



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

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

15 July 2013
Trial Day 210

Before the Judges:

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

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KHIEU Samphan

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I N D E X

MR. STEPHEN HEDER

Questioning by Mr. Raynor (resumes) page 3

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Questioning by Mr. Lor Chunthy page 98

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
M. ABDULHAK	English
JUDGE CARTWRIGHT	English
MS GUISSÉ	French
MR. HEDER	English
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LOR CHUNTHY	Khmer
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French

1

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

2 (Court opens at 0904H)

3 MR. PRESIDENT:

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

5 Today the Chamber will continue to hear the testimony of the
6 witness Steve Heder, who will be questioned by the parties to
7 this case. The Prosecution will conclude their session this
8 morning and then the Lead Co-Lawyers for civil parties will
9 commence their session.

10 Dav Ansan, could you report the attendance of the parties and
11 individuals to today's proceeding?

12 [09.06.01]

13 THE GREFFIER:

14 Thank you, Mr. President.

15 For today's proceeding, all parties are present.

16 On a side note, Nuon Chea is present in the holding cell
17 downstairs pursuant to the decision of the Trial Chamber
18 concerning his health.

19 Mr. Stephen Heder, who will testify today, is already in the
20 courtroom.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you.

24 We would like now to hand the floor to the Prosecution to
25 continue putting questions to the witness. You may proceed.

2

1 MR. RAYNOR:

2 Good morning, Mr. President. Good morning, Your Honours. May it
3 please you. Good morning to my fellow counsel and good morning to
4 you, Mr. Heder.

5 [09.06.55]

6 Mr. President, can I please ask two things: firstly, that the
7 four files that Mr. Heder was dealing with last Thursday, now be
8 handed back to him; and, secondly, that he be handed a new file,
9 5. And I have here, Mr. President, a number of copies of the
10 index to file 5 for distribution in the courtroom.

11 MR. PRESIDENT:

12 Defence counsel for Khieu Samphan, you may proceed.

13 MS. GUISSÉ:

14 Good morning, Mr. President. Good morning to everybody present
15 here.

16 [09.07.56]

17 I don't know what there is in Document 5 that the prosecutor
18 wants to put to the witness, but if we are talking here about new
19 documents that were listed this weekend by the prosecutor
20 concerning a number of press articles as sent by email, I want to
21 put it on record now that we do have a certain number of
22 objections because some of them are not on the case file or at
23 least we certainly didn't find them in our research before the
24 documents were put to the witness. And so I would like this to be
25 discussed please if we are talking about documents that were

3

1 listed by the Prosecution over the weekend by email.

2 Thank you, Mr. President.

3 MR. RAYNOR:

4 Mr. President, I understand the observation entirely. They are
5 not to do with the email documents and I hope when my learned
6 friend sees the index to file 5, the documents will become
7 apparent. They're not to do with the email.

8 [09.09.14]

9 MR. PRESIDENT:

10 Yes, you may proceed.

11 Court Officer, could you deliver the hard copy for distribution
12 to the parties in the Court?

13 MR. RAYNOR:

14 Mr. President, there was also a collection of other papers of Mr.
15 Heder's from the files. Can I also hand those over?

16 MR. PRESIDENT:

17 Yes, you may do so.

18 Court Officer, could you deliver the four documents and the new
19 one for the witness' examination. Thank you.

20 [09.10.38]

21 QUESTIONING BY MR. RAYNOR RESUMES:

22 Q. Mr. Heder, you should now have five files in front of you. My
23 first question though is going to relate to file 2, so could I
24 ask you please to obtain file 2? File 2, tab 4; file 2, tab 4,
25 document number E3/573. Our description on our case of this

4

1 document, Mr. Heder, is a transcription of the shorthand notes of
2 an interview by Stephen Heder with Ieng Sary on the 4th of
3 January 1999.

4 Now, first of all, can you confirm that you took shorthand notes
5 of the interview with Ieng Sary?

6 MR. HEDER:

7 A. Yes.

8 Q. I want to move to an extract about half way down the page
9 which states:

10 "Khieu Samphan became a Central Committee member 1976, although
11 already in 1975 he was de facto involved in Central Committee
12 affairs; as chairman of 870, transfers and removals of cadre
13 would cross his desk; he would be told, for example, that such
14 and such was being sent to the 'Chamkar', so in some ways, he
15 knew more than me..."

16 Does that accurately record what Ieng Sary told you about Khieu
17 Samphan in this interview?

18 A. Yes.

19 [09.13.10]

20 Q. I'm told that I may have misquoted the document number; can I
21 confirm for everyone, it's E3/573.

22 Mr. Heder, the extract that I've just quoted and you've confirmed
23 includes the words: "that such and such was being sent to the
24 chamkar." What is or was the "chamkar" back in the days of
25 Democratic Kampuchea?

5

1 A. Well, "chamkar" is literally agricultural field that's not for
2 paddy, but for fruit or vegetables. So the implication on the
3 face of it, the meaning on the face of it is being sent to farm
4 those kinds of fields; non paddy agricultural fields.

5 [09.14.18]

6 Q. And if you're able to, Ieng Sary was talking about Khieu
7 Samphan's "crossing his desk" -- is the phrase -- of "transfers
8 and removals of cadre". Can I concentrate on the word "removals";
9 in all the interviews that you've conducted and from direct
10 factual sources without speculating and without offering an
11 opinion, did the word "removals" have any particular connotation
12 during the Democratic Kampuchea period?

13 A. Depending on the context -- well, put it this way, the literal
14 meaning is precisely what's given here as a translation,
15 "removal". The -- what "removal" exactly meant was, I think quite
16 intentionally -- that's an opinion -- but quite intentionally
17 left ambiguous by the terminology. So it might mean one thing, it
18 might mean something else; that is to say, it might mean simply
19 removal from the post or it might mean removal from the post
20 followed by something else that was implied in the use of the
21 terminology. But the terminology itself wouldn't give you the
22 answer to the question of what the full meaning for the full
23 implication of the term might be.

24 Q. Was the term "removal" ever used in the context of an arrest?

25 A. Yes, one could be removed by being arrested among many other

6

1 possibilities.

2 [09.16.38]

3 Q. When Ieng Sary told you that Khieu Samphan had been chairman
4 of 870, was there any obvious doubt in the tone or the way he
5 told you that Khieu Samphan was the chairman?

6 A. No.

7 Q. Aside from talking about Khieu Samphan having transfers and
8 removals of cadre cross his desk as chairman of 870, did Ieng
9 Sary give any more detail as to the connection between Khieu
10 Samphan, Office 870 and what he did there?

11 A. Nothing more than it is reflected here.

12 Q. I'm going to be moving to separate files now, Mr. Heder. Can
13 you put away our current file and please pick up file 3?

14 THE INTERPRETER:

15 Message from the interpreters, it would be helpful if the witness
16 were a little closer to the microphone.

17 Thank you very much.

18 [09.18.24]

19 BY MR. RAYNOR:

20 Q. Mr. Heder, file 3, tab 9, document number E190.1.72; at the
21 top: "Steve Heder Interview with Van Rith also known as Meuan,
22 21st of March 2004, S'ang, Kandal province."

23 First of all, Mr. Heder, just a very brief introduction as to how
24 this interview with Van Rith was organized.

25 MR. HEDER:

7

1 A. To use the journalistic phrase, I doorstepped him. I simply
2 appeared; I ascertained where he lived and I appeared at his
3 residence and asked to speak to him.

4 Q. You should have within tab 9, the transcribed elements of the
5 interview and then behind that, can you confirm that you've got
6 some handwritten notes; I think seven pages in total. Can you
7 confirm if they are the handwritten notes that you made when you
8 were speaking to Van Rith?

9 A. Yes.

10 [09.20.20]

11 Q. If we look on the typewritten version which is the first page
12 in your tab 9, it states as follows:

13 "Van Rith confirms that Khieu Samphan was chairman of M-870 after
14 Doeun. In that capacity, Van Rith liaised with him on matters
15 concerning commerce and requests for materials which would come
16 from other central ministries through M-870 to Van Rith. He
17 doesn't know what other aspects of Central Committee work Khieu
18 Samphan might have handled, but does not deny that it could have
19 included military and security affairs."

20 Can you confirm that that is what Van Rith told you in this
21 interview?

22 A. Yes.

23 [09.21.27]

24 Q. Dealing with the next paragraph, it's recorded in the
25 following terms:

8

1 "When Khieu Samphan told him around July 1978 that the Central
2 Committee wanted him to travel to the Northwest on commercial
3 matters, he feared he was about to be arrested."

4 Can you confirm that that is what Van Rith told you in this
5 interview?

6 A. Yes.

7 Q. Turning to the next page which takes us into English,
8 00747760; French, 00744418; and Khmer, 00742278; and in
9 connection with 1978, there's the following extract:

10 "He" so that's Van Rith, "He told Khieu Samphan in November 1978,
11 that the revolution in the countryside was a failure, that there
12 was no great leap forward, but in fact starvation."

13 Again, can you confirm that that is what was said in this
14 interview with Van Rith?

15 A. Yes.

16 [09.23.06]

17 Q. Next question, without speculating, without giving opinion,
18 relying on factual sources whether from your interviews or
19 otherwise, have you seen factual material about Van Rith liaising
20 with Khieu Samphan on commercial matters?

21 A. Possibly in some of the DC-Cam interview materials, something
22 like that or to that effect comes up. I'm trying to remember
23 whether there might be something similar in any of the interviews
24 that were done in 2005. I don't specifically recall that there
25 was; there might have been, but I don't specifically recall that

1 there was.

2 Q. And have you ever seen any copy, Ministry of Commerce
3 documentation either mentioning Khieu Samphan, Hem or if you
4 like, it being apparent from the face of the document that it's a
5 Ministry of Commerce document mentioning Hem or Khieu Samphan?

6 A. Yes, I saw at least some such documents when they were still
7 on file at DC-Cam and more such documents when I was working at,
8 I believe OCIJ, not OCP, but it could have been both places.

9 [09.25.01]

10 Q. Thank you. I'd like to move next please to file 4. File 4, tab
11 4. These are extracts from the book "Seven Candidates for
12 Prosecution", and I'd like you to go to the extract that reflects
13 page 93, which is, I think, the last page in this pack. Do you
14 have that page? It should have 93 in the top right? Yes, confirm
15 you have. Quote from this page:

16 "In particular" -- and I should say, this is referencing Khieu
17 Samphan -- "In particular, it was in his capacity as chairman of
18 Office 870 that Khieu Samphan was present as a note taker at a
19 secret meeting in the first half of 1978, at which Pol Pot, Nuon
20 Chea, and Son Sen ordered the purge and execution of East
21 Secretary So Phim, and most of the leading CPK military and
22 political cadre in the East Zone."

23 Footnote 361, then references two documents: E3/1915, which is
24 "Nate Thayer, Death in Detail" in "The Far Eastern Economic
25 Review", and E3/1567 "Nate Thayer, Duch Confesses", again "Far

10

1 Eastern Economic Review".

2 [09.27.17]

3 MR. PRESIDENT:

4 Prosecutor, could you please refer to your footnote and ERN
5 numbers again? Thank you.

6 BY MR. RAYNOR:

7 Certainly, Mr. President. The footnote in "Seven Candidates" is
8 footnote 361, and the documents to support the footnote are
9 E3/1915 and E3/1567.

10 Q. Question, Mr. Heder: Nate Thayer. A little bit of detail, and
11 can you help us on when it was that Nate Thayer was speaking to
12 Duch or Duch. A little bit of detail. Not too much, please.

13 MR. HEDER:

14 A. Nate Thayer was -- is -- a journalist. Had worked in Bangkok
15 and in Phnom Penh, and particularly in Phnom Penh from --
16 sometime, I think, shortly after (sic) the beginning of the UNTAC
17 period, through to the end of the 90s, at least. And was, I
18 believe -- the interview with Duch or the conversations with Duch
19 or the conversations in which Nate was present were all in -- I
20 think it's early '99, if I recall correctly -- sometimes in the
21 presence of one or more persons from the Office of the High
22 Commission of Human Rights of the era; I think sometimes on his
23 own.

24 [09.29.18]

25 Q. Thank you. Still within file 4, tab 4 -- so the very section

11

1 that you have. But if you move backwards, please, to page 65. So
2 this is document E3/48, "Seven Candidates for Prosecution", page
3 65, footnote 234. It's stated, Mr. Heder -- and this is reference
4 to reports:

5 "These reports are sometimes addressed specifically to Pol Pot,
6 including by abbreviation or by his alias 009, but more often
7 they are addressed simply to "Brother" or "the Organization", or
8 the Central Committee by its code number 870. But they were
9 routinely slated to be copied to a list of recipients that
10 included Nuon Chea. More particularly, these reports were
11 routinely marked for copying and presentation (chamlang choun) to
12 some or all of the five members of the Standing Committee who
13 were usually resident in the capital, Phnom Penh: Pol Pot
14 (referred to as 'Uncle'); Nuon Chea (referred to as 'Uncle
15 Nuon'); Ieng Sary (referred to as 'Brother Van'); the late Vorn
16 Vet (referred to as 'Brother Von') and the late Son Sen (referred
17 to as "Brother Khiev").

18 [09.31.18]

19 And in footnote 234, you state:

20 "The list usually appears at the bottom of the documents, and
21 like the documents themselves, is usually typewritten. Starting
22 in early 1978, Brother Khiev is often not on the list, apparently
23 because he was on duty on the Vietnamese border. In addition to
24 the specified members of the Standing Committee, the list also
25 typically indicates that the documents were to be copied to "the

12

1 Office" and to "Documentation".

2 Now, Mr. Heder, the question is: Just approximately, how many
3 reports of this nature have you seen? Just roughly?

4 A. If by reports, we're referring -- in this context --
5 specifically to reports that were in fact telegrams, a dozen or
6 two.

7 Q. Thank you. I'd like you please now to turn to file 5.

8 [09.33.40]

9 Q. Mr. Heder, file 5, probably indexes 1 and 2 together, or you
10 may be answering questions selectively on them. But, so that we
11 have the two documents on the records, first of all -- E3/724, a
12 "Revolutionary Youth", from July 1975; and, secondly, E3/731, a
13 "Revolutionary Flag" special issue, December 1975 to January
14 1976.

15 Mr. Heder, in respect of "Revolutionary Flags", the case file
16 shows that contact was going to be made with you to provide two
17 copies of "Revolutionary Flag". First question is: Did you
18 provide copies of "Revolutionary Flag" having received requests
19 from this Court?

20 MR. HEDER:

21 A. Yes. At least "Revolutionary Flag" or "Flags" and/or
22 "Revolutionary Youth". I don't recall specifically.

23 [09.35.06]

24 Q. Now, if we take them together and call them -- well,
25 "Revolutionary Flags and Youth" -- can I ask when was the first

13

1 time that you saw -- and can you explain whether it was an
2 original or a copy -- but roughly what year was the first time
3 that you saw an original or a copy of "Revolutionary Flag" or
4 "Revolutionary Youth"?

5 A. Certainly 1980. Maybe 1979. But the first time I saw a
6 collection of Flags and Youth -- and/or Youth -- wasn't until, if
7 I recall correctly, late 1980. And I'm almost entirely certain
8 that the ones that were asked for by the Court and which I've
9 provided to the Court came from that collection that I saw in
10 late 1980, and they were among duplicates of those particular
11 issues of Flags and Youth that were lying around the Tuol Sleng
12 Genocide Museum. That is to say, S-21 -- XS-21. They were given
13 to me by the archivists at the Tuol Sleng Genocide Museum.

14 [09.36.52]

15 Q. When you say "duplicates" -- and if you can look, please, at
16 tab 1 and tab 2 on the documents I've described. Dealing first of
17 all with tab 1, which was E3/724, we can see that the version we
18 have here on the front cover is in red, with two flags shown on
19 the front in red. Can you please confirm that?

20 A. Yes. And I'll clarify it, when I say "duplicates", I mean
21 duplicates of the original. In those days, there was almost no
22 photocopy capacity in Phnom Penh, so the archivists' decision was
23 they would give me copies of things of which -- they would give
24 me originals of publications of which there were also other
25 originals. So, I only got originals. I didn't get any

14

1 photocopies. And I only got originals for which they also had
2 additional originals.

3 Q. So when we see the -- if I can call it the physical state --
4 of each of the pages on this first document, and indeed the
5 second one, and the state of the magazine as shown by the spine;
6 these are the ones that you saw back then. Is that correct?

7 A. Yes. I believe there were others, but they came on to the case
8 file by different routes.

9 [09.38.43]

10 MR. PRESIDENT:

11 Victor Koppe, please take the floor. Thank you.

12 MR. KOPPE:

13 Thank you, Mr. President. Good morning, Your Honours. Good
14 morning, Counsel.

15 Do I understand correctly that the witness is now being shown a
16 colour copy of the "Revolutionary Flag"? And if yes, I think it
17 would be very helpful, especially, for our client in the holding
18 cell, to be able to see that same colour copy of the
19 "Revolutionary Flag" issue that is just being presented.

20 So, I would invite -- like to invite the prosecutor, if possible,
21 to give that colour copy.

22 [09.39.32]

23 BY MR. RAYNOR:

24 Yes, that certainly presents no problems. Can I explain, on the
25 case file, E3/742, is in red. But we're going to have copies of

15

1 both of these copied off and passed over to my learned friend.

2 Q. Mr. Heder, can we look, please, first at the first tab, which
3 is E3/724. And if I take you to the first page in after the
4 cover, if that makes sense, and we can see in the top of the page
5 there's some handwriting in English. It's down the margin of that
6 page, and also at the top. Can I check that you're at tab 1,
7 which is the "Revolutionary Flag" with two flags at the front? Or
8 let me give you the opportunity to go through this document. So,
9 this is the one with two "Revolutionary Flags" on the front.

10 Well, that's the "Revolutionary Youth" from July 1975. But
11 there's writing in English at various points in the document. Can
12 you help on whose annotations or markings those are? In other
13 words, whose handwriting?

14 MR. HEDER:

15 A. Yes. Actually, going back to the cover, the annotation that
16 says "775" on the right -- that's me -- trying to make a
17 chronological file of this particular source. The underlining in
18 red with the flash translations in red -- all of that is me. I
19 think maybe I eventually ran out of red ink, so yes the
20 annotations further along in the document -- the underlining --
21 I'm not sure the -- yes, the underlining, the squiggle along the
22 margin, and the English annotations -- all that's me.

23 [09.42.20]

24 Q. And the same question in respect of tab 2. So, this is the
25 "Revolutionary Flag". And again, if you look on the front page

16

1 there's some markings in red pen, and then as we go through the
2 document again there's some markings both on the pages themselves
3 and in the margins.

4 A. Yes. Again, the date -- the added date on the front cover and
5 the underlining squiggling and annotations along the side and
6 within the text are all me.

7 Q. Thank you. Can I just explain to everyone in Court that the
8 first document that I've been calling E3/724 -- the red colour,
9 we understand, is E169/4.1.1, and the second document I've been
10 referring to -- E3/731 -- the red version is E169/4/1.1.2?

11 Thank you, Mr. Heder. I'd like you now to turn to tab 3 within
12 the same file. So, this is file 5, tab 3.

13 [09.44.08]

14 MR. PRESIDENT:

15 Mr. Victor Koppe, you may proceed.

16 MR. KOPPE:

17 Briefly, Mr. President, just to come back to my early point
18 today. It's very difficult for me to catch up with the
19 questioning if I don't have the document on the screen. It's
20 especially difficult, of course, for my client to follow. So,
21 it's not necessarily the point that I -- or that we are seeing it
22 -- it's the point that on the screen, Nuon Chea, down from the
23 holding cell, is able to see a coloured version of the
24 "Revolutionary Flag".

