



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

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

2 February 2012
Trial Day 26

Before the Judges: NIL Nonn, Presiding
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YA Sokhan
Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
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List of Speakers:

Language used unless specified otherwise in the transcript

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

1

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

2 (Court opens at 0900H)

3 MR. PRESIDENT:

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

5 [09.01.34]

6 As we scheduled in hearing the testimony of the DC-Cam director,
7 this morning, the floor should be given to the three defence
8 teams.

9 As previously stated, two days have been allotted to the three
10 defence teams.

11 Before I hand over to the Nuon Chea's defence teams, I'd like to
12 inquire with the three defence teams how have you arranged
13 amongst yourselves for the time allocations of the two days
14 allotment for the three defence team.

15 And I'd like to hear comment, first, from Nuon Chea's team.

16 MR. PESTMAN:

17 Yes, thank you. Yes, we have negotiated with the other teams. We
18 envisage that we will need one day for our cross-examination of
19 this witness. And, as far as I understand, the other parties have
20 agreed to give us that day and they will divide the remaining
21 time among themselves, if I'm correct. If I'm not correct, then
22 feel free to contradict me.

23 We were told by the international council for Khieu Samphan, who
24 will not be here on Monday, that he would like to ask his
25 questions today. And, if your Trial Chamber agrees, we would

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1 allow him to use at least an hour of our time today, and in
2 return we would be able to use his time on Monday, if that's ok.
3 So we would do a bit of a relay when questioning this particular
4 witness. So we will need one day, if the other parties agree, but
5 we would like to give part of our time today to the Khieu Samphan
6 team if we can get -- or use, his time on Monday.

7 [09.03.42]

8 I hope I've made myself clear.

9 MR. PRESIDENT:

10 Khieu Samphan's defence, you can proceed.

11 MR. KONG SAM ONN:

12 Thank you, Mr. President. Let me clarify in regards to the
13 interpretation.

14 In fact, my client, Mr. Khieu Samphan, will be present on Monday,
15 but it's my international counterpart who will not be available
16 on Monday. Thank you.

17 (Judges deliberate)

18 [09.05.11]

19 MR. PRESIDENT:

20 I'd like to inquire with the Ieng Sary's defence team.

21 What is your opinion on the comment and request made by Nuon
22 Chea's defence?

23 MR. KARNAVAS:

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

3

1 We would not object if Nuon Chea wishes to have the Khieu Samphan
2 international lawyer take up an hour of their time today and then
3 have an hour of their time on Monday.

4 As far as our time is concerned, I would say one and a half to
5 two hours. However, most likely, it would be a lot less, I would
6 say more in the range of 45 minutes to an hour, depending on what
7 is covered today. It's hard to predict, since I'm going to be
8 going last, but certainly I intend to be very efficient, not
9 cover any new ground and not prolong the proceedings more than
10 they need to be. So, hopefully, 45 minutes but I would like as
11 much as an hour and a half, Your Honours, if that's okay. Thank
12 you.

13 [09.06.31]

14 MR. PRESIDENT:

15 Thank you, Defence Counsel.

16 What about Khieu Samphan's defence?

17 MR. KONG SAM ONN:

18 As my international counterpart would like to examine the witness
19 for an hour this afternoon, then I'll use the remaining time for
20 my team on Monday. And it may take between one to two hours.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you, defence teams.

24 We now hand over to Nuon Chea's defence to cross-examine this
25 witness. You may proceed--

4

1 (Judges deliberate)

2 [09.09.51]

3 Due to the request by Khieu Samphan's defence that the
4 international defence counsel will not be available on Monday,
5 that is the 6th of February 2012, and that the time shall be used
6 today instead, it is rather difficult for the Chamber to decide.
7 For that reasons, the Chamber decided to change the order of
8 questioning -- of examining this witness. We would like now for
9 the Khieu Samphan's team to question this witness first.

10 So, now, Khieu Samphan's defence, you may proceed--

11 Judge Lavergne, you may take the floor.

12 JUDGE LAVERGNE:

13 Thank you. The Chamber has just been informed of the
14 unavailability of Khieu Samphan's international counsel and is
15 therefore providing counsel the possibility to examine the
16 witness now. If not, the Chamber does not wish to see the
17 sequence of questioning to be interrupted and then resumed.
18 So, if it's possible, you can begin examination of the witness,
19 and then we shall pick up in the same order as previously
20 planned.

21 MR. VERCKEN:

22 Thank you very much--

23 [09.12.09]

24 MR. PRESIDENT:

25 Khieu Samphan's Defence Counsel, could you please pause?

5

1 I notice the Nuon Chea's defence team is on his feet. You may
2 proceed.

3 MR. SON ARUN:

4 Good morning, Mr. President, Your Honours. I support the
5 clarification by Judge Lavergne for giving the floor first to
6 Khieu Samphan's defence. And then we will proceed after their
7 conclusion.

8 MR. PRESIDENT:

9 Thank you for your comment regarding the decision by the Trial
10 Chamber.

11 Therefore, Khieu Samphan's defence, you may now proceed.

12 [09.13.24]

13 QUESTIONING BY MR. VERCKEN:

14 Thank you very much, Mr. President. I had a few documents to put
15 forward to the witness, and this was the reason why I had
16 preferred to commence my examination at the start of this
17 afternoon's session. However, I am happy to begin right away if
18 this is the Chamber's instruction.

19 Good morning, Mr. Witness. My name is Counsel Arthur Vercken. I
20 represent the Accused, Mr. Khieu Samphan.

21 The questions I wish to put to you relate primarily to documents
22 that are supposedly belonging to the era of Democratic Kampuchea,
23 of the plethora of documents that are -- is gathered by DC-Cam.
24 My questions will focus on documents that are dated from the time
25 of Democratic Kampuchea.

6

1 Q. My first question is as follows: To your mind, what is the
2 most certain and sure way of conducting an investigation? Is it
3 to rely on an original, a copy or a document that is dated from
4 the era in question?

5 [09.15.19]

6 MR. ABDULHAK:

7 Your Honours, we would object to this question.

8 Clearly it's not a question that's within the witness' expertise
9 or within the purposes for which he was called to testify,
10 whether or not an investigation is best conducted with originals
11 or copies. That is a matter for the Judges, in our submission.

12 MR. VERCKEN:

13 If I may reply, Mr. President, yesterday, when the witness was
14 responding to questions put by the civil parties, the witness
15 stated that he was of the belief that the organization was in a
16 position to carry out inquiries or investigations, even if they
17 were not judicial investigations per se.

18 We are all well aware that DC-Cam, in one manner or another,
19 conducts inquiries or investigations and this is exactly why my
20 question focuses on an investigation or an inquiry, be it
21 judicial or not, which speaks directly to the mission of DC-Cam.

22 (Judges deliberate)

23 [09.17.55]

24 MR. PRESIDENT:

25 The objection by the Prosecution is sustained. The witness, you

7

1 are instructed not to respond to the question by the Defence. The
2 Defence now can proceed with other questions.

3 MR. VERCKEN:

4 Could Your Honours please explain to me why this issue is being
5 dismissed?

6 The witness represents an organization that collects documents
7 from the world over. I believe it is entirely natural and routine
8 to ask the director if copies hold a greater probative value than
9 their originals.

10 If I'm not able to ask such questions to the witness, I will stop
11 my line of questioning immediately.

12 MR. PRESIDENT:

13 Judge Lavergne, you may take the floor in order to respond to
14 this defence counsel.

15 [09.19.23]

16 JUDGE LAVERGNE:

17 Allow me to make some clarification, subject, of course, to
18 intervention by my colleagues. What we are dealing with today is
19 a judicial debate, a judicial proceeding to determine the
20 probative value of DC-Cam documents. Therefore, the research that
21 is conducted by DC-Cam are of great interest for historical --
22 for academic reasons.

23 However, today, what we are chiefly concerned with are the
24 documents that are part and parcel of these judicial proceedings.
25 Therefore, we deem that such a question is not warranted because

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1 it does not deal with the judicial process.

2 [09.20.16]

3 MR. VERCKEN:

4 I understand, Your Honour. However, a very high percentage of the
5 documents on the case file are indeed -- have been collected by
6 DC-Cam. Therefore, those documents have a direct link, and that's
7 where the problem lies. It is in fact one of the problems of this
8 trial. We have an organization, against which I absolutely have
9 no objections, that carries out its own and proper activities.

10 However, the position of the Defence is that the Prosecution has
11 taken for granted the value of those documents, integrated them
12 directly into the case file, which were collected by DC-Cam
13 without any further verification. This is exactly why the two
14 issues that you have just raised are intrinsically related.

15 On that note, I shall continue.

16 BY MR. VERCKEN:

17 Q. Mr. Witness, where are the originals of the documents that
18 date back to the time -- where are the originals that DC-Cam has
19 availed itself of? Where are they today?

20 [09.21.47]

21 MR. YOUK CHHANG:

22 A. There are five types of documents if you can recall from the
23 testimony last week. The first type of document is a DC-Cam--

24 Q. Excuse me for interrupting you, Mr. Witness. I do not have a
25 lot of time, so I'll reformulate my question and be much more

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1 specific. I don't need you to layout the definitions of each
2 category of documents. I've already told you that I want to focus
3 solely on documents that date back to the era of Democratic
4 Kampuchea. Please do not talk to me about the classification of
5 documents or those that are conserved by DC-Cam. That is not the
6 subject of my question.

7 My question for you is: Where, today, are the originals of the
8 documents that you believe date back to the era of Democratic
9 Kampuchea and that are in the possession of your organization?
10 Where are those documents? Where are they?

11 [09.22.48]

12 MR. YOUK CHHANG:

13 A. They are in Cambodia.

14 Q. Where are they, in Cambodia?

15 A. Due to the security reasons, it is difficult to inform the
16 counsel of the location of the original documents. However, with
17 your permission, I can illustrate that.

18 (Judges deliberate)

19 [09.24.13]

20 MR. PRESIDENT:

21 The Co-Prosecution, you may proceed.

22 MR. ABDULHAK:

23 Thank you, Mr. President. We'll be very brief.

24 I think the question is too broad to begin with. Where are the
25 originals? Mr. Youk Chhang testified yesterday there's about 1

10

1 million, I believe, pages.

2 And so the question should be more specific: What -- which types.

3 And I think that's what the witness was trying to do, is be more
4 specific.

5 [09.24.37]

6 Now - but, secondly, also, there was testimony yesterday about a
7 number of categories whose originals are kept, for example, at
8 the National Archives. So we have been given some of these
9 responses already. But if the witness is asked to provide a full
10 listing, if you like, of all of the originals which DC-Cam holds
11 - and perhaps, if that's a matter of -- if that's a sensitive
12 matter, perhaps, it could be dealt with in closed session. Thank
13 you.

14 MR. PRESIDENT:

15 I notice Nuon Chea's international defence counsel is on his
16 feet. You may proceed.

17 MR. PESTMAN:

18 I fully support this suggestion. I think it's a very good idea to
19 go into closed session if that is the condition attached to the
20 witness revealing the location of the original documents, because
21 I'm very curious to know where those documents are. And I think
22 it's important that we know because we might ask for the
23 production of the original documents when those documents will be
24 discussed in Court. So it's very important for us to know where
25 they are, to know whether it's actually possible and feasible,

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1 and if so, how long it will take to produce those original
2 documents.

3 [09.25.58]

4 So I would -- I would support the suggestion made by the
5 Prosecution and go into closed session.

6 MR. PRESIDENT:

7 Thank you, parties, for your comments and requests.

8 (Judges deliberate)

9 [09.28.08]

10 The National Co-Prosecutor, why did you stand on your feet before
11 the Bench deliberated? Do you have any other issues beside the
12 issues that we already deliberated?

13 Mr. Witness, you do not need to respond to the question by the
14 defence counsel, then, as a principle of safety and security of
15 those documents, that is in regards to the original documents and
16 the photocopies documents used in this courtroom, is the core of
17 the debate. It is not necessary to reveal the location of those
18 original documents.

19 And the issues raised by parties for a closed session, we have
20 the view that it is not necessary.

21 [09.29.27]

22 You may proceed, but please make sure that it is not necessary to
23 specify the provenance -- secret provenance of the -- of the
24 documents. But the most important thing is the copies of the
25 documents which have been copied from the original.

12

1 So we would like to hear from the DC-Cam whether or not the
2 copied documents are authentic and it can be verified or not. So
3 it means that the original documents are there for verification,
4 but the secrecy of the document is simply to ensure the security
5 of the document.

6 MR. YOUK CHHANG:

7 Well, if any parties would like to verify the copied documents
8 with the original ones, the DC-Cam is readily available to assist
9 them to do so.

10 BY MR. VERCKEN:

11 Q. Precisely. Mr. Witness, has one of the parties to this Court,
12 whether it is the Co-Prosecutors or the Co-Investigating Judges,
13 to date, asked you to find original, contemporaneous documents
14 from Democratic Kampuchea, wherever they have been stored in
15 Cambodia, asking you to present them to them? Has such a thing
16 happened? Has DC-Cam been asked by the Co-Prosecutors or the
17 Co-Investigating Judges to produce originals which you believe
18 date back to the era of Democratic Kampuchea? Because you said
19 that you haven't found one that appeared to be false among all
20 the ones in your possession. But has this incident occurred?

21 [09.32.34]

22 MR. YOUK CHHANG:

23 A. I'm sorry, Your Honour, I do not understand the question
24 clearly, but I assume that the question was that, if parties
25 would like to verify documents -- the copy ones -- with the

13

1 original documents, of course, at DC-Cam, we will be able to do
2 that upon request.

3 But if Your Honours are of the opinion that the question is
4 different from this, then please advise me so.

5 MR. PRESIDENT:

6 Please, Counsel, be advised that you should maintain your proper
7 question. And make sure that you pause in between questions and
8 answers so that the translation can get through, so possibly
9 before you pose the next question. You may proceed.

10 BY MR. VERCKEN:

11 Q. My question is whether, to date, the Co-Prosecutors and the
12 Co-Investigating Judges have ever asked you if they can see the
13 originals which you believe are contemporaneous with the
14 Democratic Kampuchea era.

15 [09.34.08]

16 MR. YOUK CHHANG:

17 A. To date, the -- both the Co-Prosecutors and the
18 Co-Investigating Judges have never requested verification with
19 the original documents, but they have so far scanned those
20 documents from the original document, like Mr. Heder, from OCIJ,
21 has done that so far.

22 Q. Have you received any kind of official instruction from this
23 Court to -- under judicial seal?

24 A. No, they're not.

25 Q. Yesterday, you referred to an episode that related to a

14

1 project -- a draft agreement with the Court, and you said that
2 the agreement wasn't actually signed; was it something of that
3 nature?

4 [09.35.50]

5 A. We -- the parties can request documents of -- from the DC-Cam
6 anytime they like. I have met with Michelle Lee and Sean Visoth
7 to draft a mutual agreement or mutual understanding with the
8 DC-Cam as to how the document may be used by the Court. So we
9 have drafted this mutual understanding agreement for several
10 years, but upon the resignation of Sean Visoth and Michelle Lee,
11 then we also sent those draft mutual understanding agreement to
12 Knut and others, but there have not been response from the Court.
13 So, from 2006 to 2009, parties have requested documents from the
14 DC-Cam, and we have been happy to provide them support. So far,
15 we have provided documents to the OCP, to civil parties, and
16 other parties as well. So we consider our place as an archive
17 where documents are kept, so we are not hesitant to provide any
18 document to parties upon request.

19 [09.37.15]

20 Q. But for the moment, since you said that none of the parties
21 wanted to have the original documents in their possession, which
22 you believe date back to the Democratic Kampuchea era, the
23 documents that you have remitted to the parties that requested
24 them -- and these include the Co-Investigating Judges and the
25 Co-Prosecutors -- are scans or copies; am I correct?

15

1 A. When sending documents to parties at the tribunal, we
2 establish a register list in order to indicate whether or not the
3 documents were copy or scanned from the original documents. The
4 OCIJ has so far requested that the scanning was -- be made from
5 the original documents.

6 Q. Well, picking up on this, yesterday, when you were answering
7 questions from the Prosecution, you told us that in order to
8 avoid damaging the documents, which you believed are
9 contemporaneous with the era, you didn't write any direct DC-Cam
10 references on those documents; is that correct?

11 A. (No interpretation)

12 [09.39.23]

13 Q. Having said that, you told us that these codes were only
14 written down on copies of what you thought were the
15 contemporaneous documents; am I correct?

