



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

**ឯកសារដើម**

**ORIGINAL/ORIGINAL**

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**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

**អង្គជំនុំជម្រះសាលាដំបូង**

Trial Chamber

Chambre de première instance

**TRANSCRIPT OF TRIAL PROCEEDINGS**

**PUBLIC**

Case File N° 002/19-09-2007-ECCC/TC

31 March 2015

Trial Day 266

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

The Accused: NUON Chea  
KHIEU Samphan

Lawyers for the Accused:  
Victor KOPPE  
SUON Visal  
KONG Sam Onn  
Anta GUISSSE

Trial Chamber Greffiers/Legal Officers:  
CHEA Sivhoang  
Roger PHILLIPS

For the Office of the Co-Prosecutors:  
SONG Chorvoin  
Dale LYSAK  
Vincent DE WILDE D'ESTMAEL

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MR. RICHARD DUDMAN (2-TCW-923)

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**List of Speakers:**  
  
Language used unless specified otherwise in the transcript

Speaker	Language
MR. DE WILDE D’ESTMAEL	French
MR. RICHARD DUDMAN (2-TCW-923)	English
JUDGE FENZ	English
MS. GUISSÉ	French
MR. KOPPE	English
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer

1 PROCEEDINGS

2 (Court opens at 0803H)

3 MR. PRESIDENT:

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

5 This morning the Chamber will continue to hear the testimony of

6 the witness, Richard Dudman, via tele -- video conference from

7 the United States of America.

8 And Ms. Chea Sivhoang, could you report the attendance of the

9 Parties and individuals to today's proceedings?

10 [08.04.30]

11 THE GREFFIER:

12 Mr. President, for today's proceedings, all parties to this case

13 are present.

14 As for Nuon Chea, he is present in the holding cell downstairs as

15 he requests to waive his right to be present in the courtroom.

16 His waiver has been delivered to the greffier.

17 The witness who is to continue his testimony today -- that is,

18 Mr. Richard Dudman by a video conference from the United States

19 of America.

20 The AV Unit informs the greffier that the link has been connected

21 and the witness is ready to testify. Thank you, Mr. President.

22 [08.05.27]

23 MR. PRESIDENT:

24 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the

25 request by Nuon Chea.

2

1 The Chamber has received a waiver from Nuon Chea, dated 31st  
2 March 2015. He confirms that due to his health problem -- that  
3 is, headache, back pain and that he cannot sit for long, and in  
4 order to effectively participate in the future hearings, he  
5 requests to waive his rights to participate in and be present at  
6 the 31st March 2015 hearing. He has been informed by his counsel  
7 about the consequence of this waiver, that in no way it can be  
8 construed as a waiver of his rights to be tried fairly or to  
9 challenge evidence presented or admitted to this Court at any  
10 time during this trial. Having seen the medical report by the  
11 duty doctor for the Accused at the ECCC, dated 31st March 2015,  
12 who notes that the health condition of Nuon Chea is that he still  
13 has his chronic back pain and he cannot sit for long and  
14 recommends that the Chamber shall grant him his request so that  
15 he can follow the proceedings remotely from a holding cell  
16 downstairs.

17 [08.06.57]

18 Based on the above information, and pursuant to Rule 81.5 of the  
19 ECCC Internal Rules, the Chamber grants Nuon Chea his request to  
20 follow the proceedings remotely from a holding cell downstairs  
21 via an audio-visual means for today's proceedings as he waives  
22 his direct presence in the courtroom. The AV Unit is instructed  
23 to link the proceedings to the room downstairs so that Nuon Chea  
24 can participate in and follow today's proceedings remotely.  
25 Good morning, Mr. Richard Dudman.

3

1 MR. DUDMAN:

2 Good morning.

3 MR. PRESIDENT:

4 Today the Chamber will continue to hear your testimony and you  
5 will be questioned by the defence teams. And Mr. Richard Dudman,  
6 are you ready?

7 MR. DUDMAN:

8 I am ready. Yes, I am ready.

9 [08.08.40]

10 MR. PRESIDENT:

11 Thank you. And the Chamber would like now to give the floor to  
12 the defence teams.

13 And Counsel, you can proceed.

14 QUESTIONING BY MR. KOPPE RESUMES:

15 Thank you, Mr. President. Good morning, Your Honours. Good  
16 morning, counsel. Good evening, Mr. Dudman. I am about --

17 MR. DUDMAN:

18 A. Good evening.

19 Q. Good evening. I am about to finish my examination and as  
20 indicated to you yesterday, I would like to finish with listening  
21 with you to an audio tape -- an audio tape of an interview or  
22 speech that Pol Pot has given to you and Elizabeth Becker in  
23 December 1978. Now Mr. Dudman, I believe you received yesterday,  
24 through your counsel, a transcript of the -- about nine and a  
25 half minutes of the interview. Is that indeed correct and if yes,

4

1 have you been able to read it?

2 A. I have read it and I listened to an audio version of it -- of  
3 most of it before this session began.

4 [08.10.09]

5 Q. Thank you very much, Mr. Dudman.

6 MR. KOPPE:

7 Mr. President, for the benefit of Nuon Chea and also for the  
8 benefit of the public, I would like to ask your permission to  
9 have this nine and a half minute audio tape played in the  
10 courtroom. I believe the AV Unit is ready, if you grant the  
11 request, to play the audio. Maybe one warning to accompany my  
12 request -- the quality is not always that good. It seems that  
13 when Pol Pot is speaking in Khmer his words are quite soft and  
14 when Thiounn Prasith is translating, the words are loud so I hope  
15 it goes well. So again, my request to have your permission.