25 You know -- the Trial Chamber knows, Mr. President, that it is an

17

1 issue of discussion. So, we're going very quickly now through a
2 document, and I have no idea, to be honest, which notes were
3 referred to just now. So I would like to ask the Prosecution to
4 slow down on this, and use this opportunity, I would suggest, to
5 be able to have everybody in the courtroom see what coloured
6 version of the "Revolutionary Flag" we're speaking about, and
7 whose notes were in fact shown to the witness.

8 [09.45.25]

9 BY MR. RAYNOR:

10 Mr. President, I agree with that suggestion. Can we please have
11 up on the screen the first of the documents I've been referring
12 to? That is, E169/4/1.1.1. I understand that's on the screen.

13 Q. Mr. Heder, to take this simply -- referencing an earlier
14 question and answer -- you said that you had written "7/75" on
15 the front page; is that correct?

16 MR. HEDER:

17 A. Yes.

18 Q. And if I can please ask for the very next page to come up on
19 the screen? There we have some English words written on the Khmer
20 text, in the margin and at the top of the page, and we had some
21 underlining as well. And your answer was that this was in your
22 handwriting; is that correct?

23 A. Yes.

24 [09.46.57]

25 Q. Can I ask please at this page -- so, this is the first page

18

1 after the front page -- is put up on the screen so that everyone
2 can see this page?

3 MR. KOPPE:

4 It's not being shown on the screen.

5 MR. RAYNOR:

6 Mr. President, can the AV Unit be instructed to put up on the
7 screen ERN page 00809793?

8 (A short pause)

9 [09.48.12]

10 MR. RAYNOR:

11 Mr. President, I understand this is being sorted out with AV
12 Unit. Can I give the ERN number again to help? This is a Khmer
13 page, and it is at ERN number 00809793.

14 MR. PRESIDENT:

15 AV booth is instructed to display this relevant page on the
16 screen, as per the request by the prosecutor.

17 [09.48.54]

18 BY MR. RAYNOR:

19 Mr. President, that is now up on the screen.

20 Q. Mr. Heder, is it on your screen? And, again, just to confirm,
21 there is some writing on the top of the page and in the margin in
22 red pen, and some underlining on the document itself. Can you
23 confirm that that was in your handwriting?

24 MR. HEDER:

25 A. Yes.

19

1 Q. I want to move to the second document, which is behind your
2 tab 2. This is document number E169/4/1.1.2. And I'd like the
3 first page to be shown. The Khmer ERN is 00809826.

4 (A short pause)

5 [09.50.46]

6 BY MR. RAYNOR:

7 Q. That is now up on the screen -- on the screen, rather.

8 Mr. Heder, on this document, in the top, there is written in pen
9 12/75-1/76. Is that in your handwriting?

10 MR. HEDER:

11 A. Yes.

12 Q. The next page I'd like the AV Unit to bring up is Khmer ERN
13 00809829. We now have that page, and again there is some writing
14 on the body of the document, some writing in the margin of that
15 document, and some underlining in the document itself. Can you
16 confirm if that is in your handwriting?

17 A. Yes, again.

18 Q. And, Mr. Heder, where are the hard copy originals of these
19 documents? Can you help?

20 A. My recollection is that I gave them to the Court.

21 [09.52.33]

22 Q. Yes. Thank you very much. Now, I'd like to go next, please, to
23 tab 3. The document at tab 3 is E3/25. It is a "Revolutionary
24 Flag" special issue, December 1976 to January 1977. I would like
25 this to be shown in Khmer, please, so can I give the Khmer ERN

20

1 first? Khmer, 00063039; English, 00491424; French, 00504049. It's
2 an extract, Mr. Heder. Can you confirm you have it with a page
3 with a heading of "attacking the enemy politically"? And this is
4 on page 31 in the English, and I've given the Khmer reference.

5 Can the AV Unit show, please, the page in Khmer, 00063039?

6 Mr. Heder, can you confirm for me, at least, that you've got the
7 English of this page with the heading "attacking the enemy
8 politically"? I've deliberately given you --

9 A. Yes.

10 [09.54.55

11 Q. -- a full version of the Khmer, because I know often they're
12 some words -- can need elaborating. But I'm going to read the
13 whole of this section:

14 "Attacking the enemy politically: Taking just one example,
15 fighting to seize the people. Throughout the world, they never
16 fought to seize the people. Our line was to fight to seize the
17 people: one, we took him; two, we took them; 100, we took them;
18 1,000, we took them; and so on until we fought for and seized the
19 people from Phnom Penh too. The line of drying up the people from
20 the enemy was very correct. This never happened in the world.
21 When the enemy has the people, the enemy has a military and an
22 economy. When the enemy has no people, the enemy has no military
23 and no economic strength. Our reasoning is correct. Thus, our
24 line is very correct. We fight to seize the people at every
25 location."

1 [09.56.14]

2 "An example: The fighting in Banam in 1973. We took everyone in
3 Banam town, expelling the ethnic Vietnamese, the ethnic Chinese,
4 the military, the police; we took everyone, drying up the people
5 from the enemy."

6 And at the end of the next -- sorry, halfway through the next
7 paragraph talks about the phrase: "Because we pulled out the
8 people. When all the people were pulled out, they gained no
9 additional forces."

10 And at the last sentence of that paragraph, "The decisive factor
11 in the victory: we pulled out the people."

12 "An example: We liberated Udong in 1974. We pulled out all the
13 people."

14 And, at the bottom of the extract: "This is a very important
15 strategic line: control the people and seize the people." Close
16 quote.

17 [09.57.30]

18 Mr. Heder, first of all, you've already testified about the
19 phrase "drying up the people from the enemy". But here we have
20 the phrases "seizing the people" and "pulling out the people".
21 Based on factual information, your interview, or other direct
22 factual sources, without speculating and without offering
23 opinion; is there other factual documentation talking of, or
24 interviews referencing the phrases "seizing the people" or
25 "pulling out the people"?

1 A. Yes.

2 Q. There is reference in this document to fighting in Banam town.

3 I don't know where this is. You said you arrived in September

4 1973. Again, based on factual sources, without offering an

5 opinion and without speculating; is there factual information

6 about drying up the people in Banam in 1973 from sources other

7 than the document we are now looking at?

8 A. Not that I'm immediately aware of, no. Not in my files, in

9 other words. Not in my personal files.

10 [09.59.10]

11 Q. In terms of my earlier question about factual information on

12 the phrase "seizing" or "pulling out the people", your answer was

13 yes. Can you tell us in what sorts of documents there is factual

14 information about seizing the people or pulling out the people?

15 A. May I deal with the translation issue, in this context?

16 Q. Yes.

17 A. The pulling out one is straightforward. That's the same Khmer

18 term as removal that we encountered in another context. So this

19 is an example of removal that doesn't necessarily mean arrest.

20 The term that's translated here as seizing -- I was sitting here

21 thinking -- I've been trying to figure out a way to translate

22 this word for 40 years, and still don't have the answer.

23 [10.00.16]

24 I can only give you an example that gives you the sense. This is

25 the verb that's used to describe, for example, two children

1 fighting over a piece of candy. And the one who gets the piece of
2 candy is the one who "seizes", to use this phrase, the candy. Or,
3 alternatively, as in this context, two armies or two political
4 administrations fighting for administrative control over people,
5 or of people -- a more neutral formulation. Or it could also be
6 used to refer to territory. And to anticipate, where it goes down
7 to the very last line in the bits that are boxed in the red in
8 the English -- that's the same seize the people -- I'm talking
9 about the sentence "this is a very important strategic line.
10 Control the people and seize the people". So that's the same
11 seize. I have a bit of a problem with the translation of the term
12 that's in Khmer into the English word "control". This is a word
13 that literally means -- the literal meaning of this word is
14 "grasp". It has a variety of meanings, depending on context. It
15 can mean, literally, grasp. That is, have in hand. It was also
16 used to mean to grasp in the intellectual sense. To have a grasp
17 on some idea, some notion, some line -- some party line. So, I
18 think control is a bit of an interpretation of the literal
19 meaning. So, it's a possible interpretation, but not a necessary
20 interpretation.

21 [10.02.08]

22 As for where else these phrases have appeared; they were
23 frequently used in the radio broadcasts of the time. I'm quite
24 certain they must appear in other Party documents of the time --
25 either '75-'79 or prior to '75 -- and they also constantly came

24

1 up when I was talking to people before April 1975 and since. So
2 these are very common terms. Commonly used, commonly appearing.
3 Q. Thank you. I'd like, next, to go to tab 4 behind the same
4 file. This is document number E3/1108. It is a report -- and I'm
5 going to read the heading of the report.

6 "Report

7 Subject: The meeting to celebrate the enemy's 23rd anniversary
8 meeting and Hu Youn's speech.

9 On the 30th of September 1974, a commission of the Communist
10 Party of Kampuchea's Central Committee gathered to celebrate the
11 anniversary of the 23-year-old history of resistance in Amleang
12 district. The event was held with the participation of many
13 people in the Khmer Rouge's framework, party members, and Khmer
14 People's National Liberation Armed Forces from different places,
15 who all dressed in black".

16 [10.04.01]

17 Again, from factual sources, not speculating or giving an
18 opinion, relying on interviews or other factual sources, can you
19 help, please, on what the "anniversary of the 23-year-old history
20 of resistance in Amleang district" refers to?

21 A. Well, that's '51 -- it would appear to be an allusion to the
22 fabricated date given for the -- given by the Communist Party of
23 Kampuchea for its foundation. At this time, at the time this
24 meeting was held. This was the date that was used by the
25 Communist Party of Kampuchea at the time to -- the date on which

1 it claimed that its Party was formed.

2 Q. So, 1974, less 23, takes us to which year for the formation? I
3 don't want to lead you.

4 A. Yes, it took me an embarrassingly long time to do those maths.
5 '51.

6 Q. Thank you. I'd like you to please to turn to page six on your
7 document. This is English ERN 00583824; the Khmer ERN is
8 00383763; and the French is 00788356; and there's this quote:
9 "Later on" -- and I should say this is referencing Hou Youn's
10 speech, so page six of your document at the bottom.

11 [10.06.27]

12 "Later on, the Organization implemented a plan according to the
13 slogan of the first phase, attack the countryside. Surround the
14 city which was the second phase. The implementation of the plan
15 achieved considerable success, hence, in 1971 the Organization
16 decided to oblige all of its military cadres to leave Vietnam's
17 military units by shifting to self-reliance."

18 My question, Mr. Heder is, based on factual information with the
19 usual caveat, is there other factual reference to a plan which
20 has two phases: phase one, attack the countryside; and phase two,
21 surround the city?

22 A. This kind of formulation is classic in Chinese communist
23 thought and Vietnamese communist thought. That said, immediately
24 off the top of my head, I don't recall a specific reference in
25 CPK materials to this, but I wouldn't be surprised if it was

1 there.

2 [10.08.00]

3 Q. All right, thank you. Tab 5, please; we're moving now to
4 document number E3/118. The English ERN is 00166994, the French
5 is 00845854 through 55, and the Khmer is 00846160 through 61, and
6 this is a FBIS document for April 1975.

7 The extract relates to the heading: "Khieu Samphan 21 April
8 Victory Message on Phnom Penh Radio, the Phnom Penh Domestic
9 Service in Cambodia on the 21st of April" and it's a
10 "congratulatory statement by the RGNUC deputy prime minister,
11 minister of national defence and CPNLAF commander-in-chief Khieu
12 Samphan to CPNLAF units and Cambodian people -- live or
13 recorded."

14 The third paragraph quoting the speech is in the following terms
15 and I quote:

16 "This is our nations and people's greatest historic victory. Our
17 entire nation, people and CPNLAF, as well as people throughout
18 the world and in all friendly countries far and near, warmly
19 welcome this great victory. It has opened the most brilliant and
20 righteous path which led the Cambodian people and the CPNLAF in
21 waging the powerful people's war to fight the enemy on every
22 field -- military, political, economic and in its efforts to
23 drain the population from controlled areas -- successively
24 smashing all enemy manoeuvres, relentlessly attacking, and
25 draining the enemy of its military, political, economic and

27

1 financial strength, food and rice until it reached a point from
2 which it could not recover. Finally, the enemy died in agony."

3 [10.10.48]

4 Mr. Heder the first question, we know that you left Phnom Penh
5 before this date of the 21st of April 1975, but did you hear this
6 broadcast around about this time or when is the first time that
7 you saw factual documentation referencing this broadcast by Khieu
8 Samphan?

9 A. This broadcast wouldn't have been easily audible to me where I
10 was on the 21st of April 1975. But the same process of
11 distribution of FBIS materials that I described previously is
12 also applicable to the U.S. Embassy in Bangkok. They received as
13 a matter of course, all the same blue teletype translations by
14 FBIS of such broadcast and I did, having done - having followed
15 those blue teletypes in Phnom Penh, I also followed them in
16 Bangkok. So I think it's highly likely I saw this in the blue
17 teletype version in Bangkok in April 1975.

18 [10.12.13]

19 Q. I was going to cover this later, but I think it's convenient
20 to cover it now.

21 The archive rat in Phnom Penh continues to be the archive rat in
22 Bangkok; is that correct?

23 A. Yes.

24 Q. Explain to us -- not a life story -- can you explain to us
25 where you went, I think you said you left Phnom Penh on the 11th

1 of April. Is that correct or was it another date?

2 A. Yes.

3 Q. Can you take us from the 11th of April 1975, let's say to the
4 end of 1975; where were you and what sort of interest did you
5 continue to have in what was going on in Democratic Kampuchea and
6 how did you access sources of information during that period?

7 [10.13.10]

8 A. I flew out on the 11th of April 1975 in the morning, with a
9 plan to return to Phnom Penh; a plan which turned out not to be
10 possible to implement. So I was, as it were, stranded in Bangkok,
11 went from Bangkok to the Thai-Cambodian border, probably arrived
12 on the Thai-Cambodian border on or about the 17th because by the
13 15th of April it was clear that it wasn't going to be possible to
14 fly back into Phnom Penh. Did some interviewing of people coming
15 out to the Thai side until sometime in May, if I recall
16 correctly, at which point I went to Laos and did reporting from
17 Laos for a couple of months and then from Laos, I went to Taiwan.
18 Towards the middle of the year, latter half of 1975, spent a
19 couple of months reporting from Taiwan and also doing some
20 Chinese study, and from there I went back to Cornell where I had
21 done my B.A. to pursue a higher level degree in what Cornell
22 called, Government; which is a kind of political science course.
23 That would have been I would arrive in Ithaca in Cornell in
24 September '75.

25 Q. If I call that the back to Cornell period now, September '75

1 onwards, you're at Cornell. Can you just explain and move us into
2 '76 or '77 or whatever years we're in, but how were you accessing
3 information about Democratic Kampuchea; academic articles,
4 newspaper reporting, radio. Can you give us some flavour as to
5 how you continue your contact at Cornell with issues Cambodian?

6 [10.15.38]

7 A. I mean the preface to that, the answer to that question is
8 with great difficulty. It was possible to access the yellow daily
9 report version of FBIS which was deposited in the Cornell
10 library. The Cornell library in those days also ran a very
11 comprehensive newspaper clipping service focused on Asia,
12 Southeast Asia in particular at a special part of the library
13 that did only that. So I was able to follow the media reports, I
14 had some contact with journalist friends who were reporting on
15 Cambodia out of Thailand, the American Embassy in Thailand.

16 [10.16.37]

17 I also had some contact with former or current U.S. government
18 officials either in Thailand or in Washington who were involved
19 in Cambodia affairs. So there was some information coming from
20 them and then, I talked at length to the delegation of American
21 communist party (Marxist-Leninist) journalists who went to
22 Cambodia in, I believe, the middle of '78. I was in contact with
23 Elizabeth Becker and Richard Dudman who went to Cambodia at the
24 end of '78 and also, in late '78, I had my first direct contact
25 with Democratic Kampuchea officials including Ieng Sary who came

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1 to the United States, came to New York City to attend a UN
2 General Assembly meeting I think it was. He was accompanied by a
3 number of people from his ministry, including In Lorn alias Nat,
4 with whom I joked about the fact that he had shelled my home in
5 1974. And part of the purpose of those meetings or encounters or
6 discussions was to arrange for me and a number of others,
7 journalists, scholars to go to Democratic Kampuchea and that trip
8 was scheduled to occur in early 1979.

9 However, the delegation got to Beijing at a point after which the
10 large scale Vietnamese invasion had already been launched. We
11 discussed the situation with the then Democratic Kampuchea
12 Ambassador in Beijing about whom I spoke to you previously, Pech
13 Chheang alias Thau, and he explained to us that the Vietnamese
14 were attempting to take Phnom Penh and that we would have to wait
15 a little while until Democratic Kampuchea threw the Vietnamese
16 out of Cambodia.

17 [10.19.18]

18 That little while turned out to be -- basically never happened in
19 some ways. They didn't throw them out, so from there, from
20 Beijing, I went to Bangkok; from Bangkok back to the
21 Thai-Cambodian border and we've already briefly discussed my
22 rather foolish little trips into Democratic Kampuchea at the very
23 tail end and just after the tail of the regime in January 1979.

24 Q. In that answer, you mentioned In Lorn alias Nat. Who was he,
25 what was his job, what happened to him?

1 A. He was a leading cadre of one of the divisions that operated
2 out of the Special Zone; that was the capacity in which he or his
3 forces shelled the southwest part of Phnom Penh in '74.

4 [10.20.27]

5 He then came to Phnom Penh and was the original chairman of S-21.
6 After that, he took up another post in the general staff under
7 Son Sen and then in the latter part of 1978, he was transferred
8 along with a number of other general staff, high ranking cadre,
9 to the Ministry of Foreign Affairs and, like most, if not all of
10 them, was purged since S-21 at the very end of '78 or very
11 beginning of '79.

12 Q. I would like you to look at file 5; I'd like you to go though,
13 to the index to file 5 that is at the front and you'll see there
14 at items 6 through to 11, there is reference to a number of
15 "Nouvelles de Cambodge Magazines" or publications. And I wonder
16 first of all please, if I could take you to number 6, so tab 6.
17 This is document number E3/1238 and Mr. Heder, can you confirm
18 that you've got this in English and French? In terms of the
19 French version, we have the title: "Nouvelle de Cambodge", we're
20 obviously back in this document E3/1238 to late March in 1974,
21 going into April. And on the front page in the English please,
22 can I take you to; this is English ERN 00278739. And it's a
23 message delivered on the 27th of March from Norodom Sihanouk of
24 congratulations to Khieu Samphan on the official friendly visit
25 to Vietnam. And the text simply reads:

32

1 "I'm extremely happy to learn that you have arrived in good
2 health in the glorious. and paternal Democratic Republic of
3 Vietnam and to deliver to you and their Excellency's, Ieng Sary,
4 Khieu Thirith and my heartfelt wishes for a complete success in
5 your patriotic mission, your current and future visits to our
6 friends Vietnam, China and Korea."

7 [10.23.13]

8 Now, Mr. Heder, I want to ask you about at the time now, so this
9 is back at the time in late March/early April. Can you remember
10 whether from "Nouvelles de Cambodge" or other sources, this
11 delegation led by Khieu Samphan and Ieng Sary going on an
12 official visit to a number of countries?

13 A. Yes, from the blue teletype FBIS file in the U.S. Embassy in
14 Phnom Penh.

15 Q. I'm not going to go through every document because we don't
16 have time, but can I take you please to index -- sorry to tab 9;
17 so the same folder, but tab 9.

18 [10.24.06]

19 Tab 9 references in document number E3/114. The page I'd like to
20 go to is your page, page 7 in English. That then gives English
21 ERN 00280556; French, 00000093 through 94; and Khmer, 00662258.
22 There is an extract which reads as follows, it's under a heading:
23 "The Phnom Penh Traitors are in Total Disarray and are cornered
24 on the Defensive on all Fronts..." There's an extract and I
25 quote:

1 "But when they were exposed in Phnom Penh, FAPLNK launched on an
2 assault on the 14th of March against positions on the Koh Dach
3 islands and Okhna Tei, on the Mekong River six kilometres from
4 the Royal Palace (Phnom Penh). In one day and one night, they
5 liberated the islands, wiped out an enemy battalion and helped
6 50,000 people to cross over to the liberated zone."

