



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

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

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

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

17 July 2013
Trial Day 212

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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MR. STEPHEN HEDER

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
JUDGE CARTWRIGHT	English
MS GUISSÉ	French
MR. HEDER	English
MR. KOPPE	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. NUON CHEA	Khmer
MR. RAYNOR	English
MS. SIMONNEAU-FORT	French
MR. SON ARUN	Khmer

1

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Today the Chamber will continue to hear the testimony of the
6 witness, Steve Heder who will be questioned by Khieu Samphan's
7 defence.

8 And before we proceed, the greffier, Ms. Se Kolvuthy, could you
9 report the attendance of the parties and individuals to today's
10 proceeding?

11 THE GREFFIER:

12 Mr. President, for today's proceeding, all parties to this case
13 are present.

14 And on the side note, Nuon Chea is present in the holding cell
15 downstairs, pursuant to the decision of the Trial Chamber
16 regarding his health.

17 The witness, Stephen Heder, is already in the courtroom ready to
18 continue his testimony.

19 Thank you.

20 MR. PRESIDENT:

21 Thank you.

22 We would like now to give the floor to Khieu Samphan's defence to
23 continue putting questions to the witness.

24 And before you proceed Counsel, I'd like to give the floor to the
25 Witness first and then the Prosecution.

2

1 [09.05.02]

2 MR. HEDER:

3 Very quickly, two offers; if you want me to finish clarifying the
4 factual basis for what I wrote in my book about the relationship
5 between Vietnamese Communist Doctrine and the Communist practice
6 of the two men who are on trial today, I'm happy to do that.

7 Second, if ZyLAB can pull up the full original text of the quotes
8 that appear in the footnote to been Kiernan's book, I'm also
9 happy to clarify - try to clarify the circumstances surrounding
10 their authorship and in particular, the factual basis as in the
11 facts available to me at that time for the views, the alternative
12 views I'm quoted correctly, I think, as having stated according
13 to those footnotes. Just offers.

14 (Judges deliberate)

15 [09.06.22]

16 MR. PRESIDENT:

17 Thank you, Mr. Steve Heder. And we would like to inform you that
18 we would not like to hear further complimentary addition from
19 you. And we kindly like to advise you that as a witness, please
20 respond directly to the question that is put to you and limit
21 your reply to the context of that question too and that is to
22 avoid the time consumption; and as you know the time allocation
23 to the parties is very limited and strict. So, please make your
24 response precise and brief.

25 And the Prosecution, you may now take the floor.

3

1 MR. RAYNOR:

2 Good morning, Mr. President. Good morning, Your Honours. Good
3 morning to fellow counsel.

4 Mr. President, I rise at this stage just to say that we have been
5 undertaking a review of the witness statements that it appears
6 that the Khieu Samphan defence team may seek to rely on today and
7 it appears to us, but we are willing to be corrected. But to take
8 just two examples, E3/392 and E3/393 are not in the revised 12
9 Annex. As has been stated by the Court on many occasions, any
10 document to be referred to must be on a parties' own Rule 80 list
11 or another parties' list.

12 [09.10.20]

13 As I say these and I anticipate perhaps other documents are not
14 in revised Annex 12 to whose admission the Defence objected and I
15 would like please, a direction to the Defence in respect of every
16 witness statement they refer to before putting any contents of
17 any witness statement to clarify in open court directly to all
18 the parties and the Trial Chamber whether the document they seek
19 to rely is in a Rule 80 list. Thank you.

20 [09.10.58]

21 MS. GUISSÉ:

22 Good morning, Mr. President. Good morning, Your Honours. Good
23 morning to all of the parties.

24 I feel that the prosecutor's remark is a bit premature I should
25 say, but I will make sure to indicate what - the status of my

4

1 documents. But right now, right off the bat, the numbers
2 mentioned by the prosecutor don't mean anything to me, but I
3 think there will be no problem and I am sure that the prosecutor
4 will be mindful and interrupt me if it's necessary.

5 So, with your leave Mr. President, I would like to start.

6 MR. PRESIDENT:

7 Yes, you may proceed.

8 [09.12.00]

9 QUESTIONING BY MS. GUISSÉ:

10 Good morning, Mr. Heder. Let me introduce myself; my name is Anta
11 Guissé. I am the International Co-Counsel of Mr. Khieu Samphan
12 and it is in this capacity that I am going to put to you a few
13 questions today.

14 You understand that you are appearing before us as a witness and
15 not as an expert and therefore, this limits us in the kinds of
16 questions that we will put to you. And it is within these strict
17 confines that I will try to clarify certain points and go over
18 certain documents with you. When I will ask you questions on
19 interviews, generally speaking, I will ask you please to answer
20 us on the basis of what you experienced directly in Cambodia,
21 what you personally saw or what information you personally
22 gathered during your research; whether it be for your articles or
23 whether it be in the context of your work here at the OCIJ or at
24 the OCP.

25 So, each time please give us a factual base; no opinions, simply

5

1 facts based on elements that you personally came into contact
2 with. I will tell you, maybe I will forget this in some of my
3 questions and I will have to remind you, but please be aware that
4 that will be the guideline.

5 [09.13.57]

6 Q. So, my first series of questions relates to when you were in
7 Cambodia between 1973, May 1973 and 11 April 1975. You said that
8 you were in Phnom Penh then and you said on the hearing of 11
9 July 2013, a little bit after a quarter to two in the afternoon,
10 that you had arrived when the bombing was officially - had
11 officially ended in August 1975. Did I understand correctly what
12 you said and do I understand that you arrived in Phnom Penh in
13 May 1973; that is to say before the end of the U.S. bombing?

14 MR. HEDER:

15 A. Yes, with one clarification that when I arrived, the bombing
16 was still going on. My recollection is that by that time or
17 shortly thereafter, the U.S. Congress legally ordered a halt to
18 the bombing, but the actual end to the bombing didn't occur until
19 the 15th of August 1973.

20 Q. So I understand that you - did you personally see any bombing
21 or experience any?

22 [09.15.35]

23 A. In - I can't say that I was in the proximity of the - in the
24 immediate proximity of the dropping of bombs by the U.S. Air
25 Force before that halted in April - of August 1973, wrong

6

1 century. But if you lived, as I did, as I described on the
2 southwest outskirts of Phnom Penh, when in particular B-52
3 strikes were being carried out, the shockwaves of the bombing
4 were sufficient to sway the house in which I was living. So, and
5 the sound of the bombing both southwest of town and north of town
6 and south of town and east of town, was all very audible. One
7 could sit on the top of the Monivong Hotel on Monivong Boulevard
8 then; I forget what it's called now and from the roof, one could
9 see the flashes of the strikes occurring in all directions around
10 town, particularly at night when it was highly visible.

11 Q. Thank you for this clarification. So, after having known that
12 bombing was taking place in such and such an area, were you led
13 to travel to an area after it had been bombed? Did you notice
14 personally what had happened in an area; what - did you notice
15 any traces of bombings in the areas you travelled to?

16 [09.17.45]

17 A. Since the overwhelming majority of the bombing was in areas
18 controlled by the Khmer Rouge, I didn't visit them and I suppose
19 if I had, I wouldn't be here today. So the answer is no.

20 Q. I would like as of now, Mr. President, I can tell the
21 prosecutor and this is a small side point, that the two
22 statements; he mentioned E3/392 and E3/393 are on the
23 Co-Prosecutor's 80, Rule 80(d) list on page 79 of this document,
24 E109/4.12. So this is just to allow the Prosecution to check this
25 if necessary.

7

1 MR. RAYNOR:

2 Mr. President, just so it's clear that that is not the right
3 list. That is reference to the initial list and not the revised
4 list. So is it on the revised list, not the original list?

5 MS. GUISSÉ:

6 Well, second point of clarification, and then I will, of course,
7 return to my questioning of the witness. It appears to me that
8 the Court's jurisprudence had indicated to us that in the context
9 of our questioning, we could use all E3 documents and that all E3
10 - all documents that were not E3 documents - that were E3
11 documents had to be placed on the parties lists.

12 [09.19.48]

13 So this is a question that I tender to the Chamber, well in any
14 case, a priori I do not intend to use these documents in the
15 first part of my questioning. So maybe you will have the time to
16 check during the break if this is possible, but for the moment I
17 will put these documents aside.

18 BY MS. GUISSÉ:

19 Q. Now, Mr. Heder let me please return to where we were. On the
20 hearing of 11 July, a little after 10 past two, you said that you
21 were able to get military information and you spoke about a
22 Japanese military, attaché, in particular.

23 So my question is the following: After the end of the U.S.
24 bombing, do you know if the Lon Nol forces had an air force? Did
25 this information coming from this military attaché or from any

8

1 other source indicate to you that this could be the case?

2 [09.21.13]

3 MR. PRESIDENT:

4 Witness, please hold on.

5 The Prosecution, you may proceed.

6 MR. RAYNOR:

7 Mr. President, repetitious; this question was answered twice
8 during the course of Mr. Heder's testimony about the Lon Nol air
9 force. It's repetitious, it's going to exactly the same ground
10 that Mr. Heder has already covered and answered. It's not
11 clarifying, it's repeating.

12 MS. GUISSÉ:

13 Fine. Well, if the answer was already provided, fine.

14 Q. Well, then can you tell us which military sources spoke to you
15 about the Lon Nol air force?

16 [09.22.06]

17 MR. HEDER:

18 A. Well, first and foremost, officers of the Khmer Republic Air
19 Force itself. Second, primarily U.S. military personnel attached
20 to the U.S. Embassy previously described and also, indeed, the
21 Japanese military attaché and I would add, almost certainly,
22 other military attachés; particularly the Thai and the
23 Singaporeans and the Malaysians were among those to whom I
24 frequently spoke. But my recollection is that the Japanese and
25 the Americans had or made - were willing to make available the

1 most detailed and specific information.

2 Q. You also spoke to my colleague, Victor Koppe, about a
3 journalist by the name of Sydney Schanberg, and he told us that
4 you did not know him very well, but that you knew him however.
5 And he testified on 7 June 2013 and he spoke about a bombing of
6 the Lon Nol forces and he mentioned this when he testified as
7 well as in an article that he presented to the parties. And this
8 article is document D226/1/4/3.1 and the date is March 1, in his
9 journal.

10 [09.23.57]

11 So, according to the dates that you provided to us, on March 1 of
12 1975, do you remember any bombing on that date?

13 MR. PRESIDENT:

14 Witness, please hold on.

15 The Prosecution, please take the floor.

16 MR. RAYNOR:

17 It seems that sloppiness does not just affect one defence team,
18 its endemic. If a reference is being made to Sydney Schanberg's
19 testimony, can we please have a page, an ERN or a timing for that
20 document and the specific passage quoted to the witness.

21 [09.24.48]

22 Secondly, if we have reference to a document, can we please have
23 a specific passage from the document that's being put to the
24 witness? This is the typical way in which this side questions;
25 they package together multiple sources without giving references

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1 and then ask questions based upon it. It is imprecise advocacy;
2 it is not advocacy which should be the gold standard for this
3 Court. I say it now so that hopefully a more professional
4 approach can be developed. It is not enough simply to package
5 various things together and then ask general questions; do you
6 remember some bombing on which date, of which area or what time.
7 It's imprecise, it's sloppy and it should not be tolerated.

8 MS. GUISSÉ:

9 Well, I see that the Co-Prosecutor is ready to object to every
10 one of my questions, so, if we're going to proceed this way, we
11 will proceed this way.

12 I'm aware that I have very limited time for my questioning and
13 I'm trying to do things the way they should be done. Now in
14 relation to this objection related to references, yes I have
15 provided the references of this document. This is the hearing of
16 7 June 2013 and the document is E1/20.1 and I'm speaking about
17 document D226/1/4/3.1. And the ERN exists in English and as all
18 parties know, because these were notes that were provided
19 belatedly by Mr. Schanberg and the ERN in English is 0898227
20 (sic). And the reason why I did not mention these ERNs is that I
21 did not intend to show the document to the witness and I was just
22 giving these references so that the parties may know what I'm
23 talking about and may know which period I'm talking about.

24 [09.27.19]

25 We spoke in - at length about this issue with Mr. Schanberg and

11

1 the point of my question was just to give the references simply
2 to provide the context. I could have asked him: "Where you in
3 Phnom Penh on March 1, 1975; do you remember having experienced
4 any bombing." I could have asked the question that way and it
5 would have been approved. So I'm trying now just to provide extra
6 specifications, but I simply wish to inform the Chamber that I
7 have a lot of references and that will take a lot of time.

8 [09.27.59]

9 And if the Co-Prosecutor intends to object to each one of my
10 questions, we won't be able to manage this today and I won't be
11 able to finish today if we continue in this way. So this is
12 something I wanted to – a point I wanted to make, so Mr.
13 President, may I please proceed with my questioning now?

14 MR. RAYNOR:

15 Mr. President, all I've asked for is the time reference in the
16 transcript of Sydney Schanberg's testimony on the 7th of June so
17 that you know what we're talking about and we know what we're
18 talking about. What is the time marking on Sydney Schanberg's
19 transcript?

20 MS. GUISSÉ:

21 I will provide it to you later. I don't have it now and I have
22 reference and I gave you the English ERN and you can refer to it.
23 It is D226/1/4/3.1; English ERN 08982227. And now that I have
24 provided this clarification, I will give you the date. It is 1
25 March 1975 and it is on March 1, 1975 that Sydney Schanberg

12

1 speaks about this bombing.

2 MR. RAYNOR:

3 Mr. President-

4 [09.29.30]

5 MR. PRESIDENT:

6 I think the prosecutor has taken many floors already and if you
7 keep doing that, we cannot move on this morning. Probably you
8 think only the time is for you just to stand up and interrupt the
9 defence counsel. Please make your point precisely and for once
10 and then wait for the reply from the other side and then we will
11 decide on that. The floor is not for you to take three for three
12 or four times already just on this very issue.

13 [09.30.11]

14 MR. RAYNOR:

15 Mr. President, is document D226/1/4/3.1 on any required list?

16 MS. GUISSÉ:

17 I am sorry, but we have used this document in extensile during
18 Mr. Schanberg's appearance. If the prosecutor uncovers this
19 document, I am sorry, but his colleague will confirm to him that
20 that document has been used extensively by the prosecutor during
21 the questioning of the witness and the entire Chamber is aware of
22 this. Can I proceed with my cross-examination of the witness, Mr.
23 President, following the particular and multitude objections of
24 the prosecutor? With the assistance of my team the hearing of the
25 7th of June 2013 was at 11.32 that we raised this issue regarding

13

1 Mr. Schanberg. I could have asked my question quite simply
2 without giving any reference; I gave the reference in order to
3 assist the parties and yet this is posing more problems.
4 Having made these clarifications, Mr. President, may I proceed
5 with my questioning of the witness?

6 MR. PRESIDENT:

7 You may proceed.

8 BY MS. GUISSÉ:

9 Thank you.

10 Q. Now, Mr. Heder, I'm sorry for the interruption.

11 My question to you was as follows. I do not know whether you
12 answered it. The question was as follows: Do you recall attending
13 on the 1st of March or at any other date, do you recall
14 witnessing any bombings?

15 [09.32.33]

16 MR. HEDER:

17 A. Yes. Particularly by Khmer Republic Air Force T-28 aircraft,
18 and some other aircraft as well, but primarily T-28's.