16 A. All documents we copy from the original documents; we index
17 them with serial number preceding by "D" -- letter D -- and we
18 have a small bracket which indicates the source of the document.
19 As I indicated to the prosecutor yesterday, if you want to verify
20 with the original document, then you can look at the serial
21 number given below the document number; that will make it easy to
22 track the source of the document.

23 Q. So what this means, Mr. Witness, is that, when I find in this
24 Court's files a document that is alleged to be from the
25 Democratic Kampuchea era, which has a DC-Cam code, that means

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1 that the document is a copy, inevitably, because it's got the
2 code from DC-Cam on it.

3 [09.41.00]

4 A. If you refer to the copied documents sent to the Court, of
5 course there are serial numbers indexed by the DC-Cam, which
6 certify that those document were copy from the original. However,
7 at the Office of Co-Investigating Judges, they look at the
8 numbers in the bracket, below the document number, and then they
9 go to those original documents and they request that those
10 documents be scanned from the originals.

11 Once again, if you want to make any verification, it was not
12 difficult because we have the number over there and then we can
13 verify it anytime.

14 Q. There is a certain amount of correspondence mail from the
15 Prosecution in the files, and the prosecutor is writing, asking
16 to -- you to remit documents that you have in your possession. I
17 can quote you an example of one of these letters if you wish. We
18 do have one or two, but they haven't been translated. It's just
19 00141959. And all of these other references I have are comparable
20 kinds of communications. I think we can probably put one of these
21 up on the screen.

22 [09.43.20]

23 And what emerges from this correspondence is that the prosecutor
24 is asking you to submit documents and also asking for an
25 authentication certificate. This authentication certificate, can

17

1 you please tell us precisely what that is?

2 A. This is a request form from the Office of Co-Prosecutor, and
3 this is only one of them; there are actually a number of other
4 similar requests. So I have an initial on this request, and it
5 indicates that I have actually provided the documents upon this
6 request.

7 Q. And the authentication certificate, which the prosecutor is
8 asking you to produce, says what exactly, this certificate, which
9 -- and this is a question -- you may have submitted?

10 A. I once wrote it to Mr. Robert Petit; it consists of six, seven
11 pages outlining the process of research and documentation as well
12 as the authenticity of the document. I sent to the -- both
13 Co-Prosecutors some time in 2006 or 2007, but of course there was
14 a written form of certificate of authenticity.

15 [09.45.25]

16 Q. Does that mean that, since 2007, you have provided one single
17 authentication certificate for all of the documents that you have
18 provided, and similarly for all the ones that you will submit in
19 the future, or, on the other hand, was there a separate
20 authentication certificate each time you received a request from
21 the prosecutors?

22 A. For each request from the Office of Co-Prosecutors, we issue a
23 certificate certifying whether or not they were the original
24 documents or copied documents and we record it in the list, so
25 there is a column or a field which we indicate to the request

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1 that whether or not the documents were the copies of the copies
2 or the copy from the original. And we also indicate whether or
3 not those documents is in the category of "KL" or "I" document.
4 So we follow the procedures of document custody so that we can
5 authenticate the document.

6 [09.46.51]

7 Q. In yesterday's hearing, you described for us the ways in which
8 you check the authenticity of the documents that you use, and you
9 told us about the importance of colour, the visual presentation
10 of a document.

11 Would you agree that this sort of work cannot be done with a copy
12 or a copy of a copy?

13 A. That's correct. It's -- it's not possible to verify it with
14 the copy of the copied document, but we can only certify that the
15 copy of the document -- the copy of the copy is a copy of the
16 document. So it means that if there is another document that is
17 in visual colours, for example, we can tell whether or not the
18 document is original or copied document.

19 Q. Among the various aspects which you dwelt on when you were
20 examining the document, you also told us that the question of the
21 date was important carried on the document.

22 Would you agree that somebody who was deceitful and who was
23 fabricating a document would probably not put "2012" on their
24 document, but might choose something more relevant to their
25 intentions, shall we say, between 1975 and 1979?

19

1 [09.48.56]

2 A. Well, I think if any one person can produce -- fabricated 1
3 million documents and that one particular person know many people
4 involved in this document, I think it is virtually impossible in
5 this context. And in other words, we also look at the visual
6 presentation of the document, we do not only consider only one
7 factor or variables. We have -- we consider a number of factors
8 in order to certify that this document belongs to the Democratic
9 Kampuchea.

10 Q. Yesterday, when you were answering the questions from the
11 Co-Prosecutors and the civil parties, you said that you were
12 careful to examine the kind of vocabulary used in the documents
13 which were given to you or which you collected.

14 Would you agree that, if a deceitful person was trying to
15 fabricate a false document from that era, they would probably not
16 talk about mobile phones, and the internet, and things like that,
17 which didn't exist between 1975 and 1979?

18 [09.50.37]

19 A. I would like to bring up an example. A confession of a former
20 prisoner, Bophana, which comprised of 200-page confession, and if
21 he want to fabricate this document or, for example, by changing
22 the terminology used, it's a bit difficult with the confession
23 this thick, and it can easily be tracked, as well, if only a few
24 pages were modified.

25 And in addition to that, we do not verify or -- and come to a

20

1 conclusion with a document by a mere looking at this particular
2 document; we actually read it in conjunction with others, and
3 other peoples also comment on this document. And, as I mentioned
4 earlier, if any one person can make up 1 million documents, it
5 would be amazing if it was not virtually impossible at all. And
6 if -- even if they could make it, it would have taken them years
7 to do it.

8 [09.51.48]

9 Q. Nobody was talking about one single person fabricating a
10 million counterfeit documents. But you, yourself, admitted that,
11 once in a million times, you did manage to find a false document
12 among the ones that had been sent to you; is that true?

13 A. Yes, that -- that is true. And the factor that I actually
14 could see that that document was not from the contemporaneous
15 document was the date, because, by looking at the dates, it was
16 clearly that it was not within the Democratic Kampuchea period.
17 And in addition to the -- to the date, we also look at the
18 content of the document as well. So, by looking at combined
19 factors, then we can come to a conclusion that this document was
20 not the contemporaneous ones.

21 Q. Can you tell the Court what date was written on the document
22 that you have just referred to?

23 [09.53.08]

24 A. To the best of my recollection, it was actually back to 1998
25 or '99, when there was arrest warrant of the kidnappers somewhere

21

1 in Kampot province.

2 Q. So you deduced that whoever fabricated this document was not
3 particularly good at the job?

4 A. I saw that that document was indeed fabricated; it was not
5 actually from the Democratic Kampuchea period.

6 Q. Several times, yesterday, when you were explaining to us the
7 sources of the different collections of documents held by DC-Cam,
8 you talked about Vietnamese experts.

9 Can you tell us who these Vietnamese experts were? This
10 denomination covers who and what, exactly?

11 A. Your Honours, yesterday-- He mentioned that I used the word
12 "Vietnamese experts", but unfortunately I did not use "Vietnamese
13 experts". But I do not hesitate to answer this question, but once
14 again, I would not want it to be on record what I did not say.

15 And with the -- Your Honours' permission, I would respond to this
16 question.

17 [09.55.06]

18 MR. PRESIDENT:

19 Counsel, can you indicate the point in the transcript which you
20 pointed out to the testimony of this witness, concerning the
21 Vietnamese expert, so that the witness has the basis to respond
22 to your question?

23 And in addition, the Chamber would base on that particular
24 transcription in order to decide whether or not to let the
25 witness respond to this question.

1 MR. VERCKEN:

2 I'll proceed in a different way, if I may, Mr. President? Let me
3 simply ask the witness if he remembers having answered a question
4 from the Co-Investigating Judges and if he recalls having talked
5 to them about documents that were collected by Vietnamese
6 experts.

7 MR. YOUK CHHANG:

8 Your Honour, I would like to hear the answer from him, whether or
9 not I did say that, the "Vietnamese expert", or so.

10 [09.56.44]

11 MR. PRESIDENT:

12 Well, the counsel has already changed his line of questioning, so
13 there might be confusion in terms of the documents used -- he
14 used when he took it from the statement taken by the Office of
15 Co-Investigating Judge, which may have involved the testimony of
16 Vietnamese expert or so, so he decided to change his line of
17 questioning.

18 So the Chamber may allow this question.

19 But the prosecutor is now on his feet so he may proceed.

20 MR. ABDULHAK:

21 Your Honour, just a point of order. I think it would be more
22 appropriate if counsel could refer the witness to the specific
23 statements. There are six statements, and some of them are quite
24 long and they discuss numerous matters.

25 So I think it would be fair to the witness and more conducive to

1 ascertain the truth if the witness could be shown the specific
2 passage or statement and asked to-- And then questions could be
3 asked about it.

4 [09.58.01]

5 MR. PRESIDENT:

6 Thank you. So, once again, the Chamber directs the counsel to
7 indicate specifically the statement you refer to. If you base
8 your questioning on the statement taken by the Office of
9 Co-Investigating Judge, then you have to indicate so.

10 MR. VERCKEN:

11 I agree with you, of course, Mr. President; I was going to do
12 that.

13 At this juncture, however, I am simply asking the witness if he
14 remembers talking about Vietnamese experts with the
15 Co-Investigating Judges. I simply wanted to ask the witness
16 directly if he remembered. That's why I'm not yet quoting any
17 documents. If the witness says that he does not recall this, then
18 I would move on to quoting evidence from statements, but in so
19 doing, I'm -- I'm trying to proceed more rapidly so as not to
20 overstep the bounds of my time.

21 [09.59.19]

22 MR. PRESIDENT:

23 Witness is directed to answer the question.

24 MR. YOUK CHHANG:

25 Well, Your Honours, I am very happy to ask -- to answer this

24

1 question, but the counsel offer to answer my question concerning
2 the truthfulness of what I said yesterday.

3 Well, the custodian of the documents in Ministry of Interior,
4 there was one expert working with this Cambodian team, and I
5 tried to look for him, but unfortunately he has already passed
6 away. And I actually got this document and information from the
7 personnel working in the Ministry of Interior.

8 BY MR. VERCKEN:

9 Q. Mr. Witness, I see that you are failing to answer my question,
10 which is impeding our dialogue. The Court has just asked you to
11 answer my question. I am the one putting questions to you. This
12 is how it works.

13 MR. PRESIDENT:

14 Defence Counsel, you are mistaken. The witness clearly responded
15 already.

16 BY MR. VERCKEN:

17 Perhaps, Mr. President, because you benefit from direct
18 interpretation into Khmer, perhaps you feel that the message was
19 crystal clear.

20 Q. But for my benefit, sir, can you please tell me the name of
21 the Vietnamese expert that you cited, what that person's duties
22 were, and the years during which they exercised their duties?

23 MR. YOUK CHHANG:

24 A. I cannot recall his names, but if you refer to the OCIJ's
25 interviews, then you would clearly know their name. The person

25

1 was an expert working at the Ministry of Interior. I cannot
2 recall their name exactly, but of course their name will be in
3 that document, because I submitted a complete set of document
4 through OCIJ.

5 Q. And, sir, you were stating today that you had communicated
6 with the Co-Investigating Judges and you had provided the name of
7 that Vietnamese expert; is this correct?

8 A. Yes, that is correct.

9 Q. Can you please tell us the number of documents that you
10 collected from this particular person?

11 [10.02.55]

12 A. Could you please repeat your question? Which I received?

13 Q. How many documents -- what is the number of documents that you
14 received directly from this source, from that person?

15 A. I never received a document from that expert at Ministry of
16 Interior. I actually received document from the Ministry of
17 Interior from a working group of the documentation at that
18 ministry. Directly, I never received any document from that
19 expert. Please make this clear. And I believe it is clear in the
20 French translation that you are listening now.

21 Q. What serial code -- or what reference does DC-Cam put on
22 documents that you received from Mr. Hun Sen?

23 [10.04.00]

24 A. In the document, we use the word "HS" to notify that a
25 document was given by him. We found the documents, actually,

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1 through the book that he authored, and then I requested through
2 his office for those documents. If you see the document with the
3 word "HS", it would denote the documents from him.

4 Any party can request for any document from DC-Cam. We do not
5 hide any document even if for the -- for the opposition parties
6 in the government. I also give them the documents when they wish
7 to get the documents that they wish.

8 [10.04.45]

9 Q. Are you aware of the year during which Mr. Hun Sen discovered
10 those documents?

11 A. I do not know what year that he obtained those documents.

12 However, I received the documents from him around 1995 or 1996,
13 when I started to research on his book at the National Archives.

14 And he referenced to those documents in his book. Then, I
15 requested to him to have those document possessed and obtained at
16 DC-Cam, and, as those documents belong to the DK period, then his
17 office gave those documents to us.

18 Q. How much time did DC-Cam require to gather all originals of
19 documents that you deemed as contemporaneous with the DK period
20 and that have been submitted before this Court?

21 A. Document collection is ongoing because we refer to documents,
22 and documents do not only come in the form of hard copy paper, or
23 photograph, or films; human beings are also considered to
24 documents, and we have millions of survivors, and we continue to
25 interview them so that we can collect all those events for the

1 young generations to understand.

2 So, if you ask how long do we need to take, this is kind of
3 ongoing and a permanent job. This is a historical activity, and
4 we do have living documents, so that is ongoing.

5 And in Cambodia, even if we have a younger generation that is
6 about 65 percent of the population, the 35 percent of the
7 population were those who went through the DK regime, and it is
8 important that we record their experiences throughout those --
9 the regime.

10 [10.07.19]

11 Q. Very well, sir. And that speaks directly to the noble mission
12 of your organization. However, we are here in a courtroom, and
13 the rules may differ.

14 Can you, therefore, please answer my question? And I repeat: How
15 much time did you require to gather all original copies of
16 documents that you judged as contemporaneous with the Democratic
17 Kampuchea period, which you have told us is deposited in secret
18 locations across Cambodia? How long did it take for you to
19 retrieve those documents and put them before this tribunal?

20 I'm talking about documents; I'm not talking about individuals.

21 Let us be very clear, I'm talking about documents that you
22 declare date back to the Democratic Kampuchea period.

23 [10.08.27]

24 A. Regarding the hard copy documents, we are working with
25 Michigan University. We are in the process of digitizing every

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1 document so that they can be uploaded on the internet and
2 everybody can access it -- that is, access those contemporaneous
3 DK documents, since we do not have a permanent location and we do
4 not want the original documents leaving Cambodia, as those
5 documents belong to Cambodia. So, if you are willing to wait, you
6 can see those original documents after they have been digitized;
7 they will be placed on the internet for you to view.

8 And the process is ongoing, in digitizing those documents to be
9 placed, that the entire set of documents will be placed on the
10 internet. Everyone can view it, can make their opinions, and can
11 understand how come people died during that regime.

12 MR. PRESIDENT:

13 Mr. Witness, please compose yourself, and listen carefully to the
14 question, and respond it accordingly. If you do not understand a
15 question, you can ask him to rephrase the question or you can
16 request the Chamber to clarify the question.

17 And, once you understand the meaning of the question, and please
18 respond only to what you are asked and don't go outside the
19 content of the question.

20 [10.10.20]

21 If I am not mistaken, your response is not a direct response to
22 the question asked by the counsel.

23 Defence Counsel, you may repeat your question again. There could
24 be a misunderstanding of your question.

25 [10.10.40]

1 BY MR. VERCKEN:

2 Q. This morning, you told the Court that original documents that
3 are contemporaneous with the Democratic Kampuchea era within the
4 possession of DC-Cam are stored in secret locations across
5 Cambodia.

6 My question is as follows: Are you able to produce them before
7 this Court? And how much time would you require to do so?

8 MR. YOUK CHHANG:

9 A. Mr. President, is my understanding correct that he wants me to
10 bring the original to the Court?

11 MR. PRESIDENT:

12 I notice the Lead Co-Lawyer is on her feet. You may proceed.

13 MS. SIMONNEAU-FORT:

14 Thank you, Mr. President. Good morning to everyone.

15 I believe that the question being asked by my friend, across the
16 way, is not relevant

17 This is a technical question that should be put by the Chamber if

18 Your Honours believe that DC-Cam should produce before this Court

19 one, 10 or a million original copies of those documents. But I

20 think those questions should be put at the appropriate time, and

21 not now.