7 Mr. Heder, my question is at the time, back around the 14th of
8 March 1974, can you remember an incidence at Koh Dach islands and
9 Okhna Tei on the Mekong River; whether from this source or other
10 factual sources?

11 A. No, I don't remember this particular incident.

12 [10.26.38]

13 Q. On the same page we continue: "A day later, on March the 15th,
14 FAPLNK again launched a swift and surprise attack on the city of
15 Udong. On the 18th of March", it says 1874, "Udong was totally
16 liberated, an enemy division was totally wiped out and 30,000
17 inhabitants of that own and surrounding areas successfully
18 crossed over to the liberated zone. It is only after FAPLNK had
19 totally destroyed the military positions, the administrative
20 power, detention camps, the pacification centres at Udong that
21 the traitors rushed reinforcement troops to recapture the town of
22 Udong, but they too were totally trounced and decimated in great
23 numbers."

24 [10.27.40]

25 The first question relates to what size, if you knew at the time,

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1 of Khmer Republic troops were present in Udong prior to the Khmer
2 Rouge attack; this suggests an enemy division was wiped out. Was
3 that in accordance with direct factual information you had at the
4 time or that you read shortly afterwards?

5 A. I can't say that I knew the FAPLNK, that is Khmer Republic
6 order of battle for that particular location. I can say that when
7 comparing these radio broadcasts or these transmissions -- some
8 of these are teletype transmissions, not radio broadcasts -- with
9 what either I saw on the ground or I was told by others who were
10 on the ground, military attaches and the like, the numbers that
11 were -- some of the events that are described in these radio
12 broadcasts or teletype transmissions either never occurred or
13 include highly inflated numbers.

14 Q. The latter part of the quote referred to "Detention camps".
15 Now, you probably don't remember, but on day one when we were
16 going through Cambodian Communism, there was a footnote, I think
17 83, that referred to a U.S. CIA Report about a detention camp
18 near Siem Reap. Now, can you help us again -- based on factual
19 information, without speculating and without giving opinion
20 evidence -- can you say from factual sources what the prevalence
21 was, if any, of detention camps prior to 1975?

22 A. The Khmer Republic continued to operate prisons and police
23 lockups in Phnom Penh and other provincial towns. There were also
24 occasionally ad hoc military detention facilities in places
25 outside of Phnom Penh and provincial towns, but I think my

35

1 recollection is the latter were relatively rare.

2 [10.30.37]

3 Q. Thank you. Tab 10 please, within the same file.

4 MR. PRESIDENT:

5 Mr. Prosecutor, the time is now appropriate for adjournment. The
6 Chamber shall adjourn now and resume at 11.00.

7 And the Chamber wishes to advise the prosecutor that upon the
8 request for additional time and the Chamber view that the
9 question that being put by the prosecutor is relevant. Therefore,
10 the Chamber grants the request of the prosecutor. The prosecutor
11 will have the whole morning this morning to put the question to
12 the witness.

13 And as for the Lead Co-Lawyer for the civil party, the Chamber
14 will also grant one hour and 30 minutes to put the question to
15 the witness.

16 [10.31.36]

17 Court officer is instructed to assist the witness during the
18 break and have him returned to this courtroom at 11.00 -- five to
19 11.00.

20 (Court recesses from 1031H to 1052H)

21 MR. PRESIDENT:

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

23 Once again, the floor is given to the Prosecution to continue
24 putting questions to the witness, Steve Heder. You may proceed.

25 MR. RAYNOR:

1 Thank you, Mr. President.

2 BY MR. RAYNOR:

3 Q. Mr. Heder, file 5, Tab 10 should be, again, a "Nouvelles du
4 Cambodge" document. It should have 12.7 in the top right that
5 you're confirming. This is document number E3/167. It is a
6 document from the "Nouvelles du Cambodge" -- Kampuchea
7 Information Agency -- and it deals with a speech given by Khieu
8 Samphan in North Korea. Can I take you please, Mr. Heder, to the
9 final page in your pack, which should be a page with 00280591 in
10 the top right -- top left-hand corner; so the final page in
11 English.

12 [10.53.32]

13 This is, I repeat, English ERN 0028 -- sorry. Forgive me. I've
14 got the wrong page. Mr. Heder, forgive me. It's page -- well, I
15 have to use the ERNs, it's page 00280586. This is Khmer,
16 00596141; and French, S00000122. And in reference to the speech
17 there is the extract:

18 "On the contrary, the Cambodian People's National Liberation
19 Armed Forces attacked the enemy forcefully and are now solidly
20 implanted at the very gates of Phnom Penh. And Phnom Penh itself,
21 the last hideout of the traitors, has become a burning
22 battlefield under the increased pressure of our People's National
23 Liberation Armed Forces. On the 18th of March, our People's
24 National Liberation Armed Forces liberated another city, Udong,
25 by annihilating all the puppet soldiers there along with their

1 reinforcements; in other words over 5,000 enemies were
2 eliminated, 1,500 of whom were captured."

3 [10.55.18]

4 Now, Mr. Heder, at the time were you aware of this speech about
5 Udong, or other speeches about Udong, or other references being
6 made to Udong by anybody in the leadership after the events in
7 Udong on the 18th of March 1974?

8 MR. HEDER:

9 A. I'm sure I would have read this in the blue teletype FBIS
10 version, in the Phnom Penh Embassy at the time.

11 Q. Thank you. I'd like to move on to another subject which takes
12 us please to tab 14. You have behind that tab, extracts from
13 document number E3/1815, which is the book by Ben Kiernan, "How
14 Pol Pot Came to Power" and we referred to extracts already from
15 this book. This is the epilogue to Mr. Kiernan's book, and at the
16 start of the epilogue he states:

17 "In June 1974, according to Pol Pot, the CPK Central Committee
18 met and decided to launch the decisive offensive to liberate
19 Phnom Penh and the whole country."

20 [10.56.56]

21 Reference has been made to footnote 1, and footnote 1 references
22 a document in French which relates to the anniversary of the CPK
23 and the date given for the pronouncement by Pol Pot is the 27th
24 of September 1977.

25 Mr. Heder, can I ask this, were you -- have you either seen the

38

1 original document, or are aware of the reference by Pol Pot to a
2 Central Committee meeting in June 1974?

3 A. Yes. With the caveat that the archive rat, and the translator
4 in me, would prefer to see the Khmer original to see what term
5 was actually used in Khmer. Particularly since the phrase
6 "Central Committee" is not in quotes, so it could be Ben
7 Kiernan's gloss.

8 [10.58.09]

9 Q. I don't have it available in Khmer, but the next document that
10 we're going to is available in Khmer. Can I take you please, to
11 tab 15? I hope you have an English version and a Khmer version.
12 But can you please let me know if you don't have a Khmer version
13 of E3/11?

14 Mr. Heder, it's going to come through in a few minutes. I'm going
15 to read an extract in English and then I hope by the time we've
16 done that, that the Khmer is going to be available for your
17 consideration. I'm going to it now, but Mr. Heder, can you
18 confirm that you have E3/11 references, a "Revolutionary Flag"
19 special issue, September 1977. Is that the document that you
20 have? I can see you confirming. Can I take you in the English
21 first of all, to page 36? The Khmer page for this, which I'd like
22 to come up on the screen please, if possible, is 00063162 through
23 63; the French is 00492836, and this is page 36, Mr. Heder, in
24 the English version.

25 [11.00.16]

1 The extract reads as follows:

2 "At the beginning we concentrated on attacking the enemy's weak
3 positions in the countryside with combined military attacks by
4 regular and guerrilla units, with mass demonstrations to strike
5 the enemy and take power in the villages and communes. In this
6 way, we liberated and expanded in the countryside every single
7 day and isolated the enemy, encircling them a few large
8 population centres, at the same time that we tied down enemy
9 forces in scattered positions, where the communications and
10 supplies became more and more difficult for them."

11 Mr. Heder, I'm handing over now the Khmer version. I hope it's
12 also on the screen, but I hope that with both documents it will
13 help.

14 Mr. President, can I hand over the Khmer version of this
15 document?

16 [11.01.20]

17 MR. PRESIDENT:

18 Yes, you can.

19 Court Officer, could you deliver the document from the prosecutor
20 for the witness examination?

21 BY MR. RAYNOR:

22 Q. Mr. Heder, I'm continuing with the extract, still on page 36.

23 There's then a summation of what happened from 1970 to 1974, and
24 then this -- and I quote:

25 "When the lines of communication on the ground and the river were

1 cut in 1974, the American imperialists and the clique of the
2 traitor, Lon Nol, found themselves extremely isolated in Phnom
3 Penh and a few provincial capitals. It was during this situation
4 when our party's central committee, in the course of its June
5 1974 conference resolved to mount the decisive offensive to
6 liberate Phnom Penh and the entire country."

7 [11.02.37]

8 Well, I'll read on in fact, because it makes more sense. I'll
9 read on.

10 "We dared to mount this decisive offensive because we had fully
11 grasped both the enemy's situation and our own. The plan of our
12 offensive was as follows, to attack Phnom Penh, cut off the lower
13 Mekong and attack the provincial capitals still under the
14 temporary control of the enemy. The control of the lower Mekong
15 was the key factor in the total liberation of Phnom Penh; the
16 attacks on other towns being complementary operations. Carrying
17 out the decision of the party's central committee, during the
18 rainy season of the year 1974, we actively prepared our forces,
19 politically, ideologically, and organizationally, and in terms of
20 the combat line of the battlefield. Our entire revolutionary army
21 audaciously fulfilled the party's mission of making the decisive
22 attack."

23 Mr. Heder, without speculating, without giving opinion evidence,
24 relying on factual sources, is there factual information aside
25 from the speech of Pol Pot, which you would like to see the

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1 Khmer? So aside from the speech of Pol Pot, or aside from this
2 "Revolutionary Flag", on the subject of the Central Committee of
3 the CPK meeting in a June 1974 conference and resolving to mount
4 an offensive to liberate Phnom Penh?

5 [11.04.30]

6 MR. HEDER:

7 A. This is not a very satisfactory answer, but I believe so, yes.
8 I can't, off the top of my head, specify where. On the issue of
9 translation, it's Party Centre throughout, and not literally
10 Party Central Committee. So make of that what you will.

11 Q. So that we're clear, if we take the sentence, "it was during
12 this situation when our Party's Central Committee in the course
13 of its conference..." Are we to, in effect, on your evidence,
14 insert "When our Party Centre Committee..." or can you just help
15 us on the sentence that I have given to you, "It was during this
16 situation when our Party Central Committee in the course of its
17 June 1974 conference."

18 A. It's simply an ambiguously Party Centre, I think throughout. I
19 haven't checked every last reference, but I think it's
20 throughout.

21 This particular one sentence -

22 [11.06.03]

23 Q. Mr. Heder, can you just say the term "Party Centre" in Khmer
24 so that we have that on record?

25 A. This is "Mocchim pak". And the phrase that follows,

1 "conference", is, in my view, correctly translated.

2 Q. So we're clear: "Resolve to mount the decisive offensive to
3 liberate Phnom Penh and the entire country."

4 A. "When our Party Centre in the course of its June 1974
5 conference."

6 Q. Can I ask the question this way to see if it helps?

7 Are you aware of the next Party Centre conference after June
8 1974?

9 A. "Conference" is a bit of a slippery word. It doesn't say
10 "plenum", which means a meeting of all of the members; it says
11 "conference". And so we have both Party Centre, which is somewhat
12 ambiguous, and conference, which can refer to a meeting of more
13 than the usual membership or less than the usual membership.
14 To my knowledge, the next such conference was in May 1975, but
15 there could have been one in between.

16 [11.07.59]

17 Q. I just want you to just pause a moment and just think because
18 you've said in respect to other factual references about the June
19 1974 -- let's call it conference -- Party Centre conference --
20 whatever helps. But if you pause a moment or even think about
21 this over the next 20 minutes whilst I'm asking other questions,
22 are you able to assist us at all on what other sources go to
23 Party Centre conference June '74?

24 I'm going to ask it again of you at the end of your testimony.

25 A. Yes, I'll think.

1 [11.08.55]

2 Q. Yes. You said in your evidence earlier that it was in January
3 1976 at a certain meeting when Khieu Samphan became an alternate
4 member -- a full member, sorry. Can you just confirm that again,
5 please? January 1976.

6 A. Yes, there's a party congress in January 1976 at which, to my
7 understanding and to my knowledge, he was elevated from alternate
8 to full membership of the Central Committee.

9 Q. Next, please, tab 16, still in file 5. This is document number
10 E3/687, is a "New York Times" report from the 9th of July 1982.

11 And it's talking about three exiled Cambodian leaders' reference
12 to Prince Norodom Sihanouk, Son Sen and Khieu Samphan.

13 On the second page that you have, Mr. Heder, which is English
14 page 00122280; and Khmer, 00651187; and in the final page of the
15 French, in reference to Khieu Samphan, this article states:

16 "And he acknowledged that millions of Cambodians had been sent
17 out of Phnom Penh and into the countryside as a result of a
18 collective decision. Had he joined in the decision? Mr. Khieu
19 Samphan chuckled dryly and replied in French, 'Yes, evidently'."

20 Mr. Heder, relying on direct factual information without
21 expressing an opinion or speculating, is there any other factual
22 information as to Mr. Khieu Samphan's involvement in a collective
23 decision to send people out of Phnom Penh and into the
24 countryside?

25 [11.11.28]

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1 A. Not to my recollection. Not in my files, unless there's
2 something mentioned in the interview or the discussion from 2005.

3 Q. Thank you. Can you move, please, to index number 18? This is a
4 collection of Amnesty International material. Can I ask you to
5 disregard the first document you have, which is dated the 18th of
6 February 1976 and has written in the top corner D84/2.3? Please
7 go beyond that document.

8 We then arrive at a document which is, in fact, E3 --

9 MR. PRESIDENT:

10 Prosecutor, could you repeat the date and the document number
11 again?

12 [11.12.30]

13 BY MR. RAYNOR:

14 Q. The document number that I'm not referring to is D84/2.3 dated
15 the 18th of February 1976. The next document is E3/3864. This is
16 a letter from Amnesty International to Khieu Samphan dated the
17 38th of February, 1977. The subject matter is in relation to
18 people who have been handed -- in Thailand and handed back to the
19 Democratic Kampuchea authorities.

20 And I also then want to move on to the next document in your
21 pack, Mr. Heder, which is the final page in your tab, which is
22 document number E3/3311. This is a letter from Amnesty
23 International. And if I can quote, it's dated the 8th of May
24 1977. The heading is as follows -- this is, in fact, a press
25 release. The heading is:

1 "Amnesty International Concerned at Democratic Kampuchean
2 Government's Lack of Response to Appeals".

3 [11.14.16]

4 "Amnesty International today, the 8th of May, 1977, expressed
5 concern at the lack of response by the government of Democratic
6 Kampuchea to its past appeals and inquiries. The International
7 human rights organization said that in February this year, it had
8 appealed to President Khieu Samphan to look into the fate of 26
9 Cambodian citizens forcibly returned to Cambodia by Thailand in
10 November 1976. The 26 persons, mainly farmers, but including an
11 11 year old child, were later reported to have been executed
12 shortly after their return to Cambodia. The appeal to President
13 Khieu Samphan was contained in a letter which also referred to
14 reports alleging summary executions and maltreatment of civilians
15 by local authorities in some areas of Cambodia. As with previous
16 inquiries made by Amnesty International to the government of
17 Democratic Kampuchea, the letter has remained unanswered."

18 Mr. Heder, relying on factual sources, no opinion, no
19 speculation, is there factual evidence contained in documents
20 showing a response, whether formal or informal, from Khieu
21 Samphan or the DK leadership by way of a direct and unambiguous
22 response to the concerns raised in these documents by Amnesty
23 International?

24 [11.16.19]

25 MR. HEDER:

1 A. I think I can answer positively not because these Amnesty
2 International files were reviewed by me in the mid -- mid to late
3 1980s, and there was no such -- there was no evidence of any such
4 response in those files.

5 Q. You said earlier in your testimony -- I think you said late
6 1978 when you met Ieng Sary and Nat at a UN General Assembly in
7 New York, I take it.

8 During this period, did Ieng Sary, Nat or anyone else there who
9 had any connection whatsoever with Democratic Kampuchea ever say
10 to you that responses had been made to refugee complaints,
11 Amnesty International reports or any other documents indicating
12 mass atrocities in Democratic Kampuchea?

13 A. I don't recall anything of the sort having been said to me.
14 There was a document, if I recall correctly, that was -- a public
15 document that was addressed to the UN by Ieng Sary, but nothing
16 was said directly or personally to me.

17 [11.17.52]

18 Q. And do you recall what that document said, the one addressed
19 to the UN by Ieng Sary in the context of the complaints being
20 genuine, part of propaganda? You know, what was the -- if you
21 like, the formal response to the nature of the complaints that
22 were being made?

23 A. My recollection is it, in short, said that this was propaganda
24 and false.

25 Q. Next -- I'm sorry to have to take your brain to different

1 years, but it's the way criminal evidence goes. You said that you
2 arrived in Phnom Penh in, I think you said, 1973. I can't
3 remember if the year (sic) was May or September. September. And
4 you then were present up to the 11th of April, 1975 when you
5 departed to Bangkok.

6 I'd like, please, to ask some questions about the humanitarian
7 situation in Phnom Penh.

8 Now, can I ask you, first of all, to paint a picture, perhaps, in
9 1974 in terms of the population of Phnom Penh? Did the population
10 of Phnom Penh, when you were present, increase in 1974? Can you
11 help us on this subject?

12 A. My recollection is that it generally increased throughout the
13 entire period that I was there.

14 [11.19.30]

15 Q. You spoke about the shelling. You said that in the dry season
16 of '74 through to '75 the shelling recommenced and that it was
17 continuous from January through to April 1975. Can you confirm
18 that, please?

19 A. Yes.

20 Q. And you gave a date of the 15th of August 1973 for the -- not
21 just notional but actual cessation of U.S. bombing. And then when
22 we're dealing with dry season '73-'74 and dry season '74-'75,
23 such bombardments as there were, and you've described this
24 already, were coming in to you and you having to build your
25 bunker. Is that correct?

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1 A. Yes, my recollection is that it was the dry season '74 -- that
2 began in late '74, latter part of '74 and ran into early '75. If
3 it hadn't been the dry season, that place would have flooded
4 because of the -- it was in a -- in a swampy area.

5 [11.21.08]

6 Q. I want to just try and get into 1975. Now, we know from
7 interviews that you had -- and we've covered this already -- that
8 the offensive to attack Phnom Penh began at 1.00 a.m. on the 1st
9 of January 1975.

10 Now, from your position resident in Phnom Penh from the 1st of
11 January 1975, can you explain, was there a period when you were
12 aware that things were hotting up, fighting intensifying,
13 bombardments becoming more regular?

14 [11.21.55]

15 A. In that latter part of '74, notwithstanding the artillery fire
16 coming from the Southwest, there was generally a kind of lull on
17 the battlefield and some in the Khmer Republic took that as a
18 sign that the Khmer Rouge, for lack of a better term, were
19 somehow militarily weakened. But the Japanese military attaché,
20 who I mentioned the other day, and other foreign Embassy military
21 sources told me at the time that this was, in fact, an indication
22 that forces were being concentrated for a large-scale attack on
23 Phnom Penh which, indeed, began that New Year's Eve/New Year's
24 Day, 31 December '74/1 January '75. And I did my bit as a
25 journalist on the morning of the 1st of January by going to the

1 opposite side of the Mekong facing Phnom Penh where the Khmer
2 Republic had forces and forces which were driven into the -- into
3 the river by the attacking Khmer Rouge forces.