19 Q. Thank you for this clarification. I will now go into another
20 line of questioning. At the hearing of the 11th of July, this
21 year, you told the Co-Prosecutor of an intelligence report of the
22 Khmer Republic and it is a record and it is in English at 11:15
23 and 14 seconds. I want to point out that it is in English because
24 at the time Mr. President, there were translation problems in
25 French and that is why I would like us to revisit that transcript

1 at that particular time witness.

2 [09.33.37]

3 You refer to an intelligence report of the Khmer Republic which
4 presented an organization chart of the Communist movement and, in
5 particular, a military organization chart. The passage which I
6 will unfortunately quote in English is as follows, and I want
7 everyone to be able to follow it, that's why I am quoting it in
8 English. On the draft transcript in the English page 82, shortly
9 before 2.15, the prosecutor put a specific question to you and he
10 asked you whether you recalled the military structure at the time
11 and this was your answer, and for the interpreters, unfortunately
12 I will read out the transcript in English with my poor accent:

13 "In at least some of these materials, Saloth Sar was at the top
14 and that was something which there was some dispute within the
15 intelligence community, about who he was and how accurate that
16 was. But after the reporting done by Uk Soeum, who had been in
17 the - on the fringes of the Party apparatus and then defected to
18 the Khmer Republic side, did some reports from Khmer Republic
19 intelligence and then published a book where he identified Saloth
20 Sar as the head of the Communist Movement. That was pretty much
21 accepted in the intelligence community. For Nat, as it was a
22 Special Zone, my recollection was in those days, Vorn Vet was
23 identified as the head of the Special Zone, but one of his other
24 aliases, I think, Sok Thuok name was used in the documents.

25 [09.36.09]

15

1 Certainly Ta Mok was mentioned; in the East, certainly So Phim
2 was mentioned as the head of the zone, I think by his - one of
3 his aliases -- Vanna, So Vanna; and the other zone secretaries
4 for the most part, were accurately identified - (inaudible) in
5 the Northeast - sorry Northwest, and so on." End of quote.

6 [09.36.48]

7 Mr. Witness, for a start, do you recall this passage; in French
8 it was not translated into French. I would like us to revisit
9 what you stated in your answer, notably that Saloth Sar was at
10 head of that organization chart. Do you recall what his
11 revolutionary alias was?

12 A. In that document, I don't think any alias was given and
13 certainly not the alias by which he was subsequently publically
14 known, Pol Pot, was not in that document. I can confirm that I
15 never heard of that alias until the name was made public once the
16 regime was in power. So, before April 1975, I certainly never
17 heard that alias applied to anyone.

18 Q. And you stated in your answer that the matter was discussed as
19 to whether Saloth Sar was at the head of the movement or not. Why
20 were there such discussions; what was cause for concern for the
21 intelligence community at the time in your opinion?

22 A. Attempts at analysis of - or the gathering and analysis of
23 intelligence about the leadership of the Khmer Rouge went through
24 several stages as it was described to me by people in - people in
25 the embassies who had access to intelligence data and initially,

16

1 for example, in the U.S. Embassy, it was insisted that those
2 known as the "Three Ghosts" which included of course, Khieu
3 Samphan, were in fact dead and that therefore, the photographs
4 that had been produced of them after March 1970 presenting them
5 in formal terms as leadership of the GRUNK and the FUNK, were
6 fakes. Subsequent to that, eventually it seemed to be accepted
7 that they were not dead, but alive and then there was some
8 discussion, again as reported to me, about whether or not they
9 held positions of real power and there wasn't certainty as I
10 recall in these circles about that issue.

11 [09.40.09]

12 And there was also a raging debate which related to this question
13 of who was in charge at the very top about the extent of
14 Vietnamese and, to a certain extent, Chinese influence. And the
15 debate was essentially about whether or not the Khmer Rouge were
16 independent of Vietnamese Communist leadership. And for a long
17 time, I was told, CIA to cite one, Intelligence Agency, continued
18 to insist that the Khmer Rouge movement was under Vietnamese
19 Communist control and leadership. I think that view, as I recall
20 it, from what I was told, was disputed by some of the analysts on
21 the ground, as often occurs in intelligence situations; there's a
22 - in my experience, from what I've been told about such things,
23 there's often a split between those who do the actual analysis on
24 the ground and the higher ups in the organization.

25 [09.41.23]

17

1 But increasingly as I indicated in my previous testimony, it
2 seemed to be accepted first, that the "Three Ghosts" were not the
3 top leadership; second, that the top leadership included the
4 likes of people like Saloth Sar, Nuon Chea, Ta Mok, Vorn Vet, Koy
5 Thuon was also frequently mentioned. And increasingly, at least I
6 was told within the U.S. Embassy intelligence community, it was
7 believed that the Khmer Rouge were not under Vietnamese control.
8 There were theories that Ieng Sary because he was a Khmer Krom
9 was therefore under Vietnamese control or Son Sen because he was
10 Khmer Krom was under Vietnamese control. Nobody seemed to have a
11 clear idea who Saloth Sar was; there was some discussion of Nuon
12 Chea, but from what I heard at the time, it seemed that this was
13 pretty much sheer speculation. So those were as I recall it, the
14 terms of the debate and I recall it rather specifically because,
15 I don't remember whether I talked about this in my previous
16 testimony, but one of the stories I was asked to do immediately
17 before and immediately after 17 April '75 by my "Time Magazine"
18 editors in Saigon, Hong Kong and New York, was about,
19 specifically about the Khmer Rouge leadership issues.

20 [09.43.14]

21 And I wrote a piece which took the position that the best
22 available evidence in the non-legal sense of the word, indicated
23 to me that the Khmer Rouge leadership was not under Vietnamese
24 control, that this was an independent, political organization
25 pursuing its own path. And that story never appeared, I was told

18

1 by my senior editors in New York, because they went to CIA in
2 Langley and CIA in Langley told them I was wrong. Therefore, they
3 didn't publish it, but the story was done and it's the reason why
4 I have some detail with regard to this debate. I went around
5 asking people who were prepared to tell me what was going on in
6 the intelligence community in - with regard to these issues. I
7 have a relatively clear memory of all of that.

8 [09.44.12]

9 Q. I am going into another line of questioning and we will return
10 to what you learned at the time and what you learned subsequently
11 in the course of your investigations on leadership. But at the
12 hearing of the 10th of July at about 14 hours, 08, the
13 Co-Prosecutor asked you about an interview you had with Thiounn
14 Prasith and he referred to document E3/22, titled: "Cambodian
15 Communism and the Vietnamese Model." And when you refer to that
16 matter at 14.08, the Co-Prosecutor referred to footnote number 69
17 in which you make reference to an interview with Thiounn Prasith
18 on the 8th and 9th of September 1978 in New York. And 14 hours
19 10, perhaps I should repeat my references; it does not appear to
20 ring a bell to you.

21 At the hearing of the 10th of July at 14 hours, 08, in a question
22 put to you by the International Co-Prosecutor, you refer to an
23 interview with Thiounn Prasith; do you recall that interview?

24 A. There were several interviews I did with Thiounn Prasith. What
25 I'm shaking my head about is the date that you mentioned. I don't

19

1 think it's possible that I interviewed him in 1978. I don't
2 recall whether he was a part of the Ieng Sary delegation that I
3 met in New York in late '78, but if I did – if he was, I can't
4 imagine, based on my current recollection, that I interviewed him
5 about something like that at that time. Subsequently, yes maybe
6 in 1998 is – maybe there's a typo somewhere in the chain of
7 transmission of this citation?

8 [09.46.51]

9 Q. Perhaps, in fact since I am referring to a document in French
10 and is New York 1997. I will cross check this matter later. You
11 state that according to what you remember, you met Mr. Thiounn
12 Prasith after the Democratic Kampuchea era. Is that correct? I
13 will come back on this matter with the good – the proper
14 references if what I'm giving is not correct. I want you to
15 recall what you said during the hearing on that day at 14 hours,
16 08; 14 hours, 10, during that interview which is dated later. You
17 stated that you paraphrased what Prasith said regarding what you
18 said, Khieu Samphan and you said he was like a private secretary
19 of Nuon. And when you questioned by the Co-Prosecutor, you stated
20 that: "I paraphrased Prasith." You said something similar, but I
21 wouldn't swear that that was exactly the expression you used.

22 [09.48.21]

23 My question to you is as follows – I am not talking of any
24 interviews you had with him as part of your scholarly research,
25 but as part of your work in the Office of Co-Prosecutors and the

20

1 Office of Co-Investigating Judges; did you ever hear of an
2 interview record with Thiounn Prasith on the 8th of June 2009?
3 Were you questioned on that and did you have any access to that
4 document?

5 A. Yes, of course, I was aware of the document. I didn't do the
6 interview myself. My recollection is the interview was done in
7 France by investigators of the office assigned to that task. As a
8 matter of course, I would probably have been involved in helping,
9 work up briefing materials for those Investigators. But I don't
10 have any record of any of that obviously. And they went, they did
11 the interview, the PV went on the case file; I read it on the
12 case file, I had access to the case file in those days. And I'm
13 not really sure if I have a lot more to say about it. Yes, I was
14 aware; yes, I was probably involved at some level in the
15 preparatory work leading to the interview. Yes, I read it once it
16 was done and that's about it, really.

17 [09.50.16]

18 Q. Yes, as a matter of fact, I'm sorry, Mr. Heder. Whenever I put
19 questions to you, it is not necessarily to seek clarifications
20 from you. My question is do you recall that, you can simply say
21 yes or no. I just want to lay a foundation for my questions. So
22 you have agreed that you worked on that document and with the
23 leave of the President, may I request that if it is possible,
24 document E3/96 be placed on the screen. It is the interview
25 transcript with Thiounn Prasith in June 2009, Paris. The page of

21

1 interest is 00342220; and the ERN in English is 00346945, and the
2 ERN in Khmer is 00348329.

3 To assist everyone in the courtroom, let me point out that the
4 paragraph in this document I would like to read out is the last
5 page; it's on the last page in French.

6 MR. PRESIDENT:

7 Mr. Prosecutor, you may proceed.

8 MR. RAYNOR:

9 Mr. President, this document was not downloaded, it was not on an
10 email sent from the Khieu Samphan team at 6.40 yesterday or on an
11 updated email sent after that, certainly on the information that
12 I have. So I object to this document being shown as it's not been
13 uploaded and we have no advance notice of it.

14 [09.52.24]

15 MS. GUISSÉ:

16 This is an unfortunate case of a document I forgot to place on
17 the list. This document was not on the interface. If I may assist
18 the parties, I don't wish to use this document later. It is
19 indeed an E3 document, referring to Thiounn Prasith, who was
20 interviewed by the witness. It also refers to Mr. Khieu Samphan,
21 so it is a document that is particularly relevant. If I didn't
22 place it on the interface it is because I forgot to do so, and
23 I'm sorry about it.

24 As Judge Cartwright said during the 3 July hearing, we should be
25 flexible in the manner in which we use these documents, given the

22

1 fact that huge amounts of documents are being presented. If the
2 Chamber would like me to refer to this document, I would simply
3 like to refer to a single paragraph regarding what Mr. Thiounn
4 Prasith said regarding what he knew about my client's duties, and
5 I think it is a very important point to broach in my questioning.

6 (Judges deliberate)

7 [09.54.58]

8 MR. PRESIDENT:

9 The Chamber grants the permission for the Defence to pursue on
10 this document, because this document was awarded the E3
11 classification, and thus far the Chamber has been relatively
12 flexible on this as well. So, Counsel, you may proceed.

13 Mr. Steve Heder, do you have any issue or anything to say?

14 MR. HEDER:

15 I've got the Khmer. In this particular instance I'd prefer the
16 French or even the English on my screen.

17 BY MS. GUISSÉ:

18 We'll perhaps try to print out a French version of the document,
19 that is, a French version of that page. If you could bear with
20 this for some time, I will read out the passage and maybe you can
21 refer to it later. It will enable us to gain time and perhaps
22 look at a translation later.

23 Q. I've already given the ERN. The question that is raised -
24 would you like to say something? So let me proceed then.

25 [09.56.34]

1 The question that was put to Mr. Thiounn Prasith during that
2 interview was as follows:

3 "Question: Did you know Khieu Samphan?"

4 "Answer: I do not remember if I knew him when I was in France. I
5 heard his name in Cambodia when he launched the magazine,
6 'L'Observateur'. I occasionally published articles in this
7 magazine under the pen name, San. Khieu Samphan had the
8 reputation of being a man of integrity. I met him a few times in
9 Phnom Penh. He was the trade minister and a member of parliament.
10 He had a political career under both Sihanouk and Pol Pot. He
11 held a doctorate in economics. I do not know if he was a member
12 of the Central Committee, but I know that he was President of the
13 Presidium. Prior to 1975, he was deputy prime minister of the
14 GRUNK and commander-in-chief of the armed forces. A bogus title
15 because Pol Pot was the actual commander. Also during the same
16 period, when he travelled abroad, it was Ieng Sary who exercised
17 power, while Khieu Samphan was the head of delegation. When a
18 delegation was headed by Ieng Sary it was he who had the real
19 power." End of quote.

20 Having read out this passage to you, I will give you my copy in
21 French with the assistance of the court officer.

22 [09.58.40]

23 First question before you receive the document: Do you recall
24 whether that was indeed a document you consulted when you were
25 working at the ECCC?

24

1 MR. HEDER:

2 A. I'm not sure what you mean by "consulted". I saw this
3 document, but I don't think I had any role in analysing this
4 particular document or otherwise; it's processing.

5 Q. Well, when I said consulting, I meant examining. Well, my
6 question now is going to be focused on the substance of what is
7 said by Mr. Thiounn Prasith.

8 We spoke about the intelligence reports on the army's
9 organization chart earlier, and in this statement Mr. Thiounn
10 Prasith explains that the rank of commander in chief of the armed
11 forces was a bogus rank. Does that correspond to the factual
12 elements that you might have gathered or to the information that
13 you might have received, whether it be while you were in Cambodia
14 or whether it be later on in your research at the OCIJ or at the
15 OCP, or in your factual research for your own personal works?

16 A. Yes.

17 [10.00.39]

18 Q. Now, I would like to turn to another point. I'm sorry, another
19 point regarding this point that you were not sure that Thiounn
20 Prasith had used Nuon's personal secretary, which you brought up
21 when you were questioned on 10 July last by the Co Prosecutor. Do
22 you have any other factual elements indicating that Khieu Samphan
23 had been the personal secretary of Nuon?

24 A. To my recollection, that's the only specific assertion of that
25 alleged fact, if you will, that purported fact, that I'm aware

25

1 of, but there could be others, but that's the only one that I can
2 currently think of.

3 Q. Now, another topic.

4 Mr. Heder, you said on 11 July at around 20 past two when you
5 were answering the Co Prosecutor again. You spoke about the radio
6 broadcasts that you heard and you spoke in particular about the
7 Voice of the FUNK. So a little bit past 20 past two you say – and
8 I quote [free translation]: "From time to time, radio broadcasts
9 were presented as broadcasting Khieu Samphan's name or someone
10 else with a name, but most of the time it was an anonymous
11 speaker speaking." End of quote.

12 [10.02.42]

13 So my question is since you said that you frequently examined the
14 FBIS reports, in these reports was a distinction made between the
15 moments when it was supposedly Khieu Samphan's voice and when it
16 was an anonymous speaker? When you would read the FBIS reports,
17 could you detect the difference between both voices being
18 broadcasted?

19 A. Yes, normally it was specified in a heading to the report.

20 Q. And when a statement of Khieu Samphan was read at length, did
21 the anchor-man or the broadcaster say that we are going to now
22 hear a statement by Khieu Samphan or were things not said so
23 specifically?

