



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 19-Mar-2012, 15:07  
CMS/CF0: Kouv Keoratanak

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

13 March 2012  
Trial Day 35

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

The Accused: NUON Chea  
IENG Sary  
KHIEU Samphan

Lawyers for the Accused:

SON Arun  
Michiel PESTMAN  
Andrew IANUZZI  
ANG Udom  
Michael G. KARNAVAS  
KONG Sam Onn  
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:

SE Kolvuthy  
Matteo CRIPPA

For the Office of the Co-Prosecutors:

VENG Huot  
CHAN Dararasmey  
Tarik ABDULHAK  
Vincent DE WILDE D'ESTMAEL

Lawyers for the Civil Parties:

PICH Ang  
Élisabeth SIMONNEAU-FORT  
Barnabé NEKUIE  
LOR Chunthy  
HONG Kimsuon  
CHET Vanly  
KIM Mengkhy  
VEN Pov  
TY Srinna

For Court Management Section:

KAUV Keoratanak

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MS. GUISSÉ	French
MR. IANUZZI	English
MR. KARNAVAS	English
MR. KONG SAM ONN	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. VENG HUOT	Khmer

1

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

2 (Court opens at 0905H)

3 MR. PRESIDENT:

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

5 As scheduled and due to the early conclusion yesterday, the  
6 defence team for Ieng Sary concluded their oral objections to the  
7 remaining documents put forward by the Co-Prosecutors and this  
8 morning Khieu Samphan's defence will take the opportunity to  
9 present their oral objections.

10 Before I hand over the floor, I'd like to make one amendment to  
11 the second decision yesterday on the wording assessment of  
12 evidence. It shall be changed to the probative value of evidence;  
13 therefore, it is not the assessment of the evidence, but its  
14 probative value.

15 [09.07.40]

16 And for the conclusion of yesterday's hearing, it seems that the  
17 decision was not that clear in the English interpretation and in  
18 order to clarify the matter, I'd like to hand the floor to Judge  
19 Cartwright in English so that all parties can clearly understand  
20 the decision of the Trial Chamber.

21 JUDGE CARTWRIGHT:

22 Thank you, President.

23 As the President has indicated, there were some difficulties with  
24 the English translation yesterday. The President ruled that the  
25 Trial Chamber will not allocate time to discuss the probative

2

1 value of the documents. Any such issue may be addressed as  
2 documents come up naturally during trial, but also in closing  
3 statements.

4 [09.08.46]

5 Thank you, President.

6 MR. PRESIDENT:

7 Thank you, Judge Cartwright.

8 We now hand the floor to Khieu Samphan's defence so that they can  
9 present their oral objections to the documents as stated in the  
10 third paragraph of the memorandum of the Trial Chamber that is  
11 document E172/5. Khieu Samphan's defence have this whole morning  
12 to present their oral objections. You may proceed.

13 MR. KONG SAM ONN:

14 Thank you, Mr. President. Good morning, Your Honours. Good  
15 morning, everyone.

16 [09.09.48]

17 I'd like to make the presentations on our oral objections to the  
18 documents submitted by the Prosecution. The submission of  
19 documents by the Prosecution was done before the Trial Chamber  
20 made its decision to make the severance of Case 002 and it was  
21 made after the issuance of Closing Order by the Co-Investigating  
22 Judges.

23 We do have some questions regarding the examination of the list  
24 of documents. For instance, the Trial Chamber already makes some  
25 points regarding the annexes and it was also made after the

3

1 Co-Prosecutors already submitted the list of documents. There are  
2 some questions that I'd like to raise in general.

3 [09.11.36]

4 Firstly, in regard to the facts determined by the Trial Chamber  
5 for the subsequent trials, for example, the facts related to  
6 cooperatives, work sites, security centres, killing sites or the  
7 facts related to the movement which would fall into the third  
8 phase that they should not be put for discussion during this  
9 first trial. As we can see, a number of the documents in the list  
10 of documents submitted by the Prosecution do not mean to be for  
11 the facts before the Trial Chamber at this stage, but it will be  
12 for subsequent trials, so we will not discuss these documents.  
13 In addition to that, in regard to the allegations, for example,  
14 genocide or religious persecution which, as parts of crimes  
15 against humanity or the grave breaches of the Geneva Convention  
16 of 1949, are supposed to be done in subsequent trials and  
17 proceedings.

18 [09.13.35]

19 Secondly, the Trial Chamber also issued its decision to sever the  
20 proceedings against Ieng Thirith and yesterday, defence counsel,  
21 Michael Karnavas, also made this point in regard to the facts and  
22 allegations against Ieng Thirith that this matter should not be  
23 discussed in this trial proceeding and, for that reason, Khieu  
24 Samphan's defence will not discuss the matters related to this  
25 Accused. So we will not make comments or make oral objections to

4

1 these particular types of documents.

2 Thirdly, a majority of documents in the list submitted by the  
3 Prosecution are not relevant to the facts and the case file being  
4 discussed before the Chamber. This is pursuant to Internal Rule  
5 87.3(a) whereby the Trial Chamber can reject requests for  
6 examination of evidence if the evidence is not relevant. Your  
7 Honours, that is at the discretion of the Chamber to decide so --  
8 that is whether the documents submitted by the Prosecution are  
9 relevant or otherwise and you can make a rejection to that  
10 submission.

11 [09.15.36]

12 Fourth, for new documents and also pursuant to the decision of  
13 the Trial Chamber; there is document E172/5 which clearly states  
14 the facts regarding the new documents that shall be discussed in  
15 Annex 21 and that shall be discussed separately, not during this  
16 particular hearing. And as defence counsel for Khieu Samphan, we  
17 observe that the new documents are not collective in one annex,  
18 but they are scattered in almost every annex; that is, the annex  
19 of the list submitted by the Prosecution. The new documents  
20 amount to 341 and we, as Khieu Samphan's defence, will not make  
21 comments or make our oral objections to these documents yet. This  
22 is not the appropriate time for discussion on these new documents  
23 and, of course, we believe that the Trial Chamber will give the  
24 opportunity for the parties to discuss these documents at a later  
25 stage.

1 [09.17.43]

2 Fifth, as a principle when it comes to the statements, for  
3 example, the statements of the witnesses alleging the acts or the  
4 activities of the Accused, I request that the person or the  
5 individual who makes such a statement shall be cross-examined in  
6 order to ascertain the truth that the statement that is made by  
7 such individual is true and correct; in particular, when it comes  
8 to the acts or the activities of the Accused. We believe that  
9 there shall be an opportunity for Khieu Samphan's defence team as  
10 well as other defence teams to cross-examine those individuals  
11 who make such statements and that is a principle which is also  
12 applied internationally.

13 As for the 341 new documents that I just mentioned, we, the Khieu  
14 Samphan defence, submit that the Prosecution should re-examine  
15 these documents and decide whether they are relevant to the  
16 context of the proceeding in this first trial and to what extent  
17 and whether they should be removed from this first trial. This  
18 can be done to minimize the time and also to remove the  
19 irrelevant documents. It is not the position of the defence  
20 counsel to object to every single document submitted by the  
21 Prosecution. It is the Prosecution's role to determine whether  
22 the documents are relevant to the facts being tried at this  
23 particular stage of the proceeding and if the Prosecution has a  
24 view that the documents are not relevant then the documents shall  
25 be removed so that we can save more time on the objections.

6

1 [09.21.03]

2 During yesterday proceedings, we heard the oral objections by the  
3 other two defence teams. Therefore, what I present today and you  
4 -- and I wish not to repeat the points already raised by the  
5 defence teams yesterday and I'd like to seek the President's  
6 permission for my colleague, Ms. Guissé, to make particular  
7 points regarding the oral objections to those documents.

8 Thank you, Your Honour.

9 MR. PRESIDENT:

10 Ms. Guissé, you may proceed.

11 MS. GUISSÉ:

12 Thank you very much, Mr. President. Good morning, first and  
13 foremost, Mr. President, Your Honours. Good morning to all  
14 parties.

15 [09.22.08]

16 May I begin by what I consider everyone would feel is good news;  
17 that is, Mr. Khieu Samphan's defence team's objections will be  
18 much more brief than originally anticipated in light of some of  
19 the Defence objections that have been raised by my fellow defence  
20 counsel. Very seasoned lawyers on this side of the Bench have  
21 made very compelling and brilliant arguments; therefore, I will  
22 not repeat what has already been laid out before you.

23 I will also avoid being redundant; however, I would point out and  
24 underscore some of the points that Mr. Khieu Samphan's defence  
25 team feels are very relevant. Allow me to begin with Annex 6.



7

1 Annex 6 is called by the Co-Prosecutors as biographies pertaining  
2 to the regime of Democratic Kampuchea. A certain number of  
3 objections have already been made by my colleagues; particularly  
4 by my esteemed colleagues from the defence team of Ieng Sary in  
5 that these documents do not fall within the scope of the first  
6 trial. This was said yesterday, and I want to underscore a  
7 problem that was raised by another team during the hearing of the  
8 16th of February during which it was called to your attention the  
9 problems pertaining to the chain of custody of these documents.

10 [09.24.24]

11 For example, allow me to refer to document D366/7.1821,  
12 D366/7.1.30, D366/7.1.27. All of these documents, for example,  
13 are presumed to be documents of the Government of Democratic  
14 Kampuchea and yet we have no idea as to how they were obtained,  
15 how and who held custody of them, in what conditions they were  
16 drafted and then later on conserved.

17 Your Honours, you also have before you documents that are annexed  
18 as witness statements; such is the case for documents D125/138.3,  
19 D125/138.5. These -- these documents belong to TCW-457, and yet  
20 upon analysis of these witness statements -- these are written  
21 records of -- written records of interviews -- these are indeed  
22 statements according to which the statement simply recognizes the  
23 names mentioned in the documents; therefore, the reliability of  
24 these documents are found wanting; therefore, there are grounds  
25 to reject them.

1 [09.26.41]

2 I would also briefly recall that we stand in objection to the  
3 admission of the analytical reports of Mr. Craig Etcheson. I  
4 would remind you of the references of these documents; they are  
5 D2 -- D2/15.33 rather, D2-15.34, D2-15.36, D2-15.37.

6 We have absolutely no information with respect to how these  
7 documents were obtained by Craig Etcheson, and the context and  
8 conditions in which he obtained them. Therefore, there are no  
9 grounds to admit them.

10 [09.27.43]

11 Allow me to move now to annex number 7. With respect to the  
12 commerce reports of Democratic Kampuchea, once again, I will  
13 refer the Chamber to the arguments developed by my esteemed  
14 friend, Mr. Kong Sam Onn on the 15th of February. I simply want  
15 to highlight what was argued previously with respect to the  
16 admission of new documents. There are seven documents that figure  
17 in Annex 21, and yet here what we are dealing with are documents  
18 that are not new. Therefore, we will raise those points once  
19 Annex 21 is indeed submitted.

20 However, all of these commerce reports are subject to the same  
21 arguments that were previously stated. Specifically, the chain of  
22 custody of these documents is dubious and deficient. We have  
23 already stated what we deem as -- documents collected by DC-Cam  
24 as unreliable based on the testimonies provided before this  
25 Chamber by the DC-Cam representatives. However, I would

1 especially call your attention to the fact that some of these  
2 documents contain written annotations, with respect to which  
3 TCW-583 would be able to provide a certain number of  
4 clarifications. However, the defence for Khieu Samphan finds it  
5 very problematic that such documents could be admitted when they  
6 contain written annotations when we have no idea as to when or  
7 how these written annotations were made.

8 [09.29.56]

9 And once again I would refer the Chamber to the testimony given  
10 by the DC-Cam representative with respect to handwritten  
11 documents. Once again, you will be able to take such information  
12 into consideration during your deliberations and you will be able  
13 to rely on these documents considering the fact that the chain of  
14 custody of these documents is completely unknown.

15 I now wish to move on to Annex number 8, and once again I shall  
16 be very brief. These documents refer to the district record of  
17 Tram Kak. I will reiterate the objection based on the fact that  
18 these documents are not relative to the first mini-trial. I would  
19 also want to recall some of the arguments raised by the defence  
20 team for Ieng Sary by repeating once again the importance to rely  
21 only on documents whose authenticity cannot be contested. Ben  
22 Kiernan has, in fact, admitted that he's relied on photocopies  
23 and other such documents. The originals are not available at this  
24 stage, and we certainly hope that the Chamber will not base its  
25 decision on such documents.

10

1 [09.31.48]

2 Allow me to move on to Annex number 9, as well as Annex number  
3 10, which I will deal with together. A very brief -- as I feel  
4 that my esteemed friends from the defence teams from Ieng Sary  
5 and Nuon Chea have been articulate -- therefore I will not  
6 belabour the proceedings, and simply state that some of these  
7 documents have been, or may have been obtained through torture.  
8 But, once again, I will ask you whether or not these documents do  
9 pertain to the first mini trial. And, therefore, they are not of  
10 concern to us at this particular point in time.

11 Allow me to make a few comments on Annex number 11, which concern  
12 the trial transcripts of Case File number 1. Counsel Karnavas  
13 spoke elaborately on this issue, but I will insist, once again,  
14 on the importance of absolutely excluding these trial  
15 transcripts. This is a criminal course -- a criminal case,  
16 rather, in which we are governed by adversarial debate. And in  
17 such conditions it is abundantly clear that all trial transcripts  
18 for a case file, during which certain acts may have been  
19 discussed, should be excluded.

20 [09.33.48]

21 I would recall that, in the Co-Prosecutor's introductory  
22 submission -- the Co-Prosecutors, in their annexes, makes  
23 reference to E9/31. And I refer specifically to paragraph 19. The  
24 interest of the Co-Prosecutors to submit Annex 11 is based on the  
25 following. And I read paragraph 11:

11

1 "These transcripts contain statements and testimonies of Duch as  
2 well as other witnesses, civil parties, who are concerned with  
3 S-21 and the DK regime. This testimony assists in proving the  
4 occurrence of the crimes alleged at S-21 and the participation of  
5 the Accused in those crimes."

6 In no uncertain terms, Your Honours, the Co-Prosecutors intend to  
7 use this annex not only to highlight facts that are relevant to  
8 the first trial, but also to draw attention to the alleged  
9 participation of the Accused to these alleged crimes. Therefore,  
10 there's a two-pronged reason for excluding these documents. Mr.  
11 Khieu Samphan is mentioned in document D284/4.94.1. This is a  
12 statement made by Mr. Raoul Marc Jennar in which the name of Mr.  
13 Khieu Samphan is mentioned many times.

14 [09.36.06]

15 We firmly and staunchly object to the admission of these  
16 documents, and if the Co-Prosecutors believe that the statements  
17 of Mr. Raoul-Marc Jennar and those of others have to be  
18 considered by this Chamber, it is incumbent upon them to make  
19 sure that such witnesses be summoned, so that they can be  
20 cross-examined by all parties.

21 I would like now to speak on Annex 14. Once again, I shall be  
22 very concise, in light of the arguments that have been developed  
23 by the Ieng Sary defence team. I believe that it would be  
24 important to call your attention an additional point, in order  
25 for you to understand whether these documents are relevant to the

12

1 first trial. I refer the Chamber to a submission of the  
2 Co-Prosecutors with respect to the annexes E9/31. Once again, I  
3 will quote paragraph 22:

4 "They claim that annex 14 lists 51 site identification reports,  
5 which were prepared by the OCIJ investigators on the specific  
6 crime sites that were the subject of the judicial investigation  
7 and the indictment."

8 [09.38.03]

9 I will recall -- and this is a very important point -- you  
10 decided and responded to some of the arguments made by the Ieng  
11 Sary defence team. You had decided in your Severance  
12 Order, in document E139, paragraph 9, the fact that constitutes  
13 the crimes alleged in this first trial do not concern education  
14 sites, detention centres or other locations. Now, based on that,  
15 you have already decided beforehand that such documents which  
16 deal specifically with clearly identified crime sites do not fall  
17 within the scope of this first trial and are therefore not  
18 relevant at this stage. Therefore, we must remain consistent with  
19 Internal Rule 87.3(a) and 3 of the ECCC Internal Rules.

20 I now wish to make a few remarks on Annex 15 -- that deals with  
21 maps and photographs. It is rather difficult for the defence team  
22 to comment on each of the 461 documents that originate from  
23 various places, and for which there may not be original copies. I  
24 will simply recall, once again, that, in E9/31, paragraph 23, the  
25 Co-Prosecutors, in justifying the submission of such an annex --

1 the Co-Prosecutors claim that the maps consist primarily of  
2 locations identified in the Closing Order as crime sites,  
3 Cambodian border areas relevant to proving the international  
4 armed conflict, and maps showing the DK zones and sectors.

5 [09.40.29]

6 Further on, the Co-Prosecutors also explained that this annex  
7 include photographs of the crime sites and the events that are  
8 the subject of the Closing Order, including S-21, regional  
9 security centres, execution sites, and work sites such as the  
10 January 1 Dam. Once again, I will recall this is a quote from  
11 paragraph 23 of document E9/31. A very large number of these  
12 documents simply are not relevant to the first trial.

13 As another illustration, I would refer you to document  
14 D108/19/1/5, which is a drawing of an execution site. I would  
15 also refer you to document D108/39/10, which is a depiction of a  
16 mass grave site. Once again, these documents fall well beyond the  
17 scope of the first mini-trial. Similarly, and as a general  
18 characterization, this annex contains maps as well as drawings  
19 that are annotated by witnesses who obviously were heard by the  
20 Co-Investigating Judges.

21 [09.42.14]

22 I deem it very important to possibly cross-examine these  
23 witnesses, if these exhibits are indeed to be admitted. I'm  
24 referring here to document D276/7.5. This includes a map of some  
25 military bases in a particular province. And, given the fact that

14

1 a witness has annotated such a map not only falls beyond the  
2 scope of the first trial -- I believe that such a document calls  
3 for clarifications and these clarifications would justify  
4 summoning the witness. The reliability of certain documents is  
5 being questioned, and as an example, I would draw your attention  
6 to some of the maps and documents obtained by the Vietnam Centre.  
7 This is an archive, and the Vietnam Centre Archives enjoyed  
8 funding and financial donations from veterans and private  
9 individuals.

10 And I will quote the following passage in English:

11 [09.44.00]

12 (Intervention in English) "The virtual Vietnam Archive may not  
13 have what you are looking for, especially if you are looking for  
14 official records of facts or figures." (End of intervention in  
15 English)

16 Quite obviously, the virtual Vietnam Archives website has made it  
17 very clear that they do not employ any scientific methodology in  
18 obtaining their documents, and yet the Co-Prosecutors are asking  
19 you to admit these documents and to base your decision on them.  
20 My esteemed friend Michael Karnavas has already made a few points  
21 on the Cambodia Genocide Program, and therefore I will not repeat  
22 his comments.

23 [09.44.55]

24 However, I will stand in full support of what he said, and also  
25 draw your attention to the following documents -- D108/50/1.4.



15

1 This document is a map of roads which dates back to 2001. How is  
2 this relevant to the first trial? That is, to have a road map  
3 that dates back to 2001. What is the probative value of such a  
4 document, which will be determined at your absolute discretion?  
5 These are just a few of the examples of the hundreds and hundreds  
6 of documents that illustrate, to my mind, the absence of  
7 relevance, as well as the absence of reliability.