4 After that, my -- I would try on a daily basis to tour the
5 shrinking defence perimeter around Phnom Penh, which I actually
6 did on the morning of the 11th of April, the morning that I left.
7 Earlier in the morning, I toured one part of that perimeter and
8 had some discussions with some FAPLNC troops, who were horrified
9 when I told them that I had been given word that the U.S. Embassy
10 was going to evacuate all of its personnel because they knew that
11 meant that the U.S. Embassy -- or they understood that to mean
12 that the U.S. Embassy had concluded that the situation was
13 militarily hopeless and that, therefore, their situation was
14 militarily hopeless.

15 [11.24.13]

16 As for your question about the situation inside Phnom Penh, as I
17 said before, it became increasingly chaotic, increasingly fraught
18 politically and I -- I don't think I previously mentioned that I
19 had -- maybe I did allude to it. I had fairly good contact with
20 the students and the workers, and I was interested in the issue
21 of what was going to happen when the Khmer Rouge came in to Phnom
22 Penh.

23 There was one particular university student leader who, if I
24 recall correctly, was named Kun Thon Thanarak, called himself
25 Penh alias Peng, and I put that question to him. He was a leader

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1 of the -- of the university student. I put that question to him
2 maybe on the 8th or the 9th of April, "What was -- what was the
3 revolution going to do about the administration of Phnom Penh
4 given the situation in the town?"

5 [11.25.24]

6 And he said to me, "You don't need to worry about that. We'll all
7 be out farming the fields."

8 And I didn't get it. I didn't realize what I was being told. It
9 was only after Phnom Penh was evacuated that I realized that I'd
10 made an enormous journalistic error by not -- by not
11 understanding I'd been given a scoop.

12 So the Phnom Penh party underground, or at least parts of it,
13 were aware that this plan was in place.

14 Q. And were you aware of this student leader's connection with
15 the underground from other sources or from previous reports or
16 contacts with him or others like him?

17 A. It was said by some people in the intelligence -- Embassy
18 intelligence community that he was part of the Communist
19 underground. I don't know whether I can say this, but he later
20 shows up in S-21 records as having been arrested some time in
21 '77, so appears, implicitly, at least, as part of the apparatus
22 in that context.

23 [11.26.51]

24 Q. I want to ask about the Mekong River. Now, what was -- I mean
25 historically. What I mean is '73 when you're there, '74 when

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1 you're there, moving into '75 when you're there.

2 What was the supply position in terms of the Mekong River and
3 supplies coming from Saigon or elsewhere?

4 So to explain, what part did the Mekong River play in ensuring
5 that Phnom Penh was properly supplied?

6 MR. PRESIDENT:

7 Witness, please wait.

8 Victor Koppe, please proceed.

9 [11.27.40]

10 MR. KOPPE:

11 Thank you, Mr. President. I object to this question. This is
12 inviting an opinion from the witness.

13 BY MR. RAYNOR:

14 Mr. President, I didn't give my usual introduction. Can I give
15 the usual introduction to the question and then I hope there
16 won't be objection?

17 Q. Without expressing an opinion, without speculating, relying on
18 direct factual information that either you saw or came to you,
19 can you assist on the Mekong River and its importance, if any, to
20 supply?

21 MR. HEDER:

22 A. It was a matter -- this issue was a matter for some discussion
23 between me and various military attachés, and it was clear to
24 them and to me from them that the supply of food and the supply
25 of ammunition up the Mekong from Southern Vietnam to Phnom Penh

1 was crucial to the military and economic situation, survival, if
2 you will, of Phnom Penh.

3 [11.29.02]

4 And I remember quite clearly having had a conversation with one
5 particular military attaché -- I believe it was an American, not
6 the Japanese. And I asked him what could happen that might result
7 in the Mekong being cut. And he said mines. And within a couple
8 of weeks, that was, indeed, the way in which the river was
9 effectively blocked.

10 Mines were laid across the river and then troops were stationed
11 so that when boats coming up the river attempted to cross the
12 mines that were strung across the river, they would be hit by
13 gunfire, particularly recoilless rifle fire, from the banks.

14 [11.29.47]

15 Q. Who was laying the mines? Did you ever see the mines or the
16 result of collision with a mine at this time?

17 A. My recollection is that I was told that the mines were being
18 primarily laid by -- this is by the military attachés -- by East
19 Zone and Special Zone divisions. And I don't recall having gone
20 down there myself, so I'm not sure I can speak to that directly,
21 although subsequent to April '75 and up through -- in subsequent,
22 if you will, again, Khmer Rouge, for lack of a better term,
23 propaganda there were photographs published of ships that had
24 been -- had attempted to run this mine blockade and had been hit
25 by recoilless rifle or other fire from the banks.

1 Q. Did the blockade by the Khmer Rouge have an effect on the
2 amount of supplies coming in to Phnom Penh?

3 A. Yes, both were greatly reduced. The only alternative was to
4 bring in things by air, and the quantity of food and ammunition
5 that could be brought in by air was less than could be brought up
6 the river.

7 Q. Relying on direct factual information, without speculating,
8 without giving an opinion, can you give factual information as to
9 the -- the nature of air supply and whether that remained
10 constant or was ever compromised in any way?

11 [11.31.54]

12 A. I'm a bit hazy on that. My memory is that the so-called air
13 bridge ended some time -- and I'm talking now days or weeks, not
14 months -- before the 11th of April. But I'm not absolutely sure
15 about that.

16 Q. In terms of hospitals in the period -- I mean, let's say late
17 '74, perhaps, through to April '75, did you visit any hospitals?
18 Do you have direct factual information without speculating or
19 giving an opinion on the extent of civilian casualties in
20 hospitals? What I mean civilian casualties being treated in
21 hospitals in or around Phnom Penh.

22 A. No, I didn't do that.

23 [11.33.04]

24 Q. You had dealt in your previous testimony with specific
25 examples of executions or people telling you about executions or

1 you seeing bodies in Udong in March 1974 and Kampong Cham also in
2 this period.

3 My question is, from the time you arrived in '73 up to the 11th
4 of April 1975, without speculating, without giving opinion
5 evidence, relying on direct factual sources, whether from your
6 interviews or otherwise, were there reports of the mass execution
7 of civilians by Khmer Rouge forces?

8 A. There were reports, stories, but it was always very difficult
9 to confirm any of that because, of course, it was impossible to
10 go to the sites. And again, I think the best work was done by Don
11 Ronk previously mentioned.

12 Q. Just so that I'm clear, did -- were you interviewing refugees
13 who were coming into Phnom Penh, say, late '74 up to April '75?

14 A. I did some of that, but I was trying harder, not with great
15 success, to make contact with and interview people who might have
16 connections to the -- to the party, to the Communist party.

17 Q. Relying on factual information, without speculating or giving
18 an opinion, was there any factual documentation showing that the
19 Khmer Rouge had liaised with or requested from international or
20 domestic relief agencies assistance of any kind?

21 A. Not to my -- not to my knowledge, no.

22 [11.35.51]

23 Q. Some of the refugees that you did speak to or that others were
24 speaking to, what were the refugees fleeing from?

25 A. Fighting, in general terms, including fleeing and -- fleeing

1 the advance of Khmer Rouge troops; fleeing the threat or the
2 reality of shelling and bombing by the Khmer Republic armed
3 forces. And I must say, even though I was given that story that I
4 -- given to do that story that I described the other day about
5 what people expected to happen, almost all of that -- of what I
6 was told I would describe as speculative. And that's why there
7 were two very different streams of thought, neither of which was
8 based, at least among the people to whom I spoke, or seemed to be
9 based, on any real direct knowledge.

10 [11.37.08]

11 Q. Thank you. I'd like you, please, to obtain file 2. I hope that
12 you have the transcript of your interview with Ieng Sary on the
13 17th of December 1996. This is document number E3/89.

14 I am starting, in fact, with the -- the commencement of this
15 interview. The record shows you, "SH", Steve Heder, saying as
16 follows, and this is to Ieng Sary:

17 "I want to start with the problem of genocide and ask for your
18 comments on my assessment of this situation. Based on the
19 evidence I have seen so far, I believe that there was no plan to
20 commit genocide, but that a genocide took place as the result of
21 a combination of four sets of policies and practices."

22 And Mr. Heder, I'm going to break the four down. So one:

23 "First, there was a plan to carry out proletarianization by
24 organizational methods, that is by compulsion, and very rapidly.
25 Second, there was a plan to carry out Khmerization by the same

1 forceful methods at the same speed. Third, anyone who opposed,
2 resisted, or failed to carry out these plans could be considered
3 an enemy or a traitor to the nation and the Party because these
4 plans were considered essential to making Cambodia into a strong
5 socialist country capable of independence from the capitalist
6 world and Vietnam."

7 [11.39.46]

8 "Fourthly, anyone accused of being an enemy or a traitor could be
9 arrested by the security service, tortured into 'confessing' and
10 implicating others, and then killed. The power to arrest, torture
11 and kill existed formally or informally from the Centre right
12 down through the zones, sectors and districts to the
13 cooperatives, and within army units; and the use of torture
14 created the most subjective multiplication of the number of
15 enemies. At the same time, the economic and military failures of
16 the revolution resulted both in numerous deaths and more and more
17 accusations of treason within the ranks. The overall result was
18 genocide, even if it was not planned as such for the moment."

19 [11.41.13]

20 You have here put four elements to Ieng Sary and you've stated
21 them in the interview, first, second, third, fourth.

22 My question is, had you formulated those four themes, in other
23 words, had you prepared those four themes or written them down as
24 a set of questions before you actually asked them to Ieng Sary or
25 was that you speaking off the cuff?

1 MR. PRESIDENT:

2 Mr. Witness, please hold on.

3 And counsel, you may proceed.

4 [11.42.05]

5 MS. GUISSÉ:

6 Yes, thank you, Mr. President. Let me respond now because here
7 we're reaching a very, very, very limit here in the Prosecution's
8 questions.

9 I understand that the way the prosecutor has formulated the
10 question is -- is a way of -- side way of having Mr. Heder speak
11 about genocide. I'd like to remind that, as we indicated -- or as
12 Judge Cartwright indicated during the questioning of Philip
13 Short, the question of defining and characterizing legally
14 "genocide" cannot come from the expert at this moment. And in any
15 case, it cannot come from Mr. Heder.

16 So of course, I understand that we are referring to an interview
17 of Mr. Heder with Mr. Ieng Sary which, of course, is part of the
18 documents tendered into evidence, but I believe we are all here
19 jurists and we know that the question that the prosecutor has put
20 to Mr. Heder aims at characterizing or not genocide no matter the
21 way the questions are put to Mr. Heder.

22 So my objection here is that we cannot start speaking about the
23 detail of these issues because these issues relate to
24 characterization and to Mr. Heder's opinion in the way that he
25 questioned Mr. Ieng Sary. And at this juncture, this is not yet

1 allowed.

2 [11.44.00]

3 MR. RAYNOR:

4 Mr. President, the purpose of the questioning is not to go on
5 about genocide. We're all aware of that offence within this
6 Court.

7 To quote again -- I know you know this, but I'm not sure my
8 learned friend was here last week when I made representations.

9 "The questions shall be directed primarily to evidence the
10 witness gathered during the interviews he conducted."

11 So I'm simply asking a question on an interview he conducted. I'm
12 not trying to make a point about genocide. I'm simply asking what
13 preparation did he do to arrive at these four questions.

14 Can I please proceed?

15 MR. PRESIDENT:

16 Counsel, you may proceed.

17 [11.44.55]

18 MS. GUISSÉ:

19 Yes, Mr. President. We agree, of course, that this is an
20 interview -- an interview of Mr. Ieng Sary by Mr. Heder, and this
21 is not a problem for me. The problem is that, in the interview
22 itself, we speak about a legal characterization which is not in
23 the scope of this current trial and that this legal
24 characterization is being made by Mr. Heder and that's his
25 opinion, of course, which is perfectly respectable, but still, it

1 is his opinion. Well, the way of presenting the thing as simply a
2 question as another question relating to all of the interviews
3 that Mr. Heder has conducted is not something that is sound,
4 legally speaking. We're not speaking here about a completely
5 superficial question.

6 If we had seen interviews of Mr. Heder with different
7 protagonists at the time speaking about the legal
8 characterization of the facts, well, I would raise the same
9 objection.

10 The idea here is not to know whether or not this was an interview
11 that was conducted by Mr. Heder. The idea is to know if the mere
12 topic in itself relates to legal characterization. And the way
13 the Co-Prosecutor put the question, indeed, leads us to speak
14 about legal characterization which should not be raised during
15 this hearing today.

16 [11.46.18]

17 And also, since it's put to this witness, who is not an expert,
18 and since this question was put to Mr. Short -- the question was
19 put to Mr. Short, who was an expert, back then, has also not been
20 authorized by the Chamber, so we would like the Chamber to follow
21 the same line of logic.

22 MR. RAYNOR:

23 I promise not to use the word "genocide".

24 (Judges deliberate)

25 [11.47.23]

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1 MR. PRESIDENT:

2 Judge Jean-Marc Lavergne, you may proceed.

3 JUDGE LAVERGNE:

4 Yes. Thank you, Mr. President.

5 Well, the Chamber has asked me to let you know that this
6 objection will not be sustained because the questions revolve on
7 the preparation of Ieng Sary's interview and not on the legal
8 analysis that may be made regarding genocide.

9 So Prosecutor, you may proceed.

10 BY MR. RAYNOR:

11 Q. Mr. Heder, four themes, prepared in advance, or did they come
12 to you as you started the interview?

13 MR. HEDER:

14 A. Because of the obstruction of my trip to Pailin by the Thai
15 authorities that I described and the fact that Ieng Sary then had
16 to travel from Pailin to Chanthaburi to meet me there; I had lots
17 of time to prepare. My recollection is that I probably, for this
18 opening PhD dissertation disguised as a question, wrote down
19 rather extensive talking points. Maybe not what's here word for
20 word, but the talking points were there.

21 [11.48.50]

22 And I'll add that I -- in doing so, I was not making any claim to
23 having a legal understanding of the notion of genocide, nor
24 expecting Ieng Sary to -- to have a legal notion, either. Of
25 course, in the academy, this is a term that has many contested

1 meanings.

2 It was, rather, an attempt on my part to use that rather
3 provocative word to elicit an answer from him that was -- would
4 address the four points, among others, that I was raising.

5 Q. And can we deal with Ieng Sary's response to your four themes?

6 Ieng Sary's first words as recorded are, "I also see things that
7 way".

8 Is that a correct reflection of what Ieng Sary told you in his
9 first answer to your question?

10 A. Yes.

11 [11.49.56]

12 Q. In the sentence -- third sentence in, Ieng Sary or this
13 document says, Ieng Sary's reply:

14 "However, as you just said, the acts committed are abhorrent, and
15 once they were in motion, they caused great suffering to the
16 nation. These are my views on your view."

17 Can you confirm that that's an accurate description of what Ieng
18 Sary said to you in this second answer -- sorry, first answer?

19 A. Yes.

20 Q. It records Ieng Sary going on to say to you:

21 "So like you said, as the revolution was beset by more and more
22 complications and problems, the number of human beings who were
23 said to have done wrong increased. I am in unison with you on
24 this."

25 Is that a correct description of what Ieng Sary said to you in

1 this first answer?

2 A. Yes.

3 [11.51.25]

4 Q. The record continues, Ieng Sary. The record continues, Ieng
5 Sary:

6 "And your two points, first, that this was done in order to
7 establish a more formidable communist foundation for the country
8 more quickly than on Vietnam so that Vietnam would not be able to
9 keep up and would not dare to try to take control of Cambodia,
10 are true. This was generally true and was the common
11 understanding of the leadership."

12 Is that an accurate record of what Ieng Sary told you in this
13 first answer?

14 A. Yes, except for the, I guess, obvious typo -- typo that should
15 be "more quickly than that in Vietnam", not "on Vietnam".

16 Q. Thank you.

17 Your second question to Ieng Sary -- we're moving over the page.
18 This makes it English, 00417600; Khmer, 00062453.

19 [11.52.48]

20 Question, Steven Heder: "From what point in time was there a
21 decision or an understanding that it was necessary to do things
22 in this manner?"

23 Second answer, Ieng Sary: "It was right there from the time a
24 victory was achieved in the five-year war against aggression. The
25 notion was formulated from that time on. However, it was not

1 until late 1975 that it was really stipulated that it was
2 imperative to go all out to carry out a really fast communization
3 in order to make it impossible for the Yuon to take Cambodian
4 territory, and that is when the acts that were committed began.
5 However, this idea that the fear of being swallowed by Vietnam,
6 that Vietnam would come in and take over had flowed through us
7 since way back when."

8 Is that an accurate reflection of what Ieng Sary told you in this
9 interview?

10 A. Yes.

11 [11.54.15]

12 Q. Next question, Steve Heder: "So then was there some sort of
13 Central Committee level meeting in late 1975 at which certain
14 specific objectives were set forth in this regard?"

15 Ieng Sary: "In September 1975, there was a meeting to decide what
16 we had to do then to keep Vietnam from coming to take control of
17 Cambodia."

18 Your question: "So was this decided at the Standing Committee
19 level or by the Central Committee as a whole?"

20 Answer: "It was only the Standing Committee, not the Central
21 Committee. The Standing Committee."

22 Steve Heder: "So who was in the Standing Committee, then, and who
23 was at the meeting?"

24 Ieng Sary: "Virtually all of the Standing Committee was there,
25 Pol Pot, Nuon Chea, So Phim, me, Son Sen, Ta Mok."

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1 [11.55.33]

2 Steve Heder: "Ta Mok? And Vorn Vet, or not?"

3 Ieng Sary: "Vorn Vet. Vorn Vet, yes."

4 Steve Heder: "And Khieu Samphan?"

5 "No, but Khieu Samphan was present."

6 Heder: "Was present, but was not a member of the Standing
7 Committee?"

8 Ieng Sary: "He was not a member of the Standing Committee."

9 "Ta Nhem of the northwest?" is your question.

10 Ieng Sary: "The northwest. He was not yet a member of the
11 Standing Committee, but he attended that meeting. Koy Thuon was
12 also there, even though he, too, was not on the Standing
13 Committee. He was there. That was all, as far as I know."

14 Steve Heder, "That's all?"

15 Ieng Sary: "A number of military commanders. Military
16 commanders."

17 Is that an accurate record of what Ieng Sary told you in this
18 meeting?

19 A. Yes.

20 [11.56.45]

21 Q. I'm moving to a final subject. I'm not going to present
22 documents because I don't have time.

23 From your factual information, without expressing an opinion,
24 without speculating, relying on interviews you had or other
25 factual information, is there factual information about a

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1 subsequent transfer in significant numbers of people from areas
2 in Cambodia to the Northwest region after April 1975?

3 So to make the question clear, I'm not asking about the initial
4 evacuation in April 1975. I am asking about, if any, a subsequent
5 evacuation or evacuations that happened at a later stage.

6 A. Yes, there are certainly a lot of mention of this in those
7 interviews that I described that I did in connection with the
8 mortality survey, as I call it, at the time because part of that
9 standard questionnaire was asking the interviewee where they were
10 throughout each part of the -- of the regime between April '75
11 and January '79.

12 [11.58.24]

13 So in fact, almost all of the 1,500 or so, if I recall correctly,
14 interviews done for that mortality survey, as I call it, gave an
15 indication of where -- whether or not people were moved in the
16 latter part of '75 and many, many indicated they were moved. And
17 then attached to those -- or linked to those quantitative
18 interviews based on a questionnaire, there are, in many, not all,
19 cases, specification either on the back of the survey -- back of
20 the questionnaire or in separate notebooks a description of that
21 re-movement of population, mostly from the Southwest and East to
22 the Northwest and North or special sectors that were subsequently
23 part of the North.

24 Q. Does the information that you've referred to indicate by large
25 whether those movements were voluntary or forced?