24 A. I don't recall instances in which someone introduced the
25 speaker and then the speaker spoke. Either there was a headline

26

1 specifying that the speech was a speech of someone, for example
2 Khieu Samphan, or alternatively, there was an editorial edition
3 by the FBIS monitors and editors indicating, as I said, read by
4 announcer, recorded, recorded voice of Khieu Samphan. And I can't
5 speak to how it was that they made that decision, how they
6 reached that conclusion, but it was a standard part of the added
7 editorial comments of either the monitors or their editors at
8 FBIS.

9 [10.05.05]

10 Q. Thank you for this clarification.

11 Now, I would like to turn to another topic. At the hearing of 11
12 July 2013 at around ten past ten when you answered a question
13 from the Prosecution, you said - when describing the
14 implementation of the policies of the Party, you said the
15 following [free translation]:

16 "In the interviews, people described the official policy as being
17 such as was announced here in the documents, but at the same
18 time, during the interviews the people often said that the
19 official policy and the official organization did not operate as
20 they were expected to operate on paper."

21 So I just wanted to remind you of this statement in order to
22 compare it to a passage from your long article "Re Evaluation".
23 And let me give you the references of the document: E190.1.3.398.
24 And the title is the following: "Re Evaluation or Re Assessment
25 of the Role Played by the Senior Leaders and the Local Cadres in

27

1 the Crimes Committed in Democratic Kampuchea: Cambodian
2 Responsibility in a Comparative Perspective."

3 [10.06.53]

4 So I don't know if you still have the document with you. Okay, I
5 will then ask the court officer, please - I'm sorry, Court
6 officer, I'm going to have you work a bit today, but - so let me
7 give you a binder.

8 MR. PRESIDENT:

9 Court Officer, yes, you can go and get the document from the
10 counsel.

11 BY MS. GUISSÉ:

12 I am just providing now a binder in which there is this document
13 "Pol Pot and Khieu Samphan". This is document D366/7.1.14, and
14 the article in question is "Re Assessing", and the index is
15 E190.1.398. These documents are in English and so the segment I'm
16 interested in is at ERN, English, 00661462 on to 63; French,
17 00792921 on to the following page; and in Khmer is 00830768 on to
18 the following page as well.

19 So, in French it's on page 9 and this is a paragraph in which you
20 describe the New People. It's a rather lengthy quote, so I'll try
21 to speak slowly for the interpreters. This is what you say [free
22 translation]:

23 [10.09.14]

24 "In order to make of the New People a stable component of a
25 monolithic block of solidarity with the state revolutionary

1 power, the local cadres were instructed to act towards the
2 evacuees in an open-minded way by demonstrating flexibility and
3 indulgence towards them and by considering them in no case as
4 prisoners of war. They also had to fight against intolerance
5 between the Old People and the New People by making them work
6 side by side in an atmosphere of solidarity and happiness."

7 So let me stop here to specify that there are many, many quotes,
8 but I will return to these quotes and to the footnotes later, but
9 let me just read out this paragraph at length.

10 Now, I will continue:

11 "They had to improve the standard of living of the New People to
12 prove that this regime was also theirs and to pay attention to
13 the fact that the Old People welcomed them and shared the ground,
14 the cattle and the food. The Old People should not take advantage
15 of the work of the New People but support them, supporting those
16 who have just arrived in the countryside with only their bare
17 hands, proving that they were entirely open to the newcomers. The
18 New People and the Old People had to therefore live and work and
19 study, have fun, enjoy prosperity, or suffer hunger together in
20 the cooperatives in a spirit of solidarity. The cadres were
21 warned. The New People had to see that the revolution was really
22 practicing economic equality. This policy was transmitted to the
23 local bodies or the parties under the following instructions: The
24 evacuees must be considered as being part of the Cambodian people
25 and not as being enemies; therefore, it is necessary to provide

1 food to them as well as water as well as shelter, kill animals,
2 provide food to the evacuees, and rice coming from the
3 cooperatives." End of quote.

4 In this paragraph, as I said, you see that there is an important
5 number of quote unquote, "quotes", and as a footnote you indicate
6 some of your sources, given that you have worked on the basis of
7 Khmer documents and you translated these documents? That is my
8 first question.

9 [10.12.32]

10 A. Yes, I've worked from the original Khmer, made my own
11 translations, and incorporated those quotes from my translations
12 of those original Khmer documents.

13 Q. Well, the footnotes forming the base of the paragraph I just
14 read out to you go from note 31 to note 41, and I'm going to,
15 since I want to understand how you work with certain documents.
16 And when I find what I think is the ground of this footnote in
17 the context of this document E3, put before the Chamber, I would
18 like to have therefore the leave to show these documents to Mr.
19 Heder for him to confirm that he did indeed work on these
20 documents in order to draft this paragraph.

21 The first document that I believe we found in the case file is
22 document E3/216, and in your footnote you say - and in English
23 and this is - I will quote it in English; this is footnote 31:
24 "Record of the Standing Committee Tour of the Northwest Zone,
25 20-24 August 1975."

30

1 I would like therefore to please provide this document in Khmer
2 to Mr. Heder because he said that he worked on this document in
3 its Khmer version for him to become aware of this document and to
4 confirm to us that he did work with this document to draft this
5 paragraph.

6 [10.15.10]

7 MR. PRESIDENT:

8 Yes, you may do so.

9 Court Officer, could you hand the document from the counsel to
10 the witness?

11 BY MS. GUISSÉ:

12 Q. So I will give you the time to become familiar with it again,
13 but I will let you know already that I simply want to be sure
14 that this is the document you used when you drafted the paragraph
15 I just quoted. Do you need more time to-

16 MR. HEDER:

17 A. Yes, it's the same document. I note, however, that this
18 version appears to be incomplete. It ends on page 7 with a new
19 heading for which there is no subsequent text. I don't recall
20 that the document upon which I worked, or from which I worked,
21 was incomplete, so there may be additional text in the document
22 from which I worked which doesn't appear here.

23 [10.17.02]

24 Q. Fine. My question is the following: Based on what you
25 indicated in this paragraph, we can agree that the quoted

31

1 passages are translations of what you found in Khmer in documents
2 coming from the Democratic Kampuchea regime, such as this
3 document E3/216?

4 A. Yes, documents that came to me either via DC Cam or in some
5 instances, David Chandler.

6 Q. You also mentioned in note 32 a document known as notes from
7 Democratic Kampuchea. So my question is: is - are these the
8 famous notes of cadres that you spoke about when you answered the
9 questions put to you by the Prosecution?

10 A. Yes.

11 Q. And in the further footnotes, at note 33, and here again I
12 must quote it in English:

13 "Document number three: Examination of the grasp and the
14 implementation of the political line on restoring the economy and
15 setting up national conscription in every domain."

16 Now, back to French, dated 19 September 1975.

17 Do you remember this document, and is this document also a
18 document given to you by DC Cam or by David Chandler?

19 [10.19.58]

20 A. Yes and yes.

21 Q. Now, regarding note 34, and in French this is a report of the
22 visit of the Standing Committee. So we agree that this is the
23 same document being referred to in note 31, or is this a
24 different document?

25 A. Same.

1 Q. Now, note 35, and I'll quote in English again: "The great
2 victory 17 April 1975 was a victory of solidarity and unity with
3 our Kampuchean people and population, Kampuchean Front." Now,
4 back to French, August 1975.

5 Here again, is this document a document that was given to you by
6 DC Cam and/or by David Chandler? And I haven't found it on the
7 case file.

8 A. I believe this document was among the scattered collection of
9 Party documents that was at the Tuol Sleng Genocide Museum and of
10 which I either got a duplicate, original, or a photocopy sometime
11 between 1980 and 1989, but I suspect 1980/1981. I think the same
12 document is also in the possession of Philip Short, either,
13 again, an original or a photocopy.

14 [10.22.13]

15 This one, looking at it, probably a photocopy, because that would
16 explain why the pagination is missing. If the photocopy was done
17 quickly in a situation where there was poor photocopying facility
18 available, could have been cut off during the photocopying in
19 haste. So, probably in this instance not an original but a
20 photocopy.

21 Q. Now, note 36. Well, we haven't found it but it's the same
22 question and I will quote this note in English again: "The bright
23 future of the new Kampuchea's economy, Kampuchean Front." Back to
24 French, August 1975.

25 So it's the same kind of document as the document you mentioned,

33

1 that is to say, a document that was in this scattered collection
2 where there were no page numbers because there was a problem with
3 the photocopying machine.

4 Now, let me move on to note 37. And I will quote in English
5 again: "Cambodian youth must forge and re-fashion themselves in
6 the movement to strengthen and expand production in cooperatives,
7 in Revolutionary Youth."

8 [10.24.24]

9 So, apparently, this note 37 has an E3 number, and with the
10 President's leave, may we provide to Mr. Heder the Khmer copy so
11 that he can confirm that he found the references for this part of
12 his article in this document with the assistance of the court
13 officer, of course?

14 MR. PRESIDENT:

15 Yes, you may do so.

16 Court officer, could you deliver the document from the counsel
17 for the witness's examination?

18 BY MS. GUISSÉ:

19 So, please go over this document again, and let us know if you
20 indeed worked with this document.

21 MR. HEDER:

22 A. Yes.

23 MR. RAYNOR:

24 Could I just ask for the E3 number, please?

25 [10.25.35]

1 MR. HEDER:

2 E3/72-

3 MS. GUISSÉ:

4 I had indicated it, but I will repeat it: E3/729.

5 Now, let me move on to note 39. I will skip note 38 because I am
6 not sure that I have it copied. Well, I will speak about note 39
7 first, and I will get back to note 38 later. And in note 39, you
8 mention a priori document, E3/750.

9 And with the leave of the President, may we please provide this
10 document to him again to make sure that he did indeed work on the
11 base of this document? I apologize, Court Officer-

12 MR. PRESIDENT:

13 Yes, you may proceed.

14 BY MS. GUISSÉ:

15 Q. Do you recognize this document?

16 [10.27.51]

17 MR. HEDER:

18 A. There seems to be some discrepancy. It doesn't seem to be the
19 same document, unless - yes, it's in the table of contents. I'm
20 trying to leaf through to find whether it's actually in the
21 photocopy you gave me.

22 It's there.

23 MS. GUISSÉ:

24 Thank you for specifying this.

25 We haven't found note number 40, and indeed, in note 41 you quote

35

1 and you already referred to this when you were answering the Co
2 Prosecutor as well as the civil parties. You speak about the
3 interviews you had with the refugees at the Cambodian/Thai
4 Border. This is part of the sources that you used to draft your
5 article.

6 You confirm. We agree.

7 The next document is 58. I was not able to show you in Khmer, and
8 it is E3/747.

9 [10.29.57]

10 With the President's leave and the assistance of the court
11 officer, I would like Mr. Heder to be shown this document so that
12 he can confirm that that is indeed the document referred to in
13 footnote 38? I'm sorry; I am overworking the court officer.

14 MR. PRESIDENT:

15 You may proceed.

16 BY MS. GUISSÉ:

17 Q. Do you recognize this document? Is that indeed the document
18 you used when you were drafting your article? And specifically,
19 the passage we're referring to?

20 MR. HEDER:

21 A. I'm sorry; which footnote are we talking about? 40?

22 Q. Not 40. I am now talking of footnote 38, which was not
23 available. It is footnote 38.

24 A. It's not the same document.

25 Q. It's not the same document?

36

1 A. No, it's not. (Inaudible) - is number 8, August '77. The one
2 cited in the footnote is special number October/November '75. So
3 it's the wrong document entirely. And while I've got the mic; the
4 document number 6 cited in footnote number 40 that you said that
5 you couldn't identify - that's the same document as is cited in
6 full in footnote 29.

7 [10.32.38]

8 Q. Thank you for this information. I am ending this line of
9 questioning, Mr. President. I have only one more question, and
10 then we can take our break. We are agreed that the instructions
11 you referred to in the paragraph I have just read out to you -
12 the paragraph in your article - these are instructions that you
13 found in various Democratic Kampuchea documents, and which you
14 cited. Is that correct?

15 A. Yes. I mean, to be specific, various Communist Party of
16 Kampuchea documents, one 'Front' document, and then there's the
17 one interview in addition. But yes, overall, yes.

18 [10.33.31]

19 Q. Mr. President, I would like to go into another line of
20 questioning. Perhaps we should take our break now?

21 MR. PRESIDENT:

22 Thank you.

23 The time is now appropriate for adjournment. The Chamber shall
24 adjourn now and resume at five to 11.00.

25 Court officer is instructed to assist the witness during the

37

1 break and have him return to this Courtroom by five to 11.00.

2 The Court is now adjourned.

3 (Court recesses from 1034H to 1057H)

4 MR. PRESIDENT:

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

6 And we would like once again to give the floor to Khieu Samphan's

7 defence to continue putting questions to the witness. You may

8 proceed. The Greffier, what happened to Nuon Chea's defence team?

9 You may join in.

10 MS. GUISSÉ:

11 Mr. President, as we get ready - or as we were getting ready, I

12 found note 38 which we spoke about with Mr. Heder, and I gave him

13 the wrong document. So with the help of the Court Officer, can we

14 please provide to Mr. Heder document E3/748, which corresponds a

15 priori to note 38 of his article?

16 [10.59.55]

17 MR. PRESIDENT:

18 Yes, you may do so.

19 BY MS. GUISSÉ:

20 Q. So, same question as previously. So, Mr. Heder, is this the

21 right document?

22 MR. HEDER:

23 A. Yes.

24 Q. Thank you. As you were preparing yourself - in the preparation

25 of your testimony, the prosecutor listed a certain number of

38

1 statements that you gathered from witnesses, whether in the
2 context of the document that we looked at regarding the refugees
3 at the Thai border, but also in other statements on the case
4 file. And I'd like to go over some of them with you.

5 [11.01.10]

6 And we're speaking again about the issue of the lower-ranking
7 cadres and their responsibility, and the fact that the policy
8 such as announced was not necessarily the policies that were
9 implemented. And this is what I would like to go over with you.

10 So the first document I would like to go over with you is
11 document D224.77, which is on the list of documents from the
12 Co-Prosecutor's Office. And with the leave of the President, I
13 would like to display the Khmer version on the screen. In
14 particular, the following pages at ERN - so this again is
15 document D224.77 - English ERN 00352107; French 00612235; Khmer
16 00657429. Mr. Heder, would you like to have the hard copy of this
17 interview which I have in English?

18 MR. PRESIDENT:

19 Yes, you may do so. Court Officer, could you deliver the document
20 from the counsel for the witnesses' examination?

21 [11.03.27]

22 BY MS. GUISSÉ:

23 So, I'd like to remind you that I'm trying as best to give you
24 the document in the original language. So, please forgive me if
25 there might be a few errors. So this is an interview dated 14

1 October 2005, by SOAS that took place in Bakan, in Pursat
2 province. And these – this is referenced on the first page of
3 this document. So the paragraph I would like to look at is at ERN
4 in English – and I repeat it – 00352107. In French, it's three
5 pages before the end of the document. And in French, the quote in
6 particular is at the end of the third paragraph:

7 [11.04.49]

8 "In 1977, we have two crops per year, having solved the water
9 problem, and got three tons (per hectare) from the two crops. The
10 stipulation was that people were to get a can per meal, but at
11 times the reality was one can per person per day. The production
12 was enough for people eat, but too much was taken away. There was
13 no specific amount that was taken away. The sector and the
14 Northwest Zone took whatever they wanted, whenever they wanted.
15 The district stipulated the ration. This was conveyed orally. If
16 you exceed the ration stipulated by the district, the cadre would
17 be arrested. On the other hand, the district never arrested
18 people for feeding the people too little. That accusation came
19 when the Southwest Zone and West Zone came. They said the
20 Northwest Zone was not feeding the people". End of quote.

