anything at this stage. Fair enough; that's
16 their position.

17 Where I take exception with the Prosecution, however, is where
18 they say this is the international practice.

19 [13.51.26]

20 Now, I will agree that there are certain international standards
21 on the admissibility of evidence, how one goes about in
22 determining whether evidence is reliable, relevant, authentic,
23 and what have you, but when we're talking about the practice, it
24 was the Prosecution -- not the Defence -- that raised the Prlic
25 Case. It is the Prosecution that are inviting you to look at that

1 particular case.

2 And having spent five years trying that case, I will take some
3 time to make some remarks on the case and also to go through a
4 series of decisions so you will see how the practice was in that
5 case, keeping in mind that I am very mindful of the fact that we
6 are in a different procedure here.

7 We have the French system that has been somewhat modified for
8 this Extraordinary Chambers, and so it is different. It is not
9 adversarial, party driven, but nonetheless, it is the Prosecution
10 that are claiming that this is the practice.

11 [13.52.34]

12 And by that, the Prosecution is suggesting that all they need to
13 do is give you -- provide you with a list of documents and it
14 automatically comes in. And then it comes out only if there's
15 some showing that the documents are not relevant or reliable.
16 And let me be clear. Admission of a document is not necessary to
17 show a document and to put a document before a witness, so I want
18 to be clear on that. We're not suggesting, never have, never
19 will, that a document has to actually be admitted, that is, that
20 you have to establish the authenticity, reliability before you
21 can even show it to a witness to elicit testimony.

22 In fact, sometimes it's almost -- it's just as important to show
23 it to a witness in order to establish the authenticity,
24 reliability and relevance.

25 So we have never claimed and never suggested and never argued

1 that one has to establish authenticity before they could actually
2 show it to the witness. I hope that point is clear.

3 [13.53.57]

4 We take exception to the Prosecution's position, and this is
5 something that we believe we are entitled to, and we mentioned
6 this earlier, based on a decision that was made by the Pre-Trial
7 Chamber, that it said, on paragraph 34 of a decision on the
8 admissibility of Ieng Sary's appeal against the OCIJ,
9 constructive denial of Ieng Sary's request concerning the OCIJ's
10 identification and reliance on evidence obtained through torture,
11 D130/7/3/5, paragraph 34 -- it's a decision of 10 May 2010: "The
12 Pre-Trial Chamber further observes that Internal Rule 87 also
13 gives the charged person the possibility to object to the
14 admissibility of evidence during the trial."

15 [13.55.00]

16 So we're not being absurd and we're not abusing the process. We
17 were invited to this hearing and we are participating.

18 And as we can see from the Pre-Trial Chamber's interpretation of
19 the Rules, we are entitled to challenge admissibility before the
20 evidence actually gets -- is admitted.

21 So let me look at -- let's look at the Prlic Case a little bit.

22 And by the way, Your Honours, just so you have an inkling, just
23 so you have an inkling in that case, we did a cursory review just
24 to pick out some of the more important decisions. There were well
25 over 60 decisions that we readily found -- I would suggest, from

1 memory, closer to 100 -- actual decisions on admissibility of
2 evidence.

3 Now, why was that? Because of the process that was put in place.
4 And it wasn't by happenstance.

5 [13.56.05]

6 The parties were initially invited on March 15th to comment on
7 draft guidelines that the Trial Chamber had proposed on 1 March
8 2006. So, March 15th 2006, we -- the parties, including the
9 Prosecution, provided comments to draft guidelines.

10 And the Prlic Case, for the record, is IT/07-74-PT.

11 Based on these draft guidelines, the Trial Chamber then issued a
12 decision adopting the guidelines, and they were general in
13 nature. This was to assist the parties as to how time would be
14 allocated, the questioning of the witnesses and so on and so
15 forth. This was a time management tool.