8 I will now move on to Annex 16, which contains audio and video  
9 recordings. Once again, I ask what the relevance of these  
10 exhibits are to the first trial.

11 I would refer you to video D294/2/25R. This is a video depicting  
12 military drills of soldiers working under the Democratic  
13 Kampuchea regime. There is also footage of forced labour. This  
14 also applies to D295/2/56R. Now, for these two particular videos,  
15 we assert that they simply are not consistent with the first  
16 trial, and they therefore should be set aside. In fact, of all  
17 the documents proposed by the Co-Prosecutors, a very high volume,  
18 if not the bulk, of their submissions, are simply not relevant.

19 [09.48.00]

20 During the hearing of the 16th of February 2012, the Khieu  
21 Samphan defence team rose to make objections to certain  
22 transcripts of interviews. I would refer the Chamber to the  
23 transcript of proceeding E1/45.1, page 67. With respect to these  
24 interviews involving Steve Heder as well as Bunchhoeun, we stated  
25 that such statements could not be admitted, unless there were an

1 opportunity to cross-examine those who had actually made the  
2 statements and produced the transcript.

3 Today, the Co-Prosecutors wish to admit audio recordings, which  
4 include D210/5R, and we apply the same objections that we made to  
5 the transcripts as we would to these audio recordings. We also  
6 object to the admission of D269/9/1.9R, D269/9/.10R (sic),  
7 D269/9.1.11R (sic), D269/9/1.12R. These are all interviews that  
8 were conducted by Mr. Ben Kiernan during the 1990s. Once again,  
9 we stand in objection to the admission of these transcripts, in  
10 addition to D313.1.2.406.1 (sic). We also stand in objection to  
11 the admission of the written transcripts of these audio  
12 recordings.

13 [09.50.56]

14 Now, with respect to videos, we would object to the admission of  
15 an interview given by Mr. Khieu Samphan in 1988. It is classified  
16 under D313.10 -- or, rather, D313/10R (sic), D13.9R, D313.11R.

17 These documents or these recordings were obtained by the  
18 Co-Prosecutors from DC-Cam. They've acknowledged that they have  
19 no information with respect to the identity of the journalist or  
20 how these recordings were obtained. These interviews are only  
21 available in the Khmer language, and there are no transcripts  
22 available. It is abundantly clear that an interview conducted in  
23 such conditions, and the fact that the identity of the journalist  
24 is not even known, provides clear grounds for the Chamber to  
25 dismiss the admission -- or to dismiss these exhibits outright.

1 You also have before Your Honours video recordings classified  
2 under D269/9/1.13R. Despite an attempt by Mr. Ben Kiernan to  
3 provide an explanation, there are many issues and problems  
4 surrounding who, exactly, conducted the interview and in what  
5 conditions, who the witness is -- so on and so forth. In light of  
6 this, the exhibit can certainly not be admitted.

7 [09.53.21]

8 We also believe that objections should be made to documents that  
9 are classified under D299/1.4R. These documents are partisan in  
10 nature, and we have already raised our objection to them in a  
11 previous hearing, but I simply want to reiterate that the issue  
12 of impartiality, objectivity, as well as reliability, is dubious,  
13 because this recording was produced by an East German team at the  
14 invitation of the Vietnamese, circa 1979. In such circumstances,  
15 it is entirely justifiable for the defence team of Mr. Khieu  
16 Samphan to question the reliability of such documents and such  
17 exhibits.

18 With respect to A16 -- with respect to annex A16, it is  
19 impossible for us to make individual comments to the exhaustive  
20 list of all documents, but those were a few of the main  
21 illustrations.

22 [09.54.51]

23 I beg your pardon, Your Honours. Allow me to comment now on Annex  
24 17, international communication documents. These documents have  
25 been discussed at a previous hearing -- namely, during the

1 hearing of the 17th of February. Issues of translation quality,  
2 as well as chain of custody and other issues were discussed, and  
3 in such circumstances, it was impossible to obtain a guarantee as  
4 to whether or not these documents are entirely authentic and  
5 reliable. And in order to substantiate some of the facts that are  
6 being alleged against the Accused, we must be able to rely on  
7 these documents, and yet it is impossible to verify the source of  
8 these documents, to verify if there have been any problems in  
9 translation, since we do not know the original source language.

10 I would take one example, which is the following document;

11 D313/1.2.265, D313/1.2.266, D313/1.2.268, D369/6.169. I will stop  
12 there, but I could certainly provide further examples.

13 Once again, we are not casting doubt on the existence of these  
14 telegrams. We are asserting, however, that the reliability -- the  
15 threshold of reliability of these documents is extremely low.

16 With respect to our next 18, which contains international media  
17 reports, once again there are certain numbers of new documents  
18 that will be examined at a later stage.

19 [09.57.38]

20 I would make a very cursory reminder that at a recent hearing in  
21 February, we had lodged objections to the admission of FBIS  
22 documents. I will not repeat those objections here. However, I  
23 would say once again that the general objections we have raised  
24 are highly significant. They deal with press articles, media  
25 clippings for which we have no indication of the author.

1 This is the example of D56, document 001; D56, document 003;  
2 D366/7.1.68; D56-Doc. 012; D56, document 15; D366/7.1.242. Again,  
3 I will limit my examples there, but I can certainly go on to cite  
4 further examples.

5 These documents are simply summaries or précises of press  
6 articles. For example, you also have D56-Doc. 017; D56-Doc. 021;  
7 D56-Doc. 011 and so on and so forth.

8 Similarly, we make objections to documents that are simply not  
9 available in Khmer, for example D51, D313/1.2.276, and  
10 D313/1.2.281, which is also not available in Khmer. I could also  
11 go on, however.

12 We stand opposed to documents for which the original Khmer is not  
13 available. Obviously, it is impossible for us to verify the  
14 accuracy of another language version if an original version is  
15 simply not available, and here I refer to the following:

16 D199/26.2.44.

17 This is just another illustration of some of the issues  
18 encountered by the defence team and I would fail to understand  
19 how one could rely on such a document in terms of reliability and  
20 other indicia.

21 [10.01.19]

22 Mr. President, do I have your leave to continue and conclude my  
23 remarks, or would you like to call for a break at this point?

24 MR. PRESIDENT:

25 You may continue for another half-an-hour before the break time.

1 [10.01.40]

2 MS. GUISSÉ:

3 Thank you, Mr. President.

4 I go on then to Annex 19 which are academic articles. I shall  
5 refer -- not refer to the objections levelled by the Ieng Sary  
6 team and merely content myself with referring to a significant  
7 point connected with document D2/15, which is Craig Etcheson's  
8 famous report.

9 We object to the document for the reasons mentioned by Counsel  
10 Karnavas, but we would also like to remind this Chamber of an  
11 important point that was raised by the defence for Ieng Thirith  
12 during the investigation. And there I refer the Chamber to D292  
13 in which, in an extremely precise and detailed way, the Ieng  
14 Thirith defence team noted the perfection of the methodology  
15 followed to establish the report and the conclusions; sometimes  
16 based on testimony obtained under torture, conclusions from a  
17 single piece of testimony that were tied in to general  
18 conclusions.

19 And here I am taking you to the substance of objections and  
20 problems listed by the Ieng Thirith defence at the time, simply  
21 to draw the Chamber's attention to the fact that this report is  
22 unsatisfactory and cannot be accepted by this Chamber. And if the  
23 Co-Prosecutors do wish to insist on us examining the document,  
24 then it would be necessary for Mr. Craig Etcheson to appear to be  
25 cross-questioned about all of these difficulties inherent to that

1 report.

2 [10.04.04]

3 I take you now to Annex 20 on the rogatory reports. Again, I  
4 would echo the objections raised by my colleagues on other  
5 defence teams, and also in international jurisprudence it is  
6 taken that we cannot accept written testimony from witnesses  
7 connected with the acts and conduct of the Accused or summaries  
8 or confirmations of hearings of witnesses or civil parties unless  
9 the accused themselves have an opportunity to cross-question  
10 those witnesses, failing which I believe that these documents  
11 should be rejected as not being submitted to proper adversarial  
12 debate.

13 [10.05.09]

14 Those were the objections, Mr. President, that I wished to make  
15 about Annexes 6 to 20 submitted by the Co-Prosecutors.

16 Very briefly, now, I'd like to look at the objections connected  
17 with the list of the civil parties' documents. I shall be brief  
18 because my colleagues have already pointed out that out of this  
19 list of 10 documents, there are nine that don't relate to the  
20 first mini-trial so, of course, the question of relevance is more  
21 pertinent than ever and these nine documents should be rejected.  
22 There is only one that could possibly be invoked in this first  
23 mini trial, which is an article by Mr. Kiernan which he wrote  
24 while he was a mere 21 year-old student. I shall not dwell on the  
25 question of the probative value or reliability of such a

22

1 document, but a university article by a student at that age, and  
2 especially bearing in mind the fact that Mr. Kiernan's testimony  
3 may come before this Court, then I will not dwell on that matter  
4 now but we will reserve the right to come back to the civil  
5 parties' document list at a later stage.

6 [10.06.36]

7 Closing then on this series of objections, I would draw to your  
8 distinguished attention the fact that I am not objecting for the  
9 sake of objecting. We're talking here about the role of all the  
10 parties, whether they are -- it is the Prosecution, the civil  
11 parties or the Defence to make sure that this Court, in its  
12 deliberations, is not burdened with documents of which the  
13 relevance and reliability is called into question.

14 And it's in the light of those elements and those ideas that I  
15 would ask you to examine the objections that I have raised, and  
16 that brings me to a close, Mr. President.

17 Thank you.

18 [10.07.22]

19 MR. PRESIDENT:

20 Thank you, Madam Counsel.

21 The time is now appropriate for a break. We shall take a  
22 20-minute break and we shall return at 10.30.

23 When we resume, the floor will be given to the Prosecution and  
24 the Lead Co-lawyers to respond to the oral objections raised by  
25 the Defence.



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

2 MR. ANG UDOM:

3 Thank you, Mr. President. Good morning, Your Honours.

4 Due to his health, Mr. Ieng Sary would like to waive his rights

5 to directly participate in today's proceeding, and instead he

6 would like to follow the proceedings in the waiting room

7 downstairs, and we'd like to seek your permission on that. Thank

8 you.

9 MR. PRESIDENT:

10 The Prosecution, you may proceed.

11 MR. ABDULHAK:

12 Mr. President, I apologize for interjecting. I was on my feet on

13 a slightly separate matter to do with scheduling.

14 The Scheduling Order indicates that we are to -- also to deal

15 with any objections by the Co-Prosecutors and the civil parties

16 to the defence lists, and I just wanted to inform the Chamber and

17 the other parties that we will not be making objections to the

18 defence lists. And so, for the purposes of scheduling, perhaps

19 Your Honours can take that into account.

20 I suppose the next matter to move on to, as the President

21 indicated, would be our responses, but I suspect given the

22 relatively brief submissions that the Defence have made, that we

23 won't -- that we might finish sometime tomorrow or, at the

24 latest, perhaps early on Thursday.

25 [10.09.24]

1 So, as a scheduling matter, you may wish to take it into account  
2 in terms of any further sessions that you may wish to consider  
3 for this week.

4 Thank you.

5 MR. PRESIDENT:

6 Thank you, Defence Counsel.

7 Lead Co-Lawyer, you may proceed.

8 MR. PICH ANG:

9 Good morning, Mr. President, Your Honours.

10 The civil party counsels would like to inform the Trial Chamber  
11 that we do not wish to make any oral objections to the documents  
12 proposed by the Defence.

13 Thank you.

14 MR. PRESIDENT:

15 Thank you, civil party Lead Co-Lawyer, for your status. This is  
16 useful for our scheduling purpose.

17 The Chamber has heard the requests made by the accused, Ieng  
18 Sary, through his counsel not to directly participate in today's  
19 proceeding and instead to follow it through the audio-visual  
20 communication in the waiting room downstairs, due to his health.

21 [10.10.52]

22 The Trial Chamber grants the permission to Mr. Ieng Sary to the  
23 request made through his lawyer to waive his right to participate  
24 directly in the proceeding, and rather to follow it through  
25 audio-visual communication in the waiting room downstairs.

25

1 Defence counsel, you are required to deliver immediately the  
2 letter to waive his right to participate directly for today's  
3 proceeding, and it shall be signed or thumb-printed by the  
4 Accused.

5 Security guard, you are instructed to bring the accused, Ieng  
6 Sary, to the waiting room downstairs, and the ICT Section you are  
7 instructed to link the proceeding through the waiting room  
8 downstairs for today's proceeding, that is both for the afternoon  
9 and the morning sessions.

10 THE GREFFIER:

11 All rise.

12 (Judges exit courtroom)

13 (Court recesses from 1011H to 1033H)

14 (Judges enter courtroom)

15 THE GREFFIER:

16 Please be seated.

17 MR. PRESIDENT:

18 The Court is back in session.

19 According to the schedule, response by the Prosecution and the  
20 civil Lead Co-Lawyers for the civil parties concerning the  
21 documents submitted by the defence teams. But before we broke,  
22 both the Prosecution and civil parties' lawyers have made their  
23 position clear that they would not object against the document  
24 put forth by the defence teams.

25 Now, I turn to the Prosecution to provide response to the Defence

1 concerning the documents they sought to be put before the  
2 Chamber.

3 Now, I give the floor to the Prosecution to respond to objections  
4 against the documents submitted by the defence teams.

5 But before we turn the floor to the Prosecution, we would like to  
6 ask the Prosecution as to how much time you need to raise this  
7 objection.

8 [10.36.29]

9 MR. ABDULHAK:

10 Thank you, Mr. President.

11 The way in which we propose to deal with the objections is for my  
12 colleague to first respond in relation to a number of thematic  
13 matters, following which we will make submissions in response on  
14 each of the annexes and we will do so, if you like, in three  
15 separate -- we propose to do so in three separate sessions.

16 [10.37.00]

17 We think we can complete the first session today and perhaps even  
18 start the second session. We will certainly complete, most  
19 likely, both the second and the third part of our responses  
20 tomorrow so that, again most likely, we would be in a position to  
21 hand over to the civil party lawyers either at the end of  
22 tomorrow or perhaps at the start of proceedings, on Thursday.

23 That's - that's the way we propose to proceed.

24 And I guess that just means -- and this is why I was raising the  
25 matter just before we broke -- is, I believe that may -- then,

1 with the civil parties' responses, we would conclude the  
2 anticipated proceedings for this week. The civil parties can  
3 obviously speak for themselves. I believe they only need  
4 approximately one hour, so we may finish early on Thursday.

5 (Judges deliberate)

6 [10.38.24]

7 MR. PRESIDENT:

8 The prosecutor, you may proceed.

9 MR. VENG HUOT:

10 Your Honours, members of the Bench, colleagues, and everyone,  
11 good morning.

12 Before the Prosecution responds to the specific Defence objection  
13 which we have heard over the past one day and a half, I will make  
14 a very brief submission on the applicable legal principle.

15 We will also outline the evidence which is before the Chamber  
16 regarding the primary sources of the material listed in the  
17 Co-Prosecutors' first phase document list.

18 [10.40.00]

19 Again, I will also outline the evidence which is before the  
20 Chamber regarding the primary sources of the materials listed in  
21 the Co-Prosecutors' first phase document list.

22 We feel this short recap may be of assistance to the Chamber,  
23 since this is the last set of documents hearings on phase 1

24 documents, and a considerable amount of evidence and

25 argumentation has been put before the Chamber on these issues so

1 far.

2 [10.40.45]

3 The legal principles.

4 The starting point is, of course, Your Honours' ruling on the  
5 application of Internal Rule 87 insofar as it concerns  
6 authenticity, relevance, and reliability of documents. As Your  
7 Honours have indicated, Internal Rule 87 contains the legal test  
8 for admission of evidence before the ECCC. Rule 87.1 creates a  
9 general presumption of admissibility of all evidence. This  
10 general rule is limited by Rule 87.3, which provides an  
11 exhaustive list of circumstances in which the Chamber may reject  
12 a request for evidence.

13 In applying these provisions in Case 001 in decisions E43/4 and  
14 E176, the Chamber adopted an approach consistent with  
15 international jurisprudence. The Chamber interpreted Rule 87.3 as  
16 requiring evidence to satisfy minimum standards of reliability  
17 and relevance. In Case 002, the Chamber has provided further  
18 guidance in its memorandum of the 31st of January 2012, document  
19 number E162, indicating that evidence which is proposed for  
20 admission must satisfy prima facie standards of relevance,  
21 reliability and authenticity.

22 [10.43.06]

23 Thus, the Chamber indicated that if a document clearly lacks  
24 reliability -- including authenticity -- it may be considered to  
25 be unsuitable to prove the facts it purports to prove. This also

1 reflects the core legal principles on which the Co-Prosecutors  
2 have relied in previous written and oral submissions. The  
3 relevant standard for reliability, relevance and authenticity at  
4 this stage is prima facie.  
5 Prima facie, of course, means "on the face of the document". It  
6 means that, at the point of admission, Your Honours are not  
7 required to be satisfied as to the exact origin, provenance,  
8 chain of custody, or form of the document as to whether it is an  
9 original or a copy. All that is required is that you are  
10 satisfied that, on its face, the evidence appears to be relevant,  
11 reliable, and authentic.  
12 Relevance, of course, relates to whether or not the document  
13 relates to an issue in the trial and tends to support the moving  
14 party's position.  
15 As for authenticity and reliability, we submit that prima facie  
16 means that you simply need to be satisfied that the evidence  
17 appears to be what it purports to be; in other words, that it  
18 does not appear to be fake and that it has a minimum level of  
19 probative value. So all that is required is sufficient indicia of  
20 reliability.  
21 Your Honours provided a helpful illustration of these standards  
22 in memorandum E162. Your Honours stated that, where a document  
23 does not appear to be a forgery or unrepresentative of the  
24 original, the Chamber shall consider that document to have been  
25 put before it, that is, the document is prima facie authentic and

1 reliable because it is not, on its face, a forgery.

2 [10.46.40]

3 Once a document is put before the Chamber and admitted into  
4 evidence, as Your Honours indicated in the memorandum, any  
5 further submissions as to reliability will go to the weight to be  
6 accorded to the evidence.

7 Similarly, you held in your judgement in Case 001, at paragraph  
8 42 that "the assessment of probative value of evidence would take  
9 place once the evidence has been admitted".

10 The reason we are highlighting this distinction is because many  
11 of the submissions we have heard from the Defence do not, in  
12 fact, go to the admissibility but rather to the weight of the  
13 evidence.

14 [10.47.44]

15 For example, the question of whether the contents of a document  
16 described an event correctly, or whether the author had direct  
17 knowledge of the event he or she describes, these are all  
18 questions that go to weight which you would ultimately ascribe to  
19 the document. But such questions do not preclude the admission of  
20 the document unless, of course, it is completely devoid of any  
21 probative value.

22 [10.48.27]

23 As indicated earlier, another aspect of the legal position on the  
24 admissibility of evidence at the international level and before  
25 the ECCC is that there is no requirement to provide the original



1 of a document. The Chamber has ruled that original documents are  
2 a preferred method of proof, but not the only form in which  
3 evidence can be admitted.