1 A. A combination of both, I would say. I can't, off the top of my
2 head -- I'm not sure I ever did a statistical analysis. Some
3 people were persuaded, believed what they were told, which was
4 that the food situation in the Northwest was better or likely to
5 be better than it was in the Southwest, and at least in some
6 parts of the East. And I can say from having talked to many
7 Cambodians over many years, including prior to these discussions,
8 this was a -- this was a widespread Cambodian belief, that the
9 Northwest of Cambodia was a kind of rice basket where there was
10 high productivity, considerable land available to be cultivated.

11 [12.00.39]

12 So some people went because they believed that once they got to
13 the Northwest, their lives would be better. Others were very
14 reluctant to leave behind the rice that they had -- the paddy
15 that they had planted and cultivated and was about to be harvest
16 at the end of 1975, thinking we worked hard to produce this food
17 and now somebody else is going to eat it. And who knows what the
18 situation may be like in the Northwest or elsewhere?

19 So there were -- there were both views, and both -- both people
20 who were prepared to go and people who didn't want to go.

21 [12.01.23]

22 Q. And in those who didn't want to go, can you give us a flavour
23 or specific examples of the nature or type of force that was used
24 or exerted on them in order to encourage them to go to the rice
25 bowl areas?

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1 A. Well, simply put, I mean, people were told they had to go,
2 whether they wanted to or not and in -- I think the overwhelming
3 -- in the overwhelming number of instances, did what they were
4 told. I don't think, given the circumstances, there was a
5 necessity for them to be told what would happen to them if they
6 didn't go. Many had already reached the conclusion that not to
7 obey orders was to put oneself at risk at least of detention, if
8 not execution.

9 Q. And in terms of conditions in the areas after they got there,
10 effects on livelihood or effects on mortality, again relying on
11 direct factual information or from interviews, can you tell us
12 what the conditions were like for the people once they arrived at
13 the rice bowl areas in the forthcoming months?

14 [12.02.54]

15 A. I think it's fair to say that, generally, the situation was
16 worse and, in many places, it was much worse than it had been in
17 the places from which they had left.

18 MR. RAYNOR:

19 Mr. Heder, thank you.

20 Mr. President, I've gone over a few minutes. Can I thank you for
21 that time. I can confirm that the OCP has now finished all
22 questioning of Mr. Heder, and I pass over to the Lead Co-Lawyers
23 for the Civil Parties, who I anticipate will be after the
24 luncheon break.

25 Thank you very much. Thank you, Mr. Heder.

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1 [12.03.32]

2 MR. PRESIDENT:

3 Thank you.

4 Mr. Victor Koppe, you may proceed.

5 MR. KOPPE:

6 Thank you, Mr. President. Just a quick request. Do you anticipate
7 to -- once civil parties are finished -- hear oral submissions on
8 our motion after the last break?

9 MR. PRESIDENT:

10 Thank you for reminding about this motion. Of course, the Chamber
11 will rule on this motion following the question put by the Lead
12 Co-Lawyer for the civil party.

13 It is now an appropriate juncture for lunch break. The Chamber
14 shall adjourn now and resume at 1.30 this afternoon.

15 Court officer is instructed to assist the witness during lunch
16 break and have him returned to this courtroom by 1.30 this
17 afternoon.

18 Security guards are instructed to bring Mr. Khieu Samphan to the
19 holding cell downstairs and have him returned to this courtroom
20 this afternoon before 1.30.

21 The Court is now adjourned.

22 (Court recesses from 1205H to 1333H)

23 MR. PRESIDENT:

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

25 We would like to hand the floor to the Lead Co Lawyers for civil

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1 parties to put questions to the witness, Mr. Steve Heder. You may
2 proceed.

3 QUESTIONING BY MS. SIMONNEAU-FORT:

4 Yes, thank you, Mr. President. Good afternoon, Your Honours. Good
5 afternoon to everyone. Good afternoon to my colleagues, and good
6 afternoon to you, Mr. Heder. My name is Élisabeth Simonneau-Fort.
7 I am a civil party lawyer; I represent the civil parties, and I'm
8 going to put to you a few questions. It will be of course much
9 less lengthy than the Prosecution.

10 And you said on 10 July to the prosecutor that beyond the
11 documents placed on the case file, beyond the numerous binders
12 you have in front of you, you also wrote, drafted many other
13 documents and interviewed many more -- many other people. So I'm
14 going to therefore base my questions on documents that are in the
15 case file and also on the other documents, of course, because you
16 are a witness and therefore you can tell us about what you have
17 seen and heard generally speaking. And my questions will be, of
18 course, essentially focused on the civil parties and on the
19 victims.

20 [13.35.33]

21 Q. So I'm going to start by the first topic I am interested in,
22 and this is a period running from May '73 until 11 April 1975
23 during which you said that you were in Cambodia and in Phnom
24 Penh, and I would like essentially -- well, you told us that you
25 had heard or met refugees, but not too many, at least that's what

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1 I heard in the French translation, and even if there are not too
2 many of these refugees, but I'm going to still ask you about what
3 these refugees told you back then between '73 and '75.

4 So you said that these were refugees coming from the liberated
5 zones. So my first question is: Did these refugees speak to you
6 about the living conditions in the liberated zones by the Khmer
7 Rouge, and if yes, can you tell us what they told you?

8 MR. HEDER:

9 A. I think from that period, '73 to '75 period, I don't really
10 have a lot to relate about conditions in the so called liberated
11 zones, because -- I had some general accounts of the way things
12 were organized in broad terms, and there were certainly some talk
13 of difficulties with rice production following the beginnings or
14 more than the beginnings of cooperativization, some talk of
15 executions and the like, but for better or for worse in that
16 period I was more focused on trying to do what I could, and
17 again, it wasn't very much, with regard Khmer Rouge to structure
18 and organization, policy, leadership, and the like. I probably
19 should have done a lot more on conditions, but at this stage,
20 certainly, really quite little. So I'm not sure I have much to
21 offer you in that regard for that period; certainly nothing more
22 than I've already stated.

23 [13.38.33]

24 If you want an order of battle for the Khmer Rouge as related to
25 me by the Japanese military, that I have somewhere, but as for a

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1 detailed or even vague description of the situation in the
2 liberated zones beyond structure and organization, as I said,
3 some talk of agricultural difficulties following the attempts at
4 cooperativization, some talk of executions, but not a lot, I'm
5 afraid. I'm sorry.

6 Q. Well, in any case, I will not, of course, criticize you for
7 the way you conducted your research. Now, beyond Udong and
8 Kampong Cham, which you spoke about, did you come close to any
9 other liberated zones during that period?

10 A. I spent some time also in Battambang, but Battambang was an
11 area in which the liberated zones were in fact relative to the
12 situation around Phnom Penh and around other provincial towns
13 rather far away. So again, my contact when I was in Battambang
14 with the situation in the liberated zones was fairly minimal.

15 [13.40.09]

16 And I'll say that my -- I didn't go to Kampong Cham until
17 sometime after the city was partially and briefly taken by the
18 Khmer Rouge. And to the extent that I talked to people about what
19 had happened, it was mostly people who had been in the town and
20 either escaped -- evaded evacuation -- and then evacuated and
21 then somehow managed to return. Udong even fewer in that regard.

22 [13.40.52]

23 Q. Thank you.

24 So now we're going to speak about another period, and maybe we
25 will turn to the forced evacuation of Phnom Penh, which you spoke

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1 about a bit with the prosecutor during these three past days. And
2 in particular, the prosecutor read to you an excerpt of document
3 E3/1740, which is the document that you drafted based on several
4 interviews with refugees at the Thai border in 1980.
5 And now regarding the evacuation plan of Phnom Penh, he read to
6 you account number 29, and I would like to read to you,
7 therefore, an excerpt from account number 18, which according to
8 your notes, is from a man from Takeo, maybe a member of the
9 Party. And I'm going to read to you the following ERNs: French,
10 00648992; English, 00170727; Khmer, 00324731.

11 [13.42.11]

12 And what I'm going to read to you is rather short. I don't think
13 that you necessarily need to read it in your hard copy. And this
14 is what this person says [free translation] -- I quote:

15 "I have the impression that the evacuation plan of Phnom Penh was
16 part of a general policy that had been around for a while because
17 this is what we had always done when we would liberate an enemy
18 zone. And in the past, we had evacuated people from the zones
19 that we had liberated because we were afraid that we wouldn't be
20 able to occupy these zones if we would be attacked; and
21 therefore, to be unable to guarantee the security of the
22 population in those areas, and also because the population was a
23 source of -- was workforce for us, and if we were able to gather
24 the people we would have sufficient forces to beat the enemy.
25 Based on what I understood, the evacuation plan to evacuate Phnom

1 Penh had two objectives: First, to maintain the security of our
2 new regime, and also, two, to solve the problems of the
3 livelihood of this population, because in the countryside there
4 was rice and there were fields, and these people could produce
5 and eat. And the main point here was that we could not know for
6 sure who were the people from Phnom Penh, we did not know who had
7 been a Lon Nol officer or a CIA agent; therefore, we were afraid
8 that our enemy could pop up." End of quote.

9 [13.44.06]

10 So do you confirm also this account?

11 A. Yes, and it's generally consistent with what I've seen in some
12 -- at least some other documents and heard from other
13 interviewees.

14 Q. Thank you.

15 And you also said, on 11 July to the prosecutor, that -- and you
16 said it again this morning, by the way -- that as of the end of
17 April 1975 and during the following weeks you had gone to the
18 Thai border and that you spoke then to evacuees. Can you tell me
19 -- can you tell us, rather, what these evacuees told you? And
20 we're going to start by the reasons that were given to them for
21 this evacuation. What did they tell you about why they had been
22 evacuated?

23 A. Many of them came from Battambang or Pursat or Siem Reap,
24 places relatively close to the Thai border. Some of them
25 described executions, particularly of relatively high-ranking and

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1 military and administrative personnel.

2 [13.46.03]

3 In -- I don't -- there was -- if I recall in those locations
4 there was some talk of the threat of bombing, not necessarily of
5 American bombing but there was -- the situation was still such
6 that it was possible that there might be bombing by remnants of
7 the Khmer Republic Air Force, T28s and other bombing-capable
8 fixed wing aircraft. But in general, they were also told -- given
9 this explanation if it was necessary for them to at least
10 temporarily leave the towns in order that the Khmer Rouge troops
11 could clear or sweep out the FAPLNK, that is to say, Khmer
12 Republic Military remnants or diehards that might attempt to
13 continue to fight them.

14 And this was an issue in Battambang, not only in Battambang town
15 but in other parts of the province because even as late as 17
16 April 1975, large parts of the province were still in Khmer
17 Republic hands.

18 [13.47.37]

19 Q. Thank you.

20 Did they also describe to you the conditions in which this
21 evacuation was carried out, the way the people had to leave, the
22 support that they might have received from the Khmer Rouge in
23 terms of food, in terms of care?

24 A. It was clear that this was a strict order that everybody had
25 to relocate. And were there instances in which, as I told you,

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1 instances in which people had been killed for not going, not that
2 I specifically recall, but certainly there were descriptions
3 given of armed forces coming in, people with guns, making it
4 clear that if people didn't leave there was at least a potential
5 threat to their lives.

6 Again, as in Phnom Penh, and some of these places, people were
7 prepared to go at least somewhat voluntarily. Many of them had
8 come from the countryside. The distinction between rural and
9 urban in western Cambodian and in these provincial towns was even
10 less than was the case with Phnom Penh. So it wasn't entirely
11 forced.

12 And again, as I described in one of my answers to the Prosecution
13 about the unpublished story about what people thought was going
14 to happen, at the very beginning at least, many didn't foresee
15 that the situation, once they got into the countryside or back to
16 the countryside, was going to be as dire as it very quickly, or
17 in some cases, immediately turned out to be.

18 [13.49.49]

19 Q. So maybe you have answered my following questions partially.

20 So my question, therefore, is why did these people seek refuge
21 abroad? Did they tell you why they, aside from describing the
22 disastrous conditions in the countryside, which you might be able
23 to expand upon, but can you tell us why they sought refuge
24 outside of Cambodia?

25 A. Well, many of them were from among this upper strata -- these

1 upper strata of the military and civil administration of the
2 Khmer Republic regime, and in many cases, also the predecessor
3 Sangkum regime. And word very quickly spread or rumours and
4 reports very quickly spread about the fate of at least some of
5 those senior or relatively senior upper strata military and civil
6 administration personnel who had been gathered up and told
7 something or another about getting their old jobs back or meeting
8 Sihanouk and then were known to or believed to have been or
9 feared to have been killed. This included stories about a
10 massacre that occurred, if I recall correctly, in the Phnom
11 Thipakdei area of Battambang, and that was one of these instances
12 in which the story that was told to those who were gathered up is
13 that they were going to greet a returning Prince Sihanouk.

14 [13.51.33]

15 It has to be said also that there were some instances in which
16 former Khmer Republic senior military and senior administrative
17 personnel were killed not by the Khmer Rouge but their own troops
18 who blamed them for all kinds of things that happened under the
19 Khmer Republic, but that was sort of a fringe phenomenon. That
20 happened, I think particularly in Siem Reap. So not all the
21 killing was done by the Khmer Rouge, there were killings by lower
22 level Khmer Republic or ordinary people.

23 And as I described the situation in Phnom Penh, there was a lot
24 of hatred, I think it would be fair to say, certainly dislike,
25 dissatisfaction with the Khmer Republic regime. So there was a

1 bit of that kind of killing as well.

2 [13.52.27]

3 So if you were a relatively high ranking Khmer Republic military
4 officer or civilian administrator it seemed to make very good
5 sense to get to Thailand and as far away from Cambodia as
6 possible as quickly as possible.

7 Q. Thank you for this clarification.

8 I am now going to read to you an excerpt of a civil party
9 statement, and then I will ask you a question.

10 So I would like to read now to you an excerpt of civil party's
11 D22/306's statement. And this is a civil party who was 18 years
12 of age in 1975, and the ERNs are the following: French, 00898083;
13 English, 00864058; and Khmer, 00484385 to 86. And this civil
14 party says the following, and this is a civil party who was
15 evacuated from Phnom Penh, and free translation:

16 [13.53.50]

17 "When Angkar asked us to prepare our positions, our family
18 started doing so and we left immediately. We were ready to leave
19 our house just with a few personal belongings, such as clothes,
20 rice, and salt, and we started walking towards Kbal Thnal on the
21 road to Takhmau, Kandal province. And on that day, the roads were
22 filled with people who were leaving their homes and leaving in
23 all different directions. The roads were packed with people,
24 whether old or young, women and men loaded with their personal
25 belongings. Some of them were carrying their belongings on carts.

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1 Cars and motorcycles could not proceed. Young children were
2 crying because they had lost their parents and they were a sad
3 sight to see. Old -- senior -- old people could not walk and they
4 would sleep along the road.

5 My family members walked for seven days to arrive at Kbal Thnal
6 roundabout. When we arrived at the Kbal Thnal roundabout, I saw
7 dead swollen bodies of soldiers and I was really scared. There
8 was strict guarding along the way by Angkar cliques wearing black
9 shirts they were guarding in order to prevent people from fleeing
10 back into the city. My family members were walking separately."

11 [13.55.32]

12 So does this excerpt resemble, through one or several details,
13 things that you had heard yourself from evacuees?

14 A. If we talk in terms of not only things that I was told in
15 April of '75 -- latter part of April, beginning of May of '75 on
16 the Thai Cambodian border, but over subsequent years, certainly
17 yes.

18 Q. Thank you. Now I'm going to read to you another excerpt which
19 is taken from the transcript of 5 December 2012. The index is
20 E1/148.1 and this is another civil party stating the following,
21 and I quote -- free translation:

22 "I saw a lot of people on the road. People were walking from the
23 Russian hospital and I saw that there were patients who were in
24 hospital beds being pushed with a drip. Some of them, therefore,
25 were still under -- were still with a drip and we had to all

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1 leave in one single direction. We weren't moving ahead very
2 quickly and we saw some of them who were riding bicycles or who
3 had rickshaws. Others were transporting their personal
4 belongings. Others were walking and some were ill, and everyone
5 was walking in the same direction. There was a very tense
6 atmosphere and the Khmer Rouge soldiers did not allow us to
7 travel freely."

8 [13.57.35]

9 And a bit further, this civil party says the following at French
10 ERN 008695; English, 00868140; Khmer, 00866941 to 42. And the
11 civil party is asked if the Khmer Rouge would give them food or
12 medicine and the civil party answered:

13 "During our evacuation, the Khmer Rouge soldiers gave us neither
14 food, nor water, nor shelter, so we left without having brought
15 with us enough food or personal belongings. And therefore, in the
16 evening when we arrived, we -- a place where we rested, we had to
17 lay out fabric to rest. And the food that we had brought along
18 with us for three days had practically disappeared."

19 So here, once again, can you tell us if, among the people you
20 spoke to -- and here I'm not only referring to the people from
21 1975 but from -- I'm referring to all of the people you heard --
22 does this resemble what you, yourself heard?

23 [13.59.11]

24 A. It certainly resembles many of the accounts that I recall
25 having heard. There are other accounts according to which there

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1 was better provision of transport, food, water. Medication, I
2 think, is an -- virtually a non-issue, and better reception once
3 they got to wherever it was they were first deposited, to use the
4 -- in fact, the official term. So I wouldn't say that the account
5 that you just gave is universally -- describes the universal
6 situation. It certainly describes a significant proportion of it.
7 It may be a kind of average account but it -- you know, again in
8 the situation in the West was rather different. There was much
9 more food available on the countryside. The numbers of people
10 coming down out of the town -- provincial towns relative to the
11 number of people in the countryside was much smaller.

12 [14.00.48]

13 So in the Northwest, the situation doesn't become so serious
14 until the de facto failure of the first paddy season crop.
15 Remember that people are coming out in April, 1975. There's
16 still, at that time of year, a considerable amount of food
17 leftover from the previous year's harvest and it's only when
18 there's not enough food -- generally not enough food produced to
19 feed everyone -- even those who are already there in the
20 Northwest -- that the situation begins seriously to deteriorate.
21 And then to deteriorate catastrophically when more and more
22 people are brought in from the Southwest and the East, creating a
23 situation in which the foods -- the ratio of people to food is
24 very, very disenable to survival in many places, for many people.

25 [14.01.58]

1 Q. Thank you very much. Can we limit ourselves to forced transfer
2 and perhaps not to the subsequent picture? At the moment, we're
3 just talking about the days of the forced transfer and if you
4 could answer maybe with relative brevity, that would be helpful
5 because we don't have an awful lot of time. I'm going to read out
6 another extract. It's the minutes of an interview with a civil
7 party who was evacuated from Phnom Penh and the question I'm
8 asking is only connected with that forced transfer phase.
9 The party says as follows -- and it's D246/16, French ERN is
10 00434834. The English one is 00400463; and in Khmer, it's
11 00390312. And this lady says after the following question:
12 "What did you see on that day in Phnom Penh?"
13 Answer: "When I got to the Daeum Kor market, I saw two or three
14 people who had been shot."
15 Question: "Can you tell us more precisely about this? Who shot
16 these people and who were the people who had been killed?"
17 Answer: "When we got there, we were blocked off by the Khmer
18 Rouge soldiers with their firearms and they stopped us from going
19 any further. I saw these Khmer Rouge soldiers end the lives of
20 two or three people by shooting them. Those people were doubtless
21 people who owned houses who refused to come out of them. I
22 witnessed this with my own eyes."
23 [14.04.08]
24 Question: "What sort of clothing were they wearing?"
25 Answer: "I saw that they were dressed in black clothing and

1 caps."

2 Question: "Did you see many people along the streets in Phnom
3 Penh leaving the city?"

4 Answer: "Everybody had to leave the city after an announcement by
5 the Khmer Rouge who announced that people had to leave the city
6 for three days because they were afraid that the Americans would
7 bombard. They would clean the city first and three days later,
8 people would be allowed to return."