16 [13.57.03]

17 On 28 April 2006, it issued a revised version of the decision
18 adopting guidelines on conduct of trial proceedings, and in that
19 particular decision, the concept of parties submitting dossier to
20 the trial was raised. And by that, the Trial Chamber was inviting
21 the parties to submit dossiers concerning various parts of the
22 indictment, so for instance, if there was a particular crime that
23 had occurred in a particular place at a particular time, the
24 parties could certainly propose a dossier with all of the
25 documents.

1 And on paragraph 11 of this decision, just to give you a flavour,
2 Your Honours, it said:
3 "Should the Prosecution or the Defence wish to provide the
4 Chamber with a dossier relating to a particular geographic
5 location in the indictment where crimes are alleged to have been
6 committed, it may do so. A list of proposed items to be included
7 in the dossier may be submitted at any time during the trial.
8 However, these proposed items will be subject to the normal
9 procedure for admission of evidence; therefore, in order to
10 ensure that a dossier only contains items admitted as evidence,
11 it should not include proposed witness evidence or exhibits until
12 after the evidence has been tendered and admitted by the
13 Chamber."

14 [13.59.03]

15 That's something important, and we'll get to it in a moment, for
16 you to appreciate the procedure that was used. And I apologize
17 for taking this time to litigate -- to go over what was done in
18 another case, but for illustrative purposes. It was a very large
19 case, not too -- somewhat similar in size with this case.
20 On 13 July 2006, the Trial Chamber issued a decision on admission
21 of evidence.

22 [13.59.38]

23 In this particular decision on page 2, it notes that it was
24 seized of "Prosecution's submission on the admission of
25 documentary evidence" motion filed by the Office of the

1 Prosecution on 15 June 2006 in which the Prosecution requests the
2 Chamber to admit various documents from the European Community
3 Monitoring Mission, the ECMM, into evidence.

4 So there was a mission on the ground that had gathered evidence,
5 and now the Prosecution was attempting to admit all of it on the
6 basis, primarily, that it came from a particular institution.

7 [14.00.21]

8 In this particular decision, the Trial Chamber indicated various
9 things; I won't belabour all of them, but I do invite the Trial
10 Chamber to look at this particular decision and we can provide
11 them to Your Honours if that would be more convenient. But what
12 is -- what I believe is relevant, on page 6, for instance, it
13 notes:

14 "Whereas, in the instant case, the Appeals Chamber noted the
15 importance of Rule 90(F), and held that the Trial Chamber has
16 broad discretionary power to enforce the Rule -- very similar to
17 what you have;

18 "Whereas, additionally, the Appeals Chamber further recognised
19 the legitimate purpose of ensuring that the proceedings are not
20 unduly delayed and that the trial is completed in a reasonable
21 time -- just as you have noted;

22 "Whereas the list of exhibits submitted by the Prosecution
23 pursuant to Rule 65 ter (E)(iii) of the Rules already contains
24 9490 exhibits;

25 "Whereas it appears the Prosecution seeks to tender most of this

1 documentary evidence without prior discussion in court;--"

2 I'm pausing so we can fully appreciate what was attempted to be
3 done in that case. "Without prior discussion in court"; that's
4 what they were trying to do. And by "discussion", they meant
5 putting it -- putting it before a witness.

6 [14.02.15]

7 "Whereas the admission of several thousand documents without
8 prior discussions over them in court may unduly delay the
9 proceedings, to the extent that the Chamber would not have the
10 benefit of explanations from a witness who could help to put
11 these documents in their context and establish their relevance
12 and probative value;

13 "Whereas the Chamber would therefore be required to spend much of
14 its resources examining and assessing thousands of documents,
15 which could take several months and would delay the pronouncement
16 of the Judgment;--"

17 I'll skip one of the "whereas". Then it goes on:

18 "Whereas, the Defence could be disadvantaged if it were forced to
19 use the limited time allocated for its cross-examinations to
20 present and discuss at trial, for the first time, Prosecution
21 documents of which it challenges the reliability or probative
22 value;

23 "Whereas the Prosecution therefore has a duty to make a choice
24 and identify those documents which are strictly necessary for the
25 determination of points in issue, and present those documents to

1 a witness who is able to provide the Chamber information in court
2 about the authenticity, relevance, and probative value of such
3 documents;--"

4 [14.04.07]

5 And then it talks about "the interests of justice", and then it
6 says - "hereby defers" to a ruling and requests that the
7 documents can come in through witness Christopher Beese, who
8 indeed came and testified.