4 It is perfectly acceptable to admit photocopies where they are  
5 prima facie authentic and reliable.

6 The Chamber has indicated that originals will be accorded more  
7 weight than photocopies. In our submission, this preferential  
8 treatment should also be extended to photocopies where the  
9 originals are in a known location and no party has submitted  
10 reasonable grounds to show that the photocopies are not true  
11 copies of the originals.

12 We have explained these submissions in more detail in our filing  
13 document E168/1 dated the 20th of February 2012.

14 [10.50.10]

15 The Chamber has also made it clear in its reasoned decision that,  
16 for the purposes of admission, it is not necessary to call  
17 witnesses with personal knowledge to authenticate materials on  
18 the case file. Equally, there is no need to establish the chain  
19 of custody of a document. Your Honours have held that, instead,  
20 evidence as to provenance and chain of custody will assist the  
21 Chamber in assessing the weight to be ascribed to the evidence.

22 We have already made submissions as to the provenance and chain  
23 of custody of a number of our proposed documents in our filing  
24 E158 dated the 23rd of December 2011 and in the previous document  
25 hearings. In addition, and as I will discuss a little later, you

1 have already heard the testimonies of Chhang Youk and Vanthan  
2 Dara Peou as to the provenance of the documents collected by  
3 DC-Cam.

4 [10.51.45]

5 And of course, Your Honours, in the upcoming segment, we will  
6 hear from numerous communication and administrative structure  
7 witnesses who will be able to give evidence regarding  
8 contemporaneous documents which have been proposed to put before  
9 the Chamber. We say that all of this information is more than  
10 sufficient to establish the prima facie relevance, reliability,  
11 and authenticity of all the documents we have proposed for this  
12 first phase of the trial.

13 We referred earlier to Your Honours' approach in distinguishing  
14 between issues of admissibility and weight of evidence. This is  
15 fully consistent with the approach taken by the international  
16 tribunals in various decisions issued by the ICTY Trial Chambers.  
17 The practice has been to distinguish clearly between the prima  
18 facie standard applicable at the point of admission of evidence  
19 and subsequent detailed assessment of the weight and probative  
20 value of that evidence.

21 [10.53.20]

22 Mr. President, Your Honours, members of the Bench, returning to  
23 the standard for admissibility:

24 It must also be kept in mind that criminal justice system of  
25 Cambodia is derived from the Civil Law system. The procedure

1 applicable at the ECCC is strongly influenced by the French  
2 criminal code which incorporates the principle of free evaluation  
3 of evidence. This principle allows for a low threshold on  
4 admissibility because all evidence is ultimately assessed by the  
5 judges to arrive at its actual probative value or weight.  
6 Another reason specific to the Civil Law system, which supports a  
7 low threshold for admissibility, is that the evidence on the case  
8 file has been collected and reviewed by impartial and independent  
9 investigating judges. So all of the evidence which is on the case  
10 file has already undergone judicial scrutiny. That must go some  
11 way towards meeting the prima facie standards. We recall that the  
12 Co-Investigating Judges refused to admit a number of items on the  
13 case file where they found them to be irrelevant or otherwise not  
14 conducive to the ascertainment of the truth.

15 [10.55.22]

16 A select portion of the evidence which was accepted by the  
17 Co-Investigating Judges is now being presented to the Trial  
18 Chamber. This Chamber is comprised of qualified professional  
19 judges. As experienced professionals, you are able to consider  
20 each piece of evidence and give it the weight that it deserves,  
21 taking into account the context, the totality of the documentary  
22 evidence, the testimonies of witnesses, and the submission of the  
23 parties. There is no risk that the admission of an evidential  
24 item, which in the end is found to have low probative value,  
25 would be prejudicial to the Accused.

1 This principle has been upheld over and over again by  
2 international courts.

3 In *Prosecutor vs. Norman*, in the Special Court for Sierra Leone  
4 Trial Chamber held on the 11th of March 2005, that judges sitting  
5 alone can be trusted to give second-hand evidence appropriate  
6 weight in the context of the evidence as a whole and according to  
7 well-understood forensic standards. And we strongly agree.

8 [10.57.20]

9 But how would the Chamber conduct this delicate exercise if it is  
10 deprived of the ability to examine all the information which  
11 provides the necessary context and facilitates an assessment of  
12 the reliability and consistency of individual pieces of evidence  
13 against the totality of the records.

14 It is our submission that in cases of this complexity, with  
15 criminal offences which include important contextual elements, it  
16 is crucial not to set the bar of admission too high, or else the  
17 Chamber may find itself deprived of sufficient evidence in its  
18 final deliberations.

19 [10.58.28]

20 As the ICTY held in the *Delalic Case* on the 19th of January 1998,  
21 the threshold standard for the admission of evidence should not  
22 be set excessively high, as documents may not necessarily be  
23 admitted as ultimate proof of guilt or innocence, but to provide  
24 a context and complete the picture presented by the evidence  
25 gathered.

1 Now I'd like to touch upon the main sources of the evidence. I  
2 would now like to turn briefly to the main sources of documents  
3 on the Co-Prosecutors' first phase list. I will pay particular  
4 attention to documents which are contemporaneous to the  
5 Democratic Kampuchea period. As these documents obviously  
6 represent an important category of evidence, my colleagues,  
7 particularly Mr. Tarik Abdulhak, will address a number of  
8 subcategories in more detail.

9 [10.59.48]

10 Extensive information regarding the provenance in chain of  
11 custody of contemporaneous DK documents is contained in:

- 12 1) documents on the case file;
- 13 2) written statements of witnesses; and
- 14 3) testimonies provided by Chhang Youk and Vanthan Peou Dara.

15 This evidence shows that our four main sources of documents  
16 contemporaneous to the DK period, the Ministry of the Interior,  
17 Tuol Sleng, National Archives, and the so-called Swedish  
18 collection. Many of the documents from these sources were  
19 collected first by DC-Cam and then provided to the OCP and OCIJ.  
20 The list which we circulated to the parties on 23 January 2012 in  
21 our filing document E161 shows that approximately 2384 documents  
22 on the OCP's first phase list came from DC-Cam. I would recall  
23 for the record that the true DC-Cam witnesses were able to  
24 describe in significant detail the processes for cataloguing and  
25 numbering of the documents which enabled all parties to easily

1 ascertain the origin of each document. In most cases it is as  
2 simple as looking at a document using its unique number on  
3 DC-Cam's publicly available database.

4 [11.01.54]

5 However, it is important to also note that, during the course of  
6 the judicial investigation, the OCIJ also obtained  
7 contemporaneous DK documents directly from Tuol Sleng and the  
8 National Archives and did not rely solely on DC-Cam as a source.  
9 I will now deal with each of the four main sources I mentioned.  
10 Now we touch upon the sources of documents from the Ministry of  
11 Interior. Ministry of Interior documents were obtained by the OCP  
12 and OCIJ from DC-Cam. Chhang Youk and Vanthan Peou Dara have  
13 testified that this collection includes documents relating to  
14 national security, such as confessions, correspondence,  
15 biographies, and photographs. They have also testified that, to  
16 their knowledge and belief, these documents were originally  
17 collected by a team of Vietnamese experts in a house in Phnom  
18 Penh in the period following the toppling of the Khmer Rouge  
19 regime. The documents were collected and deposited in an office  
20 of the Ministry of Interior until they were handed over to DC-Cam  
21 in or around 1996.

22 [11.03.42]

23 Importantly, the witnesses have confirmed that DC-Cam has in its  
24 possession the originals of all of these documents. I refer the  
25 Chamber in particular to the transcript of Vanthan Peou Dara,

1 testimony of 23 January 2012 at pages 74 to 80 of the English  
2 version and at pages 62 to 66 of the Khmer version and Chhang  
3 Youk's testimony on 1st February 2012 at pages 43 to 48 of the  
4 English version and at pages 39 to 44 of the Khmer version. This  
5 oral testimony is consistent with statements Chhang Youk  
6 previously made in OCIJ interviews, and in which he additionally  
7 specified that the house where the documents were found is  
8 believed to have been occupied by Son Sen.

9 [11.05.04]

10 I referred you in particular to D204/4 written record of  
11 interview of Chhang Youk dated 19 August 2009, in page 3 of the  
12 English version and page 4 of the Khmer version. The testimonies  
13 are also consistent with the information contained in an article  
14 co-authored by Chhang Youk entitled "Documenting the crimes of  
15 Democratic Kampuchea", dated 24 March 2009. This article is on  
16 the case file as D155.3.

17 I referred you in particular to pages 226 to 230 which deal with  
18 different types of documents in the Ministry of Interior  
19 collection.

20 On the issue of originals, I note that during the judicial  
21 investigation, original documents from this collection were cited  
22 and scanned in colour by OCIJ officials. Numerous colour scans of  
23 originals are on the case file and can easily be viewed by Your  
24 Honours and the parties. On this point, I would refer Your  
25 Honours to the OCP's response to Khieu Samphan's request for

1 original documents which is document E168/1, dated 20 February  
2 2012. In this response, at paragraphs 13 to 15, the  
3 Co-Prosecutors outlined the evidence of the case file confirming  
4 that originals were obtained from DC-Cam during the judicial  
5 investigation.

6 [11.07.19]

7 I would like now to move on to the sources of documents from Tuol  
8 Sleng.

9 Turning now to the Tuol Sleng documents, these primarily comprise  
10 confessions, prisoner records, and biographies, but also include  
11 documents originating from other offices and to ministries of  
12 Democratic Kampuchea. They were obtained both from DC-Cam and  
13 from Tuol Sleng directly during the course of the judicial  
14 investigation.

15 [11.08.02]

16 In their oral testimony, Vanthan Peou Dara and Chhang Youk  
17 provided information regarding this collection. I refer the  
18 Chamber to the transcript of Vanthan Peou Dara's testimony on  
19 23rd January 2012, pages 73 to 74 of the English transcript, at  
20 pages 60 to 61 of Khmer transcript, and Chhang Youk's testimony  
21 on 1st February 2012, pages 65 to 70, 105, and 117 of the English  
22 transcript; and Khmer transcript at pages 57 to 61, page 89, and  
23 page 100.

24 The two witnesses testified that DC-Cam took only photocopies of  
25 documents from Tuol Sleng and that the originals remained at Tuol



1 Sleng. These documents are identified in the DC-Cam database with  
2 the prefix "TSL'". This prefix can be seen on the copies of Tuol  
3 Sleng documents that the OCP and OCIJ obtained from DC-Cam.

4 With regard to documents found at Tuol Sleng which originated  
5 from other DC -- from other DK offices, Chhang Youk testified  
6 that, in his experience, it was not uncommon for documents from  
7 one DK ministry to be found in a different ministry; for example,  
8 because documents were sent as correspondence from one ministry  
9 to another.

10 [11.10.42]

11 The case file also includes written records of interview by the  
12 OCIJ of former Tuol Sleng museum staff. These witness interviews  
13 provide valuable information as to the types of documents located  
14 at the museum, the circumstances of their discovery, and the  
15 process of organizing the collection. For the sake of the record,  
16 I note that the witness statements are D108/42/1 which is a  
17 written record of interview of TCW-97 dated 25 March 2008,  
18 document D108/32/2 which is a written record of interview of  
19 TCW-368 dated 26 March 2008, and document D108/21/12 which is a  
20 written record of interview of a witness who has not been  
21 assigned a pseudonym, and it is dated 18 February 2008.

22 [11.12.43]

23 During his interview, the witness, TCW-97, who began working at  
24 the museum in May 1979 and holds a senior position at the museum,  
25 confirmed that he participated in the collection of documents

1 from the buildings in the main S-21 compound and nearby houses.  
2 He testified that, under the directorship of the late Oeng Pech,  
3 the archivist assembled all documents relating to the same person  
4 and assigned serial numbers to those dossiers. He also provided  
5 detailed testimony as to the storage of these original records  
6 from 1979 onwards. He describes the specific locations and  
7 methods of storage used over the years.  
8 witness TCW-368, a former staff member, told the OCIJ that the  
9 documents found at Tuol Sleng, including in nearby houses,  
10 included confessions, execution logs, interrogation logs,  
11 summaries of confessions, study notebooks, CPK statutes,  
12 speeches, and directives, and copies of the "Revolutionary Flag"  
13 and "Youth" magazines.  
14 [11.15.04]  
15 During the judicial investigation, OCIJ officials inspected  
16 and/or requested coloured scans of a large number of original  
17 documents located at Tuol Sleng. These documents are all in the  
18 case file and are clearly identifiable as copies of originals. I  
19 refer Your Honours to documents filed pursuant to rogatory  
20 letters D82 dated 29 January 2008 and D159 dated 4 July 2008. I  
21 also refer Your Honours to the rogatory execution reports which  
22 were filed together with the relevant copies. These reports  
23 explained the circumstances of the inspection and copying of the  
24 originals.  
25 I will now move on to the sources of documents from the National

1 Archives. With regard to the National Archives' collection, the  
2 majority of these documents can be described broadly as  
3 Democratic Kampuchea commerce records. Chhang Youk has testified  
4 that, to his knowledge, the National Archives' documents were  
5 first kept at the ministry of propaganda and information under  
6 Mr. Keo Chanda. The documents were kept under Mr. Keo Chanda's  
7 supervision until the National Archives were established with a  
8 mandate to collect national documents. The documents were then  
9 transferred to the National Archives where they were copied by  
10 DC-Cam starting in/around 1996.

11 [11.17.47]

12 Chhang Youk testified that the original documents which they  
13 inspected and copied appeared to be DK-era documents and that  
14 these originals remained at the archives. I refer the Chamber  
15 particularly to the testimony of Chhang Youk on 1st February  
16 2012, at pages 56 to 62 of the English transcript and at pages 50  
17 to 55 of the Khmer transcript.

18 Further information as to the provenance of documents at the  
19 National Archives is set out in the article co-authored by Chhang  
20 Youk which I referred to earlier; that is, document number  
21 D155.3. At page 228, the article states that certain Standing  
22 Committee minutes were deposited at the archives by Renakse  
23 officials.

24 [11.19.14]

25 As with the Tuol Sleng documents during the judicial

1 investigation, officials from the OCIJ inspected and/or obtained  
2 colour copies of a number of original documents directly from the  
3 National Archives. On this point, I referred Your Honours to the  
4 documents filed pursuant to rogatory letter, D161; they are  
5 attachments to the rogatory letter execution report, D161/1 dated  
6 4 February 2009.

7 I would like now move to the sources of document under the  
8 Swedish collection. I would like to conclude with documents  
9 obtained from the so-called Swedish collection. This collection  
10 includes contemporaneous DK media reports, DK public statements,  
11 and FUNK or GRUNK publications.

12 In addition to contemporaneous reporting by international media,  
13 the documents in this collection were obtained during the  
14 judicial investigation from DC-Cam. Chhang Youk and Vanthan Peou  
15 Dara are to -- also testified as to the origins of this  
16 collection. I referred Your Honours to the testimony of Chhang  
17 Youk on 1st February 2012, at pages 41 to 42 of the English  
18 transcript and at pages 38 to 39 of the Khmer transcript, and on  
19 6 February 2012, at pages 20 and 91 of the English transcript and  
20 at page 16 and page 60 -- 76 of the Khmer transcript, and to the  
21 testimony of Vanthan Peou Dara on 23rd January 2012, at pages 47  
22 to 48 of the English transcript, at pages 38 to 39 of the Khmer  
23 transcript.

24 [11.22.26]

25 The two witnesses testified that in total this collection

1 comprise some 600 to 700,000 pages. They stated that these  
2 documents were compiled by the Committee of Laos, Vietnam,  
3 Cambodia, and Sweden Friendship whose members visited Democratic  
4 Kampuchea in 1978. This collection was received by DC-Cam in  
5 2007, following DC-Cam's public appeal for any private or public  
6 collectors to provide documents relevant to the Democratic  
7 Kampuchea. The documents received as part of the Swedish  
8 collection are largely copies of originals which remained at Lund  
9 University.

10 Your Honours, to conclude, I have outlined briefly the applicable  
11 legal principles and the evidence on the case file concerning the  
12 provenance and chain of custody for the four main sources of  
13 documentary evidence.

14 In our submission, this evidence taken together establishes a  
15 very strong basis for these records to be admitted as authentic  
16 and reliable.

17 Your Honours, I now conclude my part of the response and I will  
18 now hand over to my colleague, Mr. Tarik, who will deal with  
19 specific Defence objections.

20 And I'd like to seek your permission in relation to Michael  
21 Karnavas, yesterday afternoon, who stated that the Prosecution  
22 sneaked in to evidence and we strongly object to that. We did not  
23 sneak in evidence; we submitted those evidence officially.

24 [11.25.35]

25 Thank you, Your Honour.

1 MR. PRESIDENT:

2 Thank you.

3 Now, the international Co-Prosecutor, you may proceed.

4 MR. ABDULHAK:

5 Thank you, Mr. President, Your Honours, counsel.

6 As my colleague has indicated, we will now move on to address,  
7 perhaps more specifically, some of the objections that we've  
8 heard over the last two days from the Defence and -- and we will  
9 do so, perhaps, in two ways. One is by first dealing with some of  
10 the thematic issues that have been raised and that I think are  
11 common to a number of the defence teams, and then, secondly, by  
12 going to those specific annexes, and again making submissions in  
13 response to the objections that relate more specifically to those  
14 annexes.

15 [11.26.52]

16 So I will proceed first to respond to some of these thematic  
17 objections. Perhaps, as a way of also building on my colleagues'  
18 submissions with respect to the legal position and information  
19 that is before Your Honours on the provenance of the evidence and  
20 then perhaps later in the afternoon, I will move on to three  
21 specific annexes; they're Annexes 7, 15, and 19 from the OCP  
22 list. And at that point I will hand over to the next OCP team,  
23 and they will, with your leave, deal with the remainder of -- of  
24 the annexes.

25 So, perhaps starting with one of these more basic points that

1 were made yesterday, I believe, by my learned friend, counsel for  
2 Mr. Ieng Sary, I think there was an assertion that the OCP was  
3 trying to, as it were, circumvent testimonial proceedings and  
4 have this case put before Your Honours simply by using documents,  
5 and I think our -- both our motives and our professional ethics  
6 were -- were put into question. I don't think those types of  
7 submissions were -- were warranted.

8 [11.28.37]

9 Your Honours, of course the Co-Prosecutors have put forward very  
10 extensive proposals for witnesses to be heard. Our witness list  
11 which is E9/4.1 identified close to 300 witnesses and we proposed  
12 to bring before Your Honours, of those witnesses, somewhere  
13 between 80 and 90 relate primarily to matters of context,  
14 operations of the regime, circumstances in which the Democratic  
15 Kampuchea records were created, etc. So Your Honours, there's no  
16 attempt to circumvent testimonial proceedings; far from it, what  
17 we are trying to do is to put before Your Honours a selection of  
18 documents which, in our submissions, will complement testimonial  
19 evidence.

20 As for some of the errors or alleged errors that were raised,  
21 they'll be dealt with by my colleagues. Suffice it to say, we  
22 were surprised to hear a reference to our professional ethics;  
23 particularly given that some of the examples that were given by  
24 the Defence were, in fact, erroneous. But I'll leave that to my  
25 colleagues.