21 So, my first question is; do you remember this interview, and do
22 these notes correspond to what was said in the interview that
23 day?

24 MR. HEDER:

25 A. Yes and yes. This an example of a case in which I did the

40

1 interview in Khmer, or the interview was done by me and others in
2 Khmer, and I wrote a simultaneous interpretation into my
3 notebook, and this is a typed transcript of what I wrote into my
4 notebook.

5 Q. So, my question is – well, you spoke Khmer then, is that the
6 case?

7 [11.07.00]

8 A. Yes. This conversation – this interview – was conducted
9 entirely in Khmer.

10 Q. So, when you speak about the translation, you're speaking
11 about your own translation, which you took down in your notes?

12 A. Correct.

13 Q. And these are handwritten notes that you're taking as the
14 conversation is developing, or did you redraft these notes later?
15 Did you rework the text for it to be clearer, or were these notes
16 actually taken simultaneously?

17 A. The notes were taken simultaneously, and then afterwards I
18 take them – I look at the notes and I write it up in typescript
19 into a computer. And this, I think, is the computer version. My
20 own computer version, it looks like. The format looks familiar to
21 me, so I think this is actually my typescript, based on the
22 handwritten notes. Not a Court retyping, as we've seen in some
23 other documents.

24 [11.08.23]

25 Q. Fine. Well, my more specific question was; are you retyping

41

1 exactly all of your notes on the computer, or do you rearrange
2 your notes differently so that the notes are clearer if they
3 cover several topics that are similar? I just want to know
4 whether or not this is a literal transcription, or whether you
5 somehow redrafted your notes afterwards?

6 A. My note-taking protocol often involves leaving out articles.
7 "A", "the", and sometimes a preposition which is implicit in the
8 - what is being said. So there may be some addition of articles
9 and prepositions in the final version. Normally, I would say, I
10 don't rearrange the text. There may be some occasions on which I
11 do, to improve the flow. But, as you can see, these things are
12 not presented as if they are verbatim. They're not in quotes, as
13 it were. This is - again, as I said, originally describing this
14 work - a kind of amateurish academic's attempt at what I later
15 learned was supposed to be called an objective summary.

16 [11.10.00]

17 Q. I think you brought this up when you spoke to the
18 Co-Prosecutor, and you learned how to do so later. And in this
19 objective summary, by definition, you never include the questions
20 that were asked to the person you were interviewing. Is that the
21 case?

22 A. Normally, yes. No questions are included. Just a kind of
23 summary of what they said.

24 Q. Thank you for this clarification on your note-taking. Now I
25 would like to turn to the content of the paragraph I just brought

1 up with you.

2 [11.11.01]

3 Does this account correspond to what you heard in other
4 statements or in other interviews, whether it be in your research
5 work or whether it be in your work for the ECCC with the OCP or
6 with the - or for the OCIJ concerning the Northwest and the West
7 Zones?

8 A. I think the answer to that has to be there are certainly quite
9 a few other accounts that I have been given over the years that
10 are generally in line with what is described, but of course, at
11 the same time, there are variant accounts. The situation wasn't
12 uniform in every place at every time, but certainly this is not
13 an aberrant or unique or unusual account based on my recollection
14 of the whole - the universe of interviews that I have done.

15 Q. Now I would like to turn to a paragraph that's a bit further
16 down. In French it's the last paragraph on the page, and on - and
17 in English it's at the same page, and in Khmer it's on the
18 following page, that is to say, 00657430 this time in Khmer. So
19 this is what the person interviewed says:

20 "In April 1975, the instructions were that the 17s and the 18s
21 should eat equally. Tempering did not mean starving them and
22 working them harder than ourselves."

23 So I will stop here. So my first question, what do you mean by

24 "17s and 18s"?

25 [11.13.24]

1 A. Seventeen is a colloquial shortening of 17 April 1975.
2 Eighteen is a colloquial shortening of 18 March 1970. So, in
3 broad terms, the 18s refers to those who came under party
4 administration and, therefore, party general re-education and
5 refashioning as of 18 March 1970, the date of the toppling of
6 Sihanouk. And 17 April refers, obviously - '75 refers to the date
7 on which other people came under that administration and thus,
8 broadly speaking, the so-called - what I translate as the veteran
9 people versus the New People.

10 Q. This excerpt I just read out to you, I would like you to
11 compare it to the other evidence and the other interviews you
12 gathered and - and conducted which is also referred to in the
13 other footnotes and in the other quotes in your article. So, the
14 instruction were that the 17s and 18s should eat equally. So this
15 person told you that instructions were given. Did this person
16 tell you who gave these instructions?

17 [11.15.16]

18 A. I assume that if that had been specified, I would have
19 included it in the notes. I, therefore, assume that it was given
20 to me in a kind of passive voice or de facto passive voice with
21 the - those who were giving the instructions described as "they".
22 It just means they, them, without specification.

23 Q. Fine. And when you heard this, were you able to compare this
24 with the instructions you had read about in the documents we
25 mentioned earlier or you did not draw this parallel in your

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1 research and in other interviews that you might have conducted?

2 A. I think there have been now two questions, one asking me to

3 situate these statements in the context of other statements,

4 other interviews and, second, to situate it in a context of party

5 documents. This interview takes place after I wrote, I think, the

6 piece that you looked at reassessing, so it's not relevant to

7 that.

8 With regard to your question about where does it fit in the

9 spectrum of other interviews that I have done and if we narrow

10 the focus to interviews with, generally speaking, lower level

11 cadre, then I would say that this is a very common statement or

12 claim, if you prefer, by such persons and even a typical account

13 as given by lower level cadre saying what policy was or claiming

14 what policy was.

15 [11.17.32]

16 Q. Thank you for this clarification. Now I would like to turn to

17 another document. This is document D224.31 - D224.31. And with

18 the President's leave, can we please provide the original in

19 English to Mr. Heder?

20 And I would like to focus more particularly on page - Khmer page

21 00788310. And may I please display this page on the screen and,

22 with the court officer's assistance, may the witness please be

23 provided the hard copy. And in French, the ERN is 00774010,

24 English 00351976.

25 [11.18.59]

1 MR. PRESIDENT:

2 Yes, you may do so.

3 Court officer, could you deliver the document from the counsel
4 for the witness's examination?

5 BY MS. GUISSÉ:

6 (No interpretation)

7 MR. PRESIDENT:

8 Counsels, please wait. There is no English translation, no
9 interpretation.

10 Court Officer, could you verify with the AV unit?

11 Defence Counsel, please repeat your last statement and question.

12 BY MS. GUISSÉ:

13 Q. Yes. I was saying that the paragraph I'd like to focus on -
14 first, I'm sorry; I was giving the context of this interview
15 which is referred to in the first page of this record.

16 This interview was done in the sub-district of Preaek Thmei in
17 the village of Champuh K'aek, Kien Svay district, Kandal
18 province. And I would like now to turn to the paragraph I would
19 like to look at with you. It's the third paragraph before the end
20 in the French version, and this is what is said by the person
21 being questioned:

22 [11.21.14]

23 "Nou Yan, the husband of my sister who was older than 50, was
24 arrested in Chheu Teal district in Ruessei Srok. He had worked as
25 a base official for public works. He was accused by the villagers

1 of being a [smooch], and he was hated by the villagers, although
2 this was not true."

3 So my first question is: Do you remember this interview?

4 MR. HEDER:

5 A. (No microphone)

6 [11.22.12]

7 Q. I heard that you were making a comment, but I didn't hear it.
8 It wasn't translated.

9 A. Sorry.

10 Q. You did not hear the translation either?

11 A. I heard the French starting out and then it just sort of went
12 dead. Almost followed the French, but not quite.

13 Q. I'm - I don't know if there is a problem with the English. Can
14 you tell me if I can proceed, if you're getting the translation
15 clearly? You can hear me? Fine.

16 So did you hear the paragraph that I quoted to you? Yes.

17 Q. So I'm going to - my - ask you the following question. This
18 person is speaking about a head of unit and in the interviews
19 that you conducted in different places where you interviewed
20 people, do you have other examples of people who are arrested
21 because of personal problems they might have had with local
22 authorities?

23 A. Yes, I would say that was very common - commonly reported in
24 my interview, to be precise.

25 [11.24.25]

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1 Q. Now I would like to turn to another document, document
2 E3/1714, the famous interviews with refugees at the Thai border.
3 The document is rather long, and my question is: will the Khmer
4 version on the screen be enough for you or do you want to have at
5 least a hard copy of the pages I'm going to refer to knowing that
6 I'm going to read rather short excerpts?

7 So my question is: Mr. Heder, can I continue just referring to
8 the excerpts? This is document E3/1714, and I would like to look
9 at the account – account number 22, which is at French ERN,
10 00648997; Khmer, 00324740; English, 00170733.

11 I need a bit of clarification, Mr. President, but I don't
12 remember if I'm allowed to mention the names of the people who
13 were interviewed in these refugee accounts because I don't
14 remember what the ruling was in relation to this because we have
15 the name of the person and the person's position, but I don't
16 know if I have the leave to project this on the screen.

17 [11.27.00]

18 MR. PRESIDENT:

19 We already have given instructions to the party if a witness
20 already bears a pseudonym, then the pseudonym shall be used
21 during the questioning and answer session before this Chamber.

22 MS. GUISSÉ:

23 Well, this is not a potential witness. Well, I will avoid, to be
24 sure, displaying the document on the screen and I'm simply going
25 to ask to project the segments I would like to look at. And it's

1 ERN, 00324741; English, 00170733. And these are the two last
2 paragraphs of this account, account number 22, dated 9 March
3 1980. And this interview took place in Sa Kaeo. And it – the two
4 paragraphs read as follows:

5 "At the same time, there was too much subjectivism. The upper
6 levels did not investigate the concrete situation, but simply sat
7 in their offices reading reports and believing them. Meanwhile,
8 at the lower level..."

9 Maybe I'm going too fast. I'll start again.

10 [11.28.41]

11 "The upper levels did not investigate the concrete situation, but
12 simply sat in their offices reading reports and believing them.
13 Meanwhile, at the lower level, the cadres were buying to please
14 the Centre and hiding the facts from it. The result was that
15 there was a great and increasing distance between the upper
16 levels and the people.

17 In the northwest, Vietnamese agents like Ros Nhim were taking
18 rice away from the co-ops at the expense of the people in keeping
19 it for themselves. They put it in storehouses in the towns and
20 also hid it away to use it in the future struggle against the
21 Centre. They kept the rice away from both the Centre and the
22 people, thus betraying both people and the Centre."

23 [11.29.36]

24 I'd like to specify here that you indicate that the source was a
25 cadre from the party – and I will not say his name – connected to

1 the Ministry of Foreign Affairs.

2 So my question following reading this excerpt is to know if you
3 heard in other interviews that you might have conducted for your
4 research or for your work here at the Courts, did you hear
5 similar accounts stating that the upper levels did not get
6 necessarily all of the information from the lower levels? That's
7 my first question.

8 A. Yes, quite common. Commonly reported, stated by people whom
9 I've interviewed, including both cadre and, in some instances,
10 ordinary people.

11 Q. This is my second question regarding this cadre. He says that
12 Hu Nim in the northwest deprived people of rice. Under the same
13 circumstances, that is, the circumstances of your field
14 investigations and also when you were working at the ECCC, did
15 you receive any other similar statements to the effect that some
16 local cadre took advantage of their positions to stash away rice
17 or to abuse the powers that they had?

18 A. Again, yes, that quite commonly asserted, reported, stated
19 among lower level cadre themselves and among ordinary people.
20 With regard to this specific passage, I would add that it was
21 less common for people to say that this was because those were
22 doing the hoarding, if you will, were Vietnamese agents. It was
23 more commonly stated to be as a result of these local cadre
24 hiding, storing, hoarding food and other things for their own
25 use.

1 [11.32.44]

2 Q. Still in the same document, E3/1714, I would like to deal with
3 another testimony. And the French ERN is as follows, 00648994; in
4 English, it is 00170730; and in Khmer, it is 00324735. And it is
5 on the next page.

6 With your leave, Mr. President, I would like to place this on the
7 screen. Since the name of the person interviewed is not
8 mentioned, in order to complete the reference, it is interview
9 number 20 of the 20th of March 1980 in Sa Kaeo. And the source
10 indicated, as you say, is the captain of a boat who was working
11 during the rainy season. In French, we are dealing with the last
12 two paragraphs, and it reads as follows, free interpretation:

13 [11.34.05]

14 "Since the liberation, the system was that in each planting
15 season, each region had - held a congress to decide how much rice
16 to be grown in common. Following the transplanting and the
17 harvest, another regional congress was organized to decide what
18 quantity of rice had to be kept for the people and how much had
19 to be sent to the centre. Generally, the party centre did not fix
20 quotas for regions, but each region was responsible for doing the
21 maximum. The regions were supposed to keep sufficient rice for
22 the regions and for the regional troops. The surplus was given to
23 the organization for sale abroad. But since there were traders in
24 the various regions who wanted - since there were cadres in the
25 regions who wanted to have a good reputation, they sent a lot of

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1 rice to the Centre, which caused a shortage in the regions. And
2 they sent the rice to the Centre in order to climb up the
3 hierarchy instead of providing enough rice for the people in the
4 regions. The main problem was that, at all levels, there wasn't
5 sufficient analysis of the real situation. Everyone believed in
6 the reports of one another and the cadre drafted false reports,
7 keeping the rice for themselves, and not feeding the people." End
8 of quote.

9 [11.35.48]

10 Here again, as I asked previously, may I request you to state
11 whether you heard such statements as part of your field work or
12 as part of your work at the Tribunal for the Co-Investigating
13 Judges or for the Co-Prosecutors? Did you hear such statements
14 only in those zones in question, or you heard them elsewhere?

15 A. Firstly, I'm not seeing anything on the screen. It would be
16 helpful if I could see the material on my screen.

17 From what I heard said, I would say that there are some other
18 reports, interviews that are generally consistent with this
19 picture, or at least some parts of this picture. Not as many as
20 there are, I would say, with regard to lower down in the system.
21 Just fewer people to interview who had access to what was going
22 on at the regional - and I should specify that in this context,
23 it means what I later conventionally translated as zone level.

24 [11.37.16]

25 What's peculiar or unique or unusual about this particular

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1 account, to my recollection, is that the assertion, the
2 statement, the claim that the Centre did not specify quotas for
3 delivery of paddy or rice is very unusual, maybe unique, maybe
4 the only one. And it's not consistent with the other material,
5 including in party documents and including in other interviews
6 with which I am familiar.

7 So with that caveat, I mean, the caveat that I have less
8 information about events at that level, and with the caveat that
9 I don't think I can recall any other accounts or any other
10 internal party material that suggests there was no - no setting
11 of quotas from above, from the Centre, that is - yes, this is
12 something that I have certainly heard in other - some other - not
13 that many, but some other accounts.

14 [11.38.26]

15 Q. Very well. I do not know why, but normally, what I read out
16 should be placed on the screen and in Khmer. If that is not the
17 case, there must be a technical problem.

18 In any case, I can see the text on the screen of my learned
19 colleague. I hope that this problem will be solved subsequently.