22 [10.12.34]

23 MR. PRESIDENT:

24 Nuon Chea's defence, you may proceed.

25 MR. SON ARUN:

30

1 Mr. President, I'd like to respond to the comment made by the
2 Lead Co-Lawyer.

3 The request by Khieu Samphan's defence is the same thing that I
4 initially requested to the Prosecution, in particular in regards
5 to the "Revolutionary Flag".

6 My client, Mr. Nuon Chea, while he was in the dock, he requested
7 for the original document repeatedly, and when he was given the
8 document, he threw that away because that was not the original
9 document. And he demanded for the original document so that he
10 can verify it.

11 Of course, it is not my turn to take the floor, but I believe the
12 original documents are important.

13 [10.13.55]

14 MR. PRESIDENT:

15 What is on your mind, Mr. Co-Prosecutor? Do you have anything
16 else to add? Can you organize yourself amongst the parties to
17 express your objections or comments in order?

18 And, as you know, the Lead Co-Lawyer is on the support side of
19 the Prosecution, and on the other side is the Defence, and if you
20 keep taking turn, this morning session would not be efficient. I
21 believe you need to organize yourself so that your objection
22 shall be done once and together to make it more efficient, as we
23 shall adhere to the principle of proceedings -- a fair trial
24 proceeding.

25 You may proceed -- the Prosecution, I mean.

1 MR. ABDULHAK:

2 Thank you, Mr. President. I'm reluctant, always, to intervene. I
3 was compelled to do so simply because I think my friend was
4 referring to a matter on which Your Honours have ruled, that, I
5 believe, during Nuon Chea's giving evidence, you indicated that
6 originals were not required. And I just simply wanted to remind
7 my learned friend, and also for the record, this matter has been
8 dealt with. Thank you.

9 [10.15.58]

10 MR. PRESIDENT:

11 I have the decision in my hand. So I advise all the parties to
12 read the verbal instructions that we announced earlier -- that
13 is, that we announced on the 26th of January 2012, regarding this
14 very subject matter. And you are not allowed to raise the same
15 issue again and again. It has been ruled already by the Chamber.
16 You may now proceed.

17 BY MR. VERCKEN:

18 Q. Mr. President, I asked the witness if, from a technical
19 standpoint, it was difficult for DC-Cam to produce original
20 documents, and how much time would be required to introduce into
21 this Chamber all documents that DC-Cam judges as contemporaneous
22 with the period. I do not believe that I was in breach of any
23 decision that has been previously handed down by Your Honours.

24 [10.17.45]

25 MR. YOUK CHHANG:

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1 A. Regarding the technical aspect for transportation of those
2 documents upon the request by the Court, it may take a month.
3 This is just a rough estimation, because we have never
4 transported any original document outside the Center.
5 Regardless, if we are seized by Your Honours request, we will
6 have a discussion with the Court's technical team on how the
7 documents can be transported safely and securely to the Chamber.
8 I'd like to add that, if Uncle Nuon wants the original
9 "Revolutionary Flag" or the original documents, I can personally
10 deliver those documents to him. We do have those original
11 documents.

12 MR. PRESIDENT:

13 Thank you, Mr. Witness. Defence Counsel, you may proceed with
14 your next question.

15 MR. VERCKEN:

16 I have no further questions, Mr. President.

17 [10.19.11]

18 MR. PRESIDENT:

19 National defence counsel for Khieu Samphan, how much time do you
20 anticipate for your turn?

21 MR. KONG SAM ONN:

22 I do have question, Mr. President, but I believe it is now time
23 for a break?

24 [10.19.30]

25 MR. PRESIDENT:

33

1 Of course, you are right. Because we want to know how much time
2 you need. If you need much time, then we can have a break first.
3 And, since your answer is not that clear and since the time is
4 now appropriate for a break, we'll take a break now and we shall
5 resume at 10.40.

6 Court officer, please assist the witness during the break with a
7 refreshment, and bring him back into the courtroom before the
8 Court resumes.

9 Defence Counsel for Ieng Sary, you may proceed.

10 MR. ANG UDOM:

11 Thank you, Mr. President. Your Honours, due to the health issue
12 and back pain of my client, Mr. Ieng Sary, he cannot -- he can no
13 longer sit here and he wishes to waive his right to participate
14 in today's proceeding by following it in the holding cell,
15 downstairs.

16 MR. PRESIDENT:

17 After having heard the request by the accused Ieng Sary through
18 his defence counsel to waive his right to follow directly the
19 proceedings in the courtroom and instead to follow it in the
20 holding cell, downstairs, the Chamber grants the permission.
21 And the defence team needs to deliver to the Chamber the waiving
22 letter with your client's signature or thumbprint.
23 For the AV Unit, you are instructed to connect the proceedings to
24 the holding cell, downstairs, for the Accused to follow it.

25 [10.21.48]

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1 And that is for today's proceeding.

2 And security guards are instructed to bring him to the holding
3 cell, downstairs.

4 We now adjourn.

5 (Court recesses from 1022H to 1044H)

6 MR. PRESIDENT:

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

8 I now hand over to the national defence counsel for Khieu Samphan
9 to put question to the witness, Mr. Chhang Youk. You may now
10 proceed.

11 QUESTIONING BY MR. KONG SAM ONN:

12 Good morning, Mr. President. Good morning, Your Honours. And good
13 morning, everyone. And good morning, Mr. Chhang Youk. My name is
14 Kong Sam Onn; I am the defence counsel for Khieu Samphan. I am
15 going to put some questions to the witness, and I hope that you
16 will provide truthful answers to my question.

17 Q. First, I would like to get the confirmation from you.

18 Yesterday, you said that you had not any previous study on
19 authentication of documents.

20 MR. YOUK CHHANG:

21 A. No. Yes -- No, I don't.

22 Q. At DC-Cam, you do not have any expert in authenticating or
23 verification of authenticity of documents?

24 [10.46.23]

25 A. We worked with National Archives to actually verify the

1 authenticity of the documents.

2 [10.46.34]

3 Q. So do you admit that you do not have any expert or specialist
4 in certifying the authenticity of document -- I mean that you do
5 not have any dedicated teams with a specialized skill in
6 authentication?

7 A. No, we don't have. We work together as a team, but we do not
8 have the so-called specialist.

9 Q. So it means that you admit that there is no specialist in
10 authentication of document; is that correct?

11 A. No, we don't.

12 Q. So, in your Center, there is no written principle in terms of
13 authentication of document?

14 A. Yes, we do. We have four criteria.

15 I mean, upon receiving one document, we first ask question. We
16 know that certain owner of the document or those who possess
17 document do not want to have any, you know, problems in the
18 future. For example, he may be summoned by the Court, so -- so he
19 simply offers it to the Documentation Center of Cambodia. And,
20 upon receiving that document, we ask them for the provenance of
21 the document, but as I indicate earlier, we did not make it in
22 writing when we receive that.

23 But actually we have the procedure to follow. For example, in our
24 worksheet we have different fields, one of which is the source of
25 the document. So in any event, when we need additional

1 information, we can ask them.

2 [10.48.16]

3 Q. So, if you have any doubts, then you ask further question; is
4 that correct? But you do not have any principle of
5 authentication of the documents?

6 A. It's a bit difficult to understand the question.

7 MR. KONG SAM ONN:

8 Your Honour, could the speaker be directed to pause a bit in
9 between question and answer?

10 [10.48.41]

11 MR. PRESIDENT:

12 The witness and counsels are advised to pause in between
13 questions and answer so that parties and others who speak other
14 languages other than Khmer can understand the questions and
15 answers through translation.

16 MR. YOUK CHHANG:

17 A. When we obtain the document, we have a list of questionnaires
18 and we follow the guidelines. So, upon receiving the document, we
19 have to ask the person who handed over the document, for example,
20 where he found the document and whether or not he can provide us
21 the contact details so that we can follow up with him when we
22 want to ask question.

23 Q. So, when you say that there is a written guideline, are you
24 talking about the questionnaire or line of questionings that you
25 ask them? Have you actually had a printed guideline that you can

1 ask -- ask them to follow, or you simply have the question?

2 A. We ask the question. Normally, we advise our staff to frame
3 their questions, for example when we receive the document. They
4 have to check whether or not the document was obtained from a
5 proper place. And we ask a few questions, but generally we ask
6 general questions about the document. But we also narrow it down
7 to a specific question as to the provenance of the document, as
8 well.

9 [10.50.27]

10 Q. So, when you put question to the person who handed over the
11 document to you, you ask the general question about the document,
12 not the specific content of the document?

13 A. Mr. Khieu Tola (sic) is a classic example of that. He is a
14 retired office -- civil servant -- Khieu Kola -- sorry -- and he
15 has in possessions several documents about Khmer Rouge, so he
16 handed over a number of document and photos to me as well. And I
17 -- when I met him, he told me that I could make use of those
18 documents when-Particularly, I can keep those document for the
19 research purpose. So I ask him for the contact number so,
20 whenever there is any question about this document, I can contact
21 him later on. But so far, for example, journalist or media wishes
22 to take this document and they want further information as to who
23 gave it to the DC-Cam in the first place, then we can contact
24 them.

25 [10.51.46]

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1 Another example: I receive a number of photos from Japan. There
2 was a Cambodian guy working in Japan; he came across a pile of
3 photographs, and then he emailed it to me. He said he had in his
4 possession a number of photographs which he found in the former
5 Embassy residence in Japan. And he wanted to send those photos to
6 me and he did not want anything in exchange for those photos. He
7 merely wants them to be kept as a historical record. So we, so
8 far, have used those photos to publicize, we provide courtesy
9 copies to others as well. But we actually have the contact
10 address of the person who actually gave them in the first place.
11 So, at the same time, I have the overall question --
12 questionnaires to ask the person who actually give the photos and
13 documents.

14 Q. Just now, you brought up two examples, the photograph you
15 obtained from the Embassy and the other photograph from Khieu
16 Kola.

17 Did you ask them how they obtained those documents from the two
18 sources?

19 [10.50.36]

20 A. Well, we did not receive photograph from the Embassy --
21 Cambodian Embassy in Japan, but from the personnel of the
22 Embassy, the staff member of the former Cambodian Embassy in
23 Japan. And, when I receive document or photograph from Mr. Khieu
24 Kola, I ask -- I ask him as to where he obtained those document.
25 Because those photographs in colours, he said he obtained those

1 documents -- those photographs when he first entered Phnom Penh.
2 At that time, Phnom Penh was -- was an empty city. There were not
3 many people in the city, so he went to somewhere around the
4 former Soviet Embassy, and then he found those photographs, and
5 he want those photographs to be kept in the place where people
6 actually can benefit from it in the future use.

7 [10.54.37]

8 Q. Well, I'm not dwell on the details of the photos, but I would
9 like to actually want to ask you to enlighten the Chamber. Now,
10 for example, Mr. Kola discovered photograph somewhere in the
11 premise of the former Soviet Embassy. So Mr. Kola himself did not
12 have any knowledge as to how those photos -- photographer
13 actually kept in the Embassy in the first place.

14 A. That was correct.

15 Q. So it means that the chain of custody was actually
16 disconnected because you did not have the full information of the
17 custody of the document from when the photo were taken and how
18 the photos were kept in different places at different stages; is
19 that correct?

20 A. It depends on documents, because certain documents may be
21 small collection and other big collections, and it's sometimes
22 difficult to ask for the minor details of the document. But Mr.
23 Kola -- Mr. Kola discovered those documents from the former
24 Soviet Embassy. So we ask -- we continue to ask, not only from
25 Mr. Kola, but we also look at the people who were in the photos

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1 as well and we try to track down whether or not we could find the
2 first -- a trace of these photos.

3 [10.56.27]

4 Q. Earlier on, I asked you about the written guidelines on the
5 authentication of documents, and you said this guideline is
6 available in your Center. Can you enlighten the Chamber as to
7 what are the principles or basic guidelines for authentication?

8 [10.56.56]

9 A. Well, I can ask my staff member to send you a copy of that
10 guideline, if you -- if you like. And with permission from the
11 Chamber, I can inform the Chamber that, upon receiving document,
12 we have to ask where they obtained those documents, and the
13 address of the person who handed over the document, and when the
14 photos or document were discovered or from whom did the person
15 receive the document. And, upon counting the number of document
16 or pages, we ask them whether or not there are any other relevant
17 or supporting documents.

18 So there are many other details in each question, and If I
19 remember correctly, there are seven, eight questions, and these
20 question actually was established by a law professor; he was
21 professor in one university in California, in -- and I think now
22 he was being appointed as the charged affair at large of all
23 crime.

24 Q. Well, I am sorry to cut you but I think that the Chamber may
25 not want to hear the details of this; that should be enough.

41

1 A. Well, that -- that is the chain of custody, if you want to
2 know the historical trace of the document.

3 Q. Well, most importantly, I want to know the step or procedures
4 you work with the document.

5 [10.58.37]

6 A. Well, that -- that is the procedure, the existing procedures
7 and guidelines we have in our place.

8 Q. I would like to move on to the mission of your organization.
9 You mentioned earlier that your organization was established in
10 order to collect documents in order to reconcile. That's what you
11 said yesterday. And you also mention it again this morning; is
12 that correct?

13 A. Well, like yesterday, I could dwell on the subject for hours.

14 [10.59.24]

15 Q. Well, I do not ask you to dwell on this matter, but I would
16 like to ask you whether or not it was true or not you mention
17 about that mission of the organization. If you want to change
18 your mind, you can.

19 A. No, that was -- that was the mission, and it stands.

20 Q. In your view, as it is the mission of your organization, I
21 believe national reconciliation, as you stated, it's the vision
22 of your organization as well. I would like you to confirm to the
23 Chamber if Cambodia at its present situation has an issue that
24 needs to be reconciled. Can you provide you organization's view
25 on this matter?

1 And, of course, in fact, there are two questions linking to this.
2 The first question is that: Is your mission at DC-Cam has changed
3 since its inception until the present time?

4 A. Yes, I can respond -- if Your Honour permits, since Mr. Dara
5 already replied to this question.

6 MR. PRESIDENT:

7 Witness, you are instructed not to respond to this question. It
8 is a repeated question and, as you represent the legal entity of
9 DC-Cam, you don't need to respond.

10 And, the Defence Counsel, please direct your question to the
11 subject matter being examined at this stage for this particular
12 witness in the named as the director of DC-Cam, in particular in
13 regards to the operations, the management, and collection of
14 documents at DC-Cam, as I remind other parties on a number of
15 occasions.

16 [11.02.22]

17 As regards to the missions or visions of DC-Cam, they are not
18 related to the subject matter being examined this morning.

19 MR. KONG SAM ONN:

20 Thank you, Mr. President. I'd like to make my observation that,
21 when DC-Cam was established in 1995, there were the Khmer Rouge
22 movements who were yet to be integrated into the Cambodian
23 Government, and it has changed since.

24 For that reason, I'd like to know the purpose of the mission of
25 DC-Cam at that time and its mission at this stage, or whether the

1 mission that was set at the inception has not yet changed.

2 In addition, I'm of the view that my question is not repetitive,
3 as I focus on the status of change of vision at DC-Cam, if there
4 is any. And I'd like the instruction from you for the witness to
5 respond to this question.

6 [11.03.55]

7 MR. PRESIDENT:

8 Witness, you are instructed not to respond as we have already
9 ruled.

10 BY MR. KONG SAM ONN:

11 Q. I will now move on to another question for Mr. Chhang Youk.
12 Last week, Mr. Vanthan further testified before this Chamber.
13 And my question is: Did you follow his testimony?

14 MR. YOUK CHHANG:

15 A. Yes, but it was on occasion, not the complete testimony.

16 [11.04.52]

17 Q. You heard the main important -- the main points of the
18 testimony.

19 Did you discuss with your deputy, Mr. Vanthan Peou Dara, after
20 his testimony?

21 A. Before I went to Thailand, I met him. And later on I spoke to
22 him on the phone to expressing my support that he should not have
23 any worry or concern, because our testimony is important both the
24 victims and for the Accused. And of course, if I am the Accused
25 defendant, I would also want the victims and the ones who -- and

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1 as for the ones who committed the crime to be punished. So I ask
2 him not to be worried.

3 Q. I don't really understand what you just said. If you are a
4 defendant for the Accused, you meant you want the victims to
5 become the criminals?

6 A. I think maybe you don't understand my statement, and my staff
7 probably would understand me more. What I intended to say is that
8 we want a fair and just Court. For that reason, we need to
9 respect the principle of the right for the Accused. It means they
10 have to have a good lawyer, like Mr. Karnavas.