1 [11.30.06]

2 Moving on to, perhaps, what was an essential theme in the  
3 submissions that we've heard over the last two days and it is the  
4 issue of relevance, Your Honours, and I think each of the three  
5 teams have made extensive submissions on this issue and so we  
6 will respond. To quote my friend, counsel for Nuon Chea, they  
7 submitted that the -- it is only the two crime sites which are  
8 currently included in this first trial that form the central  
9 thread that Your Honours should be concerned with and that little  
10 else is now relevant and that Your Honours should adopt a  
11 clinical approach in excluding evidence that goes to any other  
12 policies or events included in the indictment. And of course,  
13 building on that approach, all defence teams have suggested that  
14 numerous documents in the Co-Prosecutors' lists are not relevant  
15 because they don't deal with the issue of the forced movement of  
16 the population; whether it be in April '75 or as part of the  
17 second-phase movement.

18 [11.31.29]

19 Now, I will deal with this in some detail because I think it is  
20 important in order to understand this issue of relevance. It is  
21 important, in our submission, to have a crisp understanding of  
22 how we came to where we are today, how it is that we are dealing  
23 with a document list which includes so many contextual documents.  
24 And it was helpful. I think my friend, counsel for Khieu Samphan,  
25 did state that this list was filed prior to Your Honours'



1 Severance Order. The first-phase list, which contains the 20  
2 annexes was of course filed on the 22nd of July 2012, at which  
3 time this case had not been severed by Your Honours.

4 [11.32.23]

5 When we filed that list, we did so in response to a number of  
6 topics which Your Honours had identified as relevant to the first  
7 phase of the trial, again, prior to severance. Your Honours  
8 indicated -- and this is reflected in the very filing which  
9 accompanied our lists, Your Honours indicated that the topics to  
10 be: number 1, structure of Democratic Kampuchea; number 2, roles  
11 of each accused during the period prior to the establishment of  
12 the Democratic Kampuchea; three, the roles of each accused in the  
13 Democratic Kampuchea Government, their assigned responsibilities,  
14 the extent of the authority, and the lines of communication  
15 throughout the temporal period with which the ECCC is concerned;  
16 and, finally, the policies of Democratic Kampuchea on the issues  
17 raised in the indictment. That is the scope of issues in response  
18 to which the Prosecutors' first-phase list was put together.

19 [11.33.38]

20 Now, as I said, that was done in July 2011. And in September,  
21 Your Honours decided to sever the proceedings into a series of,  
22 if you like, back-to-back trials. And this is, of course, found  
23 in document E124, which is your order of the 22nd of September  
24 2011. What is central to this issue, Your Honours, is that that  
25 order retains the topics that I just referred to; it retains

1 them.

2 MR. PRESIDENT:

3 Prosecution, please slow down, particularly when it comes to the  
4 number -- the -- please repeat the document number so that it is  
5 clear for the record.

6 MR. ABDULHAK:

7 Thank you, Mr. President. And, as a repeat offender, I apologize  
8 to the interpreters and others who -- who are recording this  
9 information.

10 So I was referring to the Severance Order, document E124 -- E124  
11 and I was -- started indicating that, of course, when Your  
12 Honours severed the trial and decided to proceed initially with  
13 the crime sites relating to forced movements, you -- you  
14 nevertheless retained all of those contextual elements.

15 [11.35.22]

16 Your order of the 22nd of September 2011 repeats those topics and  
17 then it proceeds at paragraph 5 to add the specific crime sites  
18 and specific charges which are the subject of the first trial.

19 And, of course, I'm sure we all recall at paragraph 6, the  
20 Chamber indicated that it may also decide to include in that  
21 first trial additional portions of the Closing Order.

22 Now, in light of what we now hear from the Defence, primarily, on  
23 the issues of relevance, one may have expected to see objections  
24 from the Defence to proceeding in this manner to including all of  
25 these contextual elements which relate, of course, to the

1 structure of Democratic Kampuchea throughout the period covered  
2 by the Closing Order and to all of the policies covered in the  
3 indictment, you -- you may have expected to hear similar  
4 arguments that we're hearing this week, but of course that wasn't  
5 the case.

6 [11.36.42]

7 This is what Nuon Chea's defence team said in their response to  
8 the Severance Order. In fact, we had filed a request for  
9 reconsideration primarily to ask Your Honours to include a small  
10 number of additional sites, and the Defence filed responses to  
11 that request, and it is that response which I am quoting from.  
12 Nuon Chea's response was document E124/5, and at paragraph 3 --  
13 I'm just reading one relevant passage -- "The Defence..." And I'm  
14 quoting here: "The Defence urges the Trial Chamber to stand by  
15 the current terms of its Severance Order; without a doubt, the  
16 most sensible decision to emerge from the ECCC."  
17 So a clear endorsement of Your Honours' approach in structuring  
18 the trial in the manner in which I've just described.

19 [11.37.52]

20 Similarly, and in more detail, Ieng Sary also endorsed Your  
21 Honours' approach. And in looking at -- in arguing that some of  
22 the international jurisprudence on issue of severance wasn't  
23 relevant and that is, in particular, the Mladic Case which was  
24 the subject of a recent decision on severance, so in  
25 distinguishing that case, the Ieng Sary says: "Unlike that case,

1 Case 002 does not have alleged separate, joint criminal  
2 enterprises. Case 002 has an alleged overarching, joint criminal  
3 enterprise."

4 And I'm reading here at paragraph -- from paragraph 11 of that  
5 filing, E124/6. Helpfully, they go on to state at paragraph 14 --  
6 and I'm just reading one part of that quote:

7 "To discard portions of a Closing Order which are not defective  
8 would be contrary to the civil law principle to ascertain the  
9 truth. Severance pursuant to Rule 89 ter simply means that the  
10 Accused will face trial for all charges in the Closing Order  
11 albeit in stages/series of trials."

12 Clearly, Your Honours, an understanding which accords with the  
13 approach that Your Honours have also since clarified.

14 [11.39.46]

15 There are additional references to this idea of an overarching,  
16 single, joint criminal enterprise in that Ieng Sary filing. You  
17 will find them at paragraphs 17 and at paragraph 18. The point  
18 that Ieng Sary was making, of course, Your Honours, is that the  
19 nature of the Severance Order is not to reduce the scope of the  
20 case; it is simply to organize the order in which the charges are  
21 heard. And, of course, it is important to note that both teams --  
22 both Nuon Chea and Ieng Sary endorsed this approach.

23 Now, Your Honours then provided, as I said, further clarification  
24 in your decision on our request for a reconsideration of the  
25 Severance Order, and this is document E124/7 -- E124/7. And Your

1 Honours there again, in fact, follow a similar reasoning to that  
2 I just quoted from Ieng Sary's submission. In paragraph 8, Your  
3 Honours state:

4 "The Severance Order is relevant only to the order and sequencing  
5 of the trials in Case 002 enabling the Chamber to issue a first  
6 verdict limited to certain counts and factual allegations at an  
7 earlier stage."

8 [11.41.37]

9 And then at paragraph 10, Your Honours indicated a number of  
10 considerations which motivated the Chamber in -- in making the  
11 Severance Order and some of those considerations were to simply  
12 divide the case into manageable parts to ensure, importantly,  
13 that the first trial encompasses a thorough examination of the  
14 fundamental issues and allegations against the Accused and to  
15 provide a foundation for a more detailed examination of the  
16 remaining charges and factual allegations against the Accused in  
17 later trials.

18 And then, building on that, Your Honours clarify further, in  
19 paragraph 11, that the Chamber, during the early trial segments  
20 -- that is, the segments that we now are dealing with -- that the  
21 Chamber, during those segments, will give consideration to the  
22 roles and responsibilities of the Accused in relation to all  
23 policies relevant to the entire indictment.

24 [11.42.48]

25 Of course, to be fair, Your Honours also make the point that a

1 detailed, factual consideration in this first trial will be given  
2 only to the implementation of the joint criminal enterprise  
3 insofar as it relates to the forced movements, but nevertheless  
4 you indicate that you see this first trial as laying a foundation  
5 and as introducing evidence relevant to the entire period under  
6 consideration.

7 And there, of course, again, in paragraph 12 of that decision,  
8 Your Honours recall that you have not excluded the possibility of  
9 adding further charges. And we submit, of course, that means that  
10 you are able to do so, and of course, ultimately, it is Your  
11 Honours' discretion, but you are able to do so only if you hear  
12 contextual evidence and evidence relating to the structure and --  
13 and communications of the Democratic Kampuchea that would enable  
14 any further sites to be incorporated.

15 [11.44.00]

16 So your approach, as we understand it, Your Honours, is to use  
17 this first trial as a foundation for subsequent trial -- trials  
18 and, of course, interestingly, even though we had initially  
19 disagreed with this approach, it has been strongly endorsed by  
20 the defence teams. Your approach has also been to reinforce, a  
21 number of times, that the Accused are required to answer all of  
22 the charges and -- and that is why we were directed to make an  
23 opening statement in relation to the entire indictment. Your  
24 approach also incorporates the possibility of adding additional  
25 crime sites, as I indicated, subject only to the notice

1 requirement; obviously, which you have also set out in your  
2 orders.

3 Now, of course, this structure does not relate only to documents;  
4 it relates, of course, equally to the witnesses that Your Honours  
5 have thus far selected. Again, we haven't heard objections from  
6 the Defence to Your Honours' selection of witnesses. Again, one  
7 might have expected that having -- calling witnesses that deal  
8 with numerous aspects of the structure and operations of the  
9 Democratic Kampuchea regime that that may have been objected to  
10 by the Defence if their position is, that the sole focus of this  
11 trial is forced movements.

12 [11.45.42]

13 In the various trial management meetings which have taken place,  
14 of course, it has been made clear that we will likely spend the  
15 best part of this year hearing testimonial evidence and that  
16 testimonial evidence which relates primarily to the structure of  
17 the regime, to its policies and -- and communications as well as  
18 to roles of the Accused that go well beyond their participation  
19 in the alleged crime of the forced movement.

20 Equally, one might note that the ministries as to which you will  
21 hear extensive evidence were in fact established by and large in  
22 1976 -- that is, following most of the crimes that are currently  
23 included in the crime base. Of course, Your Honours, Democratic  
24 Kampuchea came into being only in January 1976 and so evidence  
25 relating to the ministries and communication structure of the

1 Democratic Kampuchea regime, by necessity, relate to matters  
2 which took place perhaps after the crimes -- the alleged crimes  
3 which are currently part of the -- this first case or this first  
4 trial.

5 There are no fewer than, I believe, 52 witnesses that have been  
6 identified thus far dealing with those contextual elements, and  
7 we simply submit that your approach with respect to documents  
8 should follow the same logic.

9 Your Honours have dealt with the severance matter on a number of  
10 occasions. You're fully aware of the fact that our first phase  
11 list was filed before severance. You did not consider it  
12 necessary to ask any of the parties to amend their lists, and  
13 that is, of course, because you have ordered that those  
14 contextual issues will be the subject of this first trial.

15 [11.48.00]

16 An additional matter that relates to the issue of relevance is,  
17 of course, proof of contextual elements of the crimes. So putting  
18 aside Your Honours' approach in -- including in this trial  
19 elements relating to the regime, we, of course, bear the onus of  
20 proving for the purposes of crimes against humanity that there  
21 was a widespread and systematic attack as part of which these  
22 crimes were committed.

23 Now, that is an element which we must prove, and at paragraph  
24 1352, the Closing Order alleges that that widespread and  
25 systematic attack was directed against the entire population of



1 Cambodia. Recalling Ieng Sary's submissions that I quoted from  
2 earlier, of course, you can't dissect this joint criminal  
3 enterprise. It is alleged to have been directed at the entire  
4 civilian population of Cambodia, and it is alleged to have lasted  
5 throughout the period covered by the indictment.

6 [11.49.16]

7 And some of the matters that we are required to prove in order to  
8 satisfy Your Honours beyond a reasonable doubt that crimes  
9 against humanity have been committed are, of course, the  
10 widespread or systematic nature of that attack against the  
11 civilian population. And that widespread and systematic attack,  
12 in our submission, needs to be established by reference to  
13 evidence which shows occurrence of acts throughout the period and  
14 in different parts of the country, not as a way of proving the  
15 crimes themselves, but as a way of establishing that this  
16 widespread and systematic attack covered the period and the  
17 territory to which the Closing Order applies.

18 Similarly -- a similar argument, of course, applies to the joint  
19 criminal enterprise. The Closing Order, as Ieng Sary correctly  
20 pointed out, alleges the existence of an over-arching joint  
21 criminal enterprise, and Your Honours have specifically included  
22 in this first trial the paragraphs which relate to the existence  
23 and scope of that joint criminal enterprise. And this is found at  
24 paragraphs -- that joint criminal enterprise is found at  
25 paragraphs 156 to 159 of the Closing Order.

1 Again, as I indicated earlier, you've made it clear that the  
2 implementation of the joint criminal enterprise is limited to the  
3 issue of forced movements, but the existence of the joint  
4 criminal enterprise as a whole is certainly a part of this case.

5 [11.51.08]

6 And what does that joint criminal enterprise entail? Well, it  
7 entails, at paragraph 157, five policies: number 1, the repeated  
8 movements of the population; number 2, the establishment and  
9 operation of cooperatives and work sites; number 3, the  
10 re-education of bad elements and killing of enemies; number 4,  
11 the targeting of specific groups; and, number 5, the regulation  
12 of marriage.

13 That joint criminal enterprise, again, like the widespread and  
14 systematic attack, is alleged to have come into existence on or  
15 before the 17th of April 1975 and to have continued throughout  
16 the period covered by the indictment.

17 In fact, the paragraph 158, which is also a part of this first  
18 trial, highlights that these policies are alleged to have evolved  
19 and increased in scale and intensity throughout the regime.

20 And we submit, Your Honours, that what the Defence is trying to  
21 do is to essentially tie our hands, make it impossible for us to  
22 adduce before you sufficient documentary evidence of the  
23 existence of that joint criminal enterprise which, of course, is  
24 massive -- is alleged to have been massive in scale and, of  
25 course, therefore, the evidence is voluminous.

1 [11.52.40]

2 This is not a case that deals solely with forced movements of the  
3 population. It is a far more complex case; it involves a far more  
4 complex and wide-reaching joint criminal enterprise.

5 And again, I want to be clear; we're not suggesting that we are  
6 here -- we will be seeking to prove those crimes at the crime  
7 base level. We will follow Your Honours' direction, of course,  
8 but we need also to be able to establish the existence of that  
9 widespread and systematic attack, we need to be able to establish  
10 the existence of the joint criminal enterprise.

11 And we do so, in part, by putting before you documents which  
12 consistently reflect, in our submission, the existence of these  
13 policies and of the attack on the civilian population.

14 Now, there is also another way of looking at issues of relevance  
15 when one considers the five policies which are, of course, as I  
16 said, alleged to form part of the joint criminal enterprise.

17 Again, Ieng Sary, quite correctly, indicated this is an  
18 over-arching joint criminal enterprise and, of course, the  
19 evidence shows, in our submission, that -- part of that joint  
20 criminal enterprise, in fact, are inter-related.

21 [11.54.17]

22 And I will give a fairly straightforward example of how these  
23 policies do interact and how it is important to understand, to  
24 have a full understanding of all the five policies in order to  
25 understand a specific crime such as forced movement of the

1 population.

2 I'll read briefly from document D199/26.2.35 -- D199/26/2.35.

3 Mr. President, with your permission, I can show that document on  
4 the screen, if that makes it more convenient for everyone to  
5 follow. Would that be appropriate?

6 MR. PRESIDENT:

7 Yes, please, you may proceed.

8 MR. ABDULHAK:

9 I thank Your Honour.

10 I should indicate, this is a report of a speech given by Pol Pot  
11 on the 4th of October 1977, in Beijing, and here Pol Pot is  
12 discussing the factors considered important in the evacuation of  
13 the urban centres in 1975. If we could have that document on the  
14 screen now, please?

15 [11.56.30]

16 Perhaps there's a technical difficulty. I might just continue  
17 because the passage I wish to read from is relatively brief. At  
18 the - the English ERN 00390921, Khmer ERN 00633021 and French ERN  
19 00602498 is the following passage -- quote:

20 "One factor in the success of the revolutionary war in Cambodia,  
21 he was reported as saying, had been the evacuation of city  
22 residents to the countryside. This had been decided in February  
23 1975, quote, 'because we knew that before the smashing of all  
24 sorts of enemy spy organizations our strength was not strong  
25 enough to defend the revolutionary regime'."

1 And then he goes on to say -- and I apologize for the blurriness  
2 of the image -- he goes on to say:

3 "The enemy's secret agent network lying low in our country was  
4 very massive and complicated, but when we crushed them, it was  
5 difficult for them to stage a comeback. Their forces were  
6 scattered in various cooperatives which are in our grip. Thus, we  
7 have the initiative in our hands. The enemy dare not attack from  
8 outside."

9 [11.58.06]

10 We submit, in this brief passage you see the interplay between  
11 the policy with respect to enemies, the decision to evacuate the  
12 city -- the urban centres and, of course, the use of cooperatives  
13 to enslave the population.

14 What's interesting to note is that there are a number of  
15 references to this reasoning behind the forced evacuations.  
16 Another one appears in Khieu Samphan's book, which is document  
17 number D213.2, D213.2, and it is also document E3/16. The  
18 relevant ERNs are English 00498300, Khmer 00380993 to 4 and  
19 French 00643907.

20 And I'm conscious of time. I will just read very quickly or very  
21 briefly a part of this section of the book where Khieu Samphan  
22 also considers the issue of the evacuation of the cities.  
23 He's reflecting here on what he sees as omissions made by  
24 researchers who were looking into this issue, and he says --  
25 quote:

1 [11.59.48]

2 "They have made accusations against Pol Pot about the evacuation  
3 of the people from Phnom Penh and the provincial towns, but in  
4 making those accusations, they did not think about the incredibly  
5 difficult and violence-filled situation that the young and  
6 immature state authority faced."

7 He goes on to discuss the existence of starvation in the city,  
8 but he also then goes on to say that:

9 "The thing that might have led to greater danger for the young  
10 and immature state authority was the situation in which tens of  
11 thousands of people had already died and there were people who  
12 were lying in wait to keep on killing one another like that.  
13 These were very favourable conditions for the CIA agents to  
14 conduct sabotage and join with the remnants of the former Lon Nol  
15 army."

16 [12.00.47]

17 And I will move on to a couple of lines below that, where he  
18 says:

19 "The greatest danger was that this rebellion and turmoil would  
20 create the opportunity for Vietnam to easily intervene from the  
21 outside and seize Kampuchea back from America under the pretext  
22 of coming to rescue it. At the time, in actuality, like it or  
23 not, the CIA and the Vietnamese Communists were joining together  
24 to kill the new state authority."

25 And there you have it, Pol Pot and Khieu Samphan both apparently

61

1 making a connection between the need to evacuate the cities and  
2 the perceived danger of enemies and a need to deal with them.

3 [12.01.36]

4 Your Honours, I am happy to stop here. I'm mindful of time and,  
5 with your leave, I'm happy to resume after the break.