9 In other words, rather than try to have all these documents come
10 in without anybody and without the benefit of how they were
11 generated -- in which manner -- the Trial Chamber wished to have
12 a particular witness come -- one or more -- to give evidence.

13 Attached to this decision -- attached to this decision, Your
14 Honours, is something that's -- that became terribly important
15 for the rest of the trial; guidelines for the admission of
16 evidence. So attached to the decision, they provided guidelines.

17 [14.05.05]

18 This was a case that was scheduled to take two years and it took
19 five years to try.

20 Guideline number six -- and this is the -- these are the
21 guidelines for the Prosecution. They would later -- and we'll go
22 through them -- issue guidelines for the Defence which were --
23 which mirrored, with some slight differences, but guideline
24 number six deals with the issue that we're dealing here today.

25 "Subject to the following conditions, the Prosecution may after

1 the testimony of a witness and within eight days of his or her
2 appearance before the Chamber request the Chamber, by way of
3 written notice, to admit documents which were not put before the
4 witness in Court and in which the witness could have testified."

5 [14.06.02]

6 In other words, with each witness, you might have a certain
7 amount of documents that you wanted to present to that witness.
8 Because of time constraints, you could only go through maybe
9 one-third of those documents; the other documents, you could move
10 to have admitted by way of motion having demonstrated certain
11 criteria such as reference to the relevant paragraph in the
12 indictment, reference to the witness and documents dealing with
13 the same paragraphs in the indictment, reasons why the document
14 was not presented to the witness, reasons why the document could
15 not be presented to another witness; so in other words, if
16 there's another witness that you can get this document in, then
17 it's your obligation to do so through that witness, and reasons
18 the party consider the document essential.

19 [14.07.00]

20 Now, I should note -- I should note, Your Honours, that, at the
21 conclusion of the Prosecution's case, just as at the conclusion
22 of the Defence case -- because there were six accused -- the
23 parties were afforded the opportunity to then move for the
24 admission of thousands of documents that they thought were
25 relevant, but could not be admitted through any particular

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1 witness.

2 Both sides attempted to introduce thousands of documents.

3 Hundreds, if not thousands, were accepted; thousands were
4 rejected.

5 So let me -- let me explain the process then because they're
6 talking about the practice. This is the practice; not to have
7 everything admitted and then screen it, but rather, as you go
8 along, you put it to the witness. Some documents, you may not be
9 able to get through witnesses so you can then move to have those
10 documents admitted based on the testimony; the foundation that
11 that witness had laid. Of course, if you could put it through
12 another witness, you were encouraged to do so.

13 [14.08.12]

14 If at the end of your -- the witnesses, in this particular area;
15 let's say the historical background, you had a thousand or 500
16 documents that you could not put to the witnesses because they
17 were either not selected or you didn't have the time; you would
18 then move for the admission of those documents.

19 The benefit, of course, for the Trial Chamber was that they had
20 heard certain evidence, certain foundation and from there they
21 could make a determination, but they did not stop just there. At
22 the end of your case, you could still move for the admission of
23 documents because by that point, the Trial Chamber had much more
24 historical context as to the importance of the documents. And, of
25 course, relevance and weight was always going to be something to

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1 be decided by the Trial Chamber at the conclusion.