11 So, in general, we have various methods. Some victims are actual
12 victims, but in certain examples, it seems that the victims were
13 portrayed as the criminals or the offenders. So that is the
14 concept that I always advise my staff not to get angry with the
15 questions put to him by the defence counsel so that he needs to
16 compose himself to provide a fair answer.

17 [11.07.29]

18 Q. Can you confirm to us in regards to the categorization of the
19 document? One point is that you had to categorize your documents.
20 Can you provide us a little bit of details regarding this
21 process?

22 A. If you study through the university, it seems simple enough.
23 In order to conduct research, we need two kinds of documents. And
24 of course you already believe -- I believe you already finished
25 your education and became a lawyer.

45

1 The two types -- the two levels of documents are the original
2 document and the supplementary document. For the five documents,
3 the five types, we put them into category. In English, people
4 would say the primary source; that is the direct original
5 documents that we received from the first custodian.

6 [11.08.53]

7 And, secondly, that a secondary resource that we receive from
8 another party. So, for all the five types of documents -- and I
9 believe you can recall those five -- they are into different
10 categories.

11 And of course, if you study at university, either locally or at
12 international university, everybody should be familiar with this
13 type of process. I hope you understand my statement. Of course, I
14 do, but I wait for the interpretation to finish first.

15 MR. KONG SAM ONN:

16 I believe I need to seek a permission from the Chamber that, when
17 the witness gives an example, in his response, about my personal
18 background and education or that I should understand this
19 process, that is my personal affair. And the witness shall not
20 raise this issue as an example. And I'd like the Chamber to
21 instruct the witness not to do so again.

22 MR. PRESIDENT:

23 I think it applies to both. The Defence Counsel, you need to make
24 your questions clear and precise in order to have them as the
25 base for the witness to respond. If the questions are not clear,

1 then the response would not be clear.

2 And for the witness, please listen carefully to the question.

3 And, if you do not understand, you can ask for the rephrase or

4 the repeat of the question. Or you can do it through the Bench;

5 then the Bench can instruct the counsel to ask another question.

6 [11.11.15]

7 And, number two, please only respond to the question being asked.

8 And, when it comes to personal matters, please try to avoid this

9 issue -- for everyone in the courtroom -- so that we can uphold

10 the respect for one another. Counsel, you may now proceed.

11 [11.11.50]

12 BY MR. KONG SAM ONN:

13 Q. Thank you, Mr. President. Mr. Youk Chhang, before the

14 establishment and operation of this Court, did your organization

15 upload on the webpage the documents -- the contemporaneous

16 documents from the DK regime?

17 MR. YOUK CHHANG:

18 A. We uploaded the information in our four databases. They are

19 photographs, the maps of the mass grave, biographies, etc. And

20 other documents were scanned and attached to the -- each

21 database.

22 Q. Did you also upload the confessions on the website?

23 A. If you refer to 1,000 confessions that we received from the

24 Ministry of Interior, we tried to scan and to upload them, but

25 only some were uploaded. At that time, the internet speed was

1 slow, and if we uploaded more, it would crash the system. As a
2 result, only some were uploaded, not a complete set. But we did
3 not upload the confessions from the Tuol Sleng Museum.

4 [11.13.30]

5 Q. For all the documents that DC-Cam has received, does DC-Cam
6 make an assessment of those documents?

7 A. I believe my deputy, Vanthan Peou Dara, already stated on this
8 issue, how the -- whether we made an assessment or not. But my
9 response is that, for every piece of documents that enter the
10 DC-Cam, it would have to come across my desk. And, after I review
11 it, I would put it in different categories, based on the -- our
12 database: biographies would go to the biography section,
13 photographs would go to the photograph section, or mass grave
14 would go to each database accordingly. And, if you consider this
15 as an assessment, this is the kind of assessment that I did.
16 And then I would deliver this to my staff to scan, and to
17 digitize it, and put it the computer database.

18 [11.14.43]

19 Q. In your organization, does it have any assessment made by an
20 expert?

21 A. Yes, by Professor Ben Kiernan. He made assessment on the
22 Santebal dossiers. The assessment was not that difficult because
23 the word "Santebal", it is already Khmer on those documents. And
24 Ben Kiernan wrote a summary on the -- this type of document. You
25 may find this information in -- on the Yale University website.

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1 He made an evaluation and have it on that website, and he also
2 made an assessment or evaluation on the different types of
3 biographies. As I recall, it was not on the website. And, if you
4 need, I can provide you with this document as well.

5 Q. The assessment that you just mentioned, is it an official
6 assessment or it is a personal assessment?

7 A. It is an assessment made by the historian, Ben Kiernan.

8 Q. So it is a personal assessment, isn't it?

9 A. Yes.

10 Q. For the documents that you received from the National
11 Archives, had you conducted any official assessment?

12 [11.16.50]

13 A. I was aware of these documents after I read a book written by
14 Ben Kiernan, and he referenced those documents that was stored at
15 National Archives. So, in his book, it -- you can mean it is
16 already an assessment by him. And I was aware of these documents
17 through reading his book. So, probably, his book can be used in
18 order to support the assessment by this historian, Ben Kiernan,
19 on those documents.

20 Q. My question is that: The documents that you received from the
21 National Archives, does it have any assessment on them?

22 A. You mean the assessment by DC-Cam.

23 Q. I mean by the National Archives.

24 [11.17.58]

25 A. For the National Archives, it is a government and legal

1 institution. Madam Lim Ky was in charge of the documents. We
2 asked her for the source of the document and as who were the
3 previous custodians. As well as I can recall, they were received
4 from the Ministry of Culture and Propaganda made with Mr. Chanda
5 as the minister, at the time, and he was the President of the
6 Bench during the trial, at that time.

7 So, of course, the National Archives has the regulations, the
8 degrees for the maintenance of those documents.

9 And whether Madam Lim Ky make an assessment or not -- it might
10 have not been published, but I think the question can be directed
11 to her if necessary.

12 Q. Let me try to sum up your comment: You do not know whether the
13 National Archives has made any official assessment; is that
14 correct?

15 A. Yes.

16 Q. My next question is that: Are you aware that, in Cambodia,
17 there is a law in relation to archiving?

18 A. Yes, there is such a law, and it was drafted by the Council of
19 Ministry. If I recall well, it was submitted through the National
20 Assembly for adoption, but I'm not sure whether it has been
21 approved by His Majesty. Of course, we also reviewed that law
22 when it was drafted, and we made some comments on the draft.

23 [11.20.48]

24 Q. I'd like to ask you another question in regards to the
25 practice at DC-Cam.

50

1 Did you adhere to the principle in this Archive Law?

2 A. The law has only been drafted recently, and it is yet to know
3 whether it has been signed by His Majesty. And when we started
4 collecting the documents, in 1995, this law was not yet drafted.
5 I cannot recall the exact year, but it was about two or three
6 years ago, when the law was drafted by the experts at the
7 National Archives and the Council of Ministers -- because the
8 National Counsel, the National Archives is under the management
9 of the Council of Ministers.

10 [11.21.55]

11 Q. For a proper record of transcript, the Archive Law was adopted
12 and signed by His Majesty since 2005. So the law has been in
13 force for almost seven years.

14 I'd like to ask another question in regard -- in regards to the
15 maintenance of the documents at DC-Cam.

16 The documents that you receive at DC-Cam, do you have experienced
17 staff who are able to authenticate the documents at your office?

18 A. Your Honours, when you talk about expertise, how do -- how do
19 you measure expertise? It is rather difficult for me to respond.
20 Regardless, I'll respond.

21 [11.23.29]

22 The word or the term "expertise" is too broad.

23 As I stated earlier, if we have any doubt, we will take
24 consultation with our partner -- that is, the National Archives
25 -- and we also work with various other organizations and

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1 institutions. When you talk about expertise, are you talking
2 about a certificate or degree in expertise?

3 My staff, including my deputy, Dara, has been working for 17
4 years. And, if you said that they lacked the experience and
5 expertise and then they need to study in order to get a proper
6 master degree or something, that is difficult.

7 And I'd like to get instruction from the Chamber for the defense
8 counsel; Khmer language is rich, and the word "expertise", in
9 Khmer, is -- is so broad.

10 Q. Thank you, Mr. Chhang Youk. Let me elaborate that the word
11 "expertise", here, in the name that they have receive a special
12 training, a specialized training. Another person can be
13 considered as being specialty in providing authenticity on those
14 documents.

15 [11.24.59]

16 A. As Mr. Vanthan Peou Dara said, our staff have been trained at
17 the New South Wales University, where Madam Helen Jarvis was a
18 librarian who provided the training. And we have Madam Cross, her
19 assistant, also trained our staff in Australia. These two
20 individuals also came to DC-Cam to conduct trainings to various
21 other staff, and we have been working and sharing this experience
22 for the last 17 years.

23 Q. I'd like to focus on the expertise in authentication. This
24 morning, when you talk about the physical examination of the hard
25 copy, in particular on its colour -- on the age of colour, how do

1 you assess whether the document of that paper was produced during
2 the DK period?

3 [11.26.28]

4 A. Let me respond. There is no scientific -- forensic examination
5 on the physical papers; we use our visual observation. For
6 instance, this tissue, this piece of tissue cannot be from that
7 era. This is a new piece of tissue. The age of colour illustrates
8 the -- the time that it has gone through and also sometime people
9 use the colours -- the papers left from the DK period. The
10 remaining papers from the Lon Nol regime have also been used by
11 various other people, and if you actually smell the paper, the
12 smell is not that pleasant. And not only I have the visual
13 examination of those documents, other people do. And if you train
14 your eyes to -- for this visual examination, then for 17 years,
15 then you would know.

16 So the physical presentation is not the only factor that we
17 assessed; also the contents, the author, and the date of those
18 documents.

19 Why I talk about the colour? Because human beings see everything
20 through colour; like when I see you, I see a white colour, not a
21 black colour yet. So colour is important. And, when we train your
22 eyes for 17 years, with assistance from other people as well,
23 combining with various other information and factors, it is
24 sufficient for the DC-Cam to make assessment. Of course, we don't
25 have any scientific testing on the actual hard copy.

1 [11.28.37]

2 Q. Mr. Chhang Youk, can you confirm to the Chamber that the
3 physical custodian of paper in various locations might have an
4 impact on its -- on the physical condition?

5 A. You mean if it is not maintained in an air-conditioned room?

6 Q. For example, two pieces of a paper, one is in the room, one is
7 outside; the colour is changed, isn't it?

8 A. I am not an expert in colour, but in general, the
9 contemporaneous DK documents were stored in a room. Even if they
10 when they were scattered around in the Tuol Sleng Museum, they
11 were scattered in the room. I rarely see those DK documents
12 inside -- at my other locations. So, if there is an expert to
13 make this assessment, that will be interesting as well.

14 [11.30.03]

15 Q. When it comes to custodian or documents before they were
16 delivered to DC-Cam, did you make verification as in a forms of
17 questions on those people who delivered the documents to you in
18 regards to where they obtained those documents?

19 A. Your Honour, I probably need to provide an answer if you
20 allowed.

21 MR. PRESIDENT:

22 Yes, you can do so.

23 MR. YOUK CHHANG:

24 A. The-- Let me give you an example. The documents at the
25 Ministry of Interior, I try to find the custodian, and I was told

1 that the documents were located near Sileb Market, on the way
2 approaching the US Embassy residence. But now, of course, it
3 became villas and karaoke palace.

4 For the documents at the National Archives, they were there. So I
5 was instructed - directed, okay, they were in this room or that
6 room.

7 For the documents at the National Archives, they were there, so I
8 wasn't instructed or directed, okay, they -- they were in this
9 room or that room.

10 [11.31.38]

11 Previously, those documents were at the office of Mr. Keo Chanda,
12 or you can ask Mr. Bergström or Laura Summers that the documents
13 were then transferred to the Lund University. So you can really
14 try to locate the locations of those documents, but the locations
15 have been changed from 1979.

16 Q. Can you confirm the number of documents you have discovered
17 and the documents that were given to your organization? How many
18 percent did you discover by themselves and how many were given by
19 others?

20 A. Your Honours, I apologize, it's a bit difficult to come up
21 with the exact percentage, but of course, if I go into my
22 database, I can actually point it out and I can send the
23 information. And, talking about the specific percentage, it's a
24 bit difficult, as well, because the document is coming in every
25 day.

1 Q. I would like simply to know the document that you have
2 received and you have in your possession so far. As for the
3 incoming documents, we are going to talk about that later on. So
4 I would like to know how many percent of the documents you have
5 discovered by yourself -- by your organization, and how many
6 percent were you given by others.

7 [11.33.40]

8 A. Well, if I refer to a specific percentage, this percentage
9 might be -- I might be kept hostage of this number. So I -- my
10 estimation, it may be 60 percent from my own organization and 40
11 percent from others. It's only indicative.

12 Q. I actually have heard the answer, but I would like to check
13 your confirmation. Document that you have received, you say --
14 you mentioned that there are around 1 million documents, but in
15 another occasion I heard that there were around 1 million pages;
16 which one is true?

17 [11.34.52]

18 A. Well, this is a technical aspect. If you look at the
19 technicality in compiling or collecting documents, when we talk
20 about one page; it is also considered a document as well -- a
21 one-page document is a document. So if we look at -- we refer to
22 the page, we look at the only page, but if you refer to the
23 sheet, there are two pages on the sheet. According to Mr. Ben
24 Kiernan, one page is considered a document. And certain people
25 consider that one-hundred-page or one-thousand-page book, for

1 example, is considered a document. But to us, one page is
2 considered one document, and then we continue counting them. So
3 this is the counting procedure, but other institutions might use
4 different methodology.

5 Q. So is it fair to say that over -- around 1 million documents
6 you have in your possession, it may be said that it accounts for
7 1 million sheets?

8 A. Well, it can be said that it's 1 million sheets, but it's
9 comprised of the five categories of documents we have in our
10 possession.

11 Q. According to you, you say that out of 1 million documents you
12 have in your possession, no document is considered fake or
13 fabricated.

14 A. There is one -- only one piece of document; the document
15 concerning the kidnapping of foreigners in Kampot province.

16 [11.36.50]

17 Q. So over -- around 1 million documents you have at the DC-Cam.
18 You recognize -- you admit that there is no one document that is
19 fake?

20 A. Are you talking about a document -- contemporaneous document
21 of the DK period? Well, these documents are the contemporaneous
22 document from 1975 to 1979.

23 Q. So there is no single fake document out of those 1 million
24 documents; is that your answer?

25 A. Yes, that is the answer. I have never changed my answer.

1 What do you mean by "fake"?

2 Q. "Fake" means that those document are not authenticated
3 documents; it is not a genuine document.

4 [11.37.52]

5 A. There is one document, as I said repeatedly, about the
6 kidnapping of foreigners in Kampot province, but other documents
7 are all from the DK period.

8 Q. The one document that you said it was irregular and -- it was
9 not a contemporaneous document of the DK period?

10 A. Well, yes, that's true. It was not relevant to the DK period;
11 it was way after 1975 to 1979.

12 Q. Documents in the possession of DC-Cam, are they confined to
13 the contemporaneous periods from April 1975 to the 6th of January
14 1979? Is that correct?

15 A. I think's that it's a bit repetitious. When we talk about
16 document, it's rather broad. It involves other documents, as
17 well. Documents that we actually enter into our database are, of
18 course, contemporaneous documents, but there are other documents.

19 For example, interviews with the survivors, the photographs
20 collected afterwards, they are also considered documents we have
21 in our possession, and we actually enter them into our database.

22 [11.40.06]

23 But the paper database, paper documents that we have and we enter
24 into our database are the contemporaneous document of the DK
25 period. But there are also documents that we call the "front

1 document"; those documents were considered petitions and those
2 documents were actually produced sometime in the early 1980s. And
3 we found those documents in the Ministry of National Festival,
4 and those documents was produced after 1979, but it was the
5 supplementary documents which give some indication as to the mass
6 graves, as well as the pits of the Khmer Rouge regime. And we
7 actually use those documents as complimentary documents, and we
8 consider them relevant and important. But later on we found that
9 it was not proper to include it into the category of documents,
10 and we classify them as the "front documents".

11 [11.41.24]

12 Q. Thank you. Can you assess the documents -- I mean, the
13 documents that you consider the contemporaneous documents and the
14 documents that were produce later on, post-1979, can you
15 distinguish between the two types of documents?