6 MR. PRESIDENT:

7 Thank you.

8 The time is now appropriate for lunch adjournment. The Court will  
9 adjourn now and resume at 1.30, this afternoon.

10 (No interpretation) -- is now on his feet. You may proceed.

11 MR. IANUZZI:

12 Thank you, Mr. President. Good morning.

13 Very briefly, Nuon Chea would like to be excused this afternoon  
14 to retire to the holding cell to follow the proceedings from  
15 there.

16 We've prepared the necessary documents. We'll submit them to the  
17 greffiers. Thank you.

18 [12.02.28]

19 MR. PRESIDENT:

20 Thank you.

21 Having heard the request by Nuon Chea through his defence counsel  
22 to excuse himself not to be present directly in this courtroom  
23 but instead follow the proceeding through audio-visual means from  
24 the holding cell due to his health reason and the Defence has  
25 mentioned that they would submit the relevant document with the

1 thumbprint of the accused, the Chamber grants leave for the  
2 accused to retire to the holding cell accordingly. He is directed  
3 to follow the proceeding from the holding cell, downstairs, where  
4 the audio-visual equipment is linked for him to follow the  
5 proceedings.

6 [12.03.44]

7 And the defence counsel is advised to submit to the Chamber the  
8 letter of favours immediately.

9 And the security guards are now instructed to bring the accused  
10 to the holding cell downstairs and bring Mr. Khieu Samphan back  
11 to this courtroom before 1.30, this afternoon. And Mr. Nuon Chea  
12 shall remain in the holding cell, following the proceeding by  
13 remote means.

14 The Court is now adjourned.

15 (Court recesses from 1204H to 1331H)

16 MR. PRESIDENT:

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

18 We would like now to, again, give the floor to the Prosecution to  
19 present their response to the oral objection raised by the  
20 defence teams. You may proceed.

21 MR. ABDULHAK:

22 Thank you, Mr. President. And good afternoon, Your Honours. We  
23 will continue our thematic responses to Defence objections.

24 And just before we -- just before we broke, I was coming to the  
25 conclusion of my discussion of issues of relevance. And of course



1 we were submitting, Your Honours, that issues of the scope of the  
2 joint criminal enterprise and proof of widespread and systematic  
3 attack were very much part of this case, and supported the  
4 introduction of a large number of contextual documents that are  
5 in our first phase list.

6 [13.33.57]

7 Now -- and just before I leave this issue of relevance, my  
8 colleague has indicated earlier the legal test for relevance --  
9 there isn't a great degree of difference here between us and the  
10 Defence. For example -- as far as, of course, the legal test is  
11 concerned -- for example, at -- in document number E114, on the  
12 6th of September 2011, Ieng Sary's defence team submitted a  
13 general test of relevance, which appears to be, in general terms,  
14 again, consistent with our understanding of the law, which is  
15 that relevance is defined as evidence that tends to prove or  
16 disprove a material issue. In other words, it is relevant if its  
17 effect is to make more or less -- more or less -- probable the  
18 existence of any fact that is at issue.

19 [13.35.06]

20 And of course the submissions we made earlier, before the break,  
21 are that the existence of the joint criminal enterprise on the  
22 territory of Cambodia, from 1975 to 1979, encompassing the five  
23 policies I referred to earlier, is a part of -- is a matter at  
24 issue, as is the widespread -- the existence of a widespread and  
25 systematic attack. Another matter which, of course, the Defence

1 are contesting in this trial.

2 So it is our submission, in conclusion, on the issue of  
3 relevance, that evidence must be relevant if it tends to support  
4 the facts that establish the existence of those five policies and  
5 of the joint criminal enterprise -- the overarching joint  
6 criminal enterprise.

7 We don't want to enter the issue of motives on the part of the  
8 Defence, but I do think there is an attempt to restrict the scope  
9 of issues examined in this trial that is at odds with what Your  
10 Honours have ordered, and it is at odds with the Severance Order  
11 and with Your Honours approach to structuring these trials, all  
12 of which form part of Case 002.

13 I will state that we think repeated references to a quote  
14 "mini-trial" are inappropriate. They're entirely out of place in  
15 a Court that is dealing with crimes -- or alleged crimes -- that  
16 affected literally millions of people. We would implore our  
17 colleagues on the other side to refrain from the use of such  
18 labels. They're offensive to the victims, and are simply not  
19 reflective of both the scope and the complexity of this case.

20 [13.37.16]

21 I will move on to the issue of originals, very briefly. As my  
22 colleague indicated, Your Honours have, of course, ruled that  
23 there is no requirement for originals to be produced as a  
24 prerequisite to admission, but of course, in Your Honours'  
25 ruling, there is a preference given to originals. And my

1 colleague also drew attention to a number of documents on the  
2 case file which evidence extensive work done by the  
3 Co-Investigating Judges to identify, locate, and scan original  
4 documents. I will be showing you some of these relevant records  
5 in the latter part of my submissions.

6 I'll just, for the sake of the completeness of the record, state  
7 the D numbers of the rogatory letters that are immediately  
8 relevant to this issue. They are: D161 -- and that relates to the  
9 collection of documents at the National Archives; secondly, three  
10 documents that relate to the collection of documents at DC-Cam  
11 and at the Tuol Sleng museum; those numbers are D248, D82, and  
12 D159.

13 And of course, Your Honours, when one looks at these documents,  
14 one must also look at the documents that follow each of those  
15 series -- each of those numbers is followed by a series of  
16 filings which indicate how documents were obtained, whether  
17 originals were viewed, scanned, and how they were -- the scans  
18 were brought and made available to the -- on the case file.

19 I will deal next with another thematic objection, if I can call  
20 it that, which I think we've heard from each of the three teams,  
21 and which relates to the supposed test of acts and conduct of the  
22 accused. My colleagues on the other side are correct in one  
23 respect only, and that is that the test that hinges on the acts  
24 and conduct of the accused applies only to the admission of  
25 written witness statements in lieu of oral testimony. And that

1 has been the subject of extensive filings which are in E96 and  
2 following.

3 [13.40.27]

4 The case law that we refer to in those -- in our request E96 and  
5 the filings that followed clearly indicate -- clearly indicates  
6 that the case law or the international tribunals developed around  
7 the issue of admission of witness statements. And I will take  
8 Your Honours quickly through a couple of decisions of the ICTY  
9 Appeals Chamber to illustrate my point. And, I think, one  
10 decision of the ICTR.

11 The phrase "acts and conduct of the accused" is found in Rule 92  
12 bis of the Rules of Procedure and Evidence of the ICTY, as I'm  
13 sure Your Honours are well aware. And it relates to the types of  
14 evidence -- types of testimonial evidence -- which can be  
15 admitted by way of witness statements or transcripts. And,  
16 essentially, what the - what was -- the position of the ICTY is  
17 that, similar to this tribunal, there is a general rule that all  
18 evidence is admissible, provided that it has basic indicia of  
19 reliability.

20 [13.41.54]

21 And there were attempts to admit into evidence, at times, witness  
22 statements taken by a party to the proceedings. At the ICTY, of  
23 course, the tribunal employs an adversarial model, where the  
24 evidence is collected by the parties. So there were attempts to  
25 file evidence in the form of witness statements collected by the

1 parties, and it was in recognition that such -- of the fact that  
2 such witness statements are potentially lacking in reliability  
3 that Rule 92 bis was introduced. It was introduced to allow a  
4 narrow scope -- or narrowing of the scope for the admission of  
5 witness statements. But it was never intended, nor does it apply,  
6 to other types of evidence. And I'll just quote briefly from the  
7 decision of the ICTY Appeals Chamber in Prosecutor and Galic --  
8 that's G-A-L-I-C -- this was the decision of the 17th of June  
9 2002. It dealt with this issue of admission of witness  
10 statements, and essentially the Court ruled, at paragraph 31,  
11 that Rule 92 bis is the *lex specialis* which takes the  
12 admissibility of written statements of prospective witnesses and  
13 transcripts out of the scope of the *lex generalis* of Rule 89(c).  
14 And that *lex generalis* of 89(c) is similar to what we have in  
15 Rule 87.1. So, it was a provision designed specifically to deal  
16 with witness statements. And so, one might say; well what is a  
17 witness statement? And I think our friends on the other side have  
18 submitted that a number of documents should actually be treated  
19 as witness statements, because they record statements of  
20 individuals, and therefore, as such, they are in the same nature  
21 of evidence as a witness statement.

22 [13.44.15]

23 We say that that is not the correct approach. Witness -- the  
24 definition of the term witness statement has itself been the  
25 subject of a number of decisions at the international level, and

1 it's fair to say that there isn't a uniform definition. But one  
2 thing is clear; that witness statement doesn't mean any document  
3 containing the word of any -- of a person. And I'll give you --  
4 I'll give a couple of examples. In Prosecutor and Blaskic -- that  
5 is B-for-Bob, L-A-S-K-I-C -- a decision of the 26th of September  
6 2000, the ICTY Appeals Chamber ruled, looking at the meaning of a  
7 witness statement, in paragraph 15 - quote:

8 "The usual meaning of a witness statement in trial proceedings is  
9 an account of a person's knowledge of a crime which is recorded  
10 through due procedure in the course of an investigation into the  
11 crime."

12 [13.45.32]

13 That is, Your Honours -- the idea of a witness statement is  
14 restricted in international jurisprudence to statements taken for  
15 the purposes of investigating a crime. It is those types of  
16 statements that are subject to the acts and conduct test, not any  
17 other type of written material, such as books or analytical  
18 reports.

19 And that -- this reasoning, the core of this reasoning is  
20 followed by the ICTR. A trial chamber decision of the 18th of  
21 September 2001 -- and this is in the case of Prosecutor and  
22 Nyiramasuhuko -- and I apologize if my pronunciation is sloppy.  
23 This was a decision on the 18th of September 2001. At paragraph  
24 9, the Trial Chamber was considering again the meaning of the  
25 term witness statement, and they say it means "statements made

1 during the course of judicial proceedings by prosecution  
2 witnesses expected to testify at trial, regardless of the origin  
3 of the said judicial proceedings".

4 [13.46.47]

5 The point being made, simply, is that the rules that prevent  
6 written material coming in, if it relates to acts and conduct of  
7 the accused, relate only to witness statements -- statements  
8 taken for the purposes of the criminal proceedings, and taken in  
9 an official capacity.

10 Now, of course, Your Honours, there are numerous secondary  
11 materials that deal with acts and conduct of the accused. They  
12 include contemporaneous Democratic Kampuchea documents; they  
13 include international newspaper coverage of the events; they  
14 include books and analytical reports -- numerous other documents.  
15 And what we say is that, even where those documents touch upon  
16 the acts and conduct of an accused, it is perfectly acceptable  
17 for them to be admitted without calling each and every author of  
18 each and every document to testify before Your Honours.

19 [13.47.58]

20 The position, as we have already stated in our written pleadings,  
21 is different when it comes to witness statements.

22 Now, why do we make this position? Why do we make this  
23 submission? Well, simply because we're not putting the books and  
24 analytical reports forward to ask Your Honours to accept what's  
25 written in them as proof beyond a reasonable doubt of those

1 facts. We're putting them in to assist in the examination of  
2 historical policy -- contextual aspects of the case. We're  
3 putting them in as corroborative of direct evidence from  
4 witnesses' contemporaneous documents. And, as my colleague  
5 submitted earlier, with a professional trier of fact -- with a  
6 Trial Chamber comprised of professional judges -- it is perfectly  
7 acceptable to admit such secondary material, because Your Honours  
8 are perfectly capable of sifting through it and giving it  
9 appropriate weight.

10 And I would just note, in passing, that my friend, counsel for  
11 Ieng Sary, alluded in passing yesterday that these types of  
12 documents -- I think -- to be fair, I think he was talking about  
13 reports -- media reports, perhaps -- that, where there are --  
14 where there is a certain corroboration between a number of  
15 documents, where they seem to confirm the same type of fact or  
16 discuss the same event, that that in itself lends them indicia of  
17 reliability. And of course we agree with that submission. That  
18 has been a theme that we have put before Your Honours throughout  
19 these hearings, that you have to look at these documents as a  
20 whole, and you have to look at the ways in which they corroborate  
21 each other, and the ways in which they corroborate witness  
22 testimony.

23 [13.49.57]

24 There is no harm; there is absolutely no prejudice, in them being  
25 before Your Honours, because Your Honours are perfectly capable



1 of giving them the appropriate weight.

2 I will come back to the issue of books briefly, because that is  
3 one of the annexes that I'm dealing with, but I'll leave it for  
4 now, and I will just briefly also recall in passing on a related  
5 issue of calling witnesses with knowledge of documents to  
6 authenticate the documents. Your Honours have, of course, now  
7 ruled in paragraph 7 of your decision E162 that there is no  
8 procedural requirement before this Court to call witnesses with  
9 personal knowledge to authenticate documents. You indicated also  
10 that testimony as to chain of custody and provenance, of course,  
11 assists in assessing the weight to be attributed to documents.

12 [13.51.01]

13 And before I leave that point, as to witnesses who can give  
14 testimony as to the provenance and circumstances in which  
15 documents are created -- of course, the next segment has numerous  
16 witnesses whom Your Honours have summoned who will of course  
17 provide exactly that type of evidence. And I'm looking at a list  
18 here -- of course, we start with Duch, but then following his  
19 testimony, a series of communications witnesses, and then, of  
20 course, Ministry of Foreign Affairs witnesses, Commerce,  
21 Propaganda and Political Education, and administrative structure  
22 witnesses. All of these witnesses will assist in our better  
23 understanding of the documents that are before Your Honours.

24 [13.52.00]

25 I will deal briefly with the issue of confessions, simply because

1 it's -- it has arisen a number of times in connection with  
2 different -- with different annexes. And what I'm referring to  
3 here is the prohibition in the Convention Against Torture, in  
4 Article 15. And I think our learned friend, counsel for Nuon  
5 Chea, made reference to rulings of the Trial Chamber in Case 001.  
6 And those rulings are, of course, on the record. What I wanted to  
7 indicate was that what was read yesterday is not a full account,  
8 if you like, of that particular issue, as it came up before the  
9 Trial Chamber. Your Honours made a general ruling, which was  
10 read, but then following that general ruling, the Prosecution  
11 essentially submitted that our understanding was that a  
12 comprehensive decision on the issue of the CAT prohibition would  
13 only be made if and when a party seeks to rely on the content of  
14 a confession, and that it would only then -- the issue would only  
15 then be ventilated in full. We indicated that, of course, it's a  
16 very complex issue and that we submitted that it needed to be  
17 dealt with comprehensively if rulings on principle were to be  
18 made. And it was, I believe, Judge Cartwright who then indicated  
19 that the Chamber reserved to the parties the right to make  
20 further submissions.

21 [13.53.55]

22 Our -- in terms of the procedure, our basic proposal is that the  
23 way to proceed is by dealing with documents as and if they are  
24 raised in Court, and ruling on the appropriate uses. You will -  
25 you will hear from one of my colleagues in far more detail on the

1 acceptable uses of this material. There are, of course,  
2 acceptable uses of this material. There is no such legal test --  
3 there is no legal test that states that torture-tainted evidence  
4 is excluded. There is a two-pronged test that must be applied.  
5 First, a statement has to be shown to have been obtained under  
6 torture, and secondly the use of that statement or confession  
7 must itself be prohibited. Unless those two conditions are  
8 fulfilled, there is absolutely no prohibition on admitting  
9 confessions. And of course there are numerous proper -- entirely  
10 proper and legitimate uses of that material which my colleagues  
11 will expand on in greater detail.

12 [13.55.17]

13 Moving on to another point which has to do with new documents, I  
14 think counsel for Khieu Samphan submitted that their  
15 understanding was that new documents identified in Annex 21 of  
16 the Co-Prosecutors' list are not the subject of these hearings. I  
17 believe they're incorrect on this. These are not new documents  
18 submitted after the opening of the trial. They are simply  
19 documents that we submitted back in April 2011, in respond to  
20 Your Honours scheduling orders. Those documents are documents  
21 which, at that time, were not on the case file, and they were  
22 proposed by us. They're very much included in these proceedings.  
23 As counsel indicated, they are scattered throughout the 20  
24 annexes, and they're, of course, also separately identified in  
25 Annex 21. Annex 21 is simply a listing for convenience of all

74

1 documents that were proposed as new at that time.

2 [13.56.44]

3 I make this point because the label "new" no longer applies to  
4 these documents. It is only once a trial commences, with the  
5 initial hearing -- it is after that point in time the Rule 87.4  
6 provides specific restrictions on the admission of new material.  
7 It is once the trial has opened. And our submission is that all  
8 of those documents that are identified as new in our -- all 80  
9 lists, and in our first phase list -- that rule does not apply.  
10 Those documents have been put before Your Honours and the  
11 parties. They were put before you a while ago. They are the  
12 subject of these hearings, and we invite the Chamber to consider  
13 them admitted, as all of the other documents that are in the  
14 annexes.

15 [13.57.40]

16 Moving on to another issue -- and this is to do with  
17 considerations or allegations of bias of DC-Cam -- and we've  
18 heard this a number of times over the last month or so. But on  
19 this occasion this submission was only made by the Khieu Samphan  
20 team. And I note that the Nuon Chea team have seemed to have  
21 given up on that particular front, which we say is futile. Your  
22 Honours, I don't want to spend an enormous amount of time on this  
23 point. I think it is self-evident that the position of DC-Cam --  
24 their mandate, their commitment, perhaps, to seeing  
25 accountability and a recording of history -- ultimately are

1 irrelevant for the purposes of admissibility of the documents  
2 that were collected at DC-Cam. It was not DC-Cam's role to  
3 investigate the crimes. The crimes were investigated by an  
4 independent and impartial judicial authority. And what is  
5 important to recall -- and, I believe, we all remember the  
6 testimony of Mr. Youk Chhang when he indicated that DC-Cam's  
7 doors are open to all parties. In fact, DC-Cam has been  
8 approached by just about all of the participants in these  
9 proceedings at one time or another to provide documents. And  
10 anyone is free to consult DC-Cam's archives.

11 What's more, this particular position was endorsed by the  
12 Co-Investigating Judges in two documents to which I will refer  
13 briefly. And they are A110/II and D164/II. What these documents  
14 make clear -- particularly the second document -- is that parties  
15 are entirely free to visit any public library, consult any public  
16 source, and propose any document which they consider relevant to  
17 ascertaining the truth. No one was excluded from DC-Cam. None of  
18 the parties were excluded from going there and searching for  
19 documents.