20 MR. PRESIDENT:

21 Court officer is now instructed to look at this.

22 BY MS. GUISSÉ:

23 Q. Normally, in case of need or difficulties, I could provide the
24 passages that I have quoted documents in English to Mr. Heder.

25 Perhaps that would be of some assistance to him. But I do not

1 have much left to deal with on this document.

2 Is the problem solved in Khmer? But I'll still give you the
3 English version of the document. It's not the entire document,
4 but only the passages I intend to use because the entire document
5 is quite voluminous.

6 [11.40.01]

7 Still regarding the same document, E3/1714, I am particularly
8 interested in interview number 13 of the 6th of March 1980 in Sa
9 Kaeo. The ERN in English to help you follow, Mr. Heder, is
10 00170714. In Khmer it is 00324706; and in French it is 00648979.
11 The passage of interest to me is in the first paragraph in the
12 French, the middle of the first paragraph.

13 I will provide the ERN. Apparently it was not understood. In
14 English, it is 00170714. In Khmer, 00324706 and in French,
15 00648979. So this is what we read in the middle of the first
16 paragraph in French:

17 "It is true that during the Pol Pot period a lot of people were
18 killed for no reason, but this was not done personally like Pol
19 Pot. It was done by district and sector secretary. For example,
20 the son of a friend of mine was a combatant. The son was accused
21 of being a traitor. Then, in the middle of the night, the
22 district secretary came to arrest the mother and father, and they
23 disappeared. Then, later, the district and sector secretaries
24 were themselves accused of being traitors, arrested, executed and
25 replaced. Their replacements had been in power only a few months

1 when the Vietnamese came."

2 [11.42.13]

3 First question; does this account dealing with arrests of
4 officials of districts and sectors something you found in other
5 accounts and regarding the replacements of certain district
6 secretaries and persons accused of maltreating the people, did
7 you hear of any arrests, executions and replacements of persons
8 following such local denouncements?

9 MR. HEDER:

10 A. Yes, and yes, and quite widespread in both cases, with regard
11 to both questions.

12 Q. Still in the same document, and this time, in principal, it is
13 testimony number 18 dated the 8th of March. The ERN in English to
14 enable you to follow is 00170728. The ERN in Khmer is 00324732
15 and the ERN in French is 00648993. In French, it is the second
16 paragraph which is of interest to me. Let me point out that the
17 ERN 00648997 in French and the ERN in English is 00170723 and in
18 Khmer, the ERN is 00324722.

19 [11.44.46]

20 And I would like to point out that the source is a person from
21 Tambon 13 in the southwest, probably a member of the Party. This
22 is just to provide the context for this statement.

23 So regarding the ERNs I cited earlier, this is the part I wish to
24 read out, second paragraph in French, second sentence:

25 "In the northwest, the situation was very strange. The system of

1 cooperatives had not been put in place before 1975–1976, and
2 people seemed to be very much afraid of the cadre and would
3 sometimes shake in terror when the cadre came as if these cadres
4 were feudal lords. And I made them understand then that
5 revolutionary society no longer had any feudal inequalities."
6 The term "feudal" stems from the fact that some local cadres
7 behaved like feudal lords. Is this something you heard in other
8 accounts? Was this the way the situation was at local level?
9 Did you have any similar documents or receive any interview
10 reports referring to such functioning at local level and this
11 categorization of people as feudal lords?
12 In your experience as an investigator and as a researcher, be it
13 for the Office of Co-Investigating Judges or the Office of the
14 Co-Prosecutors, did you hear any such thing?

15 [11.46.51]

16 A. Yes, with regard to the part about people living in fear of
17 cadre. No, I would say with regard to the specific analysis, if
18 you will, by this source of – or interpretation of that – the
19 behaviour that led to those fears being feudal, I think that's a
20 fairly unusual account.

21 Q. I would like us to look at another document now, and it is
22 document E3/198. And it is the notes or, rather, the objective
23 summary, to use the technical term, you adopted regarding the
24 interview of 17th of August 2005 you had with Mr. Khieu Samphan.
25 The ERNS are as follows. In French, it is 00296212; and in

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1 English, it is 00184680; and in Khmer, it is 00078214. The
2 original is in Khmer, and I will simply place on the screen the
3 part I wish to comment on – or I would like you to comment on.
4 And this would echo what has just been said.

5 [11.48.35]

6 In the last paragraph, you referred – you are talking of Mr.
7 Khieu Samphan, and this is what you say:

8 "According to him, in the Khmer Rouge regime each zone,
9 particularly zone secretaries, were like viceroys and they
10 managed work in the zone as they wished. The Central Committee
11 could not control and could only receive reports. In the New
12 North Zone, after the assignment of Kang Chap to be in charge,
13 people were arrested and imprisoned and the upper echelon was not
14 aware of this until 1978 when the Central Committee and B-1 sent
15 people from Phnom Penh to arrange for tourist reception. Then
16 they were aware of it and reported the matter." End of quote.

17 In principal these are your notes, but I'm just putting the
18 question to you. Do you recall these notes and the interview?
19 Does that tally with what you recall as having been said by Mr.
20 Khieu Samphan at the time?

21 [11.49.50]

22 A. Actually, in this particular instance, neither the interview
23 nor the notes nor the translation are mine, so I can't answer
24 your question in the way that I normally would.

25 Q. Very well. I'll put my question differently.

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1 Who conducted the interview and what is the difference compared
2 to other note-taking methods and the manner in which you
3 translated what you heard in the - in respect of the other
4 interviews you referred to a while ago?

5 A. This - this interview, discussion was carried out by a
6 Cambodian by the name of Heng Ham Kheng. I believe in the company
7 of a Cambodian named Toch Vannarith. The notes were taken in
8 Khmer more or less, I think, along the model that I've described
9 with regard to my own note-taking. And what we have here on the
10 screen, the English we have here on the screen, appears to me
11 from the way in which things are formulated, to be a Court
12 translation, not my translation. There are certain terms here I
13 would normally not use, so I - I take this to be a Court
14 translation.

15 [11.51.32]

16 Q. So should I take it, then, that you did not attend that
17 interview of the 17th of August 2005?

18 A. Yes, that's correct.

19 Q. Very well, then. I will not put any further questions on you -
20 to you on the matter.

21 I would like to look at another document, and it is Document
22 17.71. And to avoid revealing the name of the person interviewed,
23 may I request the President to show Mr. Heder both the interview
24 in English and the interview in Khmer, the transcripts of both
25 interviews, knowing that the original normally would be in

1 English.

2 [11.52.49]

3 With your leave, Mr. President, may the witness be shown the
4 document? The ERN for the first page in French is 00614079; In
5 English, it is 00089756; and in Khmer, it is 00602356. And it has
6 to do with a witness who has a pseudonym, TCW-325. With the
7 President's leave, of course.

8 MR. PRESIDENT:

9 You may proceed.

10 BY MS. GUISSÉ:

11 Q. In the first page - on the first page of this document, we see
12 the name of the person interviewed. First question, did you
13 personally conduct this interview with the person dated 22nd of
14 September 2005?

15 And it is in English. The interview is in English, and the notes
16 are in English. Does that ring a bell?

17 [11.54.29]

18 MR. HEDER:

19 A. Yes and no. Yes, I did the interview. Yes, I took the notes by
20 the usual method that I've described in English. This appears to
21 be my transcription of the handwritten notes into a typescript
22 computer digital form.

23 The "no" bit has to do with the date. The date at the top is not
24 the date of the interview, but a date that is generated by the
25 computer database into which the data was inserted. The actual

1 date of this interview, if I recall correctly, is some time in
2 1980. The place of the interview I can also recall - easier to
3 recall the place than the exact date. The place was Khao I Dang,
4 a UNHCR-administered asylum seekers' camp on the Thai side of the
5 Thai-Cambodian border.

6 [11.55.36]

7 So I interviewed this person in that location in that year, took
8 the notes in English and then transcribed them, put them into a
9 database and it - when it was spewed out by the database, it has
10 that other date on it, which is just the date that it was spewed
11 out. Or maybe the date it was entered. So that's a false date.

12 Q. Thank you for these clarifications. I would like us to look at
13 an initial extract from this interview. The ERN in French, is
14 00614086; in Khmer, it is 00602366; and in English, it is
15 00089764.

16 May I request that the part of the interview record that I would
17 like to use be placed systematically on the screen? In French, it
18 is the third paragraph on the page, and it reads as follows:

19 [11.57.01]

20 "At 17 April celebrations, Pol Pot was always the speaker. Khieu
21 Samphan was not even on the stage. The only time there were a lot
22 of people on the stage was in 1975 when there was still the
23 front. After that, it would be Pol Pot, Nuon Chea, Ta Mok, etc.
24 Pol Pot spoke at the 1976 and 1978 celebrations, which I
25 attended. He also spoke, I think, at a 1977 celebration, although

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1 I did not attend it that year. He continued to be the party
2 secretary throughout." End of quote.

3 First question – and I believe this will be the last question
4 before the lunch break: As part of your investigations, be it
5 within the framework of your research or as part of your work for
6 the Office of Co-Investigating Judges and the Office of
7 Co-Prosecutors, did you receive any other statements regarding
8 the 17th April celebrations and the fact that the speeches were
9 delivered by Pol Pot and Khieu Samphan was not present on stage?
10 Do you recall receiving other documents or interview reports
11 regarding the same events, or similar events?

12 A. I think the answer to that one has to be either none or maybe
13 too few to remember. I – I can't say that I have a lot of data, a
14 lot of interview material on this specific point.

15 [11.58.50]

16 Q. Well, Mr. President, perhaps this is the right time for us to
17 take our break.

18 MR. PRESIDENT:

19 Thank you, Madam Counsel.

20 The time is now appropriate for lunch adjournment. The Chamber
21 shall adjourn now and resume at 1.30 this afternoon.

22 Court Officer, please assist the witness during the break and
23 have him return to this courtroom by 1.30 this afternoon.

24 Security guards are instructed to bring Mr. Khieu Samphan to the
25 holding cell downstairs and have him return in this courtroom

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1 this afternoon, before 1.30.

2 The Court is now adjourned.

3 (Court recesses from 1159H to 1336H)

4 MR. PRESIDENT:

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

6 The Prosecution, you may proceed.

7 MR. RAYNOR:

8 Mr. President - is that working?

9 Mr. President, I rise at this point not to deliberately interrupt
10 my learned friend. But there is a matter of law that has arisen
11 this morning, and I'd like to explain it please and invite some
12 further matters to be taken care of.

13 Mr. President, both defence teams have referred now to witness
14 statements in their cross-examination in respect of witnesses who
15 have not testified. I refer to the statements of Heng Samrin
16 yesterday, and this morning to the statements of Kho Vanny,
17 19.71, and Thiounn Prasith, which was an OCIJ statement.

18 [13.38.24]

19 And, Mr. President, we have no problem with this. But it impacts
20 upon another important aspect of evidence yet to be decided upon
21 by the Trial Chamber, namely the OCP application to admit witness
22 statements in lieu of oral testimony. The Defence has so far
23 insisted that these statements, insofar as they relate to acts
24 and conduct of the Accused, cannot be admitted into evidence
25 unless the makers of these statements testify. Yet they have,

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1 over the last two days now, referred to these statements in
2 cross-examination, even in circumstances where the statements
3 refer to the acts and conduct of the Accused. The defence teams,
4 in their responses to the OCP application to admit witness
5 statements in lieu of oral testimony have submitted that the test
6 of exclusion is much wider than acts and conduct, and includes
7 pivotal issues, evidence going to important issues, and also even
8 evidence of authority structures.

9 [13.40.17]

10 Now, Mr. President, impliedly, by the defence teams referring to
11 these statements, it seems that the Defence are withdrawing their
12 objections to the admission of such statements absent
13 cross-examination.

14 So my application at this stage is twofold: firstly, for the
15 Defence to confirm its position, and if it is not sufficiently
16 clarified, secondly, for the Trial Chamber to note my application
17 today as a factor to be considered when the Trial Chamber
18 ultimately decides whether to admit such statements in lieu of
19 cross-examination. Thank you.

20 MR. PRESIDENT:

21 Thank you, Mr. Prosecutor.

22 The Counsel for Khieu Samphan, you may proceed.

23 MS. GUISSÉ:

24 Yes, thank you, Mr. President. I would like to make a point of
25 clarification - a legal point of clarification which is

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1 essential. The prosecutor is saying that we are retracting
2 ourselves from our request to exclude all elements relative to
3 the acts and the conduct of the Accused – well, it was never our
4 intent to backtrack there. And I would like to note the
5 specificity of cross-examination.

6 [13.42.23]

7 We have here a witness who came as a witness – factual -- a
8 fact-witness – because he did not wish to testify as an expert.
9 However, in his work as a researcher or as a member of the OCIJ
10 or of the OCP, he had to make – he made a certain number of
11 statements that were used by the Co-Prosecutor in his
12 examination, because he asked him that these statements were used
13 as sources for Mr. Heder's writings. Under these conditions, and
14 because we are referring here to the contents of the testimony of
15 these witnesses gathered and referred to in the footnotes – well,
16 our way of obtaining information on the other elements that Mr.
17 Heder may have is to confront him with other documents, because
18 we cannot put questions to him as an expert by principal.

19 [13.43.42]

20 For example, if I had not based myself on Thiounn Prasith's
21 statement, which the witness had access to, I would not have had
22 a sufficiently solid base to speak more generally about the other
23 elements that he might have come across. Once again, this – an
24 examination technique of Mr. Heder, in particular – caused by the
25 specificity of his background as a factual witness from '73 to

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1 75. And we also have to make him speak about the content of the
2 case without putting questions to him as an expert. So this was
3 the only way that I would proceed to use – to have him speak
4 about more general things in the context of his research. So,
5 what we're asking the Chamber is not to consider the documents
6 that we referred to as being Mr. Heder's testimony. What we are
7 interested in is the answer that Mr. Heder provided following the
8 confrontation with the documents that we presented to him.
9 So, simply speaking, when I ask Mr. Heder: Is the fact that Mr.
10 Thiounn Prasith is referred to as a commander of the armed forces
11 – did you hear this? And he answers: Yes, what interests me is
12 not so much what Thiounn Prasith said. It is what Mr. Heder said;
13 explaining to us that, in the context of his research and in the
14 context of the people that he interviewed, this is a fact that
15 transpires from his research. So what I want to focus on is not
16 so much the content of the testimonies here, but it is his answer
17 caused by the document that I'm asking him to comment on.

18 [13.45.50]

19 So – I want to be clear here – the usage of the documents that we
20 have had now – it is to be able to have Mr. Heder's testimony on
21 these points, and not the testimony of other people, and also for
22 him to talk about his experience as a researcher in the context
23 that we're describing.

24 Second point; the Chamber already ruled on this issue. So the
25 idea is not to backtrack. What the Co-Prosecutor is trying to say

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1 - well, okay, maybe I can find a back way of getting back into
2 the same issue - no. What we are asking from you, once again, is
3 to understand, for the moment, with Mr. Heder, the only way we
4 can proceed is to confront him with statements and with elements
5 that are on the case file, with once again the mere objective of
6 getting an answer from him and getting his testimony from him,
7 and not the testimony of other people. So, this is the second
8 point I would like to raise.

9 [13.46.55]

10 And the third point - but I think we can discuss this later,
11 because it's already 10 to 2.00. So I am already eating up my
12 examination time. This morning, already half an hour was taken
13 from me, so I would like now to tell the Chamber, as of now, that
14 it will be very difficult for me to finish today. I had said at
15 the very beginning of Mr. Heder's testimony that I would be
16 asking for extra time, and this request is even more pressing.
17 So, I don't know if the Nuon Chea team wishes to say something
18 about this.