16 A. This is quite a difficult question to answer. I think that
17 this -- this can be answered by the -- by looking at the database
18 of my website. If I answer from the top of my head, I cannot
19 actually recall. But if you want this information, you can
20 indicate that. I can provide -- can ask my staff to provide you
21 the exact data. Otherwise, you may look it in my -- in my
22 website. I do not want to tell you the exact number -- percentage
23 point because I don't want to be kept hostage with the number I
24 mention.

25 [11.42.49]

1 Q. That brings me to the last question: Do you know that your
2 former staff have been recruited at the ECCC? How many of them
3 have worked at the ECCC?

4 A. Well, yes, there are many -- there are many of my staff
5 working here. I noted yesterday Sochea, from OCP, Kalyan, Sophal,
6 Makara, Narin, Sorya - so people working in Public Affairs, in
7 Translation Unit, in the OCIJ, but I cannot tell you the exact
8 number. But I remember their names, but I don't know how many
9 exactly and there is nothing to hide, as well. I can -- I can --
10 I can tell you the names because those people actually apply for
11 a job here and they were recruited through a regular process of
12 the Court, so they should be proud of themselves, and I can't
13 tell them -- I can't tell you the names of those former staff who
14 are actually now onboard with the ECCC.

15 [11.44.01]

16 MR. PRESIDENT:

17 Thank you, Counsel. And thank you, Witness.

18 It is now time to adjourn for lunch. And the Chamber will adjourn
19 for lunch until 1.30 this afternoon.

20 And for your information, Mr. Chhang Youk, your testimony has not
21 yet come to an end yet. So, this morning, you will be brought to
22 -- before the Chamber again.

23 And the court officer is instructed to arrange the room for the
24 witness to take a rest and bring him to the courtroom before
25 1.30.

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1 Security guards are now instructed to bring Mr. Nuon Chea.
2 And the Chamber notes the counsel is on his feet. Is there any
3 issue you want to raise? You may proceed.

4 [11.45.14]

5 MR. PESTMAN:

6 I almost forgot, Your Honours, to make my usual request. My
7 client would like to stay downstairs and follow the remaining of
8 the procedure from the holding cell.

9 And I've already submitted a copy of the waiver -- or the
10 original waiver to the greffier.

11 MR. PRESIDENT:

12 Having heard the request by the accused Nuon Chea through his
13 counsel, who waives his right to be present in the courtroom, and
14 instead follow the proceeding remotely, through audiovisual
15 equipment, in the holding cell, the Chamber grants the
16 permission, and Nuon Chea may follow the proceeding from the
17 holding cell.

18 And the counsel also informed the Chamber that he has already
19 submitted the Chamber a copy of the original waiver that his
20 client would not participate directly in this proceeding. So the
21 AV technicians are instructed to connect the AV equipment so that
22 Mr. Nuon Chea can follow the proceedings remotely, from the
23 holding cell.

24 [11.46.56]

25 And security guards are instructed to bring Mr. Nuon Chea and

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1 Khieu Samphan to the holding cell, downstairs, and bring Mr.

2 Khieu Samphan to this courtroom before 1.30.

3 The Court is now adjourned.

4 (Court recesses from 1147H to 1331H)

5 MR. PRESIDENT:

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

7 We would hand over the floor to Nuon Chea's defence team in order

8 to put questions to this witness. You may now proceed.

9 [13.32.30]

10 QUESTIONING BY MR. PAUW:

11 Thank you, Mr. President, Your Honours. Good afternoon, everyone

12 in the courtroom. Good afternoon, Mr. Youk Chhang.

13 I would like to start today by saying thank you to you, Mr. Youk

14 Chhang, because, as has been discussed over the past few days,

15 you have been very helpful in providing us with information. And,

16 as I understand, you've mostly dealt with my colleague, Andrew

17 Ianuzzi, and he tells me that the contact has always been very

18 pleasant and that you've always been helpful. And, as it was an

19 issue in the last few days, I would like to thank you on behalf

20 of the Nuon Chea defence team.

21 Q. And-- I'll wait for the translation. And as it was not a

22 question, I will continue with my first question, and that

23 relates to some general issues that I would like to pose some

24 questions about.

25 [13.33.25]

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1 And the first one is-- It's been discussed a lot the past few
2 days, but I would like to get it very clear that, if DC-Cam
3 refers to a document as an original document, this document may
4 not be the actual document as it was produced during the DK era;
5 is that correct?

6 MR. YOUK CHHANG:

7 A. It is rather difficult because the photocopy document can also
8 be considered original because it is copied from the original
9 document held overseas.

10 Q. I think this answers my question in a slightly roundabout way.
11 I understand your question to mean that what you, at DC-Cam, call
12 originals are not necessarily documents that were at least
13 allegedly created in the DK era, between '75 and '79.

14 A. That is correct.

15 Q. Thank you. And you've talked about this a little bit
16 yesterday, but I want to also make it very clear: When you come
17 across a document that dates from the 1975 to 1979 period, will
18 you collect it and keep it no matter what the content of that
19 document?

20 [13.35.17]

21 A. That is also correct.

22 Q. And DC-Cam also collects documents that have not actually been
23 produced in the '75 to '79 period; we know this because some of
24 these are actually on the case file.

25 What criteria do you use to actually collect a document that was

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1 not produced during the DK era or not collect it?

2 A. In general, those documents were given to us in a big chunk,
3 so there is a mixture. For example, those from Sweden, there were
4 some document from the DK era, and some were done by the DK
5 officials but after that period, and the whole lot of it went to
6 us. So we did not separate those documents as we tried to retain
7 the original collection. We were given those documents as a bunch
8 together.

9 [13.36.30]

10 Q. Okay, let me try to be more specific. If you, as a DC-Cam
11 researcher, or one of your researchers goes out into the
12 countryside in Cambodia and comes across a document that is
13 dated, let's say, 1982, but it still may or may not relate to the
14 '75-'79 period, what criteria do you use to then collect the
15 document or not?

16 A. In general, if the document was not produced during the DK
17 era, but it -- its content is related, for example regarding mass
18 grave or relocations, then we also collected that type of
19 document as well.

20 Q. And you say it is "related" to the DK era, but could you be a
21 bit more specific? Do you use any criteria to determine whether
22 it's related to the DK era?

23 [13.37.46]

24 A. I am not really clear on your question. Do you mean what --
25 what criteria I use in order to identify that a document was from

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1 the DK era or how do I consider the documents that was produced
2 after the DK era?

3 Q. I'll make it easier, maybe, by giving a specific example -- a
4 fictional example. But let's say you come across a document that
5 is clearly produced in 1983, 1984, for example, and it talks
6 about my client, Nuon Chea; will you, then, collect it even if it
7 relates to actions or acts by my client that may have occurred
8 after the '79 period?

9 A. In general, we do not go to the countryside or to other places
10 to collect those documents. However, we were given those
11 documents as well, and then we retained them at our DC-Cam.

12 Q. I don't want to linger too much on this point so I will move
13 on. The question has not been answered, but that may be my fault
14 because the question is not clear. But I will move on.

15 [13.39.11]

16 You have stated at the Investigating Judges that certain scholars
17 have made annotations on the original DK-era documents. Can you
18 give us some names of some of those scholars?

19 A. From what I can recall, they're Professor Ben Kiernan, David
20 Chandler-

21 THE INTERPRETER:

22 The interpreter cannot catch the third name.

23 Q. Could you please repeat the third name?

24 A. Julio Jeldres, the-- That scholar was from Chile.

25 Q. At the Investigating Judges, you have actually discussed one

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1 particular document and you've recognized the handwriting of Mr.
2 Stephen Heder; do you recall recognizing this document at the
3 Investigating Judges?

4 A. If you show me the document, then I can tell you that because
5 I know the handwritings of many senior researchers.

6 [13.40.47]

7 Q. Okay. Well, I would love to do that, but I, again, want to
8 keep an eye on the clock. So my question will be: According to
9 your knowledge, do you know if Steve Heder ever wrote on original
10 DK-era documents?

11 A. I cannot recall that well. And also which document you refer
12 to? I only remember the three scholars that I mentioned earlier;
13 they did make annotation on the minutes meeting of the Standing
14 Committee. In the case of Steve Heder, I need to see that
15 document before I can say so.

16 Q. Thank you.

17 In your discussions with the Investigating Judges, you have used
18 the term "at-risk documents". Can you explain what the term
19 "at-risk documents" means?

20 A. We use the term "at-risk" in reference to those documents.

21 This type of document is a document that -- of our concern due to
22 the clashes in 1997.

23 [13.42.18]

24 I discussed with Ben Kiernan and Helen Jarvis what shall we do to
25 that documents due to the unstable situation. Then, we were

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1 advised that for the important documents, we should gather them
2 in one secure location. As I remember, our building was being
3 refurbished. And our building was on the east of the Independence
4 Monument, and at that time there were a lot of armors and
5 soldiers, so I told Ben Kiernan that this one document -- or
6 these documents were at-risk documents, and we need to find a
7 secure location.

8 Q. Thank you, that's a clear answer.

9 We've discussed several times in the past few days that DC-Cam
10 has as its mission searching for the truth, and one of the things
11 that your organization is searching for is the truth about the
12 people that died during the DK era; is that correct?

13 [13.43.37]

14 A. Yes, that is correct.

15 Q. In your research, do you ever come across documents or other
16 forms of evidence that could provide other explanations for
17 deaths that have been attributed to the DK regime?

18 MR. ABDULHAK:

19 Mr. President, if I may, we would object to this question, simply
20 because it relates to DC-Cam's other activities and methods in
21 areas into which they may undertake research.

22 And, just recalling Mr. Karnavas' objection yesterday, we're here
23 to deal with the methodology for obtaining, cataloguing, and
24 treating DC-Cam documents that are now before the Court, other
25 DC-Cam activities being irrelevant to that issue. Thank you.

1 MR. PAUW:

2 Mr. President, if I may respond shortly, I think the objection by
3 the OCP is -- should not be sustained for several reasons.

4 It's clear that this type of evidence, if it is collected by
5 DC-Cam, is relevant also in this trial, because it would raise
6 the question if DC-Cam possesses this evidence, has or has not
7 transferred this evidence to the Court.

8 [13.45.02]

9 As to what my colleague, Mr. Karnavas, said yesterday, that was
10 his position. I do not remember the OCP standing up in support of
11 his position, and I think the Chamber actually ruled in favour of
12 my colleague from the civil parties, stating that the collection
13 of evidence is something that can be discussed.

14 [13.45.23]

15 Our position is that, if you talk about the collection of
16 evidence, the flip side of that is that the not collection of
17 evidence or certain evidence that is not transferred to the
18 Court, for that matter, should be a topic of discussion. We
19 cannot limit ourselves to just discussing the documents that have
20 been found and that have been transferred; we need to also
21 discuss what documents have not been looked for, have not been
22 collected or, possibly, have not been transferred. We need to get
23 that whole picture; that's what we are here for today. It belongs
24 to the discussion of the collection of evidence.

25 MR. PRESIDENT:

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1 Witness, please wait.

2 (Judges deliberate)

3 [13.47.16]

4 Witness, have you heard clearly the questions that you were
5 asked?

6 MR. YOUK CHHANG:

7 I would like the counsel to repeat his question.

8 BY MR. PAUW:

9 Q. Yes, Mr. Youk Chhang. My question was--

10 I'll give a little bit of an introduction to make it, perhaps,
11 more clear.

12 The DK regime has been accused of being responsible for the death
13 of many people. There might however be other causes of some of
14 those deaths, at least.

15 Do you, in your research, ever find documents or other forms of
16 evidence that could provide other explanations for those deaths,
17 for example documents relating to the American bombing raids or
18 documents relating to Lon Nol atrocities?

19 [13.48.28]

20 MR. PRESIDENT:

21 Witness, you can respond to this question, and the objection
22 raised by the Prosecution is denied.

23 MR. YOUK CHHANG:

24 A. Usually, we receive information, in particular from Svay
25 Rieng, where heavy bombardment was made. We also witness the

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1 fragment of the bombs. We also saw the remnants of weaponry on
2 the mountain, in Rattanakiri. And we also informed the military
3 museum, in Siem Reap, regarding these remnants of weapons.

4 We also used to be informed of the death of people, and not due
5 to the imprisonment, but due to sickness and lack of medicine.

6 BY MR. PAUW:

7 Q. Thank you. Thank you. And my actual question was: When you
8 come across that evidence, for example remnants of bomb craters,
9 would you collect that evidence? Would you take pictures? And
10 would you store it at DC-Cam?

11 MR. YOUK CHHANG:

12 A. Yes, we do. We went to wrote some articles in the "Search for
13 the Truth" magazine.

14 Q. And, when you go out in the countryside to interview people as
15 to the things that happened in the DK era, do people voluntarily
16 speak about other things that may have happened, such as, again,
17 American bombing raids or the Lon Nol regime?

18 A. Usually, we would ask them to describe about their large
19 events. Some of them started from the fifties, the sixties or
20 during the events of the bombardment. So our staff actually
21 recorded the description of those events, and they are on the
22 tape.

23 Q. Okay, thank you. That is very clear.

24 [13.50.57]

25 Then-- And moving on to another topic, and that is your

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1 interactions with the OCP-- And we have asked your deputy, Mr.
2 Dara, some questions regarding this, but some things remain
3 unclear.

4 So the first question would be the following. You have stated
5 that you received a letter from the OCP on the 8th of September
6 2006; in this letter, the OCP officially requested you to
7 transfer documents.

8 Do you remember giving this date in your interview with the
9 Co-Investigating Judges?

10 A. I cannot recall that. We have received many request letters.
11 If you can show me the particular letter, then I can describe.
12 Because, usually, we instruct any party for a request to make it
13 in writing.

14 Q. Again, with a view on the clock, I will not show you the
15 actual letter; I will just tell you that you have made a
16 statement with the Investigating Judges, in which you stated
17 that, on the 8th of September 2006, you received a first letter
18 by the OCP in which the OCP requested DC-Cam to hand over
19 documents.

20 [13.52.34]

21 My question is the following: Before you received this first
22 letter by the OCP, had you had meetings with representatives of
23 the OCP?

24 A. We never discuss about the documents that a party would like
25 to request. We know that, at the ECCC, there is Mr. Craig

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1 Etcheson who usually informs his peers about the database used at
2 DC-Cam. And, if anyone wants a particular document, then they
3 needs to refer to the code used at DC-Cam. So all the letters
4 from OCP, OCIJ or the DSS, they must be brought to my attention
5 with the codes of the documents that they would like to obtain.
6 And that is the practice.

7 Q. Thank you for that answer, but my question was: Before the OCP
8 actually requested documents from DC-Cam by official letter, had
9 you had -- you, personally, Mr. Youk Chhang -- had you had any
10 meetings with representatives of the OCP?

11 [13.54.11]

12 A. If you talk about the meeting to discuss a document, no, but
13 if they were -- or they went to work in an office in the DC-Cam,
14 yes, because we have an office reserved for all parties, but
15 there was no discussion on any particular document.

16 Q. Thank you. When-- According to your recollection, what was the
17 first time you met a representative from the OCP?

18 A. I cannot recall that. Because at that time it was Mr. Robert
19 Petit. I met him and I met Madam Chea Leang, but I cannot recall
20 the first time that I met with them. I can say I met with them
21 only during the operation of the ECCC.

22 Q. Okay. And do you remember what was discussed in your first
23 meeting with Robert Petit? And I'm not sure if Chea Leang was
24 present, but do you remember what was discussed with Mr. Robert
25 Petit?

1 [13.55.54]

2 A. It was rather difficult because Mr. Robert Petit was a man of
3 a few words, he did not speak much and he was rather reluctant,
4 as he believed I worked for the government institution. I met
5 with Mr. Robert Petit once, and he was really unfriendly at the
6 time, and I was rather surprised because it was the first time
7 that I met him and I met his wife; she was a dark woman. And, of
8 course, nothing else of interest at the time.

9 Q. Did you discuss with Mr. Robert Petit, at any point, which
10 documents DC-Cam would supply to the OCP?

11 A. No.

12 Q. Did you ever suggest to the OCP which documents it should look
13 at in order to prosecute the individuals that are standing trial
14 at the ECCC?

15 A. No, not at all.

16 [13.57.16]

17 Q. And do you know -- so I'm asking for your knowledge -- do you
18 know how the OCP decided which documents they wanted to receive
19 from DC-Cam?