20 [14.00.30]

21 In fact, none of the parties were excluded or prohibited from  
22 consulting any public source. And so we say that it is not  
23 appropriate for the Defence to turn around at this stage of the  
24 proceedings and allege that, because DC-Cam has an interest in  
25 recording the history and in seeing accountability for the crimes

1 -- that for that reason, anything collected from DC-Cam must be  
2 tainted and unreliable. That submission must surely fail.  
3 I will now move on to deal with three annexes, and I will do so  
4 briefly, because the Defence submissions or objections were not  
5 particularly extensive on these particular annexes. And -  
6 firstly, Your Honours, Annex 7, which contains commerce records.  
7 On this annex, I recall that the Nuon Chea team accepted -- in  
8 fact, encouraged their admission. I believe the Ieng Sary team  
9 left it to the Trial Chamber's discretion as to whether or not  
10 these documents should be admitted, and it was really only the  
11 Khieu Samphan team that objected to these documents being  
12 admitted.  
13 [14.02.10]  
14 They did so on a number of grounds. One of them was the  
15 involvement of DC-Cam, which we've just dealt with. Another  
16 complaint about these documents was the issue of chain of  
17 custody, and there was also reference to the annotations which  
18 appear on these documents. Now, I will just recall again that  
19 Your Honours have ruled that evidence as to chain of custody is  
20 not a condition precedent for the admission of material. All that  
21 needs to be shown is that they are prima facie reliable and  
22 authentic. Your Honours, in our submission, there is absolutely  
23 no doubt that these documents are both reliable and authentic.  
24 And we say so because there is extensive evidence on the case  
25 file as to the provenance and origin of these documents. Khieu

1 Samphan's counsel referred to the statements of witness TCW-583,  
2 who was actually shown a number of these documents during the  
3 judicial investigation, and was able to discuss them. He is on  
4 Your Honour's trial list, and he will be available, we believe,  
5 to further expand on the circumstances in which these documents  
6 were created and just what they mean.

7 [14.03.50]

8 I wanted to use this annex to also illustrate the point we were  
9 making earlier about the attempts of the Co-Investigating Judges  
10 to obtain originals.

11 And, Mr. President, if I have your permission, I would like to  
12 briefly display two or three documents that record -- that relate  
13 to the commerce records and to the way in which they were  
14 collected. So, if I have permission, I will proceed.

15 MR. PRESIDENT:

16 Yes, you may proceed.

17 MR. ABDULHAK:

18 Thank you, Your Honour. If we could show on the screen document  
19 D161?

20 We made reference to this a little bit earlier, and -- Your  
21 Honours, D161 is a rogatory letter issued by the Co-Investigating  
22 Judges. I do apologize for showing the English version here. It's  
23 just a little bit easier for me to follow what's on the screen.

24 [14.05.20]

25 If we can scroll down to the next -- to the second page of this

1 document?

2 And what we have done, Your Honours, is we have redacted the  
3 names of the investigators, for obvious reasons. But of course  
4 the full document is available on the case file. The highlighted  
5 section describes the mission, which the Co-Investigating Judges  
6 were entrusting the investigators with, and it states:

7 "They are to enter into contact with persons responsible for the  
8 National Archive in order to request their cooperation for  
9 consultation in copying of documents, audio-visual archives,  
10 etc."

11 In a second paragraph, it says: "They are to consult such  
12 materials and/or request the provision of physical or electronic  
13 copies."

14 [14.06.21]

15 Now I would like to move on to D161/1 -- that is, D161/1. This is  
16 to illustrate my submissions earlier as to how attempts -- work  
17 was done by the Co-Investigating Judges and their office to  
18 obtain original documents or at least to consult original  
19 documents wherever available. And you see here, at -- on the  
20 first page, in a highlighted passage, the investigator's report,  
21 then on two dates, in 2009, they attended the National Archives  
22 of Cambodia, and proceeded to consult and make colour scans of  
23 the original documents, located within the archives. Fifty-one of  
24 those documents were scanned in their entirety, and when you  
25 scroll to the next page, it indicates that the annexes to this



1 document are colour scans of the actual originals that are found  
2 at the archives.

3 On the point -- I discuss -- I'm discussing these documents now  
4 because of course the records collected at the National Archives  
5 are, by and large, the commerce records. So it is the Annex 7  
6 material that is being referred to in these rogatory letters and  
7 reports. As to the origin of how these documents came to be at  
8 the National Archive, Youk Chhang was able to provide some  
9 information in his statement D150 -- D150 -- where he indicates  
10 that the -- these particular documents were deposited at the  
11 archives by members of the Renakse Front.

12 [14.08.21]

13 Just while we're on Annex 7, even though this point has not been  
14 addressed in great detail, I think it might just be useful if I  
15 point out, also, the relevance of these documents. There are 169  
16 documents in Annex 7 and, on our review; it appears that 26 of  
17 them are reports to Brother Hem, who, of course, is Mr. Khieu  
18 Samphan. In addition to these 26 reports, approximately 98  
19 documents which are Ministry of Commerce documents contain  
20 annotations that refer to Brother Hem. They're usually  
21 annotations that show that documents were sent for approval to  
22 Mr. Khieu Samphan. These documents are, of course, relevant for a  
23 number of reasons, including the fact that they evidence the  
24 functioning of the regime, and they also evidence Mr. Khieu  
25 Samphan's authority with respect to the Ministry of Commerce. And

1 these are very much matters that are included in this first  
2 trial.

3 [14.10.00]

4 And I might, at this stage, also display another document, and  
5 this is D366/7.1.841. What we will do is we will display -- this  
6 is another Annex 7 document -- we'll display it in Khmer  
7 initially, just to show the document's format in the original  
8 language.

9 If we could show that document, now, D366/7.1.843 (sic)? And,  
10 Your Honours, this document appears to be a ledger which records  
11 the supplies or storage of paddy and rice for the month of March  
12 of 1977 -- indicates large amounts of produce being centralized  
13 in Phnom Penh, and that produce having -- originating, rather,  
14 from the Southwest Zone, the West Zone, the East, the Northwest  
15 -- and -- rather, and the Northwest. We might just show that  
16 document in English, also. It may be of interest to the -- to  
17 those who are unable to read Khmer. But this document is, again  
18 -- it bears an annotation indicating that it was sent to Mr.  
19 Khieu Samphan -- to Brother Hem -- but it is also relevant -- and  
20 you can see the relevant passages are marked in red on the screen  
21 in the top left-hand corner -- shows that it was sent to Brother  
22 Hem. It shows, in our submission, among other things, the fact  
23 that the central government was very much in charge of the  
24 collection and distribution of this type of produce.

25 [14.12.22]

1 The issue of annotations was also raised, and I've indicated that  
2 a number of these documents contain annotations -- I believe, 98.  
3 On that issue, Your Honours, it is our submission that these  
4 annotations, basically, are not relevant for the purposes of  
5 admissibility. They are -- they appear to be annotations of Van  
6 Rith, the Democratic Kampuchea Minister of Commerce. I won't say  
7 more on that -- it will be the subject of testimonies before Your  
8 Honours -- other than to say these are simple, apparently  
9 administrative annotations. On their face, they appear to be --  
10 to have been made in the course of business of the Ministry of  
11 Commerce. I see no way in which the presence of those annotations  
12 detracts in any way from the admissibility of documents,  
13 particularly when you consider that what you have before you is  
14 essentially originals or scans of originals.

15 [14.13.39]

16 Dealing with Annex 15, briefly -- and this, of course, is the  
17 annex that contains a number of maps and photographs. And we  
18 would note that the vast majority of these documents weren't  
19 actually objected to. We kept notes over the last two days, and  
20 it appears that only a small number were specifically identified  
21 by Counsel. Of course, ample time was given to them. They all  
22 completed their submissions in less than the time that was  
23 allocated. Nuon Chea said that these documents had varied  
24 relevance. The Ieng Sary team commented on photographs, stating  
25 that -- submitting that, if they are purported to be fair and

82

1 accurate representations of matters as they stood in 1975 or  
2 images as they were in 1975, then I believe the submission was  
3 that witnesses had to be called to testify as to those images. We  
4 say that that submission is simply not legally correct, there's  
5 no such requirement. There is a large number of photographs on  
6 the case file. Many of them were taken after the 1979 period.  
7 Your Honours are perfectly capable of looking at them and,  
8 obviously, in light of, also, witness testimonies, giving them  
9 any weight that you consider appropriate. I should say that,  
10 where there are pictures of buildings in Phnom Penh -- by and  
11 large they're not intended to be representative of buildings as  
12 they were in 1975 or 1979. These -- many of these pictures were  
13 taken by investigators in the presence of witnesses. They were  
14 simply taken in order to identify relevant sites and witnesses  
15 will be able to further describe those sites as they were at the  
16 relevant times.

17 [14.16.20]

18 We have limited time, so I don't necessarily propose to go  
19 through each -- I think there were six documents that were raised  
20 by other counsels. As to document D108/39/8 -- if we could show  
21 that document on the screen briefly, simply because I think it's  
22 been referred to by a number of counsels -- D108/39/8. And my  
23 learned friend, counsel for Ieng Sary, made extensive submissions  
24 on this document.

25 MR. PRESIDENT:

1 Yes, you may proceed.

2 MR. ABDULHAK:

3 Thank you. Thank you, Mr. President.

4 [14.17.17]

5 That document should be coming up on the screen briefly. My  
6 learned friend made detailed submissions on the program that  
7 produced this document. It is entitled "Genocide Sites in  
8 Cambodia". Your Honours will recall that my friend made  
9 submissions in relation to the use of the word "genocide", and  
10 also to the methodology adopted in creating these maps. These are  
11 maps, according to the introduction -- they're simply maps that  
12 are intended to indicate the geographic location of suspected  
13 crime sites. They're not ultimately conclusive, obviously.  
14 They're not -- we're not putting them forward as evidence beyond  
15 a reasonable doubt of these sites, but they are, we submit,  
16 contextually relevant. The introduction of this document explains  
17 how these sites were identified, and there's a number of sources  
18 of information, including witness interviews, local informants,  
19 use of Democratic Kampuchea's own documents, and various reports.  
20 So this is an analytical document that, in our submission, does  
21 have the basic indicia of reliability. Whether or not Your  
22 Honours ultimately agree with its -- with the mapping or with the  
23 location of sites -- that is a matter for Your Honours. It is a  
24 matter to be decided following the trial and following all of the  
25 evidence that will be put before you.

1 [14.19.17]

2 We have no objection, if Your Honours consider it appropriate, to  
3 call the authors. We wouldn't object to them coming to testify,  
4 if that is the Defence's request.

5 And here is that document now, it appears on the screen. And you  
6 can see that it simply indicates various locations where there  
7 might be -- various locations that may contain crime sites --  
8 that is, mass burial sites. These types of documents, we submit,  
9 are relevant, again, because of the requirement to prove the  
10 widespread and systematic attack on the territory of Cambodia as  
11 a whole. They are relevant, also, because of the need to prove  
12 the existence of a joint criminal enterprise to search for and  
13 kill enemies throughout the country.

14 [14.20.22]

15 And the same applies to some of the other documents that were  
16 challenged -- specifically, documents D108/19/1/5 and D108/39/10.  
17 Again, these documents are maps of alleged killing fields, and we  
18 submit they are relevant, and they do have prima facie  
19 reliability that is sufficient for them to be admitted before  
20 Your Honours.

21 Moving on to Annex 19 -- and this annex, of course, contain  
22 books. I made submissions earlier as to the admissibility of this  
23 type of material and the non-applicability of the acts and  
24 conduct -- acts and conduct test to this material. I believe it  
25 was -- submissions were made by counsel for Ieng Sary that

1 authors -- that, for books to be admitted, that authors had to be  
2 called. We submit that that is not the correct legal position.

3 While Your Honours have summoned a number of experts who authored  
4 several of these books, our submission is that, ultimately,  
5 hearing the authors is not a prerequisite to admission, because  
6 the documents -- the books are being submitted as contextual and  
7 corroborative evidence, and evidence that helps establish policy.  
8 They are not -- in most cases, they are not primary evidence of  
9 any criminal activity as such.

10 And, of course, Your Honours, when you look at the Defence lists  
11 for -- where they've proposed materials to be put before Your  
12 Honours, there are numerous books that have been proposed, and so  
13 I simply note that in passing, because, obviously, all parties  
14 see the relevance of books as material that can assist in  
15 contextualizing some of the direct evidence that is being put  
16 before you.

17 [14.23.06]

18 And the relevant list for Ieng Sary is 109/6.2. This contains a  
19 number of books which are proposed to be put before Your Honours.  
20 The same applies to Khieu Samphan, and you can find a number of  
21 books and academic papers listed in E9/29.2, which was the  
22 original list from April 2011, as well as the first phase list,  
23 which is E109/1.1.

24 There is another list which we believe Your Honours should take  
25 into account when considering Defence objections, and this is a

1 list submitted by Ieng Sary, in April, as part of the initial  
2 lists of evidence. And this is E9/25.2. Now this is quite a long  
3 document, some 100 pages.

4 [14.24.38]

5 It contains over 1,000 documents that are proposed -- new  
6 documents that are proposed to be put before Your Honours, and it  
7 includes the full shopping list of documents that we've been  
8 discussing these last two days, from newspapers to books and  
9 academic papers to analytical reports, foreign government  
10 materials, including CIA and the like, and, of course,  
11 contemporaneous Democratic Kampuchea documents. We haven't  
12 objected to any of this material. We feel it is important that  
13 the Defence wish to put these documents before Your Honours, put  
14 them to witnesses, and make submissions on them. We will,  
15 obviously, not object. We consider it important for them to be  
16 able to put their case, but we do also make the submission that  
17 -- or make the observation, rather, than when Ieng Sary submitted  
18 this rather lengthy list of documents, he was not proposing, at  
19 the same time, to call their authors. And the reason, of course,  
20 that wasn't done is obvious. This trial would never complete if  
21 we were to call every author of every book and every analytical  
22 report that is proposed to be put into evidence.

23 [14.25.51]

24 I will close by just dealing with one document, which I believe  
25 most, if not all, of my learned friends made reference to. This



1 is D2-15. It is an analytical report prepared by Mr. Craig  
2 Etcheson.

3 Mr. Etcheson, of course, testified before Your Honours in the  
4 first trial. Your Honours considered his expertise sufficient to  
5 bring him in to testify on matters of structure of Democratic  
6 Kampuchea. Of course, we support the Defence's request in this  
7 regard, in part because this is -- this gentleman is one of the  
8 leading experts on these issues in the world. He has been found  
9 reliable by Your Honours, already. As my learned friend for Ieng  
10 Sary indicated, he is available within 100 metres of us, and we  
11 have also proposed him as a witness. So we see no particular  
12 reason to object -- this testimony is -- can be obtained without  
13 undue delay, and we're happy for the Defence's request to be  
14 accepted.

15 [14.27.15]

16 Your Honours, that concludes my submissions.

17 I'm looking at the time. At this point, I would hand over to my  
18 colleagues who will deal with Annexes 14, 20, and 17, but perhaps  
19 Your Honours may wish to take a break at this stage.

20 MR. PRESIDENT:

21 Thank you.

22 The time is now appropriate for a 15-minute break. We will resume  
23 at ten-to-three.

24 The Court is adjourned.

25 (Court recesses from 1428H to 1453H)

1 MR. PRESIDENT:

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

3 The floor is now handed over again to the Prosecution to continue  
4 their response to the oral objections.

5 MR. DE WILDE D'ESTMAEL:

6 Thank you very much, Mr. President. Your Honours, good afternoon.

7 Between now and four o'clock, I'm going to try and cover three  
8 annexes -- 14, 20, and 17.

9 Looking at Annex 14, this concerns site ID reports. There are  
10 only two documents, in fact, but the Defence spent quite  
11 considerable time on those two documents and it is my duty,  
12 therefore, to respond to them.

13 [14.54.41]

14 These are two site ID reports, not 151 reports as mentioned this  
15 morning by Counsel Guissé. They were selected by the OCIJ as  
16 being pertinent for this first phase of the trial.

17 The authenticity of these two reports cannot be reasonably  
18 impugned. They were drawn up by the investigators from the OCIJ  
19 according to the standard procedures. Each one of the documents  
20 has the letterhead, date, the name of the investigator, the  
21 reference to the rogatory letter, and the signatures of the  
22 investigators. These are investigators who have taken oaths and  
23 who are recognized in their functions. These reports were  
24 recognized as being valid and they have been regularly filed.

25 The objections from the Defence tend to focus on the reliability

1 or the probative value of these two documents.

2 [14.55.56]

3 But perhaps before going into the details of this, I'd like to  
4 make an opening comment about the fact that this morning the Nuon  
5 Chea defence team, once again, quoted during the hearing the name  
6 of a potential witness on the list of witnesses proposed by the  
7 parties.

8 I refer to witness TCW-729, whose appearance here has not been  
9 requested by the Co-Prosecutors but by the Khieu Samphan defence  
10 team.

11 Quoting the name of potential witnesses in a public hearing  
12 should not be tolerated. Once it's done, the harm is done and  
13 it's too late to come back on anything, it's too late to raise  
14 any objections.

15 We would like, once again, to ask the Chamber to make quite sure  
16 that the different parties in this courtroom respect the  
17 principle of the use of the pseudonym of each of the potential  
18 witnesses who might be called to appear before this Chamber. We  
19 would also like the Nuon Chea defence team to once again be  
20 warned about this. Coming back to a review of these two  
21 documents, the first of them is a report; it's D232/108, dated  
22 the 7th of January 2010.

23 Under a rogatory letter dated the 24th of July 2009, it consists  
24 of a list of 26 locations and buildings in Phnom Penh which were  
25 used during the Democratic Kampuchea regime, and the

1 investigators tried to identify them and to specify their  
2 locations and to photograph them. It's very important to point  
3 out here that this report was prepared in response to a request  
4 from the Ieng Thirith defence team dated the 16th of September  
5 2009 which has code D209.

6 [14.58.37]

7 As to the contents of this document the report quite clearly  
8 explains that certain locations or buildings were not  
9 identifiable or positioned in any watertight way because there  
10 were contradictory witness statements.

11 The report also says, that each time a building has been  
12 apparently modified or demolished since 1979, it indicates what  
13 the witness sources are, references for the testimony that was  
14 used to identify these different places and there are also  
15 statements by the accused which have helped us to localize these  
16 buildings. A good number of these witnesses will be called to  
17 testify in this first trial.

18 [14.59.40]

19 So the report appears to be objective. It's established in good  
20 faith and it is relevant for this phase of the trial to the  
21 extent that the buildings concerned are connected with the  
22 administrative structure of Democratic Kampuchea. You will see  
23 photographs of the locations where K-1 Office was or K-3, Nuon  
24 Chea's office, Office B-1, in other words, the Foreign Ministry  
25 and other buildings connected with the Foreign Ministry such as

1 B-32.

2 You will see photographs of other ministries and other places  
3 where the Democratic Kampuchea ministries were located, and other  
4 places like K-15, the railway station or the Olympic stadium or  
5 the headquarters of the Revolutionary Army of Kampuchea.

6 Other photos concern buildings within the Khmer Rouge  
7 communications system such as K-7 or K-18.

8 The document could be used by the parties when they come to put  
9 questions to the witnesses on whose evidence the current  
10 investigating Judges have established the documents and other  
11 witnesses, as well. So what the report really brings to our  
12 discussions is a visual picture of the places and buildings which  
13 are very often mentioned during our hearings.

14 [15.01.21]

15 So, the places and the buildings have been located on the basis  
16 of certain testimony which is often being corroborated and the  
17 weight that can be given to the document or certain parts of the  
18 report may vary according to the credibility of the witnesses;  
19 but it is up to you to appreciate that at the conclusion of this  
20 trial. Here, I don't think we should be discussing, excuse me, I  
21 think we are discussing the admissibility of the document rather  
22 than engaging in a lengthy discussion on its contents.