19 Another point I would like to specify - and I'll be finished with
20 this - since Kho Vanny's name was mentioned - but I thought she
21 had a pseudonym, and I thought that the Chamber stood by
22 pseudonyms. And I would like to let you know that she is on the
23 list of witnesses that we would like to examine. But, first of
24 all, I'd like to remind you that the idea is not to tender into
25 evidence elements that we're presenting to the witness. It is to

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1 use these elements as means to elicit from him his testimony. And
2 that's what I'm asking you to take into account. Not the
3 documents themselves, but his response to these documents. Thank
4 you.

5 [13.48.28]

6 MR. PRESIDENT:

7 Thank you, Counsel.

8 And the Counsel for Nuon Chea, would you like to say something?

9 MR. SON ARUN:

10 Good afternoon, Mr. President, Your Honours. On behalf of my
11 client, Nuon Chea, I would like the permission from the Chamber -
12 from the President - for my client to make a brief observation
13 that is three minutes long. And he's ready to make that
14 observation now.

15 MR. PRESIDENT:

16 What about the submission by the prosecutor regarding the
17 referencing to the interview of the witnesses who have not been
18 summoned by the Chamber? Do you have any observation or response
19 to that?

20 MR. KOPPE:

21 Just a very quick reply, Mr. President. We have just finalized a
22 last draft of submissions on this very subject. The question
23 raised by the prosecutor will - the answer to this question we
24 will incorporate into this final draft. Hopefully, we will be
25 able to file our submissions tomorrow or Friday on this very

1 subject.

2 [13.50.10]

3 MR. PRESIDENT:

4 The Chamber permits Mr. Nuon Chea to make his observation
5 regarding the scheduling of the hearing in questioning him that
6 we scheduled for the forthcoming week.

7 Nuon Chea, you may proceed.

8 MR. NUON CHEA:

9 Good afternoon, Your Honours. I would like to make a brief
10 notification to Your Honours. As I have always reiterated that
11 this Court has failed to respect a fair trial - a principle of
12 fair trial - fair and just trial. And through my observation, I
13 observe that the treatment towards the Accused and my defence
14 team is getting worse.

15 [13.51.36]

16 I therefore have no confidence in this Court, and this is a
17 similar position reflected by Khieu Samphan. The treatment by the
18 Court towards me is unbalanced, as it seems to favour the
19 Prosecution.

20 For example, recently, my defence counsel was prohibited from
21 asking substantive questions in order to defend my case. That is
22 an example of injustice - that my counsel is prohibited from
23 performing his defence duty to his full capacity. This is a case
24 of life and death for me. It is not just for granted or an
25 expeditious process to punish me.

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1 With such lack of confidence and imbalanced treatment by the
2 Chamber, I would like therefore to notify that, in order to
3 respond to the questions put by the Prosecution and the party, I
4 decline to do so, due to this nature of injustice by this very
5 Court. I'm grateful.

6 [13.53.20]

7 MR. PRESIDENT:

8 The Prosecution, you may proceed.

9 MR. ABDULHAK:

10 Thank you, Mr. President. I'll be extremely brief.

11 I rise in response to this statement by Nuon Chea, and to restate
12 our request now, in relation to Nuon Chea himself, as we have
13 done in relation to Khieu Samphan - an accused who takes the
14 stand and gives evidence in a trial thereby waives his right to
15 silence. In such circumstances, a refusal to continue to answer
16 questions can properly - and in this case, now should - lead to
17 adverse inference being drawn against him in your consideration of
18 the evidence. I want to inform the Chamber now - because this
19 filing is in progress, and it may or may not have reached Your
20 Honours - that we have, just recently - yesterday afternoon, I
21 believe, filed a response to Khieu Samphan's notification of his
22 withdrawal from testimony, formally requesting Your Honours to
23 draw negative inferences against him. And, secondly, asking Your
24 Honours to give us an opportunity to state, in open court, in
25 Khieu Samphan's presence, those matters of fact as to which we

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1 will invite Your Honours to draw negative inferences.

2 [13.54.52]

3 If I can now extend that application to Nuon Chea as well,
4 perhaps as a scheduling matter, this is an appropriate time for
5 Your Honours to consider it, given that it appears, following Mr.
6 Heder, we may well not be hearing any more witnesses in this
7 trial. Thank you, Your Honours.

8 MR. PRESIDENT:

9 Thank you, the prosecutor.

10 And the International Lead Co-Lawyer, you may proceed.

11 MS. SIMONNEAU-FORT:

12 Yes, thank you, Mr. President. I'm going to be very brief.

13 I simply want to say that, even if I am flabbergasted by what I
14 heard, I'm not surprised. I was persuaded that Nuon Chea would do
15 as Khieu Samphan, and my comments are the same, and I regret
16 infinitely what is happening. My comments are the same as for
17 Khieu Samphan.

18 [13.55.53]

19 But I'd like to maybe add one comment. I noticed that, little by
20 little, the Accused and the defence teams are positioning
21 themselves as victims, for example, the defence teams obliging us
22 to apply rules regarding the scope of the trial, for example,
23 regarding the fact of considering a person as a witness and not
24 as an expert. This - but when we speak to these defence teams,
25 the defence teams say that when the same rules befall them, we

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1 prevent them from speaking and we don't respect the principle of
2 adversarial hearings. I find this unfair. I find this disloyal,
3 and I find this inappropriate. And I find it regretful that this
4 position is being followed by the Accused as well as by the
5 defence teams.

6 MS. GUISSÉ:

7 Thank you, Mr. President.

8 Well, I believe my client already spoke regarding this issue.

9 Written submissions were made in this regard, and we already
10 exposed Mr. Khieu Samphan's position.

11 [13.57.14]

12 Now, regarding the Co-Prosecutor's request to make a final
13 statement before the final statement, I completely challenge
14 this. If, in their final statements, the Co-Prosecutors wish to
15 make a statement on this issue, they will do as they wish. And
16 the inferences that will be necessary for your verdicts can wait
17 until the final statements. If they want to make - but the moment
18 for the final statements is the moment for the final statements,
19 and not now.

20 MR. PRESIDENT:

21 The Prosecution, you may proceed.

22 MR. ABDULHAK:

23 Thank you, Mr. President.

24 Extremely briefly, I do apologize for holding up the proceedings
25 on this. The reason for that application, indeed, has to do with

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1 the application of law as to adverse inferences.

2 [13.58.28]

3 Our intent is to make sure that there can be no complaint by this
4 Defence – by either of the two defendants, on appeal, that Your
5 Honours did not put them on notice of the exact fact as to which
6 inferences may be drawn. And that's the reason for our
7 application. It is not to sensationalize this issue. It is to
8 ensure that both Accused are properly informed as to the issues
9 that – on which adverse inferences are being requested, and on
10 which Your Honours may draw negative inferences, before the door
11 in this trial, for them to give evidence, is finally closed. So
12 we make this application out of both fairness to the Accused, and
13 ensuring that notice is given to them, but also, frankly, out of
14 fairness to victims and all the other participants in these
15 proceedings. It is important for the Accused to hear that
16 statement, so that when the proceedings close, there can be no
17 suggestion that there was any doubt in their minds as to what we
18 are asking Your Chamber, Your Honours, to consider in your
19 deliberations.

20 Thank you, Mr. President.

21 (Judges deliberate)

22 [14.06.54]

23 MR. PRESIDENT:

24 I hand over the floor to Judge Silvia Cartwright to clarify on
25 the issue raised by the prosecutor as well as other matters

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1 concerning the proceedings.

2 You may proceed, Judge, please.

3 JUDGE CARTWRIGHT:

4 Thank you, President.

5 The Chamber notes the observation by the prosecutors concerning
6 the reference by other parties to witness statements where those
7 witnesses have not been called to testify before the Chamber, and
8 it notes that it will deal with this matter if necessary in the
9 verdict.

10 Khieu Samphan's defence team has indicated that it may wish to
11 have further time to examine this witness. That is a matter that
12 will be decided before we adjourn for the day, and again, depends
13 on relevance, repetition and other relevant matters.

14 Thank you, President. I think that's the extent of our
15 discussion.

16 [14.08.21]

17 MR. PRESIDENT:

18 Thank you, Judge.

19 Now, I hand over the floor to the defence team for Mr. Khieu
20 Samphan to put the questions to Mr. Steve Heder.

21 You may proceed, Counsel.

22 BY MS. GUISSÉ:

23 Thank you, Mr. President. Good afternoon, Mr. Heder.

24 Q. Let us resume our - in this case, our examination where we
25 ended off, Document 19.1. I would like to quote a passage from

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1 this document, 19.71, and the English page that is of interest to
2 me is 0089768; in Khmer it is 00602370 – and may I request that
3 this page be placed on the screen – and in French the ERN is
4 00614089.

5 [14.09.40]

6 In French, it is the third paragraph on that page, and this is
7 what is stated therein.

8 May I point out to you, Mr. Heder, that the quotation is long. I
9 intend to request you to comment on the entire paragraph, and I
10 will break it up into little bits in order to ask those
11 questions. The first paragraph is as follows:

12 "In summary, the intellectuals working in Phnom Penh had no idea
13 of the scale of starvation and execution in the countryside. In
14 1976, when we were eating gruel in Phnom Penh, we thought that
15 there might be shortages in the countryside, but in 1977/1978, we
16 thought that things were improving, just as they were in Phnom
17 Penh, especially because this is what the radio was saying. Also
18 there were articles with photographs in magazines." End of quote.

19 [14.10.50]

20 Regarding this first part of the statement, please tell me
21 whether in the course of your work, as a researcher and as an
22 investigator in the Office of the Co Investigating Judges and in
23 the Office of the Co Prosecutors, you had the opportunity to read
24 documents relating to intellectuals living in Phnom Penh or to
25 interview persons living in Phnom Penh who said they didn't know

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1 what was happening in the rural areas. Did you gain any knowledge
2 of this as part of your work?

3 MR. HEDER:

4 A. Speaking with regard to - and it's clear from the rest of the
5 paragraph that this is what Kho Vanny is talking about - with
6 regard to non party intellectuals effectively confined to Phnom
7 Penh, there are certainly some other cases of such people having
8 said similar things to me. I think there are also some contrary
9 instances of people in that category saying that they were
10 considerably more aware of the situation in the countryside.

11 [14.12.17]

12 And the determining factor as I recall from what people have said
13 is what is suggested here which is the - in some instances those
14 people in that category did have the opportunity to visit the
15 countryside or were visited by people from the countryside who
16 gave them a different indication about what the reality was than
17 this person has described, but certainly there are others who
18 have given accounts similar to this person's, to persons in the
19 same category.

20 Q. I will press on with the reading of the passage and this will
21 enable us to delve further into this paragraph. In the next - in
22 the same paragraph, same ERN:

23 [14.13.15]

24 "So we thought that things were okay. As for the Party people,
25 it's hard to say. They made visits to the countryside and made

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1 reports on their return, but I don't know what was in those
2 reports. I don't know whether they saw the true situation or
3 whether they told the truth to the higher echelons or not. The
4 indications are that when the top Party people went down to the
5 countryside, the local cooperative cadres put a good face on
6 things, presented tables full of food, and drove away the thin
7 and sick people." End of quote.

8 On this second point I am still asking questions with a view to
9 laying a foundation, but my objective is to know whether you were
10 able to obtain information on this as part of your work and as
11 part of your investigations as far as facts are concerned or even
12 as part of research you carried out in order to draft your
13 articles.

14 Did you hear this kind of information? Did you receive documents
15 related to the fact that indeed in some local cooperatives and in
16 some rural areas the real situation on the ground was hidden from
17 the hierarchy when there were visits?

18 [14.14.47]

19 A. Yes, there are many accounts given of the creation of a false
20 facade on those occasions when people from the Centre or people
21 from the top, if you will, visited the grassroots. And I mean,
22 for example, yesterday I happened to be in a car with someone who
23 recounted that exact scenario. He was in a cooperative in the
24 countryside, they were visited by people from the top, and
25 indeed, the local cadres arranged this beautiful scene for them

1 to see.

2 Those accounts differ in the extent to which the people who spoke
3 to me inferred that this creation of a facade was successful in
4 making those who came from the top believe that the situation was
5 as presented or not. But yes, the – certainly the attempt to
6 create such facades, whether believed or not, was fairly common
7 to quite common.

8 Q. I will continue reading the passage to be complete. Third
9 paragraph, the person who is writing says the following:

10 [14.16.24]

11 "You can't say, however, that the upper echelons knew nothing
12 because in the Party documents there were instructions about how
13 to straighten out implementation. For example, it was pointed out
14 that in some places cadres did not prepare proper facilities for
15 mobile brigades so that when the mobile brigades arrived there
16 were no places for them to stay. It was also said that in some
17 places people weren't given enough rest and that people should
18 not be worked through the hot part of the day or at night." End
19 of quote.

20 Regarding this third excerpt, my question to you is as follows:

21 As part of your research in the course of the reading of
22 documents or interviews you conducted in order to gather facts as
23 part of your work for the Co Investigating Judges and/or the Co
24 Prosecutors, did you obtain any information that led you to
25 believe that there were instructions given so that attitudes at

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1 grassroots levels should change? Did you obtain such information
2 as part of your work?

3 A. Yes, both before, during, and after my work at the Court, both
4 – and both in official documents produced, presumptively, at the
5 Centre level, and in accounts given to me by people in
6 interviews, both with regard to the issuing and the reception of
7 such instructions.

8 [14.18.40]

9 Q. Thank you.

10 I am done with this document, as far as this point is concerned.

11 I would like us to now talk about the documents you were able to
12 consult or on which you worked when you were working either for
13 the Office of the Co Investigating Judges or for the Office of
14 the Co Prosecutors.

15 First of all, this question is obvious, but I would like to ask
16 it so that we can lay the foundation for subsequent questions:
17 Outside of the preliminary work you did on Democratic Kampuchea,
18 was your work with the Khmer one of the criteria for your hiring
19 to work for the ECCC?

20 A. Sorry, I didn't quite catch the question. Maybe there was some
21 slippage in the translation. It wasn't clear to me.

22 Q. No problem, I will repeat the question perhaps more slowly.

23 The fact that you worked, you studied the situation among the
24 Khmer, was it one of the criteria for your recruitment to work at
25 the ECCC?

1 A. I very much presume so, yes. Certainly, those who made the
2 hiring decisions were fully aware of that background.

3 [14.20.55]

4 Q. You conducted some interviews of witnesses as part of this
5 case, and when you interviewed those witnesses did you interview
6 them directly in Khmer or you were assisted by interpreters?

7 A. No, directly in Khmer, always in the company of a, if you
8 will, a Cambodian co investigator. So the business was conducted
9 by myself and my co investigator, Cambodian co investigator,
10 entirely in Khmer.

11 Q. As part of your work within this Tribunal, whether we are
12 talking of your work in the Office of Co Investigating Judges or
13 the Office of Co Prosecutors, did you have access to all the
14 documents in your investigations or as part of the research that
15 you carried out?

16 A. I think so. Of course, with the exception, if I recall
17 correctly, of those categorized as strictly confidential, which -
18 to which access is not widely given, not given in general the way
19 everything else is.

20 [14.22.46]

21 Q. Regarding the specific matter of confidential documents, which
22 is of interest to me, as regards the records that were available,
23 were you able to read all of them at one point or the other?