16 MR. PRESIDENT:

17 Your request is granted, and the AV Unit, please play the audio  
18 file as requested by Counsel Koppe.

19 (Audio presentation)

20 [08.13.15]

21 MR. PRESIDENT:

22 Please pause, and Counsel Koppe you have the floor.

23 MR. KOPPE:

24 Thank you, Mr. President. I am also directing my remarks to the  
25 AV Unit. It is the excerpt that starts at minute 33.15. I believe

5

1 they were accordingly instructed and I heard something completely  
2 different so I'm not quite sure where they are. It is document  
3 D28R, starting at minute 33.15.

4 MR. PRESIDENT:

5 AV Unit, please play this segment as indicated by Counsel Koppe  
6 at 33 minutes 15 seconds time mark. Thank you.

7 (Audio presentation)

8 [08.24.40]

9 BY MR. KOPPE:

10 Q. Mr. Dudman, have you been able to listen to this audio tape?

11 MR. DUDMAN:

12 A. Yes.

13 Q. Of course, I realise it's a long time ago that this interview  
14 took place but does this -- does the listening to this interview  
15 jog your memory?

16 A. No.

17 Q. Do you remember any reaction at your side in relation to this  
18 interview that you had after the interview or is that simply too  
19 long ago?

20 A. I don't recall any reaction.

21 Q. Is there any reaction now at this stage that you can give to  
22 the Trial Chamber about this interview or am I asking too much  
23 now?

24 A. I don't get your question.

25 [08.26.01]



6

1 Q. Is there anything that you would like to say now in reaction  
2 to having heard again this interview?

3 A. No, I have no comment.

4 MR. KOPPE:

5 Mr. President, since I have run out of time I would like to cede  
6 the floor.

7 Thank you very much -- thank you very much, Mr. Dudman. Have a  
8 good evening.

9 MR. DUDMAN:

10 Thank you.

11 MR. PRESIDENT:

12 Thank you and the Chamber would like now to give the floor to the  
13 Co-Prosecutors.

14 [08.26.43]

15 QUESTIONING BY MR. LYSAK:

16 Thank you, Mr. President. Good evening to you, Mr. Dudman. My  
17 name is Dale Lysak. I'm one of the International Prosecutors and  
18 I will be asking you some questions today.

19 MR. DUDMAN:

20 A. Good evening.

21 Q. Yesterday, Nuon Chea's counsel asked you about your capture  
22 and detention in Vietnam or in Cambodia by Vietnam troops in 1970  
23 and I have just a few follow-ups on that subject. I want to read  
24 or reference you to a short excerpt from your book "Forty Days  
25 with the Enemy" which is on our case file as E338.17 at S00023188

7

1 through 89, only available in English, and you wrote here that  
2 you were generally treated well with the exception of the first  
3 day when you were treated roughly for a time by Cambodians, in  
4 your words, which treatment was halted by authorities of the  
5 Liberation Army who guaranteed your safety if it was verified you  
6 were international journalists. Now I want to follow up on this.  
7 When you said that you were treated roughly by Cambodians, who  
8 were those people and what did they do to you?

9 A. I don't recall.

10 [08.28.40]

11 Q. When you said that, you made a reference to the Liberation  
12 Army as having intervened and protected you. Do you remember who  
13 you were referring to by the Liberation Army -- who was it that  
14 came in and intervened and protected you?

15 A. I don't remember.

16 Q. Let me move to another subject, Mr. Dudman. I want to ask you  
17 a few questions about another issue that came up yesterday, which  
18 is the obstacles or limitations you faced as a journalist trying  
19 to obtain information when you were in Democratic Kampuchea in  
20 December 1978. Yesterday, Mr. Koppe, Nuon Chea's counsel, read to  
21 you an excerpt from one of your articles, E3/3290, in which you  
22 stated -- quote: "The visit amounted to a conducted tour, with  
23 strict limits on conversations with ordinary Cambodians, and no  
24 opportunity to speak with any but a few top government  
25 officials." End of quote. You used that same term yesterday in

8

1 your testimony, when you told Defence Counsel that your visit was  
2 a 'conducted tour', which you described as pretty unsatisfactory.  
3 Can you explain to the Court why you called your visit to  
4 Democratic Kampuchea a 'conducted tour'? And why, as a  
5 journalist, you felt unsatisfied?

6 A. I like to ask questions as a journalist, and get answers. And  
7 that was really impossible at the time. I don't have a great  
8 recollection now of those events of nearly 40 years ago, but in  
9 reading from my book, it rings a bell, and I can remember the  
10 feeling of frustration.

11 [08.31.35]

12 Q. Thank you. I am going to refer now to a document, E3/1156.  
13 This is a surviving report from Democratic Kampuchea about  
14 requests that yourself, though your name is translated in this  
15 document as "Lidman", instead of "Dudman" -- but it is a list of  
16 requests from yourself, Professor Caldwell and Elizabeth Becker,  
17 which was written by a cadre named Ny Kan.

18 And the fifth request from you in this list was -- and I quote:  
19 "To meet with leaders, such as the first Prime Minister, Deputy  
20 Prime Minister Ieng Sary, Deputy Prime Minister Son Sen, Ieng  
21 Thirith, Khieu Ponnary, Brother Nuon Chea, and King Sihanouk."  
22 First -- and I realize it was a long time ago -- do you have any  
23 recollection of meeting a person from the Ministry of Foreign  
24 Affairs named Kan?

25 A. I do not.

1 [08.33.07]

2 Q. Let me read to you a little of what you wrote in relation to  
3 your requests to interview government officials. This is in an  
4 article titled "Governing in Secret". It is in E3/3290, which is  
5 a -- contains a series of articles by you at English, ERN  
6 00419211; and Khmer, 01070714 to15. You wrote here about how,  
7 despite making repeated requests, the only top government  
8 officials you were allowed to meet were Pol Pot and Ieng Sary.  
9 And you also stated the following -- quote: "I had asked to meet  
10 most of the known officials, a total of about 10, including two  
11 French-educated sisters who are married to Pol Pot and Ieng Sary,  
12 and held important positions in their own right. I asked in vain  
13 to meet the former head of state, Prince Norodom Sihanouk,"  
14 continuing below, "Officials said he had been refusing all  
15 requests by visiting delegations who wanted to see him." End of  
16 quote.