9 [14.04.53]

10 Mr. Witness, did you hear statements of this kind from
11 individuals? I'm not really asking you to ask us what you have
12 heard about in the majority or the minority so to speak, just if
13 you heard these kinds of things at all from people who you spoke
14 to. Thank you.

15 A. I think there were some instances in -- I believe it was
16 Battambang -- of people being shot or threatened with being shot
17 if they didn't leave their homes. On the other specific points,
18 this famous specification of three days, my recollection is that
19 wasn't commonly said with regard to these places in Western
20 Cambodia. Temporary? Yes. Temporary, specifically for three days
21 and then return? I don't recall that having been a theme.

22 Q. Thank you. On the subject of the first forced transfer, I want
23 to look at a couple of further extracts from a civil party at a
24 hearing on the 30th of May 2013. It's E1/199.1. This is Ms. Po
25 Dina; French ERN 00917599; English, 00917721 to 22; and in Khmer,

1 00917984.

2 [14.07.11]

3 And this person describes a rather particular event and she said:

4 "Once we were there, we were told over the loud speaker that
5 people had to register. Some people went to register. My husband
6 wanted to do so but I told him that things weren't looking good
7 so we better not register our name. We just went on walking. So
8 we kept walking."

9 And in the following ERN in French, but on the same page in
10 English and Khmer, she says that:

11 "Once we got there, they once again called us for family
12 registration and we registered the members of our family, and
13 they categorized us as 17th of April people. That's what they
14 called us, 17th of April people. They told us that we were 17th
15 of April people so we couldn't stop there. We had to go on
16 walking and I begged them to let us stay there for some time
17 because we had been tired and they refused. They said that their
18 village was in a state of shortage of food so we had to go on."
19 Now that kind of registration and census, among people who you
20 talked to not in '75 and not only for the western part of the
21 country, did you hear this kind of circumstance or phenomenon
22 being described?

23 [14.08.48]

24 A. I think that one, I can say, was close to universal, done
25 somewhat less comprehensively in the west initially than places

1 where the Khmer Rouge administration was more settled but done
2 everywhere.

3 MR. PRESIDENT:

4 Counsel, please hold on.

5 Mr. Victor Koppe, you may proceed.

6 MR. KOPPE:

7 Thank you Mr. President.

8 I think it's about time I start objecting to the way these
9 questions are being phrased. Let us remind ourselves that Mr.
10 Heder here is a witness and that in general terms, the witness
11 should not be led into these answers. Up until now, when the
12 prosecutor was asking questions, it was always about his own
13 articles or his own interviews and now we are confronting -- we
14 are seeing this Witness being confronted with witness statements
15 of testimony of other people, and then Mr. Heder is invited to
16 give a comment.

17 [14.10.13]

18 Now the whole issue of the evacuation is not a crucial issue and
19 the things that happen there to the Nuon Chea defence team but I
20 still think that this is not the proper way of eliciting
21 information. So I think it is important that the witness is being
22 asked open questions and not leading in the way that has been
23 done so far. And in addition to this -- and that's why I also
24 raised -- I hear the Witness saying that this practice described
25 by this particular witness was a universal practice.

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1 Now it is interesting for a witness to be able to determine if
2 something is universal practice but it at least seems to be an
3 opinion on the things that happen, presumably in the whole of
4 Democratic Kampuchea in '75 and afterwards. So I would also ask
5 you, Mr. President and the Chamber, to remind the witness not to
6 give general or universal statements as to things that happened
7 in '75. So my objection is two-fold. It's leading and it is
8 inviting, apparently, the witness to give an expert opinion on
9 what happened in DK in '75 and afterwards.

10 [14.11.44]

11 MS. SIMONNEAU-FORT:

12 If I may, Mr. President, I will answer that. For more than 18
13 months, I have been questioning witnesses in this manner, the
14 most recent Mr. Ponchaud, who is perhaps the most comparable to
15 Mr. Heder as a witness. And I was using civil party statements. I
16 was not asking for comments on those statements. I was asking if
17 the witness, himself had heard identical things or where
18 applicable, seen identical things. I was not asking for any kind
19 of further comment. I was asking him about things he had heard or
20 seen or not heard or seen. If I may, I will continue. So far,
21 there haven't been any objections to this procedure and I would
22 like to be able to continue employing it for the few weeks
23 remaining to us.

24 MR. PRESIDENT:

25 Counsel, please move on. And the Chamber wishes to advise the

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1 witness that in response to the question put by parties, please
2 try to be brief so that we can move on to other question and it
3 may be appropriate for the time allocated to each party as well.

4 [14.13.19]

5 BY MS. SIMONNEAU-FORT:

6 Thank you Mr. President

7 Q. I'd like to come back now to the New People who you were
8 discussing with the prosecutor in previous days, on various
9 occasions. And among the people you were able to speak to over
10 the years -- in fact, if I've counted correctly, more than 30
11 years -- have these people given you specific descriptions of the
12 treatment that was meted out to the New People or not?

13 MR. HEDER:

14 A. I'm at a bit of a loss as to how to deal with the back and
15 forth on what the scope of the answer should be. Certainly I've
16 spoken to many people who were categorized as New People and
17 there's a -- one can conclude that overall, there was a certain
18 tendency of treatment in their regard but at the same time, there
19 was variation. I'm not sure -- if I have to be brief, I'm not
20 sure how much more specific I can be and if so, how.

21 [14.14.57]

22 Q. Let's see if I can fit this into the time I have. I'll read
23 out an extract from the 12th of December 2012, a civil party in
24 hearing E1/152.1. The French ERN is 00871393; In English, it's
25 00871253; and in Khmer; it's 00869655. This civil party, Ms.

1 Affonço said the following. Firstly, she was asked a question:
2 "You told us just now, Ms. Affonço, that in your village, the
3 distinction between the New People that you referred to was very
4 visible. Can you explain to us the consequences of that
5 distinction?"

6 Her answer was:

7 "Well it was very obvious because for example, with the
8 distribution of rice, we had one portion of rice and they had
9 two. Their women did not work. They had enough to eat. Their
10 women were also able to give birth. I saw two pregnant women like
11 that and they had enough to eat. We did not have enough to eat.
12 They had meat and fish. We only had salt with our rice and we
13 only ate rice porridge. We were only entitled to two meals a day
14 and each time, it was just a ladle of that porridge. Otherwise,
15 what did we eat? Frogs, grasshoppers and scorpions. Anything I
16 could pick up in the countryside, I ate. We even ate cockroaches
17 when we found some. We were turned into animals. We fought over
18 scraps of food with their dogs and their dogs had more to eat
19 than we did."

20 [14.17.28]

21 Mr. Heder, I'm not going to ask you say if this corresponds to
22 the general picture. I'm going to ask you if you personally heard
23 people describing things of that kind.

24 A. I think the answer has to be some, yes, or maybe many, yes.
25 Somewhere between some and many, yes.

1 Q. Thank you for that concision and precision. Staying on the
2 question of New People and on the matter of propaganda, I'd like
3 to quote again from transcript. It's an extract from an interview
4 of Witness 338, on the 22nd of August 2012. The transcript is
5 E1/112.1, French ERN is 00841318. In English, it's 00841201 and
6 02; and in Khmer, it's 00839903. This person was responsible for
7 drafting articles, some of which were broadcast over the radio
8 and what he says is the following. First he's asked a question:
9 "I am coming back to the term, "New People". Have you written
10 about this term, "New People" in your articles?"
11 Incidentally, let me add that this witness did not write for
12 "Revolutionary Youth", nor for "Revolutionary Flag".
13 The answer: "As a matter of our publication policies, there was
14 no distinction whatsoever between the old and New People. And in
15 the article, we were restricted from making that distinction and
16 that was mentioned in the "Revolution Flag" but in our ordinary
17 publications, we were not allowed to make this distinction. Part
18 of our journal was for radio broadcast. We would only extract a
19 certain portion that did not concern the policies and party line
20 and we constantly received advice from our superiors that
21 broadcasting was like carrying artillery; it had enormous impact.
22 So before any article was broadcast, it had to be reviewed time
23 and again. We couldn't decide to broadcast it at our own
24 prerogative. It had to go through review and the editor in chief
25 had to revise the content in order to ensure that it had less

1 impact."

2 [14.20.47]

3 Question: "You said that the "Revolutionary Flag" mentioned the
4 term, "New People". Can you tell me what it said about New
5 People?"

6 Answer: "I don't recall this particular issue. I did not actually
7 see it with my own eyes but I only wanted to refer to the
8 authorization. Our newspaper didn't have the authority to write
9 about anything that was secret but in "Revolutionary Flag", they
10 could write something that was secret for the Party."

11 My question is as follows; among all the people that you have an
12 opportunity to speak to, especially cadres and Party members, did
13 you ever hear that distinction being drawn between the kind of
14 propaganda that was for Party members and propaganda that was
15 aimed at the population of the wider world?

16 A. Yes, certainly there was a distinction to be made between
17 propaganda and education. To use, I guess, the more exact term
18 within the party ranks and vis-à-vis what, in the party language,
19 were known as the masses. On this particular point, I'm not sure
20 I understood what your witness said and I'm not sure that from
21 what I was told, it was a matter of having a distinction between
22 "New People" and what I translate as veteran people in party
23 circles and not having that distinction outside of party circles.
24 I'm not sure that is one of the things for which there was such a
25 policy distinction but yes, in general terms; some things were

1 reserved for internal party consumption. Other things were
2 disseminated for mass consumption.

3 [14.22.51]

4 Q. Thank you. I'd now like to have a quick look at the matter of
5 enemies and traitors, which you also discussed with the
6 prosecutors. And in fact, when the prosecutor asked your
7 question, quoting the case of petty thieves who stole things like
8 spades, the prosecutor asked you about people who could be
9 executed for them mere theft of a spade and you said, "Yes". That
10 was on the 11th of July, 12 o'clock and eight minutes. I want to
11 read you two small extracts from civil party witness testimony
12 and I'd like to ask you if you'd heard about anything similar.
13 The first extract is drawn from D22/3765, French ERN, 00892711;
14 English, 00892763; and Khmer, 00875010. The civil party says the
15 following:

16 "As for the other Khmers, I saw the Khmer Rouge taking them away
17 for execution, without any kind of mercy, although they had
18 simply stolen a tube of bamboo full of palm juice, or an egg from
19 a chicken's nest, or a cockerel. Some of them were accused of
20 having discretely taken away a few grains of rice to cook them
21 and eat them. These people were all executed, tortured or beaten
22 to death. I want to say here that two of my children were
23 executed because they had stolen a little bit of food to appease
24 their hunger."

25 [14.25.05]

1 The second very short extract that I want to read on this topic
2 is drawn from a transcript of the 12th of December 2011, E1/152.1
3 and this is Denise Affonço once again, and she told us just
4 before 1538 minutes and 40 seconds, responding to a question
5 about her son, "Do you know why he was treated in this way and
6 beaten in this way?", and she answers:

7 "Yes, because like all children of his age, one day he went to
8 look for some kindling wood and instead of cutting the wood with
9 his friends they took some wood that was already cut and they
10 were caught by the slob who told them you are the children of
11 corrupt people, you're continuing to steal and you will therefore
12 be punished, duly punished, and that was the way it was." End of
13 quote.

14 Mr. Heder, among the people you have talked to, did you hear
15 similar stories?

16 A. Yes, many.

17 [14.26.25]

18 Q. Thank you.

19 Now, I'm going to talk about forced -- about the second forced
20 transfer, which you spoke about a bit this morning with the
21 prosecutor.

22 Among the people you interviewed or you heard, did people
23 describe to you the conditions under which these forced transfers
24 happened? You spoke this morning about the reasons, but what
25 about the conditions in which these forced transfers took place?

1 A. You mean conditions of transport?

2 Q. General conditions, transport, food, care provided.

3 A. Well, by boat, truck, and train, often under quite crowded
4 conditions, typically with little food, not a lot, and
5 circumstances in a manner that left them -- many instances not
6 able to sleep or rest, and therefore, in many instances arrive,
7 wherever it was they were going, weaker, sicker, and hungrier
8 than they had started out, so therefore, in very poor, relatively
9 very poor condition. In what -- and a lot of this was done under
10 some form of military control and/or guard with the people being
11 transported -- transferred from one military operation of the
12 next when they crossed, for example, a zone border, or a sector
13 border, or another CPK administrative border.

14 [14.28.43]

15 Q. Thank you.

16 Now, I'm going to read to you a few other short excerpts of civil
17 party statements regarding the second forced transfer.

18 And the first excerpt comes from civil party, D22/2068, and the
19 French ERN is 00923428; English, 00893384; and Khmer, 00544511 --
20 41. And this civil party says the following:

21 "In 1976, as most of the people living there, I was deported by
22 train to Pursat. We were very many of us and my father, Vay Khut,
23 my mother known as Yem, were deported from S'ang district to Bati
24 district in Takeo province. I had no news from them. My brothers
25 and sisters -- my brother and sister, Dy Khen, Yeun and Rom were

1 also with my parents in Takeo.

2 [14.29.59]

3 "And I travelled by train with my two children to Pursat. The
4 train was packed. I don't know where the other people came from.
5 Little children were looking for their parents and they were
6 crying, and the group leaders threw them out of the windows of
7 the train. There were -- and I was terrified by the scene I
8 hugged my children.

9 And when the night fell, the train stopped. We didn't have any
10 mosquito nets. We had no blankets to protect ourselves from the
11 insects, and the next day we had to continue on foot led by two
12 armed men who were following us, and they scattered us into the
13 different cooperatives."

14 And the second excerpt comes from a written record of interview,
15 D217/3; French ERN 00372053; English, 00353702; Khmer, 00349497
16 to 98, and the excerpt that I'm going to read to you is the
17 following:

18 [14.31.17]

19 "About two weeks after the meeting, the people started being
20 evacuated. The people were set to work by large canals with about
21 100 people by so many canals because this was a major evacuation
22 taking place that took place in all villages in this Lvea Aem
23 district. The canals stopped at Ponhea Leu district, and then we
24 were transferred by truck that brought us to Damnak Smach
25 station, and we stayed there for one week where the Khmer Rouge

1 would give us our ration of rice. And a week later, the Khmer
2 Rouge called out the people so that they board the trains to
3 Bakan district, Pursat province."

4 So once again, does -- did you hear similar descriptions among
5 the people you interviewed?

6 A. Again, yes, many.

7 [14.32.30]

8 Q. Thank you.

9 Now, I see that I don't have much time left, so I'm going to turn
10 to another topic, which is language.

11 You said that you speak fluent Khmer, and you said to the
12 prosecutor -- or you shared several expressions with the
13 prosecutor such as "draining" the people or "drying up" the
14 people from the enemy, and you also spoke about the New People,
15 and you also spoke about "capturing" the people, "seizing" the
16 people, "removing" the people.

17 And my question is the following: Among all the interviews you
18 conducted, did you note that the people interviewed would use a
19 special kind of language corresponding to the period of
20 Democratic Kampuchea, for example, to qualify traitors, to
21 characterize agricultural activity, to characterize the regime,
22 the leaders, etc.?

23 A. Yes, there was a particular and easily recognizable -- as it
24 were -- a political dialect that was widely used by cadres and
25 ordinary people alike under the CPK -- under CPK administration

1 in the same way that there was a difference between the language
2 that was -- political language that was spoken under Sihanouk and
3 the political language that was spoken under Lon Nol, but more
4 dramatically.

5 [14.34.27]

6 Q. Could you give me an example, for example, to characterize
7 agricultural activity, production, working cooperatives, etc.?

8 A. Well, to start with the end, there was a particular party
9 parlance word that was used to refer to production, "bangkor
10 bangkeun phal" (phonetic) as opposed to the central colloquial
11 "tuol sla" (phonetic). Famously, the word for "to eat", which
12 there had previously been a fairly wide variety depending on
13 social class, social status, social station, everyone was
14 expected to use a kind of peasantry "hok" (phonetic) for eat
15 instead any of the other possibilities.

16 So yes, I mean, for -- both for common -- some words were made
17 very -- were -- everybody was expected to speak a more common
18 form of Khmer than had previously been spoken, at least by some
19 people, whereas conversely, there was a new set of vocabulary
20 mostly introduced via translation from Vietnamese where people
21 had to speak in a different register that was in some ways more
22 formal, more official than had previously been the case, so kind
23 of moving in both directions at once.

24 [14.36.15]

25 Q. Thank you.

1 And this specific parlance, is it only found in documents coming
2 from the Centre, that is to say, speeches, the official
3 publications of the Party, institutional documents, minutes of
4 meetings, for example, or can we find -- do we find this
5 vocabulary only in these kinds of documents or can we also find
6 it in spoken language, such as in the spoken language of the
7 cadres at different levels?

8 MR. PRESIDENT:

9 Witness, please wait.

10 Counsel Victor Koppe, you may proceed.

11 MR. KOPPE:

12 I object, Mr. President. It's clearly an invitation for an expert
13 opinion and not a question to a witness.

14 [14.37.15]

15 MS. SIMONNEAU-FORT:

16 I don't believe that I'm asking Mr. Heder to speak as an expert
17 here. Of course, I'm sure he could do so. I am simply asking him
18 to speak to me about what he heard and about he saw and about
19 what he read and I know that he read a lot of documents, read a
20 lot of documentary evidence. I know that he interviewed many
21 people, in particular, cadres, and I'd like to know if among what
22 he heard and if he heard the same vocabulary among the cadres in
23 the spoken language as in the documents that he read. So I'm not
24 asking him to provide his opinion, I'm simply asking him to share
25 his observations.

1 (Judges deliberate)

2 [14.39.11]

3 MR. PRESIDENT:

4 The objection raised by the international counsel for Nuon Chea
5 is appropriate.

6 International Lead Co Lawyer, please rephrase your question, and
7 we actually have reminded all parties regarding the status of Mr.
8 Steve Heder. Steve Heder is here as a witness, not as an expert.
9 So please, prepare your questions accordingly -- that is, to
10 direct your question to him as a witness.

11 Anyhow, the time is appropriate for a short break. We will take a
12 20-minute break and resume at 3 p.m.

13 Court Officer, please assist the witness during the break and
14 have him returned to the courtroom at 3 p.m.

15 (Court recesses from 1440H to 1501H)

16 MR. PRESIDENT:

17 Please be seated. The Court is now back in session and we
18 continue to give the floor to the Lead Co-Lawyers for civil
19 parties to put the questions to the witness, Steve Heder.

20 You may proceed.

21 BY MS. SIMONNEAU-FORT:

22 Yes, thank you, Mr. President. Well, I am almost done in fact,
23 I'm going to reformulate my last question and I'll just put it
24 into two parts.

25 Q. You said that there was a special language used during the

1 period of Democratic Kampuchea and -- have you seen this
2 language, have you read this language in documents coming from
3 the Centre, such as in speeches, in publications, in
4 institutional documents? Have you seen examples of this language
5 in documents coming from the Centre?

6 MR. HEDER:

7 A. Certainly, yes.

8 Q. And my second question is the following: Was this special
9 parlance -- did you see it in statements made by cadres and
10 members of the Party?

11 A. Yes. And I would add also among the ordinary population, both
12 new and veteran.

13 [15.04.12]

14 MS. SIMONNEAU-FORT:

15 Thank you, because I wanted indeed to add this third question,
16 but you already answered it.

17 Thank you very much, Mr. Heder.

18 I am done with my questioning, my colleague, Lor Chunthy, wishes
19 to put a few questions to you.

20 Mr. President.

21 QUESTIONING BY MR. LOR CHUNTHY:

22 Good afternoon, Your Honours; and good afternoon everyone in and
23 around the courtroom; and good afternoon, Mr. Stephen Heder. My
24 name is Lor Chunthy, the lawyer for civil parties. I have only a
25 few questions supplementary to what has been asked by the lead

1 co-lawyer.