20 MR. ABDULHAK:

21 We would object to this question, Your Honours. Clearly, it is
22 not a fact that is within the witness' knowledge, as to how the
23 OCP may have assessed the documents at DC-Cam.

24 MR. PAUW:

25 Mr. President, it would be in the witness' knowledge if the -- if

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1 a representative from the OCP has told Mr. Youk Chhang why they
2 select certain documents, so I would ask the witness to answer
3 the question, with your permission, of course.

4 (Judges deliberate)

5 [13.58.49]

6 MR. PRESIDENT:

7 Your objection is sustained.

8 Defence Counsel, you may proceed with another question or another
9 precise question.

10 BY MR. PAUW:

11 Thank you, Mr. President. I will move on.

12 Q. Has the OCP or the OCIJ ever asked you for documents that you
13 do not actually have in your collection?

14 MR. YOUK CHHANG:

15 A. Generally speaking, we never discussed the documents. We will
16 copy documents upon the request.

17 Q. And-- Okay. I'll let this be for now and I will move on to a
18 following topic. And it's something that we discussed this
19 morning. And we've had a lot of discussion about the words
20 "assessment", or "analysis", or "evaluation", and apparently, in
21 Khmer, there's -- there's some confusion -- as there might be in
22 English, by the way -- about the exact meanings of those words.
23 So I'm going to try to be precise in my questions.

24 [14.00.19]

25 And my question is the following: When DC-Cam receives documents,

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1 you have stated this morning that you assess the documents and
2 you place it in a category or you assign it to a category such as
3 a photo, or a biography, or a mass-grave site; is that correct?
4 Is that what you stated this morning?

5 A. Yes, it is correct.

6 Q. When you receive a document, does DC-Cam "assess" whether this
7 document contains inculpatory information?

8 [14.01.11]

9 A. No, we did not do that. We only look at the content of the
10 document so that we can put that in our database.

11 Q. Do you "analyze" whether that document contains inculpatory
12 information? I'm just changing the word, to be sure.

13 A. We made summaries that I included in a work sheet in order to
14 capture what I included in the documents, and these are uploaded
15 on the webpage of the DC-Cam. We call them summaries. So, in
16 order to have a brief understanding of what the documents are all
17 about, we included these summaries and upload them on the website
18 so that researchers can have a quick look on the content of the
19 documents.

20 Q. So you prepare a summary; I understand this. But is part of
21 the summary analyzing whether statements -- or, sorry, whether
22 information contained in document is inculpatory?

23 MR. ABDULHAK:

24 Your Honours, we would object to this line of questioning.

25 I was reluctant to intervene immediately, but I think my friend

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1 is continuing beyond the scope of relevance.

2 The inculpatory or otherwise contents of the document and their
3 assessment as such by DC-Cam is clearly not relevant for the
4 purposes of the test of prima facie relevance, reliability, and
5 authenticity, which Your Honours have clarified recently.

6 MR. PAUW:

7 Mr. President, with your permission, again, I think we have a lot
8 of misunderstanding about the meaning of the word "to analyze",
9 "to evaluate", "to assess", and I want to be absolutely clear
10 about what these words mean and what DC-Cam actually does to
11 these documents. And Mr. Dara was very, very clear about this
12 last week, and that may have been due to a translation issue.
13 So, here, we are -- we can clarify this issue, and it is
14 important. And I will also demonstrate this in the remainder of
15 my questioning.

16 So I would, again -- would like to ask the witness whether a part
17 of making summary is --whether he "analyzes" whether the document
18 is inculpatory.

19 MR. PRESIDENT:

20 Can the witness hold?

21 (Judges deliberate)

22 [14.05.47]

23 MR. PRESIDENT:

24 The objection is sustained.

25 Witness is not required to answer the question put forward by

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1 defence counsel.

2 And counsel may begin with a new questions.

3 BY MR. PAUW:

4 Thank you, Your Honour. I will move on.

5 Q. Mr. Youk Chhang, you stated yesterday that one of the
6 important activities of DC-Cam had been to push for a trial by an
7 independent tribunal that would try the alleged perpetrators of
8 crimes in the DK era; is that correct?

9 MR. YOUK CHHANG:

10 A. Yes, it is.

11 Q. Which specific individuals did DC-Cam want to have prosecuted
12 before such a tribunal?

13 MR. ABDULHAK:

14 Your Honours, I object. Clearly, this question is not relevant.

15 MR. PAUW:

16 Mr. President, if I may, it's -- clearly is relevant because it
17 relates to the - again -- the collection of evidence, and DC-Cam
18 has been collecting evidence; it's the core of this case. And it
19 simply matters if DC-Cam had certain individuals in mind when it
20 was collecting this evidence.

21 And I think Mr. Youk Chhang is the best person to answer this
22 question: Did DC-Cam have a preference for certain persons to be
23 prosecuted? And I think it's a straightforward question. I don't
24 understand the objection by the OCP.

25 (Judges deliberate)

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1 [14.10.02]

2 MR. PRESIDENT:

3 Concerning this issue, it is not clear, so the Chamber would like
4 to hand over to Judge Cartwright to inquire about this issue.

5 JUDGE CARTWRIGHT:

6 Thank you, President. Counsel for Nuon Chea, the Chamber
7 considers that you could rephrase your question in such a way as
8 to inquire whether, as director of DC-Cam, Mr. Chhang Youk has
9 ever publicly expressed a view on who might be prosecuted before
10 this tribunal. What he might say privately is a different matter,
11 but "publicly", "as DC-Cam".

12 Are you clear about that? Does that cover your concerns?

13 MR. PAUW:

14 Thank you, Judge Cartwright. I could not have said it better
15 myself. So, if this question can be put to the witness as your
16 phrase it, I would be delighted.

17 JUDGE CARTWRIGHT:

18 You want me to dictate your question to the Accused, now, do you?

19 [14.11.30]

20 Well, Mr. Chhang Youk, as director of DC-Cam, have you ever
21 publicly stated what, if any, people should be charged --
22 prosecuted before the ECCC, in your capacity as director?

23 MR. YOUK CHHANG:

24 A. Thank you, Your Honour. I once talked that any Khmer Rouge
25 leader who committed crimes shall be brought to be prosecuted. I

1 used to say this several times.

2 MR. PRESIDENT:

3 Defence counsel may proceed with other questions.

4 BY MR. PAUW:

5 Thank you, Mr. President. And thank you, Mr. Youk Chhang, for
6 that answer.

7 [14.12.36]

8 Q. "Searching for the Truth" is a DC-Cam publication; is that
9 true?

10 MR. YOUK CHHANG:

11 A. Yes, it is.

12 Q. And is it true that you write articles in this magazine?

13 A. Yes, it is.

14 Q. And in "Searching for the Truth", in this magazine, have you
15 ever explicitly called for the prosecution of Mr. Nuon Chea?

16 A. As I told Madam Judge, I wish any Khmer Rouge leader that has
17 been found by the Khmer Rouge to be responsible for the crimes to
18 be punished.

19 Q. I understand your position, Mr. Youk Chhang, but the question
20 is; Have you ever specifically mentioned the name of my client,
21 in your publication "Searching for the Truth", as somebody that
22 should be prosecuted by this Court?

23 A. I have written -- I said so -- but I do remember which issue
24 that include that phrase in the magazine.

25 Q. Thank you. When DC-Cam was started, at the very early

1 beginning, did you or anybody else at DC-Cam already expect that
2 some DK-era officials might be brought to trial?

3 [14.14.43]

4 A. I am never hopeless that there would be such a court to bring
5 Khmer Rouge leaders to trial, so I always thought that there
6 would be a court. But I am not a court, I am not the senior
7 researchers, so I will admit myself to only collecting documents
8 to be ready for use by the public and by the Court. So, if I
9 remember it correctly, in 1995, I began to work at Yale
10 University with these kind of ideas, that I expect that there
11 would be a court to bring those who were responsible for the
12 crimes during the regime to be punished.

13 Q. Thank you. And you say you collected documents and you wanted
14 to make sure that they were ready for use by the public and by
15 the Court.

16 Can you tell us whether you took any special measures to have
17 your documents be ready for use by a court, or by this Court --
18 oh, but, no, this Court was not in existence then -- by a court?

19 A. At the time, there were many researchers who were interested
20 in this issue, and I have my personal requests, and we had
21 requests also from the United Nations, who requested to me to
22 collect documents for them to do their research. And those people
23 also included Steve Heder. I helped him to the extent possible in
24 order to collect documents for him.

25 [14.16.45]

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1 Q. This did not answer my question entirely. My question was:
2 When you collected and assembled these documents, did you take
3 any special measures to prepare for a possible future use of
4 these documents by a court?

5 A. I'm not clear about the question. Are you asking whether I had
6 any plan to compile case files for individuals? Is that what you
7 are asking me?

8 MR. PRESIDENT:

9 Can Counsel ask the question again? And make sure that the
10 question is easy to understand so that there is no confusion in
11 the answer, or the -- otherwise, we cannot have the answer for
12 that question.

13 BY MR. PAUW:

14 Thank you, Mr. President.

15 Q. Again, Mr. Youk Chhang, I could not have said it better
16 myself. This is exactly what I am asking for: Did you collect
17 documents and put them in a sort of case file relating to
18 specific individuals?

19 MR. YOUK CHHANG:

20 A. I prepared these case files upon the request by different
21 individuals who are interested in analyze -- in evaluating those
22 individuals.

23 Q. Can you tell me the names of those individuals that were
24 interested?

25 [14.18.45]

1 A. There are many. There are many, and I can provide some
2 examples. Some requests as to find the relatives who died during
3 the regime, and some others are local cadres. And some requested
4 to find information about their relatives who were detained at
5 the security center, and some also requested information related
6 to Ieng Sary, Om Van, Om Hem.

7 So, upon those requests, we collected documents and copied the
8 documents into places so that people who are interested can
9 research. We expect that there may be some others who might
10 request the same thing, so we prepare it in advance; it would be
11 easy for those people.

12 [14.19.45]

13 And I recall that Mr. Heder came to me and asked for documents. I
14 was able to collect documents and put them on some cabinets. Mr.
15 Heder wrote a document called "The Seven Candidates for
16 Prosecution".

17 We have had different requests, and most of those requests are
18 interesting, and so we prepared these documents well in advance
19 so that we-- We expected, like I said. If there were similar
20 requests, then everything will be ready for them.

21 And once we have those documents well in advance, then, it takes
22 only less than two hours to give the documents to those who
23 requested for the documents.

24 Q. And the follow-up question would then be: At DC-Cam, at the
25 time, in the 1990s, was there a file, or a folder, or a

1 collection of documents, at DC-Cam, that was called the "Nuon
2 Chea file"?

3 A. We have a Nuon Chea folder, and the Nuon Chea documents are
4 also provided to Mr. Roger, because he requested us to collect
5 any document related to what we had done before and prepare those
6 documents and deliver them to him. So he requested us to deliver
7 these documents to him. He requested documents related to
8 telegram or other kind of documents that are related to Om Hem,
9 for example, or to pits or mass graves.

10 [14.21.50]

11 Q. Thank you, but I have very little time this afternoon. So I
12 hear your answer that, indeed, you have a Nuon Chea folder.

13 Can you indicate when this folder was first established, in which
14 year, more or less?

15 A. Since the establishment of the DC-Cam, in 1995, there were
16 ongoing requests, so I do not remember which request was that
17 made -- when that request was made.

18 And we may have had this kind of ideas a long time ago, because
19 we may have journalists or media personnel who may come to us and
20 ask for this kind of documents. So what I'm trying to say is that
21 these documents existed for a long time ago.

22 Q. Do I understand you correctly that the Nuon Chea folder was
23 first created upon request by somebody external? Is that how I
24 understand your answer?

25 A. Yes.

1 Q. And, after you created the Nuon Chea folder, has the only
2 purpose of that Nuon Chea folder been to assist outside research
3 – outside researchers for requests for documents?

4 A. We also have internal requesters. For example, the opposition
5 party also requested this kind of documents. I provided about
6 one-thousand-page document to them, according to their request.

7 Q. And at DC-Cam, have you ever analyzed the contents of the Nuon
8 Chea folder to see whether those documents are inculpatory,
9 possibly exculpatory or neutral?

10 A. First of all, I now made myself clearly: I am not a lawyer, so
11 I'm not interested in analyzing legally the contents of the
12 documents. I am not a legal practitioner, but I am interested in
13 reading historical documents. At any point that I am interested
14 in a particular point, I will seek information. For example, if I
15 am reading a document on a particular page and I'm interested in
16 that, I will seek for more information relating to that. Because,
17 I know, me, myself, clearly, I am not a lawyer.

18 Q. So do I understand your answer correctly when I say that you,
19 yourself, personally, have not analyzed these documents or
20 assessed these documents to see if they contained inculpatory
21 material?

22 A. In English, we use the word (in English) "curiosity". I am
23 interested in something, for example, and so I try, in order to
24 find out -- you know, to cure my curiosity.

25 Q. I would suggest that we do not add yet a fourth word to the

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1 discussion to describe what's happening at DC-Cam at the
2 documents. So I will phrase my question, and I will use the
3 English words "to analyze", and I would ask the Khmer
4 interpreters to actually put the English word to you, "to
5 analyze": Did you personally ever analyze the collection of
6 documents to see if they contained inculpatory information?

7 MR. ABDULHAK:

8 Your Honours, we object.

9 [14.26.18]

10 This very question was ruled inadmissible only 10, 15 minutes
11 ago.

12 MR. PRESIDENT:

13 The objection is sustained.

14 Witness does not have to answer this last question.

15 BY MR. PAUW:

16 Thank you, Mr. President.

17 Q. In the -- in your collection of evidence, in DC-Cam's
18 collection of evidence, have you or DC-Cam ever focused on
19 collecting evidence that would implicate certain particular
20 individuals?

21 MR. YOUK CHHANG:

22 A. I am of the view that the law cannot-- Rather, we are not
23 using the word "evidence". For us, we are seeking for the truth.
24 I don't know whether you prefer to call it evidence. For us, we
25 want to know the truth. And in this case, for the document that I

1 have read, no matter where the document comes from, I am
2 interested in all of them. So like I told you, if there is a
3 request for that document, I will feel interested in reading that
4 document, every day.

5 [14.28.11]

6 Q. I hear you say that, at DC-Cam, you do not use the word
7 "evidence", and I note that your deputy said a similar thing last
8 week.

9 Are you aware that I showed the strategic plan for DC-Cam for the
10 years 2009 and 2011 to your deputy, that actually uses the word
11 "evidence"?

12 A. There may be a confusion - confusion when it comes to the
13 analysis of this word. The document was written by me, myself,
14 and there were three photos. My photo was one of -- is one of
15 them. I remember this document clearly.

16 What I said just now is that the law never monopolize the word
17 "evidence". For historians, this can be used in order to seek the
18 events that happened in the history. And, if you read documents
19 in -- historical documents, you can also see that the word is
20 used. And you read our poster, you will see that the word
21 "evidence" is used. That's why I'm saying -- I'm saying here the
22 law does not monopolize the word -- the use of the word
23 "evidence". For me, coming from a social science background, we
24 use this word for the purpose of our research because we want to
25 know what happened in the history. And the reason why we want to

1 know what happened in the history, because we prevent the events
2 from not -- from happening again. And if you interpret the word
3 in another way, that -- the meaning will change accordingly.

4 [14.30.16]

5 Q. Thank you, Mr. Youk Chhang. I think the confusion remains, but
6 I'll leave it at that.

7 I have spoken with your deputy, Mr. Dara, about the
8 Accountability Project at DC-Cam. Could you briefly explain what
9 the goal of the Accountability Project is?

10 A. This project -- for this project, we have a questionnaire, and
11 the questionnaire was submitted to the Court, to the
12 Co-Investigating Judges, and this questionnaire was developed by
13 one of our advisors. And we had consultations with other legal
14 officers.

15 We tried our best to avoid leading the interviewees from giving
16 self-incriminating answers.

17 Q. Mr. Youk Chhang, I'm sorry to interrupt you again. I didn't
18 ask you about the procedure of the Accountability Project; I'm
19 asking you what the goal of the Accountability Project is. Could
20 you give me a short answer on that, please?