17 [08.34.40]

18 My first question about this: Do you remember ever being given a  
19 reason for why you could not meet with government officials,  
20 leaders such as Nuon Chea, Son Sen, and the wives of Ieng Sary  
21 and Pol Pot, Ieng Thirith and Khieu Ponnary? Were you ever given  
22 a reason as to why you could not meet with those people?  
23 A. I don't remember. I may have written something about what  
24 reason was given me at the time, but I haven't seen that in  
25 reviewing my writings.

10

1 Q. Were you ever told, while you were in Democratic Kampuchea and  
2 in Phnom Penh that Prince Sihanouk was in fact at the Royal  
3 Palace under house arrest?

4 A. I don't recall being told that.

5 Q. Had you previously met Sihanouk in China?

6 A. I don't believe so.

7 [08.35.56]

8 Q. I'm going to turn now to an article you wrote titled  
9 "Conformity -- A Must for Survival in Cambodia." This is E338.19.  
10 In this article, you talked about a visit to a cooperative called  
11 Leay Bour cooperative in Takeo province. While you were there,  
12 you were told that the cooperative included people from Phnom  
13 Penh, but you wrote that: "Whenever there were requests to speak  
14 with some of them, they always turned out to be away in the rice  
15 fields, bringing in the harvest." End of quote. You wrote that  
16 you were eventually allowed to talk to a man named Neth Yan, but  
17 you described the circumstances of that interview as follows --  
18 quote: "Yan's comments could hardly have been spontaneous. He was  
19 interviewed in an otherwise empty communal dining hall, with a  
20 government official from Phnom Penh doing the interpreting, and  
21 several other officials and cadres listening in." End of quote.

22 [08.37.26]

23 A question, Mr. Dudman: was there anyone in your group -- that  
24 is, amongst yourself, Elizabeth Becker and Malcolm Caldwell, who  
25 was sufficiently fluent in Khmer to understand what people were

11

1 saying to you, such as this person? Or were you dependent upon  
2 the Ministry of Foreign Affairs officials to interpret what was  
3 being said to you during these interviews?

4 A. I don't remember that, where I got that impression. I don't  
5 remember who it was that told me that.

6 Q. My question: Did you have your own interpreters with you, or  
7 did you have to rely on the officials from the Ministry of  
8 Foreign Affairs to translate when you conducted interviews?

9 A. I don't recall having my own interpreter along with us.

10 Q. And I realize it was a long time ago, but when you were in  
11 Leay Bour cooperative in Takeo province, and the district in  
12 which Leay Bour is located, Tram Kak district, do you remember  
13 whether there were local leaders there who met with you?

14 A. I don't recall such a meeting.

15 [08.39.23]

16 Q. In your August 1990 article that you were asked about  
17 yesterday, E307/5.2.16, despite the control over what you saw and  
18 heard during this trip, you wrote the following -- quote: "In  
19 Phnom Penh, and on the 1,000-mile automobile tour, I saw shocking  
20 evidence of brutality and regimentation." End of quote. Can you  
21 describe to the Court in general what it is that you saw during  
22 your trip that you considered to be "shocking evidence of  
23 brutality and regimentation"?

24 A. I don't remember why I said that, why I wrote that. I have no  
25 recollection of what led me to say that.

12

1 Q. Let me turn now to another subject that you talked about a  
2 little yesterday, which was your attempt to acquire information  
3 relating to the food supplies and health of the people in  
4 Cambodia. You wrote an article on the 28th of December 1978,  
5 titled "Is Cambodia Starving?" This is document E305/12.58. In  
6 this report, you wrote that you saw no evidence of starvation,  
7 and that rice production appeared to have increased. But you also  
8 provided the following qualification to your statements, and I  
9 quote your words:

10 "This conclusion must be tentative. The government refused access  
11 to any production or trade specialists, for detailed questioning  
12 about claimed yields. It likewise ignored repeated requests to  
13 take two visiting American reporters to any of the hospitals or  
14 small clinics that it says are operating by the score throughout  
15 Cambodia. Nor would it permit an interview with any public health  
16 authority." End of quote.

17 [08.42.26]

18 Can you explain why it would have been important to you as a  
19 journalist to visit a hospital or to speak to a public health  
20 official in order to assess whether people were in fact receiving  
21 a sufficient and adequate diet in Democratic Kampuchea?

22 A. I was trying to establish truth.

23 Q. What type of things would you look for? What type of questions  
24 might you have asked if you had been allowed to go to a hospital,  
25 or to meet with a public health official?

13

1 A. I have a hard time placing myself back in that situation. I  
2 don't know what I would have asked, but I would have thought of  
3 some appropriate questions to try to get at the truth of what  
4 kind of health care they had.

5 [08.43.42]

6 Q. Mr. Dudman, one of the witnesses who has recently testified in  
7 this trial is a man named Riel Son, and he was the deputy chief  
8 of the Tram Kak district hospital in Takeo province from 1976 to  
9 the end of the Khmer Rouge regime. Tram Kak district was the  
10 location of the Leay Bour cooperative, one of the sites you and  
11 Ms. Becker were taken to. And on the 17th of March this year, in  
12 this Court -- reference, Your Honours at 11.08 through 11.14 of  
13 that morning -- this witness testified that in the later part of  
14 the regime, so the time period you were there, the number of  
15 people dying from malnutrition got worse because people did not  
16 have enough food to eat, and there were about five deaths every  
17 day in his hospital from people suffering from malnutrition whose  
18 bodies were swollen. The hospital, by the way, where this was  
19 taking place, was only about 12 miles from the model cooperative  
20 you visited, Leay Bour.