24 A. All is a big word, but I think it's probably safe to say that
25 I read virtually all the evidentiary documents. Frankly, some of

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1 the procedural stuff I didn't pay attention to, but the
2 evidentiary stuff, the font - the "fond", as it's known in
3 French, I think, I think I read virtually everything.

4 Q. I would like to start by referring to documents that I know in
5 principle that you are aware of, since you mentioned them in
6 footnotes in your articles. And the article in question is
7 document E3/3169. And the ERN in French is 00722073; the ERN in
8 Khmer is 00711381; and the ERN in French is 00722073.

9 [14.24.50]

10 You, of course, referred to dates, and I'm referring to footnote
11 33. And the source of what you refer to, that is, the transcripts
12 of Committee meetings between 1973 and 1976, you refer to
13 transcripts of meetings of the Standing Committee meeting on the
14 2nd of November 1975, and the 22nd of February 1976, the 11th of
15 March 1976, and the 17th of May 1976, and the 30th of May 1976.
16 And you state in these - these transcripts refer to the presence
17 of Khieu Samphan, and these documents were of course provided by
18 David Chandler.

19 I would like to show you in Khmer the transcripts that we have on
20 record corresponding to those dates and I would like you to
21 confirm whether that is indeed the case, and this is what you
22 were referring to in the footnotes, and then I will put questions
23 to you regarding the investigations you were able to conduct.

24 [14.26.24]

25 With your leave, Mr. President, may I request that the first

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1 document be shown to the witness? It is E3/229, and it is the
2 transcript of the meeting of the Standing Committee on the night
3 of the 22nd of February 1976. So this document, in principle is
4 referred to in the footnotes.

5 With the assistance of the Court officer, may I request that Mr.
6 Heder be shown this document and then I will put questions to him
7 subsequently?

8 MR. PRESIDENT:

9 You may proceed.

10 BY MS. GUISSÉ:

11 Q. The page that is of interest to me is the first page, in
12 principle, in all the languages; in French, it is 00334958; in
13 Khmer, it is 0000713; in English, it is 00182625.

14 Before putting questions to you specifically on the contents, may
15 I request you to confirm whether you were familiar with this
16 document and that this is part of what you refer to in the
17 footnotes you refer to, that is, footnote 33 in E3/1/169?

18 MR. HEDER:

19 A. Yes, this is one of those documents, and the - I'll note that
20 the English annotations in this instance are David Chandler's,
21 not mine.

22 [14.28.25]

23 Q. I have no annotations in the French copy, so I won't be able
24 to put any questions on the annotations. I am interested in the
25 agenda, "National Defence Matters", particularly, "I. Report on

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1 the national defence situation;

2 1. The situation on the Eastern Border:", and I will read out the
3 first paragraph:

4 "Comrade Khieu reported that since early February, Vietnam has
5 acted strongly along our Eastern Border, especially in
6 Ratanakiri, Svay Rieng, and K'am Samnar. They have entered and
7 deployed 200 metres to three kilometres from the border, inside
8 our territory. At some locations, they have deployed inside old
9 Lon Nol military camps in platoon to company strength. When we
10 gave chase they withdrew. With men who numbered a section and
11 even a company, they said that their Central Committee had sent
12 them." End of quote.

13 [14.30.06]

14 My question is as follows - perhaps I should give you enough time
15 to finish reading the article.

16 So my question is: If during your research, whether for your work
17 as a researcher or whether as an investigator for the OCIJ or for
18 the OCP, did you obtain other documentary elements or interviews
19 of people who were in that area - that is to say the eastern
20 border - who spoke to you about these incursions of Vietnamese
21 troops or in any case, of these border problems? Were you made
22 aware of this during your research activity?

23 A. Yes, to some extent.

24 [14.31.11]

25 Q. Can you tell us whether this was in the context of other

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1 documents or whether it was - this was in the context of
2 interviews? And do you remember when you conducted these
3 interviews and where, if you remember?

4 A. In terms of documents - although I can't be specific about the
5 exact timeframe - there are certainly either telegrams or reports
6 from the eastern side of Cambodia describing what the telegrams
7 or reports say are Vietnamese incursions into what is disclaimed
8 to be Cambodian territory. With regard to interviews, to my
9 recollection - at least in my day at OCP and my day at OCIJ - I
10 don't recall anything specific about this. However, in the
11 interviews I did in the - in the period between '78 and '84 and
12 then the interviews in which I was involved in doing in 2005,
13 there are oral accounts of these kinds of events. And again,
14 whether we're talking specifically about February 1976 in these
15 particular locations, that a finer distinction I'm not sure I can
16 make, but in broader terms, yes.

17 [14.33.42]

18 Q. And reacting to this issue of date, you told us that this did
19 not necessarily happen on the 22nd of February 1976. So do you
20 remember if these border issues happened at other moments in the
21 period of Democratic Kampuchea? Did this happen within one single
22 year or were there such incidents at other moments?

23 Of course, always in light of what you heard and what - and of
24 the evidence that you gathered, I would like to repeat this to
25 you just so that things are clear.

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1 A. Well, setting aside the difficulty of disentangling the
2 question of presence of Vietnamese military forces inside
3 Cambodia in a context where it's not described as territorial
4 encroachment on the one hand and instances in which it's
5 described as territorial encroachment on the other - because
6 sometimes people made that distinction - there are accounts right
7 from the - before 1975 - before April 1975 through '75, '76 and
8 '77 and of course in the latter part of '77 and continuously
9 thereafter, there is fighting back and forth across what I think
10 both sides would recognize as some place that's the border.

11 [14.35.25]

12 So, in interviews and in official documents - internal documents
13 - particularly post '75 for the internal documents, I don't
14 recall any internal documents from before '75, but - yes, this is
15 - this is happening on an increasingly large scale right from pre
16 April 1975 through to 7 January '79.

17 MS. GUISSÉ:

18 Mr. President, I wish to turn to another line of questioning, so
19 maybe we could take a break now or do you wish me to continue?

20 MR. PRESIDENT:

21 Thank you.

22 The time is appropriate for a short break. We will take a break
23 now and return at 3 p.m.

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

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1 The Court is now in recess.

2 (Court recesses from 1436H to 1507H)

3 MR. PRESIDENT:

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

5 The Chamber would like to give the floor once again to the
6 defence team for Khieu Samphan to continue putting further
7 questions to Mr. Steve Heder.

8 You may proceed.

9 [15.07.56]

10 BY MS. GUISSÉ:

11 Thank you, Mr. President.

12 Q. Mr. Heder, I'd like us to now go into another line of
13 questioning.

14 At the hearing of the 11th of July 2013 at about 15.28, the
15 Co-Prosecutor put the following question to you - and I quote:

16 "Regarding factual information from factual sources - I'm not
17 asking you for an opinion - apart from S-21 confessions, did you
18 see factual documents regarding the functioning of Office 870?"

19 And your answer was as follows: "I believe the answer is yes, but
20 I would like to look at those documents again. I believe that
21 there are several references, but since this is a matter in
22 dispute which is crucial and there's a lot of ambiguity regarding
23 the terms used and even factual basis."

24 End of quote.

25 [15.09.07]

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1 My first question to you is as follows: what do you mean when you
2 say that these matters were in dispute and were crucial? I don't
3 know how this is being interpreted to you in English. Do you
4 recall what you told the Co-Prosecutor?

5 MR. HEDER:

6 A. Well, I mean - I think there's a fact not in dispute which is
7 that this number, this code 870, has something to do with the top
8 structure in the Party hierarchy or in the Party structure
9 overall. And there are those - there are testimonies, interviews
10 and some documents which say - or at least appear to say
11 something quite specific about the existence and the role of
12 something called "Office 870" or "Offices 870" because as I said
13 very early on, it's not always entirely clear in Khmer when
14 something is singular and when something is plural.

15 [15.10.34]

16 So what "870" connotes, what "Office 870" - or what all "Office
17 870" might be, it seems to me is sort of generally recognized as
18 important, but not agreed upon either among the people to whom I
19 have spoken or within the Tribunal itself, from my somewhat
20 cursory reading of previous exchanges on this issue -previous in
21 Court - open Court exchanges between the parties on this issue.
22 So I wanted to - rather than talk off the top of my head about
23 documents, which are maybe particularly important, I wanted to
24 see the documents so that I wouldn't make any simple errors of
25 memory with regard to the content of those documents.

1 [15.11.48]

2 Q. Thank you. And that is the point to which I am coming now.

3 In due course, I'd like to show you some documents in order to
4 obtain some clarifications from you as a person who carried out
5 investigations on the matter. But on a preliminary basis, we have
6 documents referring to the figure "870", but with different
7 terminology. I would like to show you different terms and ask you
8 to say whether this corresponds to something specific in light of
9 the investigations you conducted and the facts you were able to
10 obtain.

11 The first term, "870 Committee", does "870 Committee" mean the
12 same thing as "Office 870" or does it mean the same thing as
13 "M-870"?

14 MR. PRESIDENT:

15 Witness, please hold on.

16 The Prosecution, you may proceed.

17 [15.13.06]

18 MR. RAYNOR:

19 Thank you, Mr. President.

20 I think we are getting into the realm now of opinion. If there's
21 a specific document with "870 Committee" or "M-870" and Mr. Heder
22 confirms that he's seen that particular document and is asked
23 questions about that particular document, that may be non-opinion
24 evidence.

25 But in my respectful submission, we now have hit the marker where

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1 we're going from treating Mr. Heder as a witness of fact to an
2 expert witness commenting upon potential interpretations of
3 phrases in documents that aren't even being shown to him.

4 BY MS. GUISSÉ:

5 As I pointed out, Mr. President, I will return to the documents,
6 so I will rephrase my question.

7 Q. Did you hear the term "870 Committee" as part of your work for
8 the Co-Investigating Judges or in interviews you conducted or as
9 part of your work for the ECCC? I mean "Committee 870"?

10 [15.14.41]

11 MR. HEDER:

12 A. Yes, yes, and yes. I mean I certainly heard the phrase – the
13 formulation referred to before the existence of the Court, during
14 and after the existence – or during and after the time that I was
15 at the Court.

16 And I – just for – again, for me being pedantically specific, I
17 can't think off the top of my head of an instance in which it
18 actually appears in the full phrase "Committee 870" or "870
19 Committee". To my recollection, in terms both of documents and in
20 terms of oral accounts, it's always referred to as "COM 870",
21 which appears to be a shortened form for the word "committee" –
22 commonly appears as a short form for "committee" according to
23 what I've been told by people to whom I've spoken.

24 At the same time, other people to whom I've spoken has said with
25 reference to "COM" that it was often used to refer to a single

1 individual.

2 [15.16.05]

3 So people to whom I have spoken over the years have said – either
4 said that it refers – it means "committee" or said that it refers
5 to the top person in that committee, or said even more
6 frustratingly, sometimes it means one of these things, sometimes
7 it means the other. So that's something I have been told,
8 certainly more than once over the years. And that's where –
9 that's why in my prefatory remarks to the Prosecution, I talked
10 about ambiguity – there is ambiguity in this formulation,
11 according to what I've been told.

12 Q. Did you hear the expression in French "Office 870" and in
13 Khmer the word would be "Munti 870"? I don't speak Khmer but the
14 word is "Munti 870". Did you ever hear such an expression or see
15 such a term?

16 A. Yes. Again, both before my – before – in my own work before
17 the Court was established, in my work while I was at the Court
18 and since.

19 [15.17.47]

20 And to clarify the linguistic issue "munti" is conventionally
21 translated as "office". "M" before 870 is conventionally
22 understood or to mean – to be a shortened form for "office". I've
23 had some discussions about this matter with Cambodian and
24 Vietnamese Party members who are familiar with both languages and
25 they have said to me that this word "munti" in Khmer is derived

1 from a Vietnamese word "phong", which means "room" or "office"
2 and which in conventional translation of Vietnamese sometimes is
3 rendered as "service".

4 So, again, take your pick, but it's all – it's all the same word,
5 it's just how it's understood or how it's rendered into – into a
6 foreign language.

7 Q. And as part of your work before, during and after you left the
8 ECCC, did you get to know documents or did you see interview
9 reports in which reference was made to "Political Office 870"?

10 A. I really think I've only seen that once in a document, and
11 never or too few times to remember in oral accounts. So there's
12 not a lot – to my recollection – specifically using that term in
13 any of the context that you asked about.

14 [15.20.10]

15 Q. And this is the last term in respect of which I would ask the
16 same question as the last one. Did you hear or see as part of
17 your work before, during and after you left the ECCC, "Brother
18 870"?

19 A. I believe I've seen that on what are purported to be internal
20 CPK documents, which I saw both at DC-Cam before the Court was
21 established and at the Court while I was working at the Court.

22 MS. GUISSÉ:

23 As you stated that you saw the reference to the term "Political
24 Office 870" in documents, may I request your leave, Mr.
25 President, to show the witness in Khmer document E3/182 with the

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1 assistance of the Court officer?

2 For the parties, the ERN in French is 00292868.

3 Mr. President, are you – agree with me that I should show the
4 witness the document?

5 [15.22.07]

6 MR. PRESIDENT:

7 Yes, you may proceed.

8 BY MS. GUISSÉ:

9 Q. The ERN in Khmer is 00001908; and the ERN in English is
10 00183393. May I point out that the passage that is of interest to
11 me is on the first page of the document in the three languages?

12 And in the following page – the first page has to do with the
13 meeting of the Standing Committee of the 9th of October 1975 and
14 the agenda is as follows:

15 "1. Delegation of work and the operational process;

16 "2. Preparation for living in common;

17 "3. A number of specific work arrangements: commerce and the
18 military."

19 I'll allow you to peruse the document, Mr. Heder, and tell me
20 whether you recall ever seeing this document before?

21 MR. HEDER:

22 A. Yes.

23 [15.23.35]

24 Q. Let me continue on the first page:

25 "1. Delegation of work and the operational process:

1 "2. Comrade Secretary in charge of the army;
2 "3. Comrade Secretary in charge of the Party, Social Affairs,
3 Culture, Propaganda and Education;
4 "3. (sic) Comrade Van, in charge of Foreign Affairs for the State
5 and the Party.
6 "4. Comrade Hem, in charge of the Front and the Royal Government,
7 Trade List and Prizes;
8 "5. Comrade Thuch, in charge of National Trades and International
9 Trades;
10 "6. Comrade Khieu, in charge of the General Staff and Security."
11 [15.24.45]
12 And let me press on 7, that is on the next page and the ERNs are
13 the same. As before, it appears in the three languages:
14 "7. Comrade Vorn, in charge of Industry and Fisheries;
15 "8. Comrade Doeun, in charge of the Political Office 870;
16 "9. Comrade Phea, in charge of Culture, Social Affairs and
17 Foreign Affairs;
18 "10. Comrade At, in charge of Propaganda, Education, both within
19 the country and abroad;
20 "11. Comrade Chey, in charge of Agriculture;
21 "12. Comrade Yem, in charge of Office 870;
22 "13. Comrade Pang, in charge of the Office of Administration."
23 The French is simply "Administration".
24 So, this is the distribution of work in this document. And number
25 8, as I have just pointed out, features Doeun, Head of the 870

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1 Political Office. And it appears to me, therefore, that "munti"
2 is written in Khmer, is that indeed correct?