23 All of the 29 photographs contained within the site ID report are  
24 also to be found in Annex 15 and a different Annex. In other  
25 words, and these are all photographs of which the Code begins

1 D232/108 followed by 1, 2, 3, etc.

2 [15.02.32]

3 The second ID site report is another one that the Defence dwelt  
4 on it at a considerable length -- I'm referring to D369/38. The  
5 signed original is in English. Thirty one photographs were made  
6 in C2 and they are appended to the report and now to be found  
7 under Annex 15, Maps and Photographs, on the table. This report  
8 is about Chrang Chamres also known as M-1 and B-60, and it's  
9 relevant for Trial 1. It concerns an entity, a work camp which,  
10 as we see it, was placed under the responsibility of the Foreign  
11 Ministry and Ieng Sary during at least one period of Democratic  
12 Kampuchea.

13 Now we are aware that witnesses from this same ministry will be  
14 called to testify during this same segment of the trial on  
15 administrative structures. It seems to me, clear that this report  
16 should be recognized as being relevant, both as concerns the  
17 administrative structure of the Foreign Ministry and the role of  
18 the accused, Ieng Sary, who was at the top of that ministry.

19 I will make a comment on the fact that the report is based on the  
20 testimony of potential witness TCW-729.

21 [15.04.23]

22 He has testified twice before the investigating Judges,  
23 interviews are D369/18 and D233/14, and this witness is on the  
24 list of witnesses proposed by the Khieu Samphan team, as I said,  
25 but it seems to me somewhat premature at this juncture to have a

1 discussion on the reliability of that testimony. We think that we  
2 ought to wait and see if this witness will be selected by the  
3 Chamber to testify during this first trial segment. And,  
4 secondly, if that is not the case, we will have to see what will  
5 be done with the witness interview records that are to be found  
6 in Annex 12. If they can be used, I'm referring to people who  
7 will not appear before this Chamber, if they can be used entirely  
8 or in part as evidence since they concern or do not concern the  
9 acts and conduct of the accused, then the eventual outcome for  
10 other documents will depend on this.

11 [15.05.53]

12 Another comment, Counsel Son Arun said this morning that witness  
13 TCW-729 would necessarily be biased and would be seeking  
14 evidence. This statement is gratuitous and unsubstantiated. The  
15 witness has been heard twice, under oath, and we have to stress  
16 that the investigators of the Co-Investigation Judges were the  
17 ones who insisted that he accompany them to show the site of  
18 Chrang Chamres, where he lived for three long years, as he said.

19 [15.06.35]

20 I might point out "en personne" that, when one has lived for  
21 three years under difficult conditions -- and that's certainly a  
22 euphemism under the Khmer Rouge -- in the same place, in the same  
23 work camp, even as a young teenager, there's no reason that your  
24 memory of those places would not be just as vivid as that of an  
25 adult or that the witness, a long time afterwards would not be

1 capable to draw a plan of that particular location. It is this  
2 kind of vivid life experience which is understandably strong.  
3 I wish now to move to Annex 20, which deals with rogatory letters  
4 and the reports of rogatory letters, as well as the 112 rogatory  
5 letters. The defence of Nuon Chea made only one single  
6 observation with respect to these reports that emanate from the  
7 Office of the Co-Investigating Judges.

8 The defence for Nuon Chea said that they should be handled with  
9 great care in light of the partiality of the Co-Investigating  
10 Judges. This subjectivity has not been proven at all. The fact of  
11 the matter is, this is -- they have not lodged a specific or  
12 relevant objection to the nature of these documents which does  
13 not in any way challenge the authenticity or relevance of these  
14 reports.

15 [15.08.22]

16 The defence of Ieng Sary has mentioned that certain reports  
17 include witness statements as well as summaries of testimonies or  
18 observations made by investigators. The Defence also said that  
19 these reports should not be admitted. However, I should point out  
20 that Counsel Ang Udom on the 10th of January 2012, during  
21 cross-examination of civil party Romam Yun, was not remiss in  
22 using a report of a rogatory letter under the reference D208/2  
23 and specifically made the critical observations made by the  
24 investigators with respect to the statements gathered.  
25 This category of documents compels several observations.



1 First and foremost, the authenticity of these documents cannot be  
2 impugned just as I have pointed out for the site identification  
3 reports. They bear all of the reliable indicia that I highlighted  
4 earlier.

5 I wish now to elaborate on the relevance of these reports and a  
6 distinction must be drawn between the several subcategories of  
7 these rogatory letters. First, and foremost, the defence for Ieng  
8 Sary was completely silent on a particular category of rogatory  
9 letter of which there are 31 reports or PVs that concern the list  
10 of written documents or audio-visual exhibits that were attained  
11 by the Co-Investigating Judges from various organizations.

12 [15.10.24]

13 Those organizations include Bophana Centre; there are eight  
14 audio-visual records out of the 112 exhibits; there are two  
15 documents that were obtained by the Tuol Sleng Archives; there  
16 were 20 documents obtained by the DC-Cam. We provided  
17 explanations - or, explanations were given with respect to how  
18 these documents were obtained and there was one document that was  
19 retrieved from the National Archives of Cambodia.

20 And, as my colleague pointed out, this document pertains to  
21 commerce. These reports establish who and how these documents  
22 were collected and they also draw to a very clear chain of  
23 custody. Therefore, it is entirely logical that Your Chamber  
24 should admit this category, this subcategory of documents.

25 [15.11.51]

1 The second subcategory concerns 66 rogatory letters, which  
2 pertain to the hearings of civil parties or witnesses by the  
3 Co-Investigating Judges. Very often, as we are well aware, the  
4 investigators were the ones conducting these interviews and  
5 hearings on behalf of the Co-Investigating Judges. On other  
6 occasions, investigators had described the circumstances under  
7 which certain hearings or interviews were held that involved a  
8 certain number of people who were identified over the course of  
9 admissions and therefore, interviewed. They also identified those  
10 who remained to be identified.

11 The other reports which outline steps as to why certain  
12 interviews could not be completed. With respect to these 66  
13 rogatory letter reports that deal with civil parties and  
14 witnesses derive from original copies of the depositions and are  
15 not summaries produced by investigators. We hope that these  
16 documents shall be deemed admissible by the Trial Chamber or that  
17 a decision not be made, at this particular stage, until your  
18 Chamber issues the decision with respect to Annex 12.

19 [15.13.54]

20 Allow me to explain why. At least 54 rogatory letters concern the  
21 hearings of witnesses or civil parties who figure on the list  
22 E9/35 and you are well aware that this list summarizes the  
23 pseudonyms of witnesses and civil parties that have been proposed  
24 by all parties to these proceedings. The Chamber has already  
25 communicated to the parties and stated that several dozens of

1 these witnesses may be heard over the course of this first trial.  
2 This does not forestall other witnesses or civil parties on list  
3 E9/35 from being heard during the course of this same first trial  
4 and that they may also potentially be providing testimony.  
5 Therefore, one must be very prudent and cautious. I believe that  
6 all parties and Judges should be satisfied that they have all  
7 information necessary at their disposal, with respect to these  
8 witnesses and civil parties and, specifically, information that  
9 is contained in the rogatory letters that specifically concern  
10 these individuals.

11 [15.15.28]

12 These include written records of witness interviews or hearings.  
13 The Co-Prosecutor is requesting that these 54 reports be deemed  
14 admissible to the extent that they concern witnesses and civil  
15 parties who may potentially be heard. The Chamber enjoys absolute  
16 discretion in this regard if they deem such reports to assist in  
17 the ascertainment of the truth. Mr. President, Your Honours, as  
18 may have been suggested by the defence team for Mr. Ieng Sary,  
19 this is not part of some scheme of the Co-Prosecutors to try and  
20 use summaries of witness statements in these reports, when these  
21 witnesses will not be heard. Above and beyond these reports that  
22 pertain to the hearings of civil parties and potential witnesses,  
23 there are other rogatory letters, far fewer in number, which do  
24 not concern any of the witnesses or civil parties that are listed  
25 in document E9/35. There are at least 12 individuals that I have

1 been able to identify. They include the following records:

2 D125/189; D125/193; D125/208; D166/134; and D125/212.

3 [15.17.35]

4 With respect to these very specific reports we request that the  
5 status of the admissibility of these reports be attached to the  
6 decision that will be issued with respect to Annex 12 and that we  
7 not refer to them unless the witness or civil party may appear.

8 If Your Honours ultimately decide to admit, either in whole or  
9 partially, these written records of witness interviews in the  
10 case, that such witnesses or civil parties may not necessarily be  
11 heard or be cross-examined by the parties, their rogatory letters  
12 must also be admitted and they must also be deemed as relevant  
13 and useful in elucidating the truth. The probative value to be  
14 attached to these documents may obviously be lower than that  
15 which would be attached to the originals of the written records  
16 of witness interviews.

17 [15.18.51]

18 But, once again, this decision falls entirely upon yourselves.

19 Perhaps you will make the distinction between written statements  
20 which concern directly the acts and conduct of the accused and  
21 other testimony which concern only the crimes themselves per se,  
22 without a clear identification of the accused. In such a  
23 scenario, this distinction could also apply to the reports of the  
24 rogatory letters that pertain to the 12 witnesses that I  
25 mentioned earlier.

1 In any event, we believe that those 12 reports are part and  
2 parcel of Annex 12 and that they should be admitted either in  
3 whole or partially. Lastly, I wish to mention the reports that  
4 figure in Annex 20, concerning the circumstances of arrest of the  
5 accused, as well as some of the evidence that was ceased during  
6 those occasions to the extent that these pieces of evidence do  
7 not figure on any of the list of documents that have been  
8 submitted by the parties for the first trial. We defer to the  
9 wisdom of Your Honours and of this Chamber to establish their  
10 relevance. That, Your Honours, concludes my remarks on Annex 20.  
11 I would now wish to turn to Annex 17 that concerns international  
12 communications.

13 [15.20.38]

14 Of the 158 documents that have been classified under this  
15 category by the Co-Prosecutors and which also appear on the list  
16 that was issued in July 2011, under E109/4.17, concerning the  
17 first phase of Case File 002, I would point out that only 151 of  
18 these documents are the subject of today's proceedings. In fact,  
19 only two documents were discussed during the hearings of the 16th  
20 of January 2012, whereas seven other documents have already been  
21 discussed during the hearing of the 16th of February 2012.  
22 Therefore, it is not necessary to discuss them once again. Mr.  
23 Karnavas was wrong to single out document D2-15.1. This is a  
24 document that must be read concurrently with D83-Annex-00011;  
25 this document is entitled: "Autobiography of Ke Pauk".

100

1 [15.22.02]

2 This document has already been discussed as these documents are  
3 contained in the footnotes of the relevant sections of the  
4 Closing Order. Be that as it were, we do not understand Mr.  
5 Karnavas to be lodging an objection but rather airing a complaint  
6 that this particular document was erroneously indexed under the  
7 wrong category of international communications.

8 As for the defence team for Nuon Chea, Mr. Ianuzzi declared or  
9 stated that this category not be dismissed outright since they  
10 had also proposed a very large number of international  
11 communications to be submitted as evidence. In fact, these 149  
12 documents could be categorized in various subcategories, each of  
13 which I will be able to provide detailed explanations. There are  
14 so many documents that come from the French Archives, 68  
15 documents that come from the United States of America, 11  
16 documents that come from Amnesty International and three from  
17 Vietnam.

18 Let us begin with the first category which concerns documents  
19 that emanate from the Archives of the Ministry of Foreign Affairs  
20 of France. There are 70 documents. The Co- Investigators from the  
21 OCIJ had acted upon a rogatory letter to retrieve these documents  
22 from the French Archives.

23 [15.24.15]

24 This letter was issued by the International Co-Investigating  
25 Judge on the 13th of March 2009 and is classified under D199.

101

1 What is this document, exactly? It is a contemporaneous document  
2 -- all of these documents, rather, are contemporaneous and they  
3 span between December 1973 and December 1978. In essence, they  
4 are telegrams or reports that were exchanged between French  
5 Embassies in Asia with the Ministry of Foreign Affairs based in  
6 Paris under the heading "Diplomatie Paris". There are 21  
7 telegrams that come from the Embassy of France in Peking, 18  
8 telegrams that come from the Embassy in Phnom Penh, prior to its  
9 closing, nine telegrams that come from the Embassy of Bangkok,  
10 two from the Embassy in Hanoi and one telegram that comes from  
11 the Embassy based in Kuala Lumpur ,as well as Vientiane, New York  
12 and the former Yugoslavia.

13 [15.25.28]

14 There are 11 telegrams or communications that come from the  
15 Ministry of Foreign Affairs, and five that are addressed to the  
16 French Minister for Defence, as well as the Ministry of Foreign  
17 Affairs prior to the evacuation of the French Embassy in Phnom  
18 Penh.

19 With respect to their authenticity, document D199, which is a  
20 rogatory letter issued by the International Co-Investigating  
21 Judge covers several aspects such as the hearing of several  
22 witnesses and civil parties who were residing and are residing in  
23 France. It also covers research that was conducted within the  
24 Archives.

25 Once again, this is a category of documents for which there are

1 no reasonable grounds to contest their authenticity. These are  
2 documents that have been copied under the official seal of the  
3 French authorities following the instructions of the  
4 Co-Investigating Judges. This is a formal guarantee of their  
5 provenance. Therefore, there's absolutely no problem of  
6 authenticity, there's absolutely no problem concerning the chain  
7 of custody of these documents.

8 [15.26.55]

9 In document D199/2, the Embassy of France in Cambodia authorizes  
10 the travelling of the investigators to France to guarantee access  
11 to the diplomatic archives of the Ministry of Foreign Affairs in  
12 France. The cover page D199/3, which was produced by two  
13 investigators and signed in France -- this page mentions that  
14 there were 605 documents that were obtained from the archives of  
15 the Ministry of Foreign Affairs in France. Of the various  
16 judicial documents, the French judicial authorities have attested  
17 to the fact that these documents have been appropriately obtained  
18 from the archives. And you will see mention of this in D199/5,  
19 which is a summary of the rogatory letter.

20 The Co-Investigating Judges, after having analyzed these  
21 archives, decided to place a certain number of these documents on  
22 the case file through a decision that is referenced under  
23 D199/26.2. The Co-Investigating Judges also decided that similar  
24 documents from the same origins would also be placed on the  
25 shared materials drive, through its decision D199/26.3.



1 [15.28.58]

2 Regarding the relevance of these documents, it can be said that  
3 they are highly relevant to the historical background, insofar as  
4 the nine -- there are nine documents that date prior to the 17th  
5 of April 1975. They are relevant to the administrative structure  
6 of the regime; they are relative to the role of the Accused prior  
7 and during the regime. They are also relevant to the evacuation  
8 of Phnom Penh. They also provide information on the demise that  
9 awaited certain categories of enemies during the evacuation of  
10 Phnom Penh. There are telegrams that come from the embassy in  
11 Phnom Penh which provide a minute-by-minute, if not day-by-day  
12 update of the evolving situation concerning all of the foreigners  
13 who had been gathered in the embassy compound just prior to their  
14 evacuation. With respect to the authenticity and the reliability  
15 of these documents, it must be understood that, first and  
16 foremost, the defence of Khieu Samphan has decided to also rely  
17 on this type of documents, because the Defence had selected  
18 themselves eight documents of the exact same nature amongst the  
19 list of documents presented before this Chamber in April and July  
20 2011.

21 [15.30.37]

22 I'm referring to list E9/29.2 and E109/1.1. I stand corrected if  
23 I am wrong, but I believe that the National Counsel for Khieu  
24 Samphan said that three of these documents should not be  
25 admitted. And yet these documents can be found in Annex 17, which

104

1 was submitted by the very same team. This appears to me as a  
2 contradiction. I refer now to document D199/26.172, which is a  
3 report produced by the Ambassador of France in Thailand addressed  
4 to the Ministry of Foreign Affairs, dated October 6th 1977.

5 There's also document D199/26.2.64. This is a telegram signed by  
6 a certain gentleman called Arnaud, who worked at the French  
7 Embassy in Peking, and addressed this document to the Ministry of  
8 Foreign Affairs, describing the situation in Cambodia.

9 [15.32.19]

10 There's also document D199/26.2.136, dated August 28th 1975. Once  
11 again, this is another telegram that is signed by the same  
12 gentleman -- Arnaud -- it emanates from the Embassy of France in  
13 Peking and is addressed to the Ministry of Foreign Affairs. It is  
14 entitled "Cambodia".

15 An additional document, D199/26.2.38 is also on the list  
16 submitted by the Khieu Samphan defence team. However, it has  
17 already been the subject of debates during the hearings of the  
18 16th of February 2012. I will therefore not dwell upon them. For  
19 other documents, also -- can be derived from the same series of  
20 French documents, but which were not listed in the  
21 Co-Prosecutors' document. However, for your information, and to  
22 further convince you of the fact that the defence of Khieu  
23 Samphan contest their reliability, I would refer you to documents  
24 D199/26.2.67 that is dated the 20th of April 1977; D199/26.2.173,  
25 which dates back to October 7th 1977; as well as document

1 D199/26.2.36, dated October 16th 1977.

2 [15.34.21]

3 These are three messages that are addressed by the Embassy of  
4 France to China to the Ministry of Foreign Affairs in Paris. And,  
5 lastly, I would draw your attention to document D199/26.2.142,  
6 which is a circular note from the Ministry of Foreign Affairs,  
7 produced in November–December 1976, entitled "Chroniques  
8 Cambodgiennes". These documents are being recognized as  
9 admissible by the Khieu Samphan defence. As for the Ieng Sary  
10 defence team, I will quote Counsel Karnavas, who said, on the  
11 16th of February 2012, that these Foreign Ministry documents were  
12 only used for internal purposes. And I will quote Counsel  
13 Karnavas, who said the following: "We would submit, and we  
14 accept, that a government, under normal circumstances, does not  
15 try to mislead itself."

16 Further on, he says -- and I quote:

17 "But these documents -- these French Ministry of Foreign Affairs  
18 documents seem to be documents generated in good faith,  
19 attempting to try to figure out what is happening. And for those  
20 reasons, we think that, while they may have been generated in  
21 good faith, they may not necessarily be reliable, and unless --  
22 independently, unless they are -- have independent indicia.  
23 Therefore, little or no weight would be given to them, although  
24 we do realize that they do come from a reliable source."

25 [15.36.30]

1 Once again, the authenticity of these documents cannot be  
2 challenged, nor the reliability of their sources can be  
3 challenged. The only element that has to be determined is the  
4 probative value to be attached to them. Referring to all of the  
5 international documents, including those from French sources, we  
6 were told that they would have to be corroborated by other  
7 documents, and then, on the subject of Annex 18, Counsel Karnavas  
8 said that if the French were listening to the same broadcasts  
9 that the CIA were producing -- the FBIS reports -- that would  
10 give a certain weight to those documents.