21 [08.45.09]

22 My question: Is this the type of information as a journalist you  
23 would have liked to obtain if you had been allowed to visit a  
24 hospital to see patients who were sick, to speak to health  
25 officials, during your trip?



14

1 A. Absolutely. That's what I would have liked to have found out.

2 MR. PRESIDENT:

3 (No translation)

4 MR. KOPPE:

5 I -- Mr. President, I object to this question. It is very -- this  
6 question is asking for speculation of the witness, and I think  
7 it's not appropriate to ask such a question to the witness.

8 MR. LYSAK:

9 If I may respond, Mr. President. Mr. Dudman is a journalist.  
10 We're asking about articles written -- he's written directly on  
11 this very question, that he wanted to go and visit hospitals, but  
12 was denied. I think this is an entirely important and relevant  
13 subject to pursue.

14 [08.46.50]

15 MR. PRESIDENT:

16 In this case, the International Deputy Co-Prosecutor can put such  
17 a question, and the Chamber wishes to know about this point as  
18 well. And for the defence counsel, the Chamber has also allowed  
19 you to -- allowed you to put some questions as well to Mr.  
20 Dudman.

21 You may now proceed, International Deputy Co-Prosecutor.

22 BY MR. LYSAK:

23 Q. So the record is clear, Mr. Dudman, could you repeat your  
24 answer to that question?

25 MR. DUDMAN:

15

1 A. Will you ask the question again?

2 [08.47.40]

3 Q. The question is whether this is the type -- the information  
4 that I read to you, whether this is the type of information you  
5 would have liked to obtain if you had been allowed to visit a  
6 hospital, see patients and speak to health officials in  
7 Democratic Kampuchea?

8 A. Yes, it is. Exactly.

9 Q. Is it fair to say, Mr. Dudman, with respect to issues like  
10 food supply, work conditions, health of the people, that in many  
11 respects what you saw during your trip was what the Khmer Rouge  
12 officials allowed or wanted you to see? Is that a fair statement?

13 A. I don't think completely fair.

14 Q. What would you say? Let me put it to you another way. Did you  
15 have any way of knowing or verifying whether cooperatives and  
16 worksites to which you were taken were representative of life, of  
17 what life was like, for most people in Democratic Kampuchea?

18 A. I could not be sure that they were representative. I suspected  
19 that they were putting their best foot forward.

20 [08.49.16]

21 Q. Now, in the same article that I was just quoting, your article  
22 titled "Is Cambodia Starving?", E305/12.58, you also wrote the  
23 following -- quote: "Even the most complete figures on rice  
24 production, health and nutrition would say nothing about the  
25 human price at which production has been expanded. This price

16

1 includes the forced emergency evacuation of Phnom Penh and other  
2 cities, the strict regimentation of those who survived, and the  
3 concentration on agricultural production at the expense of  
4 freedom to learn, read, travel and practice religion." End of  
5 quote.

6 Could you explain to the Court a little why you wrote that the  
7 expansion of agricultural production had been at the expense of  
8 some basic human freedoms?

9 A. I don't recall what led me to write that.

10 Q. You also wrote in this article about how, during your trip,  
11 officials from the regime showed off several new dams, including  
12 what you described as -- quote: "Three large concrete structures  
13 that they said had been built on a crash basis by thousands of  
14 workers using only their hands." End of quote. Mr. Dudman, do you  
15 remember anything about those dams? And if so, can you provide to  
16 the Court your recollection and impression of the dams, and what  
17 it would have been like to have built those dams by hand?

18 A. I don't have a direct reaction -- recollection, after all  
19 these years. I wrote what I saw and what I could -- the  
20 information I could get. But I don't -- I can't go beyond the  
21 text of what I wrote.

22 [08.51.53]

23 Q. Let me ask you one more question on this subject, and I'm  
24 referring here to a different article, titled "Cooperative",  
25 which is in document E305/12.54; English, at S00014149; Khmer,

17

1 ERN 010063272. In this article, you described the meals that  
2 foreign visitors were provided, and you described them as follows  
3 -- quote:  
4 "Lunch and dinner almost always included two big flounders or  
5 other fish, a big platter of either prawns or lobsters, and  
6 either chicken or chunks of beef or pork, plus a big casserole of  
7 light Cambodian steamed rice. Salad was sliced cucumbers and  
8 boiled eggs. Chinese Snowflake beer was the usual beverage." End  
9 of quote. Do you remember receiving meals like this? And can you  
10 tell us where it was that you were fed meals like the one  
11 described here?

12 Did you hear my question, Mr. Dudman?

13 A. I heard your question. I don't know -- I don't really remember  
14 where I had those meals. I'd be surprised if I didn't say in the  
15 story something about where it was.

16 [08.54.20]

17 Q. I just want to clarify. Do you think -- did you observe that  
18 ordinary Cambodians in Democratic Kampuchea were receiving meals  
19 like this?

20 A. I am sure they were not.

21 Q. I am going to turn now to my next subject, and that is the  
22 treatment of political opponents or enemies by the Khmer Rouge.  
23 In the opening paragraphs of an article you wrote that is dated  
24 26 December 1978, the article titled "Conformity -- A Must for  
25 Survival in Cambodia" -- this is document E338.19, you wrote --

18

1 and I quote: "The Cambodia version of communism has no place in  
2 it for anyone who wants to read, write or even think  
3 independently." End of quote.

4 [08.55.43]

5 You also stated that the Cambodian Revolution had made conformity  
6 a condition of survival. Do you remember -- can you give any  
7 explanation to the Court, Mr. Dudman, of what you saw or learned  
8 during your trip that led you to write this?

9 A. I can't remember how I came to write that.

10 Q. In the same article, E338.19, you also wrote -- quote: "The  
11 Cambodian Revolution, surely the most extreme in modern history,  
12 evidently has forced former upper and middle class city dwellers  
13 to conform to an austere standard of hard manual labour, no  
14 money, no mail system, no telephone service, no books, almost no  
15 individual property, no advanced education, little or no  
16 religion, none of the freedoms accepted or at least professed by  
17 most of the rest of the world. Social upheaval under the  
18 victorious Cambodian revolutionaries has gone well beyond the  
19 Chinese precedent at the height of the great proletarian cultural  
20 revolution." End of quote.