2 [15.05.20]

3 Q. You are an intellectual and you have conducted research on the
4 Cambodian history since 1973 and in fact, you came to Cambodia in
5 1969, if I'm not mistaken. And today you are here to testify
6 before this Court. My first question to you is the following:

7 After the 17 April 1975 -- that is immediately after that day --
8 Democratic Kampuchea convened a meeting at the Silver Pagoda.
9 Were you aware of that meeting?

10 A. I'm not quite sure the location you're referring to, at the
11 Silver Pagoda -- at the Silver Pagoda. Yes, I certainly have
12 heard about that, although I can't separate in my mind whether
13 I'd heard about it as it were, independently of my work at the
14 Court or only as a -- no, I think I heard about it before my work
15 at the Court.

16 Q. If you heard about the meeting -- or knew about the meeting,
17 either through your research or by other means, were you aware
18 that a decision was made at that time regarding the
19 implementation of the policies after the immediate liberation of
20 the country by the Khmer Rouge? Were you aware of that policy and
21 its implementation?

22 A. I don't specifically recall whether that was the meeting of
23 May '75 or the meeting of September '75. I think the meeting of
24 May '75 was at the old Khmer-Soviet Technical Institute. The
25 Silver Pagoda meeting -- if I recall correctly -- wasn't until

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1 later in the year, maybe August or September.

2 So I'm not quite sure which set of decisions I can associate it
3 with or much less their implementation.

4 [15.08.29]

5 Q. Parts of the policy is the prohibition of the market or the
6 prohibition of the circulation of a currency. Have you come
7 across such a policy through your research?

8 A. Well, prohibition of markets began by -- if not before 1973 in
9 at least some places, according to my recollection. And equally
10 the end of the use of the Khmer Republic currency, which
11 effectively meant the end of the use of all currency because it
12 wasn't yet even planned to be replaced with anything else also
13 began by '73-'74. So I think what happened after 17 April '75 was
14 affirmation of the continuation of policy decisions that had
15 already been made with regard to the liberated zones and which
16 were confirmed as to be applied throughout the whole country.

17 [15.09.51]

18 Q. You talked about a meeting at the Soviet Technical Institute
19 in May. Can you shed light on us the content of that meeting and
20 who actually participated in that meeting?

21 A. Again, if I recall correctly, this was a meeting to which
22 lower -- cadres from below the Centre or the central level from
23 throughout the country were invited -- maybe one of several such
24 meetings -- but including cadre from the zone, sector and
25 district level and various military units which -- if again if

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1 memory serves -- was more a kind of policy dissemination meeting
2 than it was in formal terms a policy decision-making meeting.

3 Q. After the conclusion of that meeting and for the sake of the
4 implementation of the policy, what did they do?

5 A. I think this is part and parcel of the decision to at least
6 continue for some time with the evacuations that had been
7 affected already and immediately -- from or immediately after 17
8 April. Again, to continue with the non-use of money at least
9 temporarily, to begin the process or to accelerate the process by
10 which Buddhist monks were no longer to be able to live off of
11 homes.

12 [15.12.17]

13 And also -- last and certainly not least, to try and search out
14 and identify -- search out, identify and execute those ranking
15 military and civilian administrative and analogous people who
16 hadn't been caught in the initial executions that occurred in the
17 first week or two after 17 April 1975.

18 Q. Also in relation to that meeting, can you tell the Court the
19 exact date of that meeting?

20 A. As I said, I'm not sure there was only one meeting. I think
21 we're talking about a series of several, by which I mean two,
22 three, four meetings in the latter part of May 1975 and maybe
23 some that spilled over into the beginning of June 1975.

24 Q. You talked about the different policies and I want to know is
25 that based on your research. Are you aware that some Cham people

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1 were mistreated during the regime?

2 A. Yes. Again, a process that began in certain ways before 17
3 April '75 and then intensified particularly from
4 September–October 1975, and even more so thereafter into '76, '77
5 and '78, becoming increasingly severe.

6 [15.14.57]

7 Q. During the course of your research, can you tell the Court how
8 the Cham was mistreated in relation -- was it in relation to the
9 religion that they practiced or was it something else?

10 A. Some -- again, starting as early as 1973, I would call it kind
11 of active discouragement, maybe compulsive discouragement of the
12 practice of religion, but not its outright prohibition. In some
13 places at least, a scattering of Chams so they wouldn't be
14 concentrated in particular areas; the prohibition in some areas
15 again on Cham holding certain kinds of positions of political
16 authority. But the picture before '75 and even after -- certainly
17 through to the end of '75 and in some ways beyond -- is rather
18 mixed. A lot of the early policies that could be described as
19 anti-Cham -- or at least anti-Islamic -- were actually carried
20 out by cadre who were themselves Cham. And that continued to be
21 significantly the case, I would say, through the end of 1975, and
22 to a lesser extent, as late as the middle of 1978, depending on
23 the location and depending on the issue.

24 [15.17.12]

25 Q. Regarding this policy implementation, what was the level of

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1 impact upon the people? Was the impact so severe that led them to
2 their death? Or could you describe the impact of those policies?

3 MR. PRESIDENT:

4 Witness, please wait.

5 Defence counsel for Khieu Samphan, you may proceed.

6 MR. KONG SAM ONN:

7 Thank you, Mr. President. I object to this question. This
8 question leads to the personal analysis of this witness and this
9 witness is not here to analyse the fact. He is here as a witness
10 and he's not an expert witness.

11 Thank you.

12 [15.18.12]

13 MR. LOR CHUNTHY:

14 Mr. President, allow me to clarify.

15 What I want is that through the research that this witness
16 conducted with the victims, either through interviews or their
17 accounts of suffering, and that's the -- what we want from this
18 witness and not his personal analysis.

19 MR. PRESIDENT:

20 The objection and its ground by counsel of Khieu Samphan is
21 appropriate, thus sustained.

22 Counsel for civil parties, you have to readjust your question,
23 the witness is here as a witness, not as an expert.

24 [15.19.07]

25 BY MR. LOR CHUNTHY:

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1 Q. Through your interviews with refugees who fled to the
2 Cambodia-Thai border, could you tell us the subjects of your
3 interview? What kind of people that you interviewed?

4 MR. HEDER:

5 A. I think the majority of them were relatively upper strata
6 Khmer Republic military and administrative personnel from western
7 Cambodia -- from locations in western Cambodia -- there were a
8 few from further away, I think there were some from Phnom Penh.
9 You may recall that in one of my earlier days of testimony I
10 talked about a pass that was issued to an evacuee. I think that
11 happened -- that person had come from Phnom Penh and the pass was
12 issued somewhere near Preaek Kdam on their way from Phnom Penh,
13 ultimately to the Thai border. But those were few and far between
14 among the people I talked to. I was only there for -- on the Thai
15 border for a couple of weeks before I went to Laos.

16 [15.20.40]

17 Q. Between 1975 to 1979, what had you learned from that regime --
18 that is the regime of Democratic Kampuchea? And at the
19 international arena, what was the impression upon the regime of
20 Democratic Kampuchea?

21 MR. PRESIDENT:

22 Witness, please wait.

23 Defence counsel for Khieu Samphan, you may proceed.

24 MR. KONG SAM ONN:

25 Thank you, Mr. President.

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1 Lawyer for civil parties put two questions to this witness
2 regarding his knowledge of what happened during the Democratic
3 Kampuchea regime from 1975 to 1979. This question is too broad
4 for this witness to respond and the counsel also mentioned
5 specific points that he wants the response from this witness.
6 And second, regarding the impressions by the international arena
7 on what happened during the Democratic Kampuchea regime would
8 mean it tries to extract the opinion from this witness.
9 For that reason, I object to this question.

10 [15.22.32]

11 MR. LOR CHUNTHY:

12 What I want is for the witness to briefly describe the interest
13 or the impression at the international arena during the
14 Democratic Kampuchea regime when it closed itself to the
15 international community.

16 MR. PRESIDENT:

17 This witness -- this kind of question can be put to an expert,
18 but not to a witness.

19 BY MR. LOR CHUNTHY:

20 Q. I'd like to put another question to this witness.

21 During the Democratic Kampuchea regime, there was a chain of
22 command from the upper echelon to the lower echelon. Could you
23 describe the means of such communication?

24 [15.23.30]

25 MR. HEDER:

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1 A. Well, to my knowledge, there was telegraphic communication
2 back and forth, that is to say up and down. There was written
3 communication, again, up and down. There were interlocking
4 meetings that allowed or made -- at least made for the
5 possibility that information could go from the top to the bottom
6 and the bottom to the top. And in those instances, we're talking
7 about oral communication, people talking to one another.

8 I think those were the three main means of communication,
9 telegrams, handwritten or typed communications, which I would --
10 mostly were called reports, headed as reports, and then the oral
11 communication that occurred in these interlocking meetings.

12 MR. LOR CHUNTHY:

13 I have no further questions for you and I'm grateful for your
14 response.

15 Mr. President, I conclude my questions now.

16 Thank you.

17 (Judges deliberate)

18 [15.25.35]

19 MR. PRESIDENT:

20 Thank you, Mr. Steve Heder.

21 The Chamber has another business to conduct that we need to hear
22 the responses from various parties to request -- a motion by Nuon
23 Chea. For that reason, the remaining of this afternoon session
24 will not be used to hear the testimony of the witness, Steve
25 Heder. And as the remaining time is short, we would like to

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1 inform the witness, Steve Heder that the hearing of your
2 testimony is not yet concluded and we will postpone it and we
3 will resume it tomorrow morning at 9.00 a.m. For that reason, you
4 are kindly invited to return to the courtroom at 9.00 a.m.
5 Court Officer, in collaboration with WESU, please assist for the
6 arrangement for the witness, Steve Heder, to return to his
7 residence and have him returned to the courtroom for his
8 testimony at 9.00 a.m. tomorrow morning.

9 [15.27.00]

10 And yes, Mr. Steve Heder, you are now excused from the courtroom.
11 The Chamber has received a request from Nuon Chea's defence to
12 accept new evidence by hearing the testimony of TCW-882. And as
13 we informed the parties, we will give the opportunity to relevant
14 parties, for example the Prosecution or the Lead Co-Lawyers, to
15 make their oral submission after the hearing of the witness Steve
16 Heder, that is at the conclusion of the time allocation for the
17 Lead Co-Lawyers for civil parties.

18 And for that reason, we would like to give the floor to the
19 Prosecution to make their response to the request by Nuon Chea's
20 defence as stated in document E294.

21 The Prosecution, please wait. I notice that the defence counsel
22 for Khieu Samphan is on her feet.

23 You may proceed.

24 [15.28.50]

25 MS. GUISSÉ:

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1 Yes, thank you, Mr. President.

2 Simply a request to know how you intend to proceed, because the

3 Khieu Samphan defence has not yet pronounced itself on the Nuon

4 Chea's defence team submission, which we support. So we would

5 like to know if you want us to provide arguments briefly before

6 the Co-Prosecutor's answer or do you wish us to speak afterwards?

7 So, I'm just asking for the Chamber on how we should proceed.

8 (Judges deliberate)

9 [15.29.48]

10 MR. PRESIDENT:

11 If you have this specific request, then you may proceed.

12 And in order to clarify on this motion and to make sure that

13 other parties are also at the same page on this, you may raise

14 your request and observation.

15 You may proceed.

16 MS. GUISSÉ:

17 Well, I understand that you accept me making my observations

18 right now then, is that what I should understand?

19 I see that Judge Lavergne acquiesces to that.

20 I won't be very lengthy because in principle we support entirely

21 the arguments developed by the Nuon Chea defence team on the fact

22 that given the new elements that have come into play regarding

23 the film on Tuol Po Chrey and regarding the request to hear

24 witness TCW-882, if I'm not mistaken. Once again, we support the

25 Nuon Chea defence team in this regard. And why? Because since the

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1 beginning -- since the beginning of the document hearings -- and
2 in particular relative to the videos -- we always said that the
3 problem of a video when we cannot see the totality of the
4 interviews that maybe were cut out of the film -- you remember
5 the very first document hearing when there were -- there were
6 excerpts of interviews of Mr. Khieu Samphan -- we asked that
7 these videos to be placed on the case file. But we opposed
8 placing these videos on the case file and saying that when there
9 was only one excerpt, we could not have the entirety of this
10 interview.

11 [15.31.52]

12 And we are in this case once again when we have only excerpts
13 that outside of their context and outside of the context of the
14 many, many hours of dailies, do not allow us to have a full
15 understanding of what was said.

16 And under these conditions, the fact of having the producer and
17 the director at the same time come here for him to explain how
18 these -- this editing was done and how the people interviewed
19 might have said extra things outside of the film now, and how
20 other people who were questioned might have provided other
21 evidence and in particular exculpatory evidence, is for us
22 something that is very, very important.

23 [15.32.35]

24 It's obvious that the email that the Nuon Chea defence team
25 mentioned arrived very recently, and thus the Defence could not

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1 avail itself of it before. This is a new element, an element that
2 provides exculpatory elements for the Defence because here again,
3 we are speaking about joint criminal enterprise, so what is
4 exculpatory -- and in particular regarding this film -- is also
5 exculpatory for Mr. Khieu Samphan. And thus, we fully support the
6 request made by the Nuon Chea defence team.

7 Once again, this proves what we said from the beginning, that
8 sometimes when we have documentary elements outside of their
9 context, we cannot understand the full context and today we have
10 the possibility of having complementary elements. So therefore,
11 we believe that it's obvious that for a fair trial, it is
12 necessary for us to have these elements in these proceedings.

13 [15.33.37]

14 MR. PRESIDENT:

15 Thank you.

16 Now I hand over the floor to the Co-Prosecutor to respond to the
17 request by the defence team.

18 MR. ABDULHAK:

19 Thank you, Mr. President.

20 And on behalf of the Co-Prosecutors, let me say first that -- for
21 clarity -- there are in fact in three aspects to this
22 application: One is for an email to be admitted into evidence.
23 The second is for the Chamber to conduct an investigation
24 pursuant to Rule 93. And the third in fact is the one that my
25 friend just addressed, which relates to the summoning of an

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1 individual whose pseudonym we understand to be TCW-382, so I will
2 refer to that individual throughout my submissions as TCW-382 --
3 this is the individual whose email of course we received last
4 week.

5 Also relevant, is TCW-720, which is the other individual,
6 involved more directly in the preparation of the videos that have
7 been referred to.

8 [15.35.19]

9 And before I give our response, can I indicate, Your Honours,
10 that yesterday afternoon we forwarded to Your Honours through the
11 legal officers -- and also to the Defence and other parties --
12 nine files which are essentially copies of publicly available
13 interviews with the gentleman to whom this request pertains.

14 In summary, before I address the request in more detail, the
15 Prosecution opposes two of the three requests. In particular, we
16 oppose the request that the email be admitted into evidence. And
17 we also oppose the request that the individual -- that is TCW-382
18 -- be summoned to give evidence. We agree in part with the third
19 request, albeit in a modified form, and I will come to that in a
20 few moments.

21 [15.36.27]

22 By way of an introduction, let me say, Your Honours, that perhaps
23 like you we were somewhat surprised to see this apparently
24 unsolicited communication from an individual, who has in the past
25 refused to cooperate with this Court when asked to provide

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1 materials that he had made available in the public domain. So it
2 is somewhat puzzling as to the motivations behind this request.
3 Also noting that instead of following perhaps the more
4 appropriate channel of directing information to the Court, if he
5 feels he has information that may assist, he does so by
6 contacting one of the counsel.

7 It is our submission that this individual has little, if
8 anything, to offer as a witness, let alone expert in this trial.
9 And it is pertinent to look at what involvement he has had in
10 collecting information that this request pertains to, and what
11 his general qualification and experience are. This is an
12 individual who is a talented filmmaker -- one might say -- but
13 he's certainly no expert in Khmer Rouge history or in CPK
14 authority structure and policies.

15 [15.38.23]

16 If you look at documents 7 and 6 that we -- that we forwarded --
17 without going into them in any great detail -- they show that his
18 background was first as a musician and then as someone making
19 general documentaries for television covering a wide variety of
20 topics. He's currently working in fact on two documentaries that
21 are entirely unrelated -- it appears -- to Cambodia. He has no
22 professional qualifications that we know of that relates to the
23 history of Cambodia or the Khmer Rouge movement. Again, as best
24 as we can tell, he has conducted no scholarly research into Khmer
25 Rouge history or policies. He has done no field work whatsoever

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1 beyond the work that is -- in fact led by TCW-720.

2 And it appears from the materials that are available in the
3 public domain, is that he holds certain rather naïve views about
4 the state of research and material available on the Khmer Rouge.

5 If I can take Your Honours to just one example that illustrates
6 this well, in document number 1 on the first page -- this is a
7 Radio Prague interview -- he is asked:

8 [15.39.53]

9 "What has TCW-720 achieved with this quest of his?"

10 Response: "Well, he has achieved a much greater understanding and
11 amount of information about the Khmer Rouge regime than has ever
12 been gathered before."

13 This gentleman is apparently unaware of hundreds of statements
14 that have been given by various leaders of Democratic Kampuchea
15 and Khmer Rouge cadre of the extensive research that has been
16 done over decades by people such as Steve Heder, David Hawk,
17 David Chandler, Ben Kiernan, Michael Vickery, Philip Short and
18 others.

19 He thinks he's gathered more information that has ever been
20 gathered before. I'm not sure if I can speak on behalf of this
21 group, but it would appear to me that their combined experience
22 of well over 100 years of research into the Khmer Rouge might
23 perhaps negate that claim.

24 There are also misrepresentations in this gentleman's email which
25 go both to his credibility and to the way in which you should

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1 hear the evidence in the form of the email or the purported
2 evidence that the Defence is putting forward.

3 [15.41.28]

4 At paragraph 2 of E294, you have the text of the email where the
5 gentleman suggests the following in relation to Nuon Chea --

6 quote:

7 "He did not agree that top Lon Nol officers had been killed. What
8 he said was that half a dozen Lon Nol cabinet and top officials
9 had been put through revolutionary due process and condemned to
10 death by a military tribunal which from memory, Nuon Chea was not
11 part of."

12 That is an allegation in relation to what Nuon Chea says in the
13 DVD. On the DVD itself, in the part called "One Day at Po Chrey"
14 -- and this is document E186.1R at 22 minutes, the following
15 exchange takes place, TCW-720 interviewing Nuon Chea -- quote:

16 "Uncle, what were the political orders for the top four or five
17 leaders of the previous regime?"

18 Nuon Chea: "They were to be liquidated, they deserved the
19 severest penalty, they'd betrayed the nation to foreigners."

20 [15.42.55]

21 You juxtaposed those two passages, Your Honours, and what you see
22 is that TCW-382 apparently has a view of the facts that are even
23 more exculpatory than Nuon Chea himself. Without even going into
24 his motives in sending this communication, he is clearly wrong
25 about his own DVD.

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1 Now, moving on to the extent of the gentleman's research -- and
2 this addresses my friend's arguments in relation to him being
3 called as a fact witness or an expert -- the documents we have
4 sent through illustrate that in fact he is at best a fellow
5 traveller and a documentary maker while someone else is leading a
6 project to collect information.

7 Documents number 5 and 6 contain statements by TCW-382 indicating
8 that he only came to Cambodia in 2006 with a plan to do a film --
9 as he says -- and it was at that point that he met TCW-720 who
10 had already done six or seven years of work. So, he, at that
11 point, joined the project, but having joined it, he, of course,
12 was not present for the most important interviews. And this goes
13 to the heart of our friend's application.

14 [15.44.43]

15 If you look at file number 1 -- and again, I referred to this
16 earlier, this is the Radio Prague interview -- it is clear from
17 this gentleman's own admissions or statements that he had very
18 little to do with key interviews. And he -- and I will read this
19 because it is significant, in our submission:

20 "Question: TCW-720's method is over many years to build up the
21 trust of these people. Did the presence of your cameras impede
22 his interviews at all?

23 Answer: No. By and large, the exclusive and extremely secret
24 revelations that take place in the film are done by him alone."