2 [14.09.08]

3 Another document that it may be worth noting, Your Honours, is on
4 13 December 2006, decision on the admission into record of
5 documents presented at the hearing. And here, the Trial Chamber
6 lays out some modalities. As I was talking -- as I was earlier
7 saying, you have to pose the documents to the witness. At the
8 conclusion -- once the witness left, the parties were obligated
9 to actually make a filing -- a filing of the documents they
10 wished to have admitted so that there would be a filed record.
11 The parties -- the opposing parties had one day to object. There
12 was an opportunity to reply and then there was a reasoned
13 decision concerning why documents were admitted or denied. That
14 was the process.

15 So when we're talking about practices, this was the practice in
16 Prlic. As I said, at some point, the defence was given an --
17 given guidelines; this was in 24 April 2008 and I'm merely
18 mentioning it so Your Honours can look at this if you wish.

19 [14.10.39]

20 I want to share, also, one decision that was made on 3 November
21 2009; this was an appeal that we had lodged on behalf of Dr.
22 Jadranko Prlic when the Trial Chamber failed to admit -- refused
23 to admit -- certain evidence which we felt should have been
24 admitted. In this decision, which overturned the Trial Chamber's
25 decision -- which was a pretty high hurdle to overcome -- the

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1 Appeals Chamber found that the standard used by the Trial
2 Chamber, in this particular instance, with these documents that
3 we were attempting to present, the standard was a higher one. In
4 other words, the Trial Chamber was employing a double standard;
5 lower standard for the Prosecution, higher for the Defence.
6 I point this out merely for illustrative purposes. There was no
7 automatic admission. You have to fight for the admission of
8 documents. I'm not suggesting that it has to be something beyond
9 what is called for by the rules, but I am suggesting that it's
10 not an automatic admission to everything and then sort it out
11 later on, especially in a case where it's heavily document
12 oriented.

13 [14.12.04]

14 So much for Prlic. Our position, Your Honours, has been pretty
15 much consistent throughout. Throughout, we have maintained that
16 before admitting a piece of evidence, the Prosecution has to
17 provide some indicia. We have seen that they're capable of doing
18 that. We're seeing, so far, that they're capable of showing and
19 sharing with us how they intend to connect the dots for all of
20 us. We suggest that they be required to do so as the trial
21 progresses. We do not agree with this notion that you should
22 accept everything. If the Trial Chamber is of the opinion that
23 because of the unique nature of this particular tribunal, it can
24 admit all of the evidence on the sheer testimony of the
25 Prosecution -- and I do call it testimony because it wasn't just

1 descriptive, here is a logo, here is a day and look how these two
2 documents look alike; there was also a commentary and it's the
3 commentary that I object to. The commentary is what gives the
4 spin, as you will, to demonstrate the -- the authenticity or the
5 reliability of the document; that's argument. They're entitled to
6 do that, but not at this stage.

7 [14.13.39]

8 We suggest that the better approach is, put documents to the
9 witness. The witness can agree or disagree that he wishes to
10 testify or acknowledge the document. They can then move for the
11 admission after you've heard the evidence. We could do that at
12 the end of each phase. We can do that at the end of each witness.
13 There are many ways of doing it, but we submit just accepting
14 wholesale documents is not the way to do it, especially, given
15 that we have a limited amount of time, a limited amount of
16 witnesses that will be coming in and more likely than not -- and
17 I dare the Prosecution, indeed, I challenge them to correct me if
18 I'm wrong that they will not be able -- we will not be able to
19 hear sufficient amount of witnesses to cover all of the sorts of
20 documents that they have presented. Yes, for blocks of documents,
21 they will be able to establish the authenticity and reliability,
22 but when it comes to newspaper articles where they're -- where
23 somebody is claimed to have given a statement and it's
24 paraphrased or even when it's quoted and there's no opportunity
25 to confront, we believe that you need to be very sceptical and if

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1 you admit that sort of document and the parties have not -- have
2 not had an opportunity to comment on it, that you give little or
3 no weight to it.