21 Why did you say that the Khmer Rouge had gone beyond the Chinese  
22 Cultural Revolution?

23 A. I don't remember how I came to make that comparison.

24 [08.57.41]

25 Q. In the same article, at English 338.19, at English, ERN

19

1 00444938; Khmer 01070497; you described how you had made  
2 inquiries to government representatives about reported systematic  
3 killings of soldiers and officials of the former regime. And you  
4 wrote the following about how Ieng Sary responded on that issue.  
5 I quote: "Ieng Sary, Deputy Prime Minister for Foreign Affairs,  
6 did not seem to be denying the charges. He said in an interview  
7 that some killings could not be avoided, but that considering the  
8 complicated situation after the war, the Communist Party of  
9 Kampuchea solved the problem in a good condition, and avoided  
10 many more killings." You continue quoting him: "Maybe that is not  
11 your belief, he said, but we are responsible, and we grasp the  
12 concrete situation in our country. We carry out all tasks in  
13 order to serve the rights of our people, and not just the rights  
14 of certain groups." End of quote.

15 [08.59.22]

16 Now, you referenced that you had been allowed to conduct an  
17 interview of Ieng Sary. Can you tell us where that interview took  
18 place? Who was present? Can you tell us a little bit about your  
19 interview of Ieng Sary?

20 A. I don't remember that interview.

21 MR. PRESIDENT:

22 Thank you, the Deputy International Co-Prosecutor. And thank you,  
23 Mr. Richard Dudman. We will take a 10-minute break, and we will  
24 resume at 9.10 a.m., Cambodian time. And Mr. Dudman, I don't  
25 really know what time it is at your side, but we will take a

20

1 10-minute break this morning our local time.

2 The Court is now in recess.

3 (Court recesses from 0900H to 0911H)

4 MR. PRESIDENT:

5 Please be seated. The Court is now back in session, and again the

6 Chamber is handed the floor to the Deputy International

7 Co-Prosecutor to put further questions to the witness, Mr.

8 Richard Dudman. You have the floor.

9 [09.11.53]

10 BY MR. LYSAK:

11 Thank you, Mr. President.

12 Q. Mr. Dudman, we very much appreciate you making your effort to

13 testify here. As a 96-year-old it's an amazing thing. I'm going

14 to continue reading some of your -- the things you wrote from

15 your trip. I realize that you may not remember too much at this

16 point. These -- some of the statements you've made though are

17 quite of interest to us, and if nothing else we want to make sure

18 they're part of the record here, and I'll continue to ask you

19 some follow-up questions, and hopefully, maybe some of this will

20 spark some, some recollections.

21 [09.12.53]

22 I'm going to continue in an article that is titled "The Enemy

23 Vietnam". This is in E3/3290 at English, ERN 00419207; Khmer,

24 01070696. And here is what you wrote -- I quote:

25 "Throughout the visit, officials denounced the Vietnamese

21

1 continually as did Radio Phnom Penh, as fascist, false  
2 communists, aggressors, the Cubans of Asia, country swallowers  
3 and crocodile, a most ungrateful animal, which does not recognize  
4 as master the person who feeds it. The Foreign Ministry official  
5 who toured the country with us, took us to a zoo at one point  
6 said, 'come see the Vietnamese prisoners'. He led the way to a  
7 pit with 60 big crocodiles in it. At another time, the officials  
8 said with a straight face, that all Vietnamese army officers have  
9 three wives: one in Hanoi, another in Saigon and the third at the  
10 Front." End of quote.

11 Do you remember your reaction when you heard Democratic Kampuchea  
12 officials making remarks like this about the Vietnamese in your  
13 presence?

14 MR. DUDMAN:

15 A. Well, as a journalist I figured that was a nice nugget for our  
16 story, and I put it in because I thought it would both amuse and  
17 enlighten our readers.

18 [09.15.20]

19 Q. Mr. Dudman, I want to read to you now a couple of examples  
20 from DK radio broadcasts during the time you were in the country  
21 in December 1978.

22 Your Honour, these are from E3/295 at the FBIS records for  
23 December 1978. In -- at page 00169107, this was a broadcast on  
24 the 16th of December 1978, which reads as follows: "According to  
25 sources in Vietnam, the Le Duan-Pham Van Dong troops are more



1 barbaric, fascist and theoretical than those of the former  
2 Thieu-Ky regime." Continuing on the next paragraph, "In early  
3 November, a soldier wearing a one star rank insignia cut off a  
4 woman's hand to rob her of the gold bracelet." And then  
5 continuing in the same paragraph, "Worst still is that the Le  
6 Duan-Pham administration has ordered each southern family to give  
7 room and board to a soldier from the north. These soldiers can  
8 loot the people's property at will. They have even raped in a  
9 most barbarous manner the wives of the head of the families with  
10 whom they live." End of quote.

11 [09.17.05]

12 A broadcast on the 21st of December 1978 by the Phnom Penh Radio,  
13 this is at 00169159 -- quote: "The skinny and wounded Vietnamese  
14 dog has been so infected by the virus of defeat, insanity and  
15 famine that even its Soviet masters cannot help it. The skinny  
16 and wounded Vietnamese dog is now becoming even skinnier and will  
17 soon die." End of quote.

18 And last on the 18th of December 1978, at 00169135, there was a  
19 broadcast of a confession, reported confession of a female  
20 Vietnamese spy, states: "The confession of Le Thi Vinh Sang, an  
21 espionage agent of the Vietnamese aggressors captured by our  
22 Kampuchean Revolutionary Army, Svay Rieng province on the 25th of  
23 September 1978, clearly shows that the Vietnamese Le Duan clique  
24 has committed most cruel and savage acts against the Kampuchea  
25 Krom minority. They have strangled babies to death and given

1 lethal injections to mothers who had just given birth." End of  
2 quote.