25 [15.45.40]

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1 A little bit further down:

2 "But for the very secret things with Nuon Chea -- and also there
3 is a scene in the film where Nuon Chea meets two killers and they
4 all discuss why they all were involved in such killing, this is
5 the kind of thing that really only TCW-720, a Cambodian that is
6 trusted by these people, could do."

7 So by his own information, Your Honours, this individual was not
8 present, contrary to Nuon Chea's submissions, in the most
9 important and most relevant of interviews.

10 As for his knowledge of Tuol Po Chrey, the video itself says at
11 48 seconds that it was TCW-720 that had investigated the massacre
12 for many years and identified people whom he was able to
13 interview in relation to that massacre.

14 So certainly, Your Honours, this individual neither has the
15 expertise nor factual knowledge, in our submission that would
16 warrant him being called to describe for you what people have had
17 to say.

18 There are other reasons why we have certain reservations or
19 concerns about the Court's ability to obtain any information from
20 this individual, and it has to do again with statements that he
21 has made in the past.

22 [15.47.28]

23 If you look at document number 2 at page 1, the individual makes
24 it clear that he views these proceedings as incompatible with a
25 truth and reconciliation process of which his film is a variant.

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1 And he says:

2 "The question then becomes to, do you want truth or justice? You
3 can't have both."

4 I'll leave the ridiculousness of that proposition to everyone
5 else to judge for themselves.

6 But furthermore, in document number 3, an interview with the
7 "Independent Newspaper" at page 1, the -- TCW-382 confirms that
8 the information that TCW-720 obtained was obtained on the
9 condition that it not be used against Nuon Chea.

10 [15.48.42]

11 And he says -- in relation to the interviewees -- and I quote:

12 "They engaged in a process with you and you must stick to that
13 promise, as a result of not bowing to the Court, we are now seen
14 as an independent party in Cambodia and more Khmer Rouge people
15 are willing -- are talking to us and they will not talk to the
16 Court."

17 TCW-720 confirms that position in document number 4, which is a
18 CNN article where he says at page 2 -- quote:

19 "If I give this kind of stuff to the Court, it means that I
20 betray Nuon Chea and I betray the killers."

21 So, Your Honours, we have indeed great doubts as to the
22 willingness of these individuals to provide any information that
23 you may seek. And that brings me to a summary of our position and
24 my conclusion.

25 First, in relation to the email, we oppose its admission. It is

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1 not suitable to prove the fact that it purports to prove it is a
2 -- it is a statement of what an individual says Nuon Chea says.
3 Nuon Chea is in this Court and can speak for himself and I've
4 just demonstrated for Your Honours, that this individual's
5 interpretation of Nuon Chea's words is unreliable.

6 [15.50.28]

7 Also, it would be entirely improper to admit an email from --
8 that says what somebody else says, if that same individual is
9 unwilling to provide the raw material or the video footage that
10 apparently contains -- or may contain -- other statements of
11 interest. So the email is a -- is not reliable, it is not
12 suitable to prove the facts it purports to prove, and it should
13 therefore not be admitted. It is of no evidential value
14 whatsoever.

15 As to the summoning of the individual, for the reasons that I've
16 stated, we oppose that application. He has no knowledge of
17 relevant facts. You cannot compare this individual to people like
18 Steve Heder or François Ponchaud or Philip Short, whether they'd
19 be viewed as fact witnesses or experts, these are people who have
20 conducted years of original research. Ponchaud and Heder, in fact
21 are witnesses of fact during the Democratic Kampuchea period.

22 [15.51.42]

23 But what's more, all of these individuals have willingly provided
24 material to the Court and it is on the basis of that material
25 that they were called to testify. He's certainly no expert and I

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1 think that requires no further elaboration.

2 Now, as to the third aspect of the application in relation to
3 making inquiries, let me say that we will always support the Nuon
4 Chea team as we will always support the Khieu Samphan team, in
5 reasonable requests to obtain information that on its face
6 appears to be probative and relevant, or to have any exculpatory
7 -- potentially exculpatory value for them.

8 So we do not oppose a request for information being sent to this
9 individual and to TCW-720 whereby, in our respectful submission,
10 they should be requested not to provide comment, not to provide
11 interpretation of what people said, but rather to provide the
12 material that is in their possession.

13 [15.52.54]

14 If they have written statements or if they have raw video footage
15 that in any way relates to the matters before Your Honours, then
16 we do not oppose -- obviously, we do not oppose, Your Honours,
17 obtaining that material.

18 But I do return to my reservations that I expressed earlier, it
19 is quite likely, in our opinion looking at the facts, that your
20 request for information -- which is what we suggest that it
21 should be -- will be met either with a refusal or with silence,
22 as was the case with the Co-Investigating Judges.

23 I should state for the record -- for clarity -- that the request
24 should be for raw footage, not for selected cutting of material.
25 And in our respectful submission, it should also be for the

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1 manuscript which led to the writing of the books -- of the book
2 E152.2.

3 [15.53.51]

4 Once that material is received -- if it is received -- we would
5 submit that Your Honours could make arrangements for it to be
6 confidentially provided to the parties, thereby addressing any
7 commercial concerns that the owners of the material may have in
8 relation to their financial interests. And then the parties can
9 be invited to make submissions as to whether that material should
10 be admitted. And secondly, whether anyone identified in that
11 material should be called as a witness.

12 But I do return to our reservations, given the stage of the
13 proceedings we are in, given this individual's prior refusal to
14 cooperate with the Court, we would encourage Your Honours to deal
15 with this matter quickly. We have the individual's email address;
16 he appears to be perfectly capable of communicating when he feels
17 like it. Your Honours should communicate an urgent request for
18 information and proceed from there.

19 [15.54.51]

20 If he's unwilling to provide the information or if he fails to
21 provide it within a short period of time, then Your Honours
22 should dismiss the request because on its face, E294 does not
23 describe any evidence as it stands, that Your Honours could admit
24 in these proceedings.

25 Those are our submissions.

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1 MR. PRESIDENT:

2 Thank you, Mr. Prosecutor.

3 How about the Lead Co-Lawyer for the civil parties, do you have
4 any observation or response?

5 MR. PICH ANG:

6 Thank you, Mr. President; and good afternoon, Mr. President and
7 Your Honours and all parties. I do not have much to observe on
8 this particular application, but a few days back Madam
9 Simonneau-Fort made it clear concerning our position with regard
10 to this matter, and as per the content of the email by this
11 particular witness he mentioned two things:

12 [15.56.02]

13 One he said -- he described things that Mr. Nuon Chea mentioned
14 in the video and, second, he talked about the evidence of the
15 video that he has produced.

16 What we would like to submit to the Chamber is that this person
17 is not an expert when he elaborates on any content whether or not
18 it was true or not. I believe that it is not appropriate and I
19 believe that the majority of what he said should not be admitted
20 as evidence. And I believe that he is now trying to have the
21 Court believe that he is an expert and I think part of his email
22 he mentioned that he was acting like an expert. So I join with
23 the Co-Prosecutor that this email not admitted to the evidence
24 and I would like to cede the floor to my international colleague
25 to add further to this point.

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1 [15.57.18]

2 MR. PRESIDENT:

3 Thank you, and International Lead Co-Lawyer, you may proceed.

4 MS. SIMONNEAU-FORT:

5 Very briefly, Mr. President, just to add to what was said by the
6 Co-Prosecutor and my learned friend, Lead Co-Lawyer. I'd just
7 like to add from a purely juridical point of view -- if I
8 understood how this request emerged -- there was an original
9 request made by our learned friend which was accepted initially
10 as new proof. It's an email from Mr. Rob Lemkin. That is the
11 principal request on the basis of 87.4 and 87.3. Then there were
12 two subsequent requests rooted in that initial request which are
13 that this individual should be heard as a witness or an expert,
14 and then the second subsequent request is that Article 93
15 investigation should be performed.

16 [15.58.21]

17 I would tend to stop at the initial request. If the initial
18 request is not admissible, then the two subsequent requests are,
19 therefore, not admissible either. And as the principal request,
20 namely, to accept the email as evidence, I do believe that if you
21 apply Rule 87.3 that the email does not have relevance and that
22 it is not likely to prove what it is intended to establish.
23 I note that Mr. Lemkin in his email does not rely on what has
24 already been said in these hearings. He relies on which he has
25 read in the Phnom Penh Post which gives us an idea of how his

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1 ideas are rooted in something that is really quite distant from
2 what happens in this Court.

3 Moreover, if Mr. Rob Lemkin believes that what Mr. Nuon Chea says
4 in Khmer in this DVD while he's being filmed is not what Mr. Nuon
5 Chea really said. I think that the least he can do to make his
6 email more believable is to illustrate it with other remarks by
7 Mr. Nuon Chea in the footage.

8 Mr. Rob Lemkin does none of that. He is happy enough to vaguely
9 refer to what the "Phnom Penh Post" said and I believe that this
10 initial request is, frankly, not grounded in seriousness and the
11 email is not serious.

12 [16.00.06]

13 If you base yourself on that email, there is no evidence of
14 relevance and it does not appear in any way likely to prove what
15 it purports to do. If the first request is rejected, it seems to
16 me logical that you should reject the other two that are only
17 things that emanate from the first.

18 We support what the Prosecution has said. Mr. Rob Lemkin is
19 neither a witness nor an expert on the file. This is absolutely
20 clear. I believe that the evidence that has been put forward by
21 the Prosecution proves this and the very vague nature of the
22 email proves this as well, if further proof is necessary.

23 I also note that the request for a further investigation that has
24 been made to you today which, as I see it, should be rejected,
25 was never proposed by the Defence at an earlier stage, it is

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1 solely on the basis of this person's email.

2 [16.01.02]

3 Now, if Mr. Nuon Chea himself believes, and has believed over the
4 last year and-a-half, that the video extracts from this DVD that
5 have been used in these hearings do not represent what he
6 actually said. I'm astonished that he hasn't made that point
7 clear over the last year and-a-half.

8 I note that the request is being made today on the basis of the
9 email which, as I've already said, is completely lacking in
10 relevance, it is hair-brained, and it certainly doesn't prove
11 what it's meant to prove. So we reject all three requests, the
12 principal one and the two that emanate from it, which have no
13 substance. Thank you.

14 MR. PRESIDENT:

15 Thank you. And the Chamber would like to thank the parties for
16 your submissions.

17 I notice that counsel Victor Koppe is on his feet. You may
18 proceed.

19 MR. KOPPE:

20 Thank you, Mr. President. Just a procedural question. Am I
21 allowed to reply to these submissions which I just heard or would
22 you rather have me do that tomorrow morning because of the time?
23 But I heard so much nonsense that I would really like to reply.
24 Sorry, Judge Cartwright, but I couldn't help myself.

25 (Judges deliberate)

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1 [16.03.28]

2 MR. PRESIDENT:

3 The Chamber will allow the defence counsel to respond. This is an
4 exceptional case, it is not a common practice, but in this
5 instance you are granted an opportunity to respond, but please
6 make it brief. Just make it a five-minute response. Thank you.

7 MR. KOPPE:

8 Thank you very much, Mr. President, I will make it very short.
9 Just, Mr. President, to allow me to go back quickly to this
10 Tuesday that we received this email. If you allow me, I will just
11 call him by his name since the civil party just mentioned his
12 name five times.

13 Mr. Rob Lemkin had read an article in the Phnom Penh Post which
14 might not have accurately described the events that had occurred
15 the day before. He intended to inform us that the way he had read
16 the article seemed to suggest that things were not in accordance
17 with his own knowledge and his own experience in relation to this
18 film. He didn't offer himself to be an expert; he just seemed to
19 be inclined to correct the things that have happened at the
20 hearing.

21 [16.05.08]

22 It is very important, once again, to realize that Mr. Rob Lemkin
23 is not somebody who is indirectly involved in this movie that we
24 have -- that we are speaking about. He is -- and one can read
25 that at the various websites and everywhere else -- he is the

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1 co-director and the co-producer of this film. This film, which --
2 and I'm sure of course that you are aware of this -- has been --
3 excerpts of this film have been shown over and over during the
4 key document presentations of the Prosecution. So in the
5 perspective of the Prosecution, this film is very important in
6 ascertaining the truth and in the key evidence in relation to
7 Nuon Chea.

8 [16.06.04]

9 Now, if you go to one of these excerpts as well, one of these
10 interviews, it seems that he and the other
11 co-producer/co-director of this film are in the possession of
12 about 160 hours of video footage and about 1,000 hours of audio
13 footage. What he seems to say is that the very small percentage
14 of this footage which has been put into the film that this is not
15 reflective at all of the things that have happened or events that
16 have passed in the Northwest Zone in April 1975?

17 So he is saying, "I have footage clearly indicating that the
18 actions in the Northwest are the design -- are the local design
19 of the then North Zone chief, Ros Nhim". So rather than focussing
20 on the first two or three paragraphs of his email, the last
21 paragraph of his email is obviously much more important and I
22 have indicated that as well last week.

23 And here it says, and I will just quote again. Of course, I know
24 you know it, but just maybe also for the public, Lemkin says:

25 [16.07.26]

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1 "By the way, regarding Po Chrey, this was a massacre ordered by
2 Ros Nhim not central command. We have amassed a wealth of
3 evidence about Nhim's agenda but have been so far unable to
4 complete our second film."

5 Now this amass -- this wealth of evidence, obviously he means
6 with that the hours of footage that I just referred to.

7 The standard which is now being applied to, according to the
8 Prosecution, is a standard that we haven't heard so far. There
9 might be questions of the probative value of this particular
10 email, but the standards are now applied in a completely manner
11 when it comes to admitting this email. There are dozens of
12 evidence where it is unclear how this evidence came about whether
13 this evidence was, in fact, saying what this particular witness
14 or expert knew or whether he was giving conclusions. So we are
15 all of a sudden changing the goalpost when it comes to the
16 admittance standard.

17 [18.08.47]

18 Most importantly, and that is actually my main argument, we have
19 to realize that Rob Lemkin approached us by sending this email.
20 He, apparently, did not have a problem in forwarding -- or
21 presenting himself and giving this information. It seems -- and
22 this is how I understand this email, that the problem of not
23 earlier giving this information at the request of the
24 Investigating Judges was that there seemed to be some sort of
25 agreement with Nuon Chea that he was not giving this footage to

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1 the Tribunal.

2 It seems now we have a different situation. It seems now that he
3 has information which might be exculpatory for Nuon Chea and if
4 Nuon Chea doesn't have a problem, if our client doesn't have a
5 problem if Lemkin and his co-producer will provide this
6 additional footage, then there is no reason any more it seems for
7 Lemkin and his co-producer to actually provide that footage.

8 [16.09.52]

9 We have a different situation than in 2011, where it seems that
10 both producers were refusing to give this footage because of the
11 agreements with Nuon Chea, but now the situation is reversed. Now
12 they are saying that they are in the possession of very important
13 exculpatory evidence and if our client says, "I have no problem
14 if you give this footage or this information to the Tribunal"
15 then, of course, there's no problem anymore to be anticipated.
16 But, of course, the most simple way to be able to find out is if
17 - if the Chamber simply asks him if Lemkin minds to provide you
18 with this additional footage.

19 Now, of course, we are all aware of the fact that these
20 proceedings are coming to an end and we realize that it is the
21 case, but it doesn't change the fact that at the last moment, it
22 seems, there is
23 now -- there are now indications of the existence of very
24 important exculpatory evidence. And just because of the fact that
25 we are now in the end phase of this proceeding doesn't mean we

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1 should not take this very seriously.

2 [16.11.13]

3 It is not -- it's maybe even quite rare in cases like this, that
4 at the last moment a producer such as Lemkin is offering the
5 Tribunal to give exculpatory evidence, but this is the case. This
6 is the situation right now and, of course, I don't have to remind
7 you but maybe I would have to remind the Prosecution about this,
8 one of the - the leading principles of this Tribunal, of this
9 Court, is the ascertainment of the truth. We are looking for the
10 truth, and here we have somebody who is claiming that he has seen
11 hours and hours of footage consisting of very important material
12 directly in relation to the very facts that the Chamber is
13 adjudicating.

14 His film is about Tuol Po Chrey. You have decided in your wisdom
15 to add Tuol Po Chrey as a crime site in addition to the forced
16 transfer. The film is obviously important because it has been
17 shown over and over, and now the very director, the very producer
18 of this film is saying, "Wait, something is not going well. We
19 have additional footage saying something completely different
20 that is apparently being portrayed".

21 And, of course, there's only one thing, Mr. President and Your
22 Honours, that you can do, is make sure that this material is
23 available for all parties and for you to make at the end of the
24 day a proper judgement in respect of especially the facts at Tuol
25 Po Chrey. Thank you.

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1 [16.12.53]

2 MR. PRESIDENT:

3 Judge Silvia Cartwright, please take the floor. Thank you.

4 JUDGE CARTWRIGHT:

5 Thank you, President.

6 Mr. Koppe, you indicated that this producer is offering to assist
7 the Chamber. Is this your understanding? It's not apparent from
8 the email and it seems to contradict the experience that the
9 Co-Investigating Judges had. Can you briefly comment on that,
10 please?

11 MR. KOPPE:

12 This is how I understand this email. He knows we are -- the
13 defence counsel for Nuon Chea. He is apparently following this
14 trial. He knows his film is the subject of an important debate.
15 As I understand from also speaking to our client is that there
16 was an agreement between our client and the co-producer not to
17 give the material to a -- to the Tribunal. That was an agreement
18 made before 2007.

19 [16.14.15]

20 Apparently, one can say that both of them have violated this
21 agreement because they have made the film, that's not a matter of
22 discussion, but from the same token of reasoning, from the same
23 rationale, we can say now if our client is saying I have no
24 problem anymore if you provide the footage to the Chamber, then I
25 can only interpret the email together with what our client is

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1 saying, that he is now willing to offer all his assistance to the
2 Chamber.

3 JUDGE CARTWRIGHT:

4 Yes, and what about the witness's journalistic ethics that he
5 repeatedly referred to, Mr. Koppe?

6 [16.14.54]

7 MR. KOPPE:

8 I have always understood this, and this is something of course to
9 be respected, that as every journalist he is protecting his
10 sources. Journalists when asked what are your sources, how did
11 you get your information, will always invoke his right. It is
12 Article 10 of the European Convention of Human Rights, protecting
13 his sources in respect of freedom of speech.

14 Now, if the very source is saying I have no problem if you
15 provide this information, then, of course, it is my understanding
16 that the journalist himself cannot properly invoke anymore -- and
17 will not do so, his right to protect his sources.

18 JUDGE CARTWRIGHT:

19 Just stay on your feet, Mr. Koppe. And what about the other
20 subjects who are in the movie other than your client, Nuon Chea,
21 have they waived any rights or are you just assuming that that
22 will be the case?

23 [16.16.03]

24 MR. KOPPE:

25 That might be the case, but I don't know. That is, of course, up

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1 to Mr. Lemkin to --

2 MR. PRESIDENT:

3 Thank you for all the comments and submissions, that's both pro
4 and against the submission made by Nuon Chea's defence.

5 And after having heard both side's submissions and responses to
6 the submission made by Nuon Chea's defence, that is document
7 E294, the Chamber will examine the issue and to make the decision
8 in due course.

9 The time is appropriate for the adjournment for today's
10 proceeding. We will adjourn now and we will resume tomorrow
11 morning -- that is Tuesday, the 16th, and tomorrow we will
12 continue to hear the testimony of Mr. Steve Heder, who will be
13 questioned by the defence groups. This information is for the
14 parties, the support staff and the general public.

15 Security guards are instructed to take the two accused, that is
16 Khieu Samphan and Nuon Chea, back to the detention facility and
17 have them returned to the courtroom tomorrow morning prior to 9
18 a.m. As for Nuon Chea, bring him to the holding cell downstairs
19 with the audio-visual means for him to remotely follow the
20 proceeding.

21 The Court is now adjourned.

22 (Court adjourns at 1618H)

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