21 A. We want to know about what happened in our history -- that is,
22 for the crimes committed during the DK period.

23 Q. Last week, I read a short excerpt from a document that is --
24 that can be found on your website. And I will not show it, but I
25 will read from it. I did the same thing last week. And I will

1 quote:

2 "The project is directly relevant to the cases – to the cases
3 against senior surviving Khmer Rouge leaders at the ECCC. It
4 provides a way to illuminate chains of command, reporting
5 practices, and other institutional features of the DK regime that
6 can help to hold leaders accountable for atrocities committed in
7 the field." End of quote.

8 [14.32.37]

9 And I put it to you that, apparently, one of the goals of the
10 Accountability Project is to hold DK leaders accountable for
11 alleged atrocities committed.

12 And my question to you is: Did you -- has DC-Cam actively looked
13 for evidence implicating those leaders in atrocities?

14 A. The purpose, in this project, is to gather historical
15 information for the Court in order to find the culprits who
16 committed crimes during that period. As Mr. Dara already informed
17 you, that is -- our action is based on those historical documents
18 and to interview those peoples, based on the documents, as to
19 what that person did during that period. And of course this would
20 assist in expediting the process before the Court.

21 And we only conduct our interviews based on the names of those
22 people in the documents in the historicals that we received. Many
23 of those people that we tried to interview already died, and then
24 we tried to find the rest or the remaining of the relatives of
25 those who already died. If you want to look at the transcript or

1 the tapes, you are welcome at DC-Cam.

2 Q. Thank you. I think that answers my question. In this document
3 that I just quoted from, DC-Cam speaks about the "illumination of
4 chains of command".

5 Can you explain to us why the illumination of chains of command
6 is important to DC-Cam?

7 MR. ABDULHAK:

8 Your Honours, for some time, now, we've been hearing questions
9 that appear completely unrelated to the issue of provenance of
10 documents and their processing and registration at DC-Cam.

11 I-- We did refrain, for a period of time; we thought our friend
12 might move on to more relevant topics, but clearly DC-Cam's
13 commitment to the work of this Court or their interest in having
14 people prosecuted -- held accountable -- is not relevant.

15 [14.35.11]

16 Unless my friends wishes to suggest that, somehow, DC-Cam has
17 engaged in forging documents, we're embarked on an inquiry that
18 really has little relevance to the issues before Your Honours.

19 MR. PAUW:

20 Mr. President, if I may respond. Clearly, I have not suggested
21 that DC-Cam has embarked on forging documents. It is the same
22 issue that came up earlier.

23 We are discussing now the way that DC-Cam has collected evidence.
24 Again, this entire case relies on the evidence that has been
25 provided by DC-Cam, and it's simply important to understand why

1 they have looked for certain types of evidence and may have
2 overlooked and not collected other types of evidence. It is
3 simply important to know what their mindset was when they went
4 out to look for this evidence.

5 I would add that this is especially important at this Court, at
6 this moment, because, as you are aware -- as you are well aware,
7 to the Defence, it is totally opaque, what the OCP has done with
8 the documents it received, and why it chose to use certain
9 documents, and why it did not choose to use other documents,
10 combined with the fact that the OCIJ's investigation was also
11 shielded from the view of the Defence. The Defence has complained
12 about it several times; we did not achieve any transparency. We
13 now have the chance to look at the root of this case to see how,
14 let's say, the first responders, to use that term, how the first
15 responders looked at the evidence, why they collected certain
16 evidence, and what their mindset was.

17 So I would suggest that, rather than irrelevance, I think we
18 might hit the core of this case. So I would ask your Court to at
19 least allow this question: Why is the illumination of chains of
20 command important to DC-Cam? Thank you.

21 MR. PRESIDENT:

22 The witness, you don't need to respond now. You have to wait.

23 (Judges deliberate)

24 [14.40.45]

25 The objection is denied.

1 Witness, you are now instructed to respond to this question.

2 Defence Counsel, this is an exception, and please do not follow
3 this line of questioning to the witness.

4 MR. YOUK CHHANG:

5 A. Thank you, Mr. President. Thank you, Mr. President. I'd like
6 the defence counsel to ask me again, please. Thank you.

7 BY MR. PAUW:

8 Thank you, Mr. President.

9 Q. Mr. Youk Chhang, what I asked you was the following: In the
10 document that I just quoted, which relates to the Accountability
11 Project, it is stated that the Accountability Project "provides a
12 way to illuminate chains of command".

13 And my question to you is: Why is it important to DC-Cam to
14 illuminate chains of command?

15 A. Because we want to know who actually killed 2 million
16 Cambodians. Based on our interviews, thousands interviews, none
17 of those interviewee ever say they killed any person, and we want
18 to know what happened in our - that history.

19 Q. Thank you, Mr. Youk Chhang.

20 I've noted your comments, Mr. President, and I would accordingly
21 move to the next topic. And I'm looking at the clock; I can
22 continue. Of course, it's up to you to decide whether we need a
23 break or not.

24 [14.43.06]

25 MR. PRESIDENT:

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1 The time is now appropriate for a break. We shall take a break
2 now and we shall resume at 3 p.m.

3 Court officer, please assist the witness during the break and
4 bring him back into the courtroom before the court resumes.

5 (Court recesses from 1443H to 1501H)

6 MR. PRESIDENT:

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

8 And the floor is now handed over to defence counsel for Nuon Chea
9 to continue his questioning to this witness.

10 BY MR. PAUW:

11 Thank you, Mr. President.

12 I would like to show, with your permission, one document to Mr.
13 Youk Chhang. It's document number D366/7.1.68, and the ERN is
14 00444387 until 0044488. And with your permission, I would like to
15 show the cover page of this document on the screen.

16 MR. PRESIDENT:

17 Your request is granted.

18 [15.03.48]

19 BY MR. PAUW:

20 Q. Mr. Youk Chhang, you see, on your screen, a document. And I
21 will read it to you. It says: "Highly Confidential Draft -- 'Not
22 for Circulation'". And it's called "The Study of CPK CC SC".
23 And, if we go down a little bit with the screen, if we scroll
24 down a little bit, we see your name appear, and the date, May of
25 2000.

1 Can you explain to us what this document is?

2 MR. YOUK CHHANG:

3 A. This is a document I created, and there are a lot of questions
4 concerning the Central Committee and Standing Committee of the
5 CPK. I have collected copies from -- of documents from Ben
6 Kiernan, from Helen Jarvis, and from Steve Heder; I combined them
7 together.

8 And the reason why I indicate that it is a -- a confidential
9 document is because I am mindful that this is a court document
10 and it is not for personal use. And I always -- even though we
11 always remind parties that the documents are not for personal
12 use, we can still spot documents being used in public.

13 [15.05.45]

14 We- As I still remember, I can see - there are emails from Helen
15 Jarvis, and I ask her: What do we mean by the work of the Central
16 or Standing Committee of the CPK? And so she explained to me and
17 sent me the document.

18 In other words, these are the copies of documents that are
19 obtained from researchers, and this is also a compilation of
20 documents for my personal studies to understand better regarding
21 the Standing and Central Committee of the CPK.

22 Q. So, if I understand you correctly, Mr. Youk Chhang, this is a
23 collection of documents that should help in the understanding of
24 the functioning of the Standing and Central Committee.

25 A. Yes, it is correct, because I am curious to know how the

1 structure was organized.

2 Q. Okay. And another question that comes to mind: Do you still
3 have other documents, at DC-Cam, that are strictly confidential
4 and that are not accessible to the public?

5 A. In fact, these documents are available in our library and they
6 are not confidential. Like I told you, the reason why I indicate
7 that the document is confidential: because here, at this Court,
8 some of the interns use these documents for personal purposes, so
9 I am concerned that those interns may these documents in the
10 wrong way against the purpose of the Court. That is why, for all
11 documents that I delivered to this Court, I indicated with
12 confidentiality.

13 This is the - this document is obtained as a second resource I
14 collected, like I told you, from a number of researchers: Steve
15 Heder, Ben Kiernan, and Helen Jarvis.

16 Q. And I heard you say that it is confidential because you
17 consider it to be a court document; is that correct?

18 A. Before I sent this document to the Court, I indicate this word
19 on this document because I do not want this document to fall in
20 the hands of interns, and which may be used for their personal
21 purposes. As you have -- may have observed, this is a draft,
22 which is not a finalized version, and I don't want this document
23 to fall in the hands of those who did not request for this
24 document.

25 Q. Thank you. And I would like to scroll down a bit to page 4 of

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1 this document, which would be ERN ending in 493, if people are
2 looking themselves. Do we see on page 4, on the top? We see an
3 email from Benedict Kiernan to DC-Cam, and I just want to
4 establish that.

5 And then move on to page 7 of this document, that's the bottom of
6 that page. And there you see a short message by what I would
7 think is Ben Kiernan, because he signs off right above that line.
8 And Ben Kiernan asks you, apparently: "P.S. Did you finally get
9 copies of the recent KR documents from the 'Phnom Penh Post'?"
10 And my question is: Do you remember what documents you requested
11 from the Phnom Penh Post?

12 A. I am not so sure. From my recollection, there are two types of
13 documents that I requested from the "Phnom Penh Post": one is the
14 photographs, Kathleen Hayes, who is the editor of the "Post", in
15 the -- is in the possession of a lot of a KR photographs. These
16 photographs are not obtained from Tuol Sleng Museum, but the
17 photographs are taken by visitors who travel across the country.

18 [15.10.52]

19 However, we are not able to cooperate with the "Post", and make
20 photocopies of the photographs, and publish these photos. From my
21 research, I observe -- I understand that the "Phnom Penh Post"
22 obtained these photographs from Anlong Veng, and I emailed Miss
23 Hayes several times.

24 Q. I'm sure you're trying to answer my question, and I appreciate
25 that, but just briefly, so, you think it might consider - might

1 concern photographs that you requested from the "Phnom Penh
2 Post"; might there also be other documents that you requested
3 from the "Phnom Penh Post", to your recollection?

4 [15.11.32]

5 A. I was actually talking about that, but you interrupted me. The
6 other type of document is the documents that "Phnom Penh Post"
7 obtained from Anlong Veng. In 1998, Anlong Veng was a place where
8 former Khmer Rouge lived. I wrote many letters to Michael Hayes
9 several times requesting for the documents.

10 And, as I remember, there is also another type of photograph that
11 the Director of AP Press in Bangkok sent to me, and I can recall
12 that his name is Denis Gray, who is the friend of Steve Heder. He
13 told me that--

14 [15.12.32]

15 Q. I hate to interrupt you again, but this goes beyond what I
16 actually asked you.

17 Let me ask you very briefly: Do you remember whether you actually
18 obtained any of those photographs or documents from the "Phnom
19 Penh Post"? I-- Here, it says that you requested them; did you
20 actually obtain them?

21 A. I obtained photocopies of the photos on the A4 paper, and
22 there were in total three copies.

23 Q. And did you receive copies or originals of the documents that
24 you also mentioned, the Anlong Veng documents, to your
25 recollection?

1 A. Do you mean the documents from Anlong Veng? As I told you, I
2 was not able to finish; I was interrupted twice. I requested
3 these documents but I did not obtain the documents; I only
4 obtained the photos.

5 [15.13.47]

6 Q. Okay. Thank you. And I just note for the record that, so far,
7 the "Phnom Penh Post" has not been mentioned today as a - as a
8 source of the documents in this case, and I may I ask something
9 -- some more questions about this on Monday.

10 But for now I will continue and I will want to show, at page 12
11 of this same document-- And I see that we have it on the screen.

12 Is it visible in its entirety? Yes, okay.

13 And at the top -- I will read it out for you -- it says:

14 "Summaries:

15 "Craig Etcheson (private communication) gives the following list
16 of key culprits--"

17 First of all, do you recognize this document?

18 A. Can I have the question again, please?

19 Q. My question was: Do you recognize this document, as it is put
20 before you on the screen?

21 A. Yes, I do; I made this document myself. I collected this
22 document myself.

23 Q. Can you explain why Craig Etcheson apparently speaks of "key
24 culprits" in this communication?

25 [15.15.27]

1 A. Craig is an activist who used to be a director of the campaign
2 against the Khmer Rouge. Perhaps you can direct this question to
3 him because he is here, in this court, at the Office of the
4 Co-prosecutors.

5 Q. Thank you for that suggestion, but I'm asking you about your
6 knowledge, whether you know why Craig Etcheson used the word
7 "culprit" in this document.

8 MR. ABDULHAK:

9 Your Honours, we would object to this line of questioning.
10 Against -- again, with respect to my learned friend, I think he
11 is veering off topic. I don't understand how any of this relates
12 to the documents that are on the case file and originate from
13 DC-Cam. Unless my friend can establish a connection and show how
14 reliability of documents that are before Your Honours are
15 affected by any of this, I don't think this line of questioning
16 should be allowed.
17 And of course, more to the point, and specifically on this issue,
18 it's clearly inappropriate to ask Mr. Youk Chhang why Mr.
19 Etcheson used certain words in his communications.

20 [15.16.42]

21 MR. PAUW:

22 Mr. President, if you allow me, again, this is the same topic. It
23 is all about the attitude that DC-Cam took to the collection of
24 evidence: What avenues did they pursue? Which piece of evidence
25 may they have neglected? Again, this is the core of this case.

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1 As to the objection by my colleague at the OCP as to whether or
2 not the witness can testify about why Craig Etcheson used the
3 word "culprit", I will totally follow your discretion on this
4 issue. But other than that, I think, especially at the end of
5 this hour, I hope it will become clear why this line of
6 questioning is actually relevant when one considers the
7 collection of evidence by DC-Cam.

8 So I will gladly withdraw my question as to Craig Etcheson's
9 mindset when he wrote this.

10 [15.17.49]

11 MR. PRESIDENT:

12 The witness has already answered: it was the documents of Mr.
13 Craig Etcheson, that in order to know the reason why, we need to
14 ask the author of the document. I think it is clear in the Khmer
15 language, at least.

16 BY MR. PAUW:

17 Thank you, Mr. President.

18 Q. I will move on to the next page, which is page 13 of the
19 document. And, again, let me see if it is visible. We go one
20 further down, to page 13. You can go a bit lower-- Yes. There,
21 you see the signing off of this document, and it states:

22 "Compiled by HJ, 20th of April 2000".

23 Could you identify to us who HJ might be?

24 A. It's Helen Jarvis.

25 [15.19.10]

1 Q. And, if you look at this date of the 20th of April 2000, was
2 Craig Etcheson an employee of DC-Cam?

3 A. No, he is not the staff of DC-Cam; nor is Ms. Helen Jarvis.

4 Q. Can you explain what the role of Craig Etcheson was in
5 relation to DC-Cam?

6 A. He's an independent researcher and he is a friend of mine.

7 Usually, he visited Cambodia and assisted me in my research. As
8 you can- You may have observed that I put -- I used the word
9 "study" here, so it is a research regarding the Democratic
10 Kampuchea. So he conducted his own research, but he also provided
11 me documents related to this issue, to me.

12 Q. Thank you. And if we, in the same document, go slightly up, to
13 page 12 again -- we just skipped over it to establish that this
14 was compiled by Helen Jarvis -- if we look at the screen and the
15 box, the red box that's now visible, I will read: "Mam Nay, (on
16 my list because he was #2 on the S-21 Party Committee, and such a
17 killer, plus I don't think he should retain his position as a
18 policeman in Battambang)".

19 [15.20.52]

20 My question to you is I'm just not clear on this. One speaks
21 about "on my list". Are we speaking about Craig Etcheson's list,
22 are we speaking about Helen Jarvis' list, or are we speaking
23 about your list? Do you -- can you provide some clarification?

24 A. Are you asking me whether I have a list of S-21? Can you ask
25 me again?

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1 Q. Certainly. I -- If we can put it on the screen again, the
2 actual phrase, the actual text? If you read the text, it says:

3 "Mam Nay--"

4 MR. YOUK CHHANG:

5 "Mam Nay", yes.

6 BY MR. PAUW:

7 "Mam Nay, (on my list because he was #2--", etc.

8 I am just not sure, because of the way the document is laid out,
9 whether we are speaking about the list of Craig Etcheson, the
10 list of Helen Jarvis or the list of you, Mr. Youk Chhang. Can you
11 clarify this matter for us?

12 A. I am not so sure, but if you read from the top of the page to
13 see who is the recipient of this letter, perhaps we can shed
14 light on this issue, because the person may be expressing his
15 view as to who could be brought to be prosecuted. Perhaps we can
16 check who would receive this document. Maybe the page can be put
17 up and scrolled ahead.