3 Mr. Dudman, I've read to you these excerpts. My question is a  
4 simple one. Is this the same type of anti-Vietnamese rhetoric  
5 that you heard while you were in Democratic Kampuchea in December  
6 1978?

7 A. I think it's the same thing. I wish I had heard that one at  
8 that time, I could have used that.

9 [09.19.14]

10 Q. Do you remember, did you ever review FBIS reports of radio  
11 broadcasts from Democratic Kampuchea or do you remember how it is  
12 that you became aware of what was being broadcast by Radio Phnom  
13 Penh?

14 A. I don't recall knowing about those broadcasts. Maybe I did,  
15 but I don't remember.

16 Q. In the first two paragraphs of article E305/12.54, E305/12.54,  
17 you reported a statement made by Pol Pot on the 22nd of December  
18 1978, which is the day you met with him, you and Ms. Becker met  
19 with him. And this is what you wrote that Pol Pot said. Pol Pot  
20 said that 95 per cent of the people in Democratic Kampuchea were  
21 good; that they had been able to re-educate and recover in his  
22 words, another 4 per cent and that they were still working on the  
23 re-education of the other 1 per cent.

24 Mr. Dudman, do you remember -- was this something that Pol Pot  
25 said to you in -- during your face-to-face meeting? Or do you

24

1 remember receiving written answers to questions that you and Ms.  
2 Becker had provided?

3 A. I don't remember how I got those quotes.

4 [09.21.13]

5 Q. Do you remember whether Pol Pot provided any explanation of  
6 how he knew the percentage of people in Democratic Kampuchea who  
7 were being subjected to re-education?

8 A. I don't know.

9 Q. I'm going to now ask you about some specific Khmer Rouge  
10 cadres that your group enquired about or given information about  
11 during your visit. In your article titled "Governing in secret"  
12 -- this is in document E3/3290; English, ERN 00419211; Khmer, ERN  
13 01070714; you reported that you had been told by a Ministry of  
14 Foreign Affairs official, Ok Sakun that -- I quote, "Hu Nim,  
15 Minister of Information and Hou Youn, Minister of the Interior  
16 were still active in the government although believed in the west  
17 to be missing or dead." End of quote.

18 And I'm also going to refer, at this time, to a document E333.1,  
19 E333.1, Mr. Dudman is a 18 December 1978 report that was written  
20 by the Democratic Kampuchea officials about your visit and it  
21 contains a section titled "Additional requests by the guests" at  
22 English, 01054090; Khmer, 01047239; French, 01054094; and in this  
23 document it indicates -- quote: "The British professor asked  
24 about Chao Seng and Phouk Chhay." End of quote.

25 [09.23.46]

25

1 And I realize I'm asking a lot here, Mr. Dudman, do you have any  
2 memory of the responses that you, Ms. Becker, Mr. Caldwell  
3 received when you made enquiries about the cadres such as those  
4 referenced here?

5 A. I don't remember any responses.

6 Q. For the record, Your Honours, document E3/2285; at Khmer, ERN  
7 00009220 to 223; English, 00873450 to 461; is a list from the  
8 S-21 prison titled "Names of prisoners smashed on the 6th of July  
9 1977." It identifies a 127 prisoners who are executed at the S-21  
10 prison on that day. Number 123 on the list is Phouk Chhay, one of  
11 the cadres whom Malcolm Caldwell had asked about and number 125  
12 on that list is Minister of Propaganda Hu Nim, a person that you  
13 Mr. Dudman were told was still alive when you were in Democratic  
14 Kampuchea in December 1978.

15 Do you remember whether you had any impressions during your trip  
16 on whether Democratic Kampuchea officials were being honest with  
17 you about prisoners, political prisoners in the country?

18 A. I don't remember.

19 [09.25.51]

20 Q. In the -- one of the reports I mentioned earlier, this is  
21 again a report from a Democratic Kampuchea official, E3/1156,  
22 this is a report that listed requests that you had made for the  
23 trip. At Number 7, the, the seventh request attributed to you,  
24 Mr. Dudman, indicated that you had accused the Revolution of  
25 executing people and that you wanted to see political prisons and

1 to be explained how the Revolution dealt with political  
2 opponents? What was the response you received to your request to  
3 be shown a prison or re-education office?

4 A. I don't recall what response I got.

5 Q. Did you visit any prisons or re-education offices when you  
6 were in Democratic Kampuchea?

7 A. Not that I can remember.

8 [09.27.02]

9 Q. And have you ever had the opportunity to visit S-21 or the  
10 Tuol Sleng prison in Phnom Penh? And do you know that this prison  
11 is located only about a mile or so away from where you were  
12 staying when you were in Phnom Penh in December 1978?

13 A. I don't recall visiting that prison.

14 Q. Your Honours, based on E3/342, which is the OCP revised S-21  
15 prisoner list, and E31651, which is an S-21 interrogation log for  
16 December 1978, there were a total 35 new prisoners who were sent  
17 to S-21 on the 10th of December 1978. That was your first full  
18 day in Phnom Penh on your trip, Mr. Dudman. Those prisoners  
19 included three female cadres who'd been arrested from the  
20 Ministry of Foreign Affairs and eight medical cadres including a  
21 16-year-old female who worked at the hospital. And on the next  
22 day, the 11th of December 1978, while you were still in Phnom  
23 Penh, the S-20 record -- S-21 documents record that 28 prisoners  
24 were taken away and executed that day. This is one prison on the  
25 first two days of your trip. Did the Foreign Ministry officials

27

1    who accompanied and talked to you ever disclose to you in any way  
2    that people were being arrested and sent to prisons while you  
3    were there? Or, the fact that people from their own Ministry --  
4    the Ministry of Foreign Affairs had been arrested and were being  
5    detained in prisons in Phnom Penh?