11 [15.37.32]

12 So here we have a whole series of documents that cannot be  
13 seriously challenged, either from the standpoint of their  
14 authenticity or their relevance to this first trial segment or  
15 the reliability of their sources. So, in our view, they should be  
16 considered prima facie admissible. Of course, you will see that  
17 all of these documents have the same characteristics. In other  
18 words, they have the letterhead of the Foreign Ministry; they are  
19 entitled "Incoming Telegram" -- "Telegram en arrivée". They are  
20 received by the Ministry from the embassies, they have a list of  
21 addresses, and they all use the same typescript. I won't dwell on  
22 this, since these were official documents which were transmitted  
23 by the French authorities themselves.  
24 As to the probative value to be given to the content of each one  
25 of these documents, which are very often analyses of the

107

1 situation that pertained in Democratic Kampuchea or about  
2 relations between other countries in the region and Democratic  
3 Kampuchea, it's our view that this kind of discussion is a little  
4 bit premature within a hearing on admissibility, and that it  
5 should normally be held at the stage of the closing arguments and  
6 submissions at the close of this trial. So, I will limit myself  
7 to giving a few illustrations of what the events described in  
8 these documents, or rather how the events described in these  
9 documents are corroborated by other sources as well.

10 [15.39.28]

11 Let me give you three examples. The first is a telegram. The  
12 reference is D199/26.2.7. It's a telegram signed by Manac'h from  
13 the French Embassy in Peking to the French Foreign Ministry,  
14 dated the 19th of April 1974. In the telegram, Manac'h states  
15 that Khieu Samphan and Ieng Sary will shortly be going to  
16 Romania. This fact is corroborated by a great many other  
17 contemporaneous sources which confirm that Khieu Samphan, as  
18 deputy prime minister and defence minister, and  
19 commander-in-chief of the CPNLAF, and Ieng Sary as special  
20 adviser to the deputy presidency of the GRUNK council. Ieng  
21 Thirith, who at the time was Minister for Popular Education and  
22 Youth, and Chhak Sarin did leave Peking in a special plane, on  
23 the 19th of April 1974, to visit several European countries,  
24 including Albania, Yugoslavia, and Romania, and 11 African  
25 countries; they came back to Peking at the start of May 1974. So

1 the sources corroborating this fact include a FUNK publication  
2 entitled "Nouvelles du Cambodge", number 708, dated the 23rd of  
3 April 1974, reference IS 12.8. Then you have the opening pages of  
4 document E3/40, also under the reference IS 3.9, which is not an  
5 autobiographical document by witness TCW-694. And he is due to  
6 appear before this Court. And he refers to this one-month trip,  
7 including in seven African countries. There's also a report from  
8 the U.S. Secretary of State, sent on the 30th of April 1974 to  
9 the U.S. Embassy in Saigon referring to an article in the "New  
10 York Times" which mentions Khieu Samphan's tour of Albania,  
11 Yugoslavia, Romania, and, after that, the African countries. And  
12 this is document D313/1.2.35.

13 [15.42.46]

14 There are two other documents which corroborate the evidence of  
15 this diplomatic tour. There's D313/12.35. This is a communication  
16 from the U.S. Embassy in Bucharest, Romania, dated the 2nd of May  
17 1974, describing Khieu Samphan's visit to Romania. And we also  
18 have witness TCW-475 who mentioned to the Co-Investigating Judges  
19 that he had accompanied Khieu Samphan in 1974 on the occasion of  
20 this same trip to Yugoslavia and Romania. This is document  
21 D201/8, dated 18th of July 2009.

22 Let's give another example going back to the DK period, this  
23 time, the arrest of Prince Sirik Matak at the French Embassy.  
24 This has been described by a good number of documents, and of  
25 course, first and foremost in the telegram from these French

1 archives from Jean Dyrac, who was counsel at the Phnom Penh  
2 embassy at the time of the evacuation, dated 20th of April 1975.  
3 Document D199/26.2.212.  
4 [15.44.32]  
5 And that telegram is corroborated by three other documents.  
6 There's a telegram of the 4th of May 1975 from the U.S. Embassy  
7 to the U.S. Secretary of State, entitled "American Talks of Phnom  
8 Penh after the Fall", which relates evacuation of Phnom Penh as  
9 seen by an American citizen, which refers to Sirik Matak's  
10 surrender to the Khmer Rouge. This is document 313/1/2.65.  
11 Then there's the well-known newspaper article by John Swayne in  
12 "The Times of London", on the 11th of March 1975, and he  
13 describes the day-to-day atmosphere in the evacuation of Phnom  
14 Penh seen from the French Embassy. And he describes daily life in  
15 the embassy. And, needless to say, he also refers to the arrest  
16 of Sirik Matak on the same 20th of April 1975, and he also talks  
17 about how all of the Cambodians had to leave the embassy and join  
18 everybody else who was outside. This is number E3/51. It also  
19 carries reference D366/7.1.278.  
20 And, finally, I will recall that in document D365/1.1 --  
21 D365/1.1.39 -- a 2nd of November 1975 article of the "Washington  
22 Post" says that Ieng Sary declared that Sirik Matak had been  
23 executed shortly after the fall of Phnom Penh. A third example,  
24 which again relates to these French archives, and here we're  
25 talking about Ieng Sary's trip between the 7th of March and the

110

1 30th of March 1977 in Southeast and South Asia, in Burma, Sri  
2 Lanka, Singapore, Malaysia, and Pakistan -- and this is described  
3 in considerable detail in French Foreign Ministry document  
4 D199/26.2.168.

5 [15.47.38]

6 This series of diplomatic visits is corroborated by a number of  
7 other documents, for example, concerning his trip to Burma.  
8 There's a FBIS document dated the 30th of August 1977. That's  
9 D262.33. And this is a transcription of a broadcast on Radio  
10 Phnom Penh, dated 29th of August 1977. Then there's another FBIS  
11 document, D262.28, dated 24th of March 1977. It's an article  
12 entitled "Singapore, Cambodia Issue Statement on Ieng Sary  
13 Visit". And it was prepared on the basis of a Radio Phnom Penh  
14 broadcast in Khmer on the 24th of March 1977. There are three  
15 other sources which back up the events mentioned by the French  
16 Ministry. There's a FBIS document dated 2nd of April 1977,  
17 referring to Ieng Sary's arrival in Sri Lanka. There's an article  
18 that came out in the "Straits Times" of the 22nd of March 1977;  
19 "Sary Heads Khmer Delegation to Singapore". That's document  
20 D313/1.2.323. And, finally, there's a BBC SWB document, D56-Doc.  
21 069, 29th of March 1977, and the title of that is "Ieng Sary in  
22 Pakistan".

23 [15.50.00]

24 This brings me to a close on the French archives, Mr. President,  
25 and I will now turn to the United States declassified documents.



111

1 These are contemporaneous American documents dating between the  
2 1st of October 1970 and June 1978, which describe the political  
3 situation in Cambodia during the period when they were  
4 transmitted. And among these documents there are 15 telegram  
5 communications from the U.S. Embassy in Phnom Penh to the U.S.  
6 State Department, between the 1st of October 1970 and the 12th of  
7 April 1975. There are 21 communications from embassies,  
8 consulates, or missions in Saigon, Hanoi, Bucharest, Paris,  
9 Tokyo, Vientiane, Hong Kong, Bangkok, Peking, Jakarta, or from  
10 the U.S. mission to the United Nations. There are 14  
11 communications, telegrams, aerograms, or other types of  
12 communications from the U.S. State Department sent out to their  
13 embassies, six communications from the Secretary of State  
14 himself, and then there are 12 internal White House documents --  
15 six of them are minutes of meetings of the U.S. National Security  
16 Council, and the others are transcriptions of exchanges between  
17 President Ford and Secretary of State Kissinger.

18 [15.51.51]

19 On the matter of their authenticity, let me say that, for all 68  
20 of those documents, they are official, and a good part of this  
21 collection of documents date from the 15th of March 1973 to 22nd  
22 of December 1975, and they were published after declassification  
23 by the U.S.A. National Archives and Records Administration. One  
24 hundred and fifty documents from that period were annexed to  
25 request D313 from the Co-Prosecutors, dated the 31st of December

1 2009, Annex 3, and 35 of them are now included on the list of the  
2 68 we are discussing here.

3 [15.52.50]

4 Other documents have been declassified, and they date back to  
5 before the 15th of March 1973. They are held by DC-Cam. More than  
6 100 of them were submitted to the Investigating Judges by a  
7 request from the OCP of the 12th of February 2012. That is D366/1  
8 and D366/5 -- a request of the 13th of April 2010. And they were  
9 accepted by the Co-Investigating Judges. More than 20 of the  
10 documents among the 68 are extracted from those declassified  
11 documents that go back to before March '73. And then there are  
12 certain rogatory letters from the Investigating Judges to the  
13 American authorities to obtain some documents, such as D291 and  
14 D291/6. You can see that certain documents were indeed obtained,  
15 in particular telegrams from the American Embassy in Bangkok. And  
16 five of these are on the list of the 68 documents, and then some  
17 were obtained through rogatory letter D248 from DC-Cam.

18 Bearing in mind the fact that these documents have been  
19 declassified and the general public can authenticate the  
20 documents at their very source, and bearing in mind also that the  
21 American authorities themselves had transmitted these documents  
22 to the Co-Investigating Judges, then there is an assumption of  
23 authenticity that these documents carry. And therefore the  
24 Defence can only establish that they are counterfeit.

25 [15.54.58]

113

1 Talking of relevance, 37 documents date back to before the 17th  
2 of April 1975, and they concern the historic context that  
3 prevailed during the five years of war. Thirty-one date to the  
4 period of the regime itself. Out of these 68 documents, 26 of  
5 them concern the role played by Khieu Samphan before and after  
6 April 1975. Nineteen concern the role of Ieng Sary, and one  
7 relates to the role of Nuon Chea. These documents are relevant  
8 also because a number of them -- precisely, 21 -- concern the  
9 forced movements of the population, principally the evacuation of  
10 Phnom Penh. Four concern the administrative structures of the  
11 centre, and two concern the military structures of the army. And  
12 quite a few other documents in this American collection concern  
13 the development and planning and sometimes the implementation of  
14 the five PCK policies considered to be part of the joint criminal  
15 enterprise by the Investigating Judges.

16 [15.56.24]

17 And there are 16 documents that concern specific groups targeted  
18 by the regime before and after the 17th of April 1975. Others  
19 relate to security centres, work camps, and cooperatives.

20 I have another five minutes on these American documents, Mr.  
21 President, so if you will allow me, I shall continue on this  
22 subject and turn to the question of their reliability. Well,  
23 looking at the internal characteristics -- when you compare these  
24 American documents to others of the same nature, but which were  
25 put into the file through different channels, you will see that

114

1 they have the same characteristics. The telegrams, the aerograms,  
2 and other communications from the embassies in the State  
3 Department -- all carry the same characteristics for the security  
4 and the confidentiality of the documents, and there's always a  
5 numbered list of references with an "EO" code, and there's a long  
6 list of the addressees, normally speaking -- there are embassies  
7 concerned or other U.S. departments or services. The same  
8 typography is always used as well. Generally, they are headed  
9 "unclassified" or "declassified", which shows that they are  
10 public.

11 [15.58.05]

12 They are structured in the same way, as well. When the message is  
13 long, it is cut up into several parts. When there are aerograms  
14 that consist of telegram text transcriptions, they all have a  
15 final page that is entitled "Message Attributes", setting out the  
16 details of each telegram -- the sender, the addressee, the  
17 confidentiality rating, and so on.

18 I'll just give one example of that sort of corroboration, because  
19 we're short of time -- apart from those that I gave concerning  
20 the French Archives that were corroborated by American documents.  
21 Let's look at document D313/1.2.79, dated the 19th of August  
22 1975. Here we have a communication by a U.S. liaison officer in  
23 Peking which refers to Khieu Samphan's departure from China on  
24 the 19th of August 1975, where he had been on a mission with Ieng  
25 Sary. And he leaves for North Korea to visit Norodom Sihanouk to

115

1 entreat him to come back to Phnom Penh. The document also talks  
2 about Ieng Sary's, Sarin Chhak's, and Thiounn Prasith's departure  
3 from Peking to go to Lima to attend the Non-Aligned Conference,  
4 and then go up to New York for the UN General Assembly in  
5 September 1975.

6 [15.59.55]

7 Turning to the presence of Khieu Samphan and Ieng Sary in China  
8 between the 16th and the 19th of August 1975, there's a series of  
9 FBIS transcriptions which corroborate that fact, but also a "New  
10 York Times" article which itself reproduces a dispatch from the  
11 Xinhua Chinese Press Agency, dated the 16th of August 1975 --  
12 document D56-Doc. 032. As to Khieu Samphan's trip to North Korea  
13 and the outcome he achieved, which was Norodom Sihanouk's return  
14 a few days afterwards to Cambodia, this is corroborated by FUNK  
15 itself in the "Nouvelle du Cambodge" number 038, publication  
16 reference IS 12.13. And the last article of publication also  
17 refers to Ieng Sary's trip to Lima. It's just one example among a  
18 good many other possible examples, which will, I hope, serve to  
19 persuade you that these Annex 17 documents cannot be taken  
20 individually but have to be seen as part of a larger set of  
21 documents that have been submitted to this Court and which will  
22 be discussed with witnesses who will be called to testify.

23 [16.01.46]

24 I believe it is wise for me to stop here, Mr. President, since we  
25 have gone past 4 o'clock already, and I would ask for a further

116

1 quarter of an hour tomorrow morning to complete my comments on  
2 Annex 17. Thank you very much, Mr. President.

3 MR. PRESIDENT:

4 Thank you, the Prosecution. I notice the Defence Counsel is on  
5 his feet. You may proceed.

6 MR. IANUZZI:

7 Thank you, Your Honour. A very brief request, if I may. I promise  
8 not to take up too much of your time, and I assure you it has  
9 nothing to do with the prime minister. This is a strictly  
10 procedural request.

11 [16.02.26]

12 I'm looking at the agenda for the rest of the week, and I notice  
13 that no time has been scheduled for replies.

14 So this is, therefore, a request to make a reply to the  
15 submissions of the prosecutor and the civil parties. I'm making  
16 it now, so that if it's granted, I'll have time to prepare  
17 properly. Very briefly, I think replies are a key aspect of  
18 adversarial hearings. I think that's reflected in Article 8.4 of  
19 the Practice Direction on the filing of documents. There are a  
20 number of issues that require clarification. We certainly have  
21 the time, and I will be very brief if I am given the chance to  
22 make a reply. There will be no prejudice to any parties, and  
23 finally, perhaps most importantly, I think it will assist the  
24 Chamber.

25 So, if I could have an indication today if there are any

117

1 objections to that, and if I could be given, perhaps, half an  
2 hour maximum at the end of the proceedings to make my  
3 submissions?

4 MR. PRESIDENT:

5 Michael Karnavas, you may proceed.

6 MR. KARNAVAS:

7 Thank you, Mr. President. Thank you, Your Honours. And good  
8 afternoon to everyone. I would have the same request -- perhaps  
9 only 15 minutes.

10 [16.03.53]

11 But if we were given the opportunity to reply, we certainly would  
12 like it. We understand it's not scheduled, and so we leave it up  
13 to you. Thank you.

14 MR. PRESIDENT:

15 Defence counsel for Khieu Samphan, you may proceed.

16 MR. KONG SAM ONN:

17 Thank you, Mr. President. Our defence team for Khieu Samphan  
18 would also request for time to respond to the response by the  
19 Prosecution.

20 We should be given such an opportunity. Thank you.

21 (Judges deliberate)

22 [16.04.52]

23 MR. PRESIDENT:

24 The International Co-Prosecutor, you may proceed.

25 MR. DE WILDE D'ESTMAEL:

118

1 Thank you very much. We are entirely in agreement with the  
2 principle that the right of reply, which has been practiced in  
3 previous sets of hearings. If I'm not mistaken, I believe that on  
4 Monday the defence teams do have an opportunity -- may have an  
5 opportunity to respond to our submissions.

6 And before you would deliberate on this issue, I would also ask  
7 for a clarification with respect to scheduling: When do Your  
8 Honours expect that the hearing on the -- audio-visual hearing of  
9 a certain expert witness will be held? If we are to conclude this  
10 week's hearings early, will this have an impact on the scheduling  
11 of that hearing? Will it be held tomorrow, on Thursday, or, as  
12 previously planned, for Monday?

13 I thank you.

14 (Judges deliberate)

15 [16.07.20]

16 MR. PRESIDENT:

17 After having heard the request by the three defence teams for an  
18 opportunity to respond to the response made by the Prosecution  
19 and the civil party lawyers regarding the documents sought to be  
20 put before the Chamber, the Chamber agrees to the request made by  
21 the three defence teams. The three defence teams will have a  
22 combined allocation of one hour time to reply to the response  
23 made by the Prosecution and the civil party lawyers. And it  
24 should be done upon the conclusion of the response by the civil  
25 party lawyers -- that is, after the conclusion of the



1 Prosecution.

2 (Judges deliberate)

3 [16.09.00]

4 For the subsequent proceedings, we shall adhere to the scheduling  
5 that we have made.

6 For instance, in regards to the testimonies of the expert, TCE-38  
7 -- so that would be best on the scheduling order that we issued.

8 (Judges deliberate)

9 [16.09.57]

10 In order to clarify the matter further, we would like to inform  
11 that the scheduling -- the hearing will proceed according to the  
12 schedule, and it is likely that the proceeding will not continue  
13 until Monday next week, as we still have two remaining days for  
14 this week -- that is, tomorrow and after tomorrow. So, we will  
15 try to conclude all the remaining issues up to Thursday, this  
16 week. So the agenda for the schedule up to Monday the 19th shall  
17 be moved, to be concluded within Thursday this week. And it is  
18 likely that we will conclude then by Thursday.

19 [16.11.00]

20 And also be informed that, on Monday, we will proceed with the  
21 questioning on facts and the questioning of the Accused or the  
22 witnesses. Actually, we scheduled that for Tuesday next week, but  
23 it will move back to Monday next week.

24 MR. IANUZZI:

25 Your Honour, excuse me, I'm confused. Let me just see if I have

120

1 it right. Tomorrow, the Prosecution will finish, and they've got  
2 approximately -- half a day? Then the civil parties, then we can  
3 make our reply. Then we'll start with the video link hearing,  
4 maybe on Thursday, and we'll try and finish that on Thursday?  
5 Yes? Okay, thank you. I -- it's clear for me now. Thanks.

6 MR. PRESIDENT:

7 That is correct. We will continue the proceedings as planned. The  
8 only thing is that there will be an opportunity given to the  
9 right to reply to the response made by the Prosecution and the  
10 civil party lawyers. And for the remaining agenda of the  
11 schedule, we shall adhere to what has been issued. And, as  
12 scheduled, we still have two remaining days for this week. So it  
13 is likely that we will finish -- or conclude all the agenda  
14 within this week, and not for Monday next week.

15 For that reason, on the schedule to question Nuon Chea on Tuesday  
16 will be moved back to Monday next week, and we will notify to the  
17 parties tomorrow. It also applies to the questioning of Kaing  
18 Guek Eav, alias Duch, which was scheduled to Tuesday afternoon,  
19 and it will be moved back to Monday afternoon.

20 The time is now appropriate for today's adjournment. The Court  
21 will now adjourn, and it will resume tomorrow morning, starting  
22 from 9 a.m.

23 Security guards, you are instructed to bring the Accused back to  
24 the detention facility and bring them back in the courtroom  
25 before 9 a.m., tomorrow.

1 GREFFIER:

2 All rise.

3 (Judges exit courtroom)

4 (Court adjourns at 1614H)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25