3 [15.26.07]

4 Is this the document in which you saw the expression "Political
5 Office 870" you referred to a while ago?

6 A. Yes. And indeed, the term that has been almost universally
7 translated as "office" is the Khmer word "munti".

8 There's something a little bit odd about the formulation here. It
9 uses the possessive Khmer form "roboh" after the words "Political
10 Office", which is a bit odd in this context because it's not used
11 elsewhere. And it sort of gives the sense of "belonging to". So,
12 if you wanted to elaborate the meaning, it could be read as
13 "Chairman of the political office belonging to 870". Whether
14 there's a distinction between "870" on its own and "belonging to
15 870", I guess that's an expert question, but it's odd.

16 [15.27.24]

17 Q. At number 12 on that list, we have a term translated into
18 French as "Office", we have "Office of Comrade Yem", "Office
19 870". And I am told that in Khmer it is "kariyalai". I crave your
20 indulgence for my accent. Have you ever heard people mention that
21 expression "kariyalai"? And according to the documents you saw or
22 read and interviews you conducted, do you know what that term
23 means, "Kariyalai 870"?

24 A. I think I can say that this is the only time I have ever seen
25 or heard this formulation. If I had to translate in order to

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1 establish a distinction between the two terms, I would use
2 something like "bureau" to render "kariyalai", if only in order
3 to distinguish it from the more common use - the more commonly
4 used word "munti". So these are two different words, each of
5 which could be translated as "office". To my mind - the native
6 speakers will all jump up and down and say I'm completely wrong -
7 but to my mind "kariyalai" has a more bureaucratic and petty
8 connotation than "munti", at least in Khmer Rouge speak, maybe
9 not in the general language.

10 But indeed, there's something different here, what that something
11 different is, is hard to say.

12 [15.29.36]

13 MS. GUISSÉ:

14 Thank you for this clarification.

15 Now I would like to refer to another record - not exactly a
16 record, but it's document E3/235. The Khmer reference is
17 00019142, the first page; French: 00322968; English: 00183416. So
18 it's the first page that I will be focusing on and the document
19 is titled "Summary of the Decision of the Standing Committee of
20 the Meeting of 19-20-21 April 1976:" [Free Translation]

21 With your leave, Mr. President, can we please provide the Khmer
22 version of the document to Mr. Heder so that he may follow more
23 consistently?

24 I'm being told that we only have the English version, so I will
25 provide the English version and we're going to display the Khmer

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1 version on the screen as we wait for the hard copy in Khmer,
2 because, of course, we would like you to go through this document
3 in its original language. So I'm going to wait for the Khmer
4 copy.

5 [15.31.37]

6 Is the document now available on the screen?

7 So, following the heading, the title of this decision, this is
8 what is stated:

9 "After three days of discussion on the issues on the agenda, the
10 Standing Committee took the decision as follows:

11 "First, regarding the creation of various committees around 870:

12 "1. The Commerce Committee..."

13 I'm just going to now mention the names of the different
14 committees and I will not mention the members with my
15 pronunciation:

16 "1. The Commerce Committee;

17 "2. The Energy Committee;

18 "3. Land Transport Committee;

19 "4. Sea Transport Committee;

20 "5. The Phnom Penh Warehouse Committee;

21 "6. The Harbour Committee."

22 [15.32.47]

23 And this continues on to the next page:

24 "7. The Agricultural Committee;

25 "8. The Industry Committee;

1 "9. Public Transport Committee;

2 "10. The Railway Committee;

3 "11. The Sewing Committee."

4 And I will now ask for the Court officer's assistance, because I

5 finally have the Khmer document available to me, so that Mr.

6 Heder can have it.

7 MR. PRESIDENT:

8 You may proceed.

9 [15.33.47]

10 BY MS. GUISSÉ:

11 Q. So my question is the following: Have you ever seen this

12 document in the context of your work before or during your time

13 at the ECCC? Are you aware of this document?

14 MR. HEDER:

15 A. Yes, yes, and yes.

16 Q. Did you ever interview people or did you see documents

17 referring to these various committees surrounding Office 870?

18 A. Yes, quite a few in both regards; both documents and oral

19 material - oral interviews.

20 MS. GUISSÉ:

21 I will get back to this a bit later and now I would like to

22 continue with another document, sir.

23 This is document E3/220, French ERN 00323891; English ERN

24 00182706; Khmer, 00000827.

25 [15.35.45]

1 And as earlier on, before you receive the hard copy, can this
2 document be displayed on the screen, please?

3 This - these are minutes of the meeting of the Standing Committee
4 on 7 May 1976. Under the heading we see the issues of Commerce
5 and the list of participants: Super Comrade Secretary, Deputy
6 Secretary, Super Comrade Van, Comrade Vorn, Comrade Yem, Comrade
7 Doeun, Comrade Thuch and the actual minutes.

8 And now, once again with the assistance of the Court officer, I
9 would like to provide a Khmer version of the document to Mr.
10 Heder.

11 Under "Heading 1" in this document-

12 MR. PRESIDENT:

13 You may proceed.

14 [15.37.17]

15 BY MS. GUISSÉ:

16 Q. So the Commerce Committee, Heading 1:

17 "Take Comrade Chey from Agriculture to come and control Commerce.

18 Comrade Doeun will go down to Commerce for three months, May,

19 June and July, one half day at the Office and one half day at

20 Commerce.

21 Comrade Doeun selected a number of comrades to prepare and build

22 for International Commerce. Their capabilities are at the level

23 of Comrade Chhon or lower." End of quote.

24 My first question - unfortunately I only have the French version

25 with me now - when I read: "Super - Comrade Doeun will go down to

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1 Commerce for three months, one half day at the Office, one half
2 day at Commerce"; what was the Khmer word for "Office" used?
3 And have you already seen this document? Maybe I should have
4 asked you first, have you already seen this document?

5 [15.38.32]

6 MR. HEDER:

7 A. Yes, I have seen the document and the Khmer term used is
8 "munti".

9 MS. GUISSÉ:

10 Now I would like to turn to another series of documents which are
11 not minutes of Standing Committee meetings, these are telegrams.
12 And for this - since these are short documents and since I know
13 you speak all three languages, French, English and Khmer, I would
14 like to provide you with the three language versions because I
15 understand that the translation might differ a little bit, so I'd
16 like to make sure that we're speaking about the same thing. The
17 first document is E3/258.

18 May I please display the Khmer on the screen so far as it is
19 legible, and provide the three language versions to Mr. Heder
20 with the President's leave?

21 First of all to know if he's already aware of these documents-

22 [15.39.51]

23 MR. PRESIDENT:

24 You may proceed.

25 BY MS. GUISSÉ:

1 Q. So, first of all, please go over the Khmer version and their
2 ERNs are - the ERN is the following: 000001108. And I'm going to
3 also ask you to look at the French version because this is the
4 version I'm going to use, which is referred to as 00531058
5 French. In French I can read: "Telegram 3, 267 characters, To
6 Beloved and Missed Office 870 com."

7 In English it's the third ERN here, 005822911, and I'll read it
8 in English to you: "267 characters, To Beloved and Missed Office
9 870 com."

10 So my question is the following. What is the word actually used,
11 exactly used, in the Khmer document?

12 [15.42.00]

13 MR. HEDER:

14 A. In the original Khmer salutation, it's all in abbreviated
15 form. So there's the letter "M", which presumably is short for
16 "munti" and there's the short form "kanak kam", which is
17 presumably short for "committee". So the French rendering is to
18 me not a precise translation but an expansive interpretation and
19 that's what results in the use of "Comité central" - excuse my
20 bad French accent - which I don't think is justified under the
21 circumstances of these terms having to be dealt with with great
22 care.

23 The English is perfectly acceptable. I mean, you could quibble
24 about the order but - and you could shorten "Office" to "O-F" or
25 "O" or something to signal that it's not the full word but, yes,

1 English is good enough. French is problematic, too expansive, too
2 interpretive.

3 [15.43.25]

4 Q. Thank you for this clarification. Have you ever seen this
5 document before?

6 A. Yes.

7 Q. Earlier you spoke about this issue of plural and singular in
8 the Khmer language and, of course, this issue is important in
9 French. In French I see in the document: "Copy to Uncle Nuon, to
10 Brother Van, to Brother Vorn, to the Offices [in plural] and to
11 the Archives", in the plural form as well.

12 Of course, the question is not relevant in English or in Khmer,
13 but upon reading this document in its Khmer version, were you
14 able to tell if mention was made of one office or of several
15 offices?

16 A. On the face of it, the Khmer, which is completely without
17 context in this document itself, on the face of it, it's
18 ambiguous. You couldn't know without a broader context whether
19 the "munti" that's mentioned at the bottom of the Khmer version
20 of the document is singular or plural. At least, I couldn't tell.
21 I would look at that and make a guess as to whether I thought it
22 was most likely singular or plural or I would use parentheses,
23 square brackets, to indicate that it's ambiguous. That's if I
24 just had this single piece of Khmer-language text to deal with.
25 In context, one might be sure of the singularity or the

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1 plurality, but only with context.

2 [15.46.04]

3 Q. Thank you for this clarification.

4 MS. GUISSÉ:

5 Now, before I move on to another document, I see Mr. President

6 it's a bit passed a quarter to 4.00, so I would now once again

7 like to ask you again not only to have extra time because

8 normally I was granted a full day, and an hour and 10 minutes

9 were already used up by objections.

10 So, first of all, I'm asking to have this extra hour and 10

11 minutes which will be necessary for me to continue my

12 questioning, and I stand by my initial request which is to have

13 an hour-and-a-half, an extra hour-and-a-half, meaning that to be

14 able to finish my examination tomorrow morning because, as you

15 can see, this is a rather fastidious exercise but it's the only

16 way I can proceed.

17 [15.47.30]

18 These are important documents for the Khieu Samphan defence team

19 and especially since we were only granted two days where as

20 originally we were granted - the two-and-a-half days were granted

21 to the civil parties and the prosecutors who went beyond that

22 time. So I'm please asking you to give me this extra time, given

23 that I have quite a few very important topics to cover for the

24 Khieu Samphan defence.

25 So I'm making this request right now, at 10 to 4.00, so that

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1 there are no problems at four, but I'm very far from having
2 finished my examination. I also must cover the interviews of Ieng
3 Sary and also the interviews with my client.

4 So, Mr. President, I would be very happy to have your decision
5 before 4 o'clock.

6 MR. PRESIDENT:

7 Thank you.

8 The Chamber grants leave for counsel so that you will have one
9 more session tomorrow morning.

10 [15.48.40]

11 MS. GUISSÉ:

12 Thank you, Mr. President.

13 What I want to know - what do you mean by "session"? Do you mean
14 the full morning or the first part of the morning until the
15 morning break or until the lunch break? Does that mean I will not
16 have any extra time, that I will just have the time that was
17 originally granted to me, that the Chamber won't give me any
18 extra time? Is that what I must understand?

19 MR. PRESIDENT:

20 So what is your request now? Are you suggesting that the Chamber
21 take into consideration the time lost for your part to ask the
22 question and are you making an application that you should be
23 granted one whole morning for tomorrow?

24 MS. GUISSÉ:

25 Well, if I'm given the full morning tomorrow - and, of course, I

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1 will try to shorten my examination - but given the
2 hour-and-a-half that I - the hour and 10 minutes I lost today,
3 and I'd also like to have an hour - the extra hour-and-a-half
4 that had been granted to me originally. So this basically means
5 the full morning if that's possible?

6 (Judges deliberate)

7 [15.51.25]

8 MR. PRESIDENT:

9 Now, the time you have left tomorrow for questioning the witness
10 of Mr. Stephen Heder, you will have one session in the morning
11 tomorrow, which means you will have one hour-and-a-half until the
12 morning break, as per your request.

13 MS. GUISSÉ:

14 Well, I take note of this. I'll see if I will make an extra
15 submission for extra time if I face a specific problem.

16 BY MS. GUISSÉ:

17 Q. Well, Mr. Heder, let me continue. Now I would like to submit
18 to your attention another series of three documents in the three
19 languages. This is document E3/893, which is a telegram, Telegram
20 Number 78, and with the assistance of the Court officer, can
21 these three documents in the three languages be provided to Mr.
22 Heder and can we please display the first page in the Khmer
23 version on the screen?

24 [15.52.55]

25 MR. PRESIDENT:

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1 You may proceed.

2 BY MS GUISSÉ:

3 Q. Once again, I'm asking you to refer to the Khmer version, the
4 first page of this document. The ERN is 000708. The English ERN
5 is 00182629; and in French, 00386272.

6 In French, I read: "Telegram Number 78, To the Much Respected
7 Bong, Comrade 870."

8 [15.54.11]

9 In English, I read - and I'll read it in English: "M-870, (Office
10 870)."

11 I don't know if that's the translator's - translators mention
12 (Microphones overlapping). In Khmer, my question is the
13 following. "What are you saying and have you already had this
14 document available?"

15 MR. HEDER:

16 A. Yes, this one is familiar as well and, again, sadly, the
17 English translation is closer to - much closer to the original;
18 exact with the original I would say, whereas the French contains
19 an interpretative expansion, the addition of "Comrade".

20 Q. Finally, the last series of documents. This is document
21 E3/902. In Khmer, the ERN is the following, 00020894; in English,
22 00183625; in French, 00324514; and with the leave of the
23 President, can this last series of telegrams be provided to Mr.
24 Heder so that he can go over it in all three languages?

25 MR. PRESIDENT:

1 You may proceed.

2 [15.56.37]

3 BY MS. GUISSÉ:

4 Q. And this is Telegram 238. We can read "Fréquence 195" in
5 French and it's addressed to "Respected and Beloved Central
6 Committee 870". This is what, in fact, appears in the French
7 version. In English, we see "Dear Beloved, 870 [Microphones
8 overlapping]" - and I'm going to ask you what appears in Khmer
9 and if you have already seen this document as well?

10 MR. HEDER

11 A. Yes, I've seen the document and all I can say is oh dear, both
12 the French and the English are wrong this time. The original
13 Khmer reads: "Presented with respect to Com 870". So, there's no
14 Central Committee, there's no "M" for office - "Presented with
15 respect to Com 870". and I'll gloss it by saying leaving
16 ambiguous whether "Com" is a committee, a whole committee, one
17 committee, another committee or whether it's a single individual.

18 Q. Thank you for this clarification.

19 MS. GUISSÉ:

20 Mr. President, I see that it's 4 o'clock. I have finished
21 covering these documents, so maybe we could adjourn now and
22 resume tomorrow morning?

23 MR. PRESIDENT:

24 Thank you.

25 Thank you, Mr. Stephen Heder.

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1 Now it is the appropriate point to adjourn for the day. The
2 Chamber shall adjourn now and resume tomorrow, the 18 of July
3 2013.

4 Tomorrow the Chamber will resume hearing the testimony of Mr.
5 Stephen Heder, and the floor will be given to the defence team
6 for Mr. Khieu Samphan. This is for the information of all parties
7 concerned, as well as the support staff.

8 Mr. Stephen Heder, your testimony has not yet come to an end. The
9 Chamber invites you to come to testify in this Court again
10 tomorrow morning, and Court officer is instructed to assist the
11 witness to the place where he is staying tonight and have him
12 return to this courtroom morning on 18 July 2013, before 9 a.m.

13 [15.59.41]

14 Security guards are instructed to bring the two co-accused to the
15 detention facility of the ECCC and have them returned to
16 participate in the hearing tomorrow, before 9 a.m.

17 And Mr. Nuon Chea is to be brought to a holding cell downstairs
18 where audio-visual equipment will be linked to him to follow the
19 proceeding remotely.

20 The Chamber is now adjourned.

21 (Court adjourns at 1600H)

22

23

24

25