4 [14.15.12]

5 Which brings me to my other point, because there was a case
6 mentioned by one of the gentlemen for the civil parties when they
7 raised -- they talked about the Halilovic Case. I must admit, I
8 was a little bit taken aback when it was referenced because I was
9 familiar with that case; I'm very familiar with the case and I'm
10 familiar with the circumstances and the decision. And this may be
11 a good opportunity to highlight why we believe statements that
12 are in newspapers are not necessarily reliable and because
13 there's no way of testing the reliability simply by looking at
14 it, more indicia will be required and if that indicia is not
15 available, then perhaps the better approach is to ignore that
16 piece of evidence and not have it admitted and cluttering up the
17 -- the file.

18 [14.16.18]

19 In Halilovic, the issue that was on appeal was that the Trial
20 Chamber, by way of motion from the Prosecution, over the Bar, as
21 they say, or from the Bar table admitted several statements --
22 confession statements that had been provided to the Office of the
23 Prosecution by Mr. Halilovic. One can only assume that Mr.
24 Halilovic did not testify and that's why they wanted to bring in
25 his statements.

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1 The Defence objected and they objected primarily on one ground
2 which was that at the time that he had given many of these
3 statements, the Prosecution had essentially induced him to waive
4 his right of silence and give a statement by telling him that his
5 cooperation would lead to his provisional release; something that
6 the Prosecution, first of all, cannot promise because it's not up
7 to the Prosecution.

8 [14.17.26]

9 Now, perhaps there was a misunderstanding. Perhaps it was: We
10 will put in a good word for you, that you're cooperating, but
11 needless to say that's how it was interpreted. And in this
12 instance, the Appeals Chamber found that the Trial Chamber had
13 erred by admitting those statements into the record, and they
14 were never considered by the trier a fact.

15 Granted, we are dealing with a different system, but for
16 illustrative purposes -- for illustrative purposes, I'm
17 demonstrating or attempting to demonstrate to the Trial Chamber
18 that there is no such automatic rule that all of the evidence is
19 admitted and I believe that even Mr. Bill Smith will agree with
20 me on that.

21 [14.18.22]

22 Over the last four days, we have sufficiently stated our
23 position. Yes, we have been repetitive at times because we're
24 dealing with arguments that are relatively the same when it comes
25 to groups of documents. We have laid out what we believe is the

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1 procedure that the Court should adopt or at least consider. We
2 believe that these hearings of the last four days were extremely
3 useful. We don't think that we abused the process or anyone, for
4 that matter, abused the process and the Ieng Sary defence would
5 like to thank the Trial Chamber for allowing us this opportunity
6 to be heard in public on these issues. Thank you very much.

7 MR. PRESIDENT:

8 Thank you, Counsel.

9 [14.19.23]

10 Now the Chamber hands over to defence counsel for Khieu Samphan.

11 MR. KONG SAM ONN:

12 Thank you, Mr. President. My respects to the Bench and everyone
13 in this courtroom.

14 First of all, I would like to make a correction or a number of
15 corrections with regards to what has been raised by the
16 Co-Prosecutors.

17 First, it deals with the fact that I demand the Prosecution to
18 prove the document beyond a reasonable doubt. I will not
19 elaborate on this point, but as the President stated yesterday
20 that if I spoke so in Khmer language I invite the Prosecution to
21 look into the transcripts. I was speaking, actually, about the
22 clues that allow us to rely on those documents. I was talking
23 about the admissibility of the documents in Case 001 into the
24 current case. I was quoted that I did not object to the
25 admissibility of Case 001 documents into Case 002.

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1 [14.21.36]

2 And next, I would like to confirm our position concerning the
3 indicia of reliability that was raised by the Prosecution. We do
4 not believe that it is sufficient. The Prosecution showed that if
5 we wish to know about the reliability of documents, parties --
6 especially the defence counsel -- should refer to the annexes
7 that the Co-Prosecution said everything was included. I submit
8 that if in the annexes, as we have been discussing this week,
9 there is sufficient information, the Prosecution may not need to
10 prove the indicia of reliability of the documents and it is not
11 necessary for us to spend the whole week to discuss this issue
12 either.