6    A. I don't recall being told about that at all.

7    [09.29.27]

8    MR. KOPPE:

9    What's the purpose of questioning Mr. Dudman like this?

10   Obviously, he hasn't been told this. It's just for the purposes  
11   of entering into the record S-21 documents. We have a segment of  
12   the (inaudible) S-21 coming up. I think that is the more  
13   appropriate time and place to do it. It doesn't really help any  
14   -- anything, this line of questioning, Mr. President. But the  
15   answer was already given, so technically, I don't object anyway.

16   MR. LYSAK:

17   Mr. President, this witness has written about political  
18   prisoners, his effort to make enquiries about the status of them.  
19   This prison was about a mile away from where he was. I think I'm  
20   entitled to ask a few questions related to whether he was  
21   provided any access or prevented from learning about what was  
22   going on.

23   [09.30.40]

24   MR. PRESIDENT:

25   The Deputy Co-Prosecutor, you can resume your questions. And the

28

1 Chamber would like to remind the Parties again, you can put  
2 questions to the witness who are of senior age about all the  
3 facts being debated before this Chamber -- that is, during that  
4 witness testimony.

5 You may proceed, Co-Prosecutor.

6 BY MR. LYSAK:

7 Thank you, Mr. President.

8 Q. Mr. Dudman, do you remember while you were in Phnom Penh  
9 whether you and Ms. Becker were allowed to move freely about the  
10 city?

11 MR. DUDMAN:

12 A. I don't really remember.

13 [09.31.42]

14 Q. Let me read a short excerpt from one of your articles to see  
15 if that refreshes your recollection. In E3/3290 at English,  
16 00419207; Khmer, 01070693 to 94; this is what you wrote -- quote:  
17 "Officials warned us against wondering off unescorted, even in  
18 almost deserted Phnom Penh. When we slipped away several times,  
19 believing the warnings to be a mere excuse to keep us from seeing  
20 too much, the guards quickly found us and drove us back by  
21 automobile to whichever guest house we were occupying at the  
22 time. On one occasion, a guard took Ms. Becker by the arm and  
23 gently but firmly conducted her home." End of quote.  
24 Does that refresh your recollection, Mr. Dudman, on whether you  
25 were allowed to move about freely in Phnom Penh?

1 A. I read that portion just yesterday and I can't really place  
2 myself back in that situation but it sort of rang a bell.

3 [09.33.15]

4 Q. Thank you, Mr. Dudman. Yesterday, Nuon Chea's counsel spent  
5 some time with you on your August 1990 op-ed piece in the New  
6 York Times. He read to you a statement in the fifth paragraph of  
7 that article, E307/5.2.16, which referenced the conventional  
8 wisdom that Pol Pot and the Khmer Rouge were irrational fanatics  
9 who practised deliberate genocide, conventional with wisdom that  
10 you were questioning.

11 Towards the end of that same article -- I'd like to read another  
12 quote to you. You wrote as follows: "But what about the killing  
13 fields and the stacks of skulls? The remains of a few hundred  
14 victims are undeniable evidence of mass executions, but they have  
15 no bearing on the question of how many were slain and certainly  
16 do not prove genocide. My own conclusion is that Pol Pot is not  
17 an irrational fanatic but a revolutionary leader who was riding a  
18 tiger. A violent, disorderly uprising by poor, ignorant,  
19 downtrodden country people; deeply resentful of urbanites, they  
20 had no compunction about driving city people into the countryside  
21 and letting them die or even clubbing them to death if they fell  
22 by the wayside or couldn't stand hard manual labour." End of  
23 quote.

24 [09.35.15]

25 I have just a couple of follow-up questions to this, Mr. Dudman.



30

1 When you wrote this op-ed piece in 1990, had you had the  
2 opportunity to review the surviving records from the S-21 prison  
3 in Phnom Penh -- records which showed that over 12,000 people had  
4 been killed at that prison alone?

5 A. I don't believe I had that information, but I don't recall.

6 Q. You testified yesterday that since the time you wrote this  
7 article in 1990, you have consulted new sources and read  
8 materials that has caused you to change your conclusions about  
9 the occurrence of genocide or mass atrocities during the Khmer  
10 Rouge regime. Can you tell us some of the sources that you have  
11 read or people that you have talked to since 1990 that led you to  
12 change your opinion?

13 A. I guess my opinion did change some, but I can't really recall  
14 what caused that.

15 [09.36.44]

16 Q. We talked about earlier an article you wrote in December 1978  
17 titled "Conformity, A Must for Survival in Cambodia". And at the  
18 very end of that article -- and this is E338.19 -- you wrote --  
19 and I quote: "A reasonable appraisal on balance seems to be that  
20 a major factor in the violent deaths, whatever their number,  
21 occurring in the last three and the half years has been the  
22 working out of the unparalleled social upheaval of this  
23 Revolution. Whether the leaders encouraged or moderated the  
24 violence or just rode with the tide is hard to say." End of  
25 quote.

1 Mr. Dudman, when you visited Democratic Kampuchea in 1978, were  
2 you given access to documents by the Khmer Rouge? And  
3 specifically, do you remember ever being allowed to review a  
4 publication called "Revolutionary Flag", an internal document  
5 that has -- circulated by the Party -- that has flags on its  
6 cover -- something that was sent to the Party cadres every month?  
7 Do you remember receiving -- being given access to any documents  
8 like this by the democratic officials when you were in Cambodia?