18 [15.22.33]

19 Q. I think we can do that, but I don't think it will clarify
20 matters because I think it's a standalone document in this actual
21 D366. I can actually check that. No, actually it's -- if we would
22 go up to page 10 -- and I would ask my case manager to do so --
23 that's all it says, and so there is no recipients indicated.
24 So-- And again, if you do not know, from this document, whose
25 list we're talking about, I will not ask you to speculate.

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1 I just want to point out to you that to me, when I read this, it
2 sounds like somebody is actually selecting suspects to be
3 prosecuted. There seems to be a pick and choose going on. And if
4 you look at the language that is used, "I don't think he should
5 retain his position as a policeman in Battambang", there seems to
6 be a purpose here.

7 Would you agree with that assessment?

8 [15.24.00]

9 A. Because we cannot see who is the recipient of this document, I
10 think that each researcher is competing each other in terms of
11 their research, and they so have their own lists. I'm sure that
12 Helen Jarvis has her own list, and Ben Kiernan also has his list,
13 as it was published in his book. So, perhaps they are describing
14 who is who.

15 Q. Thank you, Mr. Youk Chhang. Does DC-Cam have a list? Or let me
16 rephrase that: Did DC-Cam have a list, in the 1990s, as to who
17 should be prosecuted?

18 A. I seemed to answer this question yesterday, already, that I
19 received document from my friend, Douglas Johnson, an American,
20 and the document, as -- if I remember it correctly, it's about
21 the biography of the Khmer Rouge. So I include all these kinds of
22 documents into this compilation. This is a compilation of various
23 documents for me to understand. As I remember, we do not have the
24 Khmer title of this document. It's probably known as the
25 "Biographies of the Khmer Rouge Leaders".

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1 Q. Do you reluctantly-- Because I don't think you are answering
2 my question. The question is-- You mentioned that all researchers
3 have their own lists, and my question to you is: Did DC-Cam, in
4 the 1990s, have a list of people that they wanted to have
5 prosecuted?

6 [15.26.13]

7 A. As I told you, in the 1990s, Professor Ben Kiernan, who was my
8 boss, published this list in his book titled "Genocide in
9 Cambodia". The book is available at the office, at the
10 University. It is on pages 13 and 14.

11 Q. That is most probably true, but it doesn't answer my question.
12 My question is: Did DC-Cam have a list of people that it wanted
13 to have prosecuted, already, in the '90s?

14 A. Because your question talk about something that people to be
15 brought to be prosecuted. That is what I am trying to explain
16 here. The list of those people has a title as "Biographies of the
17 Khmer Rouge Leaders". I have read this document, and there is
18 this document.

19 [15.27.35]

20 Q. And, if I understand you correctly, you are referring to a
21 document that has been prepared by Ben Kiernan.
22 I am asking you whether DC-Cam itself had a list, for possibly
23 internal purposes, of people that it would like to have
24 prosecuted?

25 A. Your honour, this is the same question. Back in the 1990s, Ben

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1 Kiernan was the boss, was the director, and the book was
2 published, and we collected these kinds of documents and we put a
3 title for this document as the "Biographies of the Khmer Rouge
4 Leader". And I sent these documents to the Court, and so it is up
5 to the Court whether who are to be prosecuted.

6 I find that the question is repetitive.

7 Mr. Ben Kiernan was the director between 1995 to 1996. Apart from
8 reading this list, I also read other documents, and so we had
9 list, and there are up to - more than 20 people included in the
10 list. And I admitted that there are lists -- such lists.

11 MR. PRESIDENT:

12 The question has already been answered. If it is - if it is still
13 not clear, another type of question should be put before the
14 witness, and the question should be formulated on the basis that
15 you have.

16 Counsel is advised to use techniques in order to ask questions
17 that you can obtain answers as you wish.

18 [15.30.12]

19 BY MR. PAUW:

20 Thank you, Mr. President. I understand your message, and I will
21 move on.

22 Q. And I will -- would like to show, on page 28 of this same
23 document, an email. If we could see it? Yes. This is an email. Is
24 it shown on the screen to the witness? And it's an email between
25 you and, among other people, Annette Marcher. Can you remember

1 who she was?

2 MR. YOUK CHHANG:

3 A. Annette was a journalist at the "Phnom Penh Post". I sent this
4 text to Steve Heder, Craig Etcheson, and Annette Marcher.

5 [15.31.12]

6 Q. Thank you. And if we then go to the next page, page 29, which
7 is bottom of the same email, if we look at the box, there, in
8 your p.s., you say: "I was a bit too emotional to say some names
9 to Annette. I think DC-Cam should not involve in naming people
10 until our legal project gets off the ground."

11 Mr. Youk Chhang, what do you mean with "naming people"?

12 A. Because, in general, I was asked about journalists of the
13 names of people, and I prefer not to mention names, as I was in
14 Phnom Penh, and Ben Kiernan, my director, was at Yale University.
15 So, usually, in my correspondence, I copied to various relevant
16 people. Based on this email, I may be asked by Annette for some
17 names of the other Khmer Rouge cadres -- could be Piseth
18 (phonetic) or Thuon (phonetic) -- but then, as I said, I prefer
19 not to mention names of other people and that DC-Cam ought not do
20 it in that way.

21 [15.32.36]

22 I also -- if you permit -- I also wrote in my other p.s. that it
23 would be funny for Craig to involve in this matter, as it
24 requires him to read a lot - to do a lot of readings of the DK
25 documents, the Khmer Rouge documents, and Craig does not read

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1 Khmer.

2 Q. Yes, I did read that and I did find it funny.

3 But another point is you say that: "--DC-Cam should not involve
4 in naming people until our legal project gets off the ground."

5 Could you explain to us what legal project you are referring to?

6 MR. ABDULHAK:

7 Your Honours, we object again. Our friend is clearly, clearly off
8 topic.

9 For some time, now, we haven't heard a single question about the
10 receipt, discovery, processing, analysis or otherwise treatment
11 of documents.

12 I think what my friend is doing -- and he indicated so earlier --
13 he's trying to put on trial DC-Cam's methods and its work prior
14 to the establishment of the Court. That clearly is not relevant
15 for the purposes of this hearing.

16 What we're here to deal with is the relevance and reliability of
17 the documents which are on the case file.

18 If my friend wishes to deal with areas which may in some way
19 affect reliability or relevance of those documents, then,
20 perhaps, those areas will be appropriate for examination.

21 And I note that he has already indicated that he doesn't allege
22 that documents are being forged or tampered with, and hence I
23 find this examination completely irrelevant.

24 [15.34.20]

25 MR. PAUW:

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1 Mr. President, if I may respond to that very briefly-- And I
2 think we are fighting the same battle over and over again, and I
3 think your message is clear: you allowed this line of
4 questioning.

5 And I also note -- and I would love to read back the transcripts,
6 but I can't -- my learned friend mentioned a lot of things, the
7 processing of documents, etc., but he left out one word, the
8 "collection" of documents, and the collection of documents is
9 what we are talking about here, and it is what is relevant in
10 this discussion, the way documents were collected. And this is
11 clearly relevant, and, again, it's about the attitude of DC-Cam
12 towards the evidence.

13 So I would like to ask the witness: What is the legal project you
14 are asking -- you are talking about?

15 MR. PRESIDENT:

16 Witness, you do not need to respond now. Please wait.

17 (Judges deliberate)

18 [15.39.18]

19 The objection by the Prosecution is sustained.

20 Witness, you do not need to respond to this question.

21 Defence Counsel, you are instructed to move on to another line of
22 questioning. You shall end this line of questioning now.

23 I think we have already instructed you on the other lines of
24 questionings regarding the issues of the documents.

25 [15.40.07]

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1 BY MR. PAUW:

2 Thank you, Mr. President. I will then move on.

3 Q. I will, however, remain in the same document and I will move
4 to page 35 of this document. If that can be shown? And this, Mr.
5 Youk Chhang, seems to be an email by Steve Heder to you, Mr. Youk
6 Chhang, and some other, I would say, people that are familiar to
7 all of us, like David Chandler, Craig Etcheson, and Helen Jarvis.
8 You have indicated you are reluctant to read out English text, so
9 I will read out the first bit of this document. If we can scroll
10 down a little bit? And it is Steve Heder who says:

11 "I believe it was wrong for DC-Cam to have become involved in
12 attempting to define and thus prejudice the scope of potential
13 prosecutions on the basis of political criteria, that is to say,
14 on the basis of political position."

15 [15.41.23]

16 MR. ABDULHAK:

17 Your Honours--

18 BY MR. PAUW:

19 Q. "This does not contribute to the search for the truth, the
20 whole truth and nothing but the truth. Instead of direct and
21 limits the search, or it appears - or it appears to tie DC-Cam to
22 a politically-driven agenda that directs and limits the search."
23 And my question is: Do you know what Steve Heder refers to when
24 he says that he believes "it was wrong for DC-Cam to have become
25 involved in attempting to define [...] the scope of potential

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1 prosecutions"? What attempts to define the scope of potential
2 prosecutions is he talking about? Can you explain this to us,
3 please?

4 [15.42.02]

5 MR. ABDULHAK:

6 Your Honours, we object. This is in clear contravention of your
7 ruling just a minute ago.

8 MR. PAUW:

9 Mr. President, if I may respond, I would suggest it's an entirely
10 different topic.

11 This email seems to relate to outside influences on DC-Cam.

12 When the civil parties spoke yesterday about possible outside
13 influences on the work of DC-Cam, your Chamber declared that this
14 was relevant for our discussion. This email, as will be shown if
15 we look further, clearly relates to outside pressures on DC-Cam.

16 And if you allow the civil parties to ask those questions, the
17 Defence should be allowed to ask the same questions.

18 So it's a different topic we're talking about, again: outside
19 influence -- possible outer influence on DC-Cam, on which Mr.
20 Youk Chhang possibly can shed light.

21 (Judges deliberate)

22 [15.43.48]

23 MR. PRESIDENT:

24 The objection by the Prosecution is sustained.

25 Defence Counsel, please try to avoid using other people's text to

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1 get comments or response from the witness. And this is not the
2 text of the witness.

3 BY MR. PAUW:

4 Thank you, Mr. President.

5 Q. I have recently, Mr. Youk Chhang, read a document that seems
6 to indicate that DC-Cam, in the 1990s, the late 1990s, has been
7 involved in some sort of project that would limit the potential
8 prosecution of lower level DK officials. It is a document that I
9 just showed you and that was not -- on the base of which I could
10 not ask you a question.

11 But my question is: Has DC-Cam been involved with or consulted on
12 the determination of the personal jurisdiction of the tribunal
13 that would prosecute the DK officials?

14 [15.45.16]

15 MR. ABDULHAK:

16 Again, Your Honours, we would object. Clearly, this line of
17 questioning, again, is not on the topics for which we are here
18 today.

19 The method for obtaining, cataloguing, and treating DC-Cam
20 documents, and more specifically documents that are on the
21 Court's case file--

22 DC-Cam's position about who and when should be prosecuted may be
23 of interest and may be a fascinating topic, but it's not a topic
24 for this hearing.

25 MR. PAUW:

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1 Mr. President, if I may respond, I just have to note that the OCP
2 seems to show very little curiosity as to the motives of DC-Cam,
3 the main donor of evidence in this case. We cannot just assume
4 that, because DC-Cam claims it's a non-biased and non-partisan
5 organization, that it, therefore, should be considered to be
6 non-biased and non-partisan.

7 If we want to assess the reliability of the evidence on the case
8 file, if we want to assess the relevance of the evidence on the
9 case file, we need to know about other documents, about other
10 lines of investigation that have not been pursued -- that may not
11 have been pursued. [15.46.38]

12 And, again, this sees to the collection of documents. When you
13 collect documents, it means that you make a conscious decision
14 and it also means that you may not collect other documents. And
15 we need to know what happened.

16 And, again, this email clearly, in the view of the Defence, shows
17 that DC-Cam had an agenda, an agenda that may be considered to be
18 noble, but it is an agenda. They have participated, it seems from
19 this email, in discussions relating to the personal jurisdiction
20 of this tribunal.

21 [15.47.19]

22 And there's an outsider, here, that's -- comments on this, Steve
23 Heder, who knows the work of DC-Cam very well.

24 And, again, I will not put the document before the witness,
25 because your Chamber has already ruled that I cannot, but it

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1 would still be very interesting to know: Why is Mr. Steve Heder
2 so upset? And I would submit that Mr. Youk Chhang could provide
3 the answer.

4 Again, what I would like to know, that would be the question: Has
5 DC-Cam been involved in the determination of the personal
6 jurisdiction of the tribunal that can prosecute the DK officials?
7 So, Mr. President, I ask for your permission to actually ask this
8 question.

9 MR. PRESIDENT:

10 Witness, please wait.

11 (Judges deliberate)

12 [15.49.39]

13 The objection raised by the International Co-prosecutor to the
14 question put by the defence counsel is sustained.

15 Witness, you do not need to respond to this question.

16 In order to clarify the matters further on the proceeding, I'd
17 like to give the floor to Judge Cartwright so she can verify
18 further for clarity to the defence for Nuon Chea.

19 JUDGE CARTWRIGHT:

20 Thank you, Mr. President. Counsel for Nuon Chea, the reason that
21 the objection by the prosecutors has been sustained is this.

22 [15.50.40]

23 The Chamber fully understands the reasons that you have engaged
24 in this line of questioning. It -- the Chamber understands that
25 you are skeptical about the motivations by DC-Cam for the way in

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1 which it has collected documents. However, the Chamber considers
2 that it has heard enough on this topic, now, and asks you to move
3 onto a completely new phase of your examination.

4 In addition, of course, is the more fundamental issue: this
5 witness cannot comment on what is in the mind of someone who
6 writes an email to him and should not be asked to speculate on
7 that.

8 So I hope I've been clear enough.

9 The Chamber would like you, now, to move on; it understands your
10 point. Thank you.

11 [15.51.47]

12 MR. PAUW:

13 Thank you, Judge Cartwright. I understand your instruction. It
14 means I have to leave through my questions, because it may come
15 as no surprise that a lot of my questions relate to this issue,
16 and I feel that many of them have not been answered. So we do
17 reserve the rights to make further submissions on this.

18 But for now I will continue, and--

19 JUDGE CARTWRIGHT:

20 Just - just one moment, please. The President and I are just
21 consulting on a procedural matter. Thank you.

22 (Judges deliberate)

23 [15.53.16]

24 MR. PRESIDENT:

25 Defence Counsel, you may now sit.

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1 I believe the proceedings, today, almost come to an end.

2 However, before the adjournment, the Chamber would like to make
3 an announcement on a decision in regards to Nuon Chea's defence
4 -- that is, Mr. Pestman. Can you please stand?

5 This is the Trial Chambers decisions on the objection raised by
6 the international defence counsel of Nuon Chea in regards to the
7 public comments on the existence of guilt of his client.

8 [15.54.06]

9 The Chamber has noted the objection by defence counsel that
10 public comments have been made via media indicating his client,
11 Nuon Chea, is guilty of offences for which he's currently being
12 tried.

13 The Chamber emphasizes that Article 38 of the Constitution of the
14 Kingdom of Cambodia, which states: "The accused shall be
15 considered innocent until the court has judged finally on the
16 case." Thus, the determination of guilt or innocence is the sole
17 responsibility of the Trial Chamber, which will consider all
18 relevant facts, evidence, submissions, and law applicable at the
19 ECCC.

20 Therefore, the Court will not take account of any public comment
21 concerning the guilt or innocence of any Accused in reaching its
22 verdict.

23 You may be seated, Defence Counsel.

24 The time is now appropriate for adjournment.

25 The Court is now adjourned, and we shall resume on Monday, next

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1 week -- that is, the 6th of February 2012 -- starting from 9 a.m.

2 The Chamber would like to thank Mr. Youk Chhang for your effort
3 and time in providing your testimony to the Trial Chamber.

4 As the examinations on you and on DC-Cam is huge, the session has
5 not yet finalized, so you are invited to appear again at this
6 court on Monday, next week, and that would be the last day for
7 your appearance. We thank you for your understanding.

8 [15.56.42]

9 Court officer, please assist this witness for his returning to
10 his residence.

11 Security guards, you are instructed to bring the three Accused
12 back to the detention facility and bring them back here on Monday
13 morning, the 6th of February 2012, before 9 a.m.

14 The Court is now adjourned.

15 (Court adjourns at 1557H)

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