13 Besides, the civil party lawyers referred to some writing
14 extracted from Mr. Khieu Samphan's book to documents from DC-Cam
15 that show that Mr. Khieu Samphan acknowledged his -- acknowledges
16 those documents.

17 I would like to inform the Bench of what Mr. Khieu Samphan told
18 the Co-Investigating Judges. Mr. Khieu Samphan told them that
19 there were falsifications of documents; documents that came from
20 DC-Cam, so I insist that civil party lawyers and the Prosecution
21 examine the records of Mr. Khieu Samphan's interview in their
22 entirety in other documents that we submitted to the Chamber.

23 [14.25.52]

24 I would like to indicate my clear position to the Chamber that we
25 never denied all documents from the -- from DC-Cam; however, we

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1 requested time and time again to the Chamber that it examine
2 thoroughly the documents from this centre.

3 The Prosecution requested to the Chamber that we made new
4 objections which were not allowed by the Chamber. Since Tuesday,
5 as Your Honours have been aware, we have been responding to the
6 indicia of reliability as illustrated by the Prosecution who
7 refers to document E158 and it was permitted by the Chamber for
8 me to respond to that document.

9 [14.27.51]

10 The Prosecution also referred to various documents as indicated
11 in document E158 and so I was also responding to those documents.
12 The defence counsel was also referring to the documents in
13 general, but which covered the whole categories of document in E5
14 -- E158; however, the general discussion is not what the defence
15 counsel wishes for as we have informed the -- Your Honours that
16 the defence counsel requested cross-examinations of specific
17 documents. That is, we want every cross-examination of each
18 document. This is because each document helps us to ascertain the
19 truth and we all want the truth.

20 [14.29.43]

21 The Co-Prosecutors and the civil party lawyers want the Court to
22 believe that we rejected all documents -- all documents, but this
23 is not the position of my client and his lawyers. However, what
24 we rejected totally is -- the policy that, for any documents are
25 not rejected, will be admitted without any further examination.

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1 This is our position, and we oppose to this policy.

2 [14.31.02]

3 The task of the Chamber is to examine each document submitted or
4 placed before the Chamber by the parties, no matter if there is
5 or is not objections.

6 I would like to quote a decision from ICTY that focuses on cases
7 of this large magnitude. I refer to the case of the prosecutor
8 Milan Martić -- it's spelled M-I-L-A-N M-A-R-T-I-C -- Milan
9 Martić. It is the decision that determined the guidelines and the
10 standards to admit evidence, issued on January 9th 2006. And I
11 would like to refer to paragraph 11, and I would like to seek
12 your permission to read in English, which is the original
13 language of the decisions.

14 (Intervention in English:) "The Trial Chamber is, pursuant to the
15 Statute of the Tribunal, the guardian and guarantor of the
16 procedural and substantive right of the Accused. The Trial
17 Chamber considers that questions of admissibility of evidence do
18 not arise only when one of the party raise an objection to a
19 piece of evidence sought to be brought forward by the other
20 party. The Trial Chamber has an inherent right and duty -- right
21 and duty -- to ensure that only evidence which qualify for
22 admission under the rule will be admitted." (End of intervention
23 in English)

24 [14.34.24]

25 That is the quote, Your Honour.

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1 Based on this extract, it is the Chamber's duty to examine every
2 piece of document, and the objection raised by any parties is to
3 assist the Chamber in fulfilling this task. The general
4 discussion on the sheer volume of documents cannot assist the
5 Chamber a great deal. As we have seen, the indicia of
6 reliability, as indicated by the Prosecution, is insufficient
7 both in quality and quantity.

8 For that reason, in order to assist the Chamber in examining the
9 documents, the Prosecution shall assist in providing a means
10 either to continue to present to the Chamber these same thousands
11 of documents, and provide more indicia of reliability -- that is,
12 a better form of reliability of each document -- or to reduce the
13 number of documents from the list.

14 I have heard the statement by the civil party lawyers that the
15 documents which have been placed in the case file are not all
16 substantive. This indicates that the documents filed by the
17 Prosecution could not be relied upon entirely. At least some
18 would lack the indicia of reliability. And if we all put
19 ourselves to debate on the documents when lack the sufficiency to
20 prove reliability, it would be a waste of time.

21 [14.37.30]

22 So the only way is the reduction of the documents from the list.
23 That would save us some time. However, I have heard the
24 Prosecution stating that the standard of reliability should be
25 lowered due to the sheer volume of documents to be examined. And

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1 if we all have to examine all of the volumes to a higher
2 standard, it would take a longer time. This approach by the
3 Prosecution to lower the standard of admissibility of those
4 documents is not possible, because the standard has been set at a
5 minimum level already.

6 Let me give you an example, Your Honour. This is in regards to
7 placing a document before the Chamber to a level of reliability
8 beyond reasonable doubt. And in this regard, it doesn't mean;
9 because of a number of Accused, we had to reduce that standard.

10 [14.39.30]

11 The necessity to put before the Chamber all the relevant
12 documents -- and in order to have a belief that they are reliable
13 and credible -- it is the approach and the burden of the
14 Prosecution to do so before Your Honours Chamber, so that we all
15 can debate those documents.

16 Once again, if the Prosecution has the view that there are a
17 large volume of documents, then they should reduce those numbers
18 of documents. Of course, the Chamber's direction in the future
19 would also -- means reliance on those documents.

20 [14.40.46]

21 And my conclusion regarding the five annexes is that all the
22 documents in the five annexes -- they involved a lot of hours for
23 the Chamber to examine each piece of document for its
24 reliability, as the Chamber has to examine each piece of 1,134
25 documents out of 4,768.

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1 Finally, Mr. President, I'd like to mention and to restate our
2 position that we do not entirely object to the documents. But the
3 principle that any document that is not objected to should be
4 accepted is unlikely for you to consider. Thank you, Mr.
5 President.

6 MR. PRESIDENT:

7 Thank you, Counsel.

8 The proceeding on the discussion on objections to documents has
9 come to an end, and before we adjourn for today's session, the
10 Chamber wishes to inform the parties the scheduling for the two
11 -- for hearing the testimonies of the two witnesses that the
12 Chamber intends to call upon for early next week -- that is, for
13 the next week's hearing from the 23rd to the 26th.

14 The Chamber has instructed the senior legal official to email to
15 the concerned parties of the scheduling, and it has been in the
16 pipeline. So, please, check your email for this information and
17 the schedule for next week's hearing.

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

19 MR. PESTMAN:

20 Thank you very much. I just wanted to follow-up on a request we
21 made last week after remarks made by the prime minister in public
22 about our client. As you may remember, he called our client a
23 killer and perpetrator of genocide, and he called -- he
24 characterized his statement as deceitful. Following this remarks,
25 we ask the Trial Chamber to take action to condemn the statements

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1 made by the prime minister and to ask him to refrain from making
2 further statements in the future.

3 And we were just curious to know when we can expect a decision on
4 this particular request.

5 (Judges deliberate)

6 [14.46.34]

7 MR. PRESIDENT:

8 The Chamber has noted the remarks made by the defence counsel. It
9 seems that the international counsel for Nuon Chea seems to
10 repeat himself, so we prefer not to make any comment to react to
11 what you have stated, and you are reminded you cannot raise this
12 same matter again.

13 The time is now appropriate for the adjournment for this
14 afternoon session, as we actually finished our debates a little
15 bit earlier than we anticipated. We will adjourn for today, and
16 we will resume next week, on Monday the 23rd of January 2012,
17 commencing from 9 a.m. We wish to inform all the parties
18 regarding this scheduling.

19 Security guards, you're instructed to take the three Accused back
20 to the detention facility and bring them back here on Monday
21 morning -- that is, 23rd of January 2012, before 9 a.m.

22 The Court is now adjourned.

23 (Court adjourns at 1448H)

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