9 A. I don't recall getting any such documents.

10 [09.38.35]

11 Q. Mr. Dudman, a number of the surviving issues of the  
12 "Revolutionary Flag" publication are now in evidence in these  
13 proceedings. I'd like to read to you one excerpt from the April  
14 1977 issue of "Revolutionary Flag", E3/742, to get your reaction.  
15 This is a -- this issue of "Revolutionary Flag" published a  
16 speech by a Party leader on the implementation of the 1977 Party  
17 plan. And at English, 00478496; French, 00499754; Khmer,  
18 00062986, the following instructions were provided to the Party  
19 cadres -- I quote:

20 "As for the enemies that are CIA, KGB, and 'Yuon' agents --  
21 Vietnamese agents, the cheap running dogs of the enemy that  
22 sneakily embedded inside a revolution and our revolutionary  
23 ranks, we must continue to strike them and trample them from our  
24 position of absolute advantage, and must constantly be on the  
25 offensive against them during 1977 to smash them even more, so

1 they cannot raise their heads."

2 [09.40.10]

3 A few page later -- a few pages later, English, 00478501; French,  
4 00499758; Khmer, 00062991 -- quote: "It is imperative to  
5 indoctrinate and whip up the masses into a force to seek out the  
6 enemy, assess the enemy, analyse the enemy, track the enemy,  
7 pressure the enemy, capture the enemy to smash the enemy and to  
8 make the enemy be like a rat surrounded by a crowd of people  
9 beating and smashing it." Am I correct, Mr. Dudman, that you are  
10 not aware of evidence like this and had not been provided these  
11 documents when you wrote either your articles in December 1978 or  
12 your op-ed piece in August 1990?

13 A. I wasn't aware of that language.

14 Q. Would you agree that this evidence seems to help answer the  
15 question you raised at the end of your article -- that is,  
16 whether Khmer Rouge leaders were encouraging or facilitating the  
17 violence there?

18 A. Certainly sounds like they were whipping it up.

19 [09.41.52]

20 Q. Another --

21 MR. PRESIDENT:

22 The Prosecutor, please wait. And counsel for Khieu Samphan, you  
23 have the floor.

24 MS. GUISSÉ:

25 Yes, Mr. President, I speak rarely when questions are put by the

1 Parties because I believe that we are professionals and we can be  
2 a bit lenient. However, I note that the usage of documents by the  
3 International Co-Prosecutor for the past minutes is not really  
4 aimed at putting questions but is close to something like  
5 pleadings. I'd like to remind you that Mr. Dudman is a witness.  
6 He said he did not know the documents and he's being questioned.  
7 But it's a rhetorical question, so I can understand that from  
8 time to time, we can dress things up here. But here, the  
9 prosecutor should put questions based on elements that Mr. Dudman  
10 is expected to know.

11 [09.43.04]

12 MR. LYSAK:

13 If I may respond, Mr. President. It was the Defence who had put  
14 into evidence the 1990 article that made various conclusions. I  
15 am entitled to pursue with this witness what information was  
16 available to him, what wasn't, and whether that information would  
17 have affected what he wrote in those articles that the Defence  
18 have put before you.

19 MS. GUISSÉ:

20 May I please answer, Mr. President? That's precisely the problem.  
21 The witness is asked to speculate: Would you have done otherwise?  
22 Would you have put other questions, for example? The idea is not  
23 to know what the witness would have done; the idea is to know  
24 what the witness saw, witnessed. And with regard to things that  
25 he's not aware of, he cannot testify about this. And here we're

34

1 asking him to speculate. He's not an expert. We're speaking here  
2 about a witness. So he should be put questions as a witness.

3 (Judges deliberate)

4 [09.46.04]

5 MR. PRESIDENT:

6 I'd like to hand the floor to Judge Claudia Fenz to provide an  
7 oral ruling on the objection by the defence teams to the question  
8 put to the witness by the Deputy Co-Prosecutor.

9 And Judge Fenz, you have the floor.

10 JUDGE FENZ:

11 We note that we have given a lot of leeway when it came to the  
12 questioning of this witness, also to the defence counsel. We have  
13 accepted more speculative questions than we would normally have,  
14 also for the defence counsel. But I think it has become obvious  
15 the last one and the half days that the witness' memory is  
16 limited. So we would strongly suggest that questions are limited  
17 to what the witness is actually supposed to testify to. And this  
18 is facts -- frankly presenting documents, then asking for  
19 confirmation that he doesn't know them. Then asking him what he  
20 would have done if he had known them is perhaps stretching the  
21 limits of even the leeway the Chamber has given too much.

22 [09.47.45]

23 MR. LYSAK:

24 Am I entitled to confirm whether the witness had access to  
25 certain types of evidence when he visited Democratic Kampuchea

1 and when he wrote these articles?

2 JUDGE FENZ:

3 But -- generally, yes, but perhaps not after reading for minutes  
4 pages and pages of these documents. I'm sure this is possible to  
5 verify in a more general way.

6 BY MR. LYSAK:

7 I will proceed to do that and then I will wrap up my questions,  
8 Your Honour. I was asking Mr. Dudman about another category of  
9 documents that are in evidence in these proceedings. And there  
10 are about three to 400 surviving telegrams and reports that were  
11 sent to the Party leaders in Phnom Penh from the zones and  
12 various organisations in Democratic Kampuchea.

13 Q. A simple question: When you were in Democratic Kampuchea, were  
14 you provided access to telegrams and reports that were sent to  
15 the Party leaders in Phnom Penh on what was going on in the  
16 country?

17 [09.49.06]

18 MR. KOPPE:

19 Mr. President, this is -- with all respect -- a ridiculous  
20 question. I mean, no -- no government even today would give  
21 access to journalists or telegrams or -- of course, Mr. Dudman  
22 didn't see any telegrams.

23 BY MR. LYSAK:

24 Mr. Dudman, did you receive any documents like that when you were  
25 in Democratic Kampuchea? Had you ever reviewed telegrams, reports

1 like that before you wrote your op-ed piece in 1990?

2 MR. DUDMAN:

3 A. I don't recall receiving such documents.

4 [09.49.54]

5 Q. I'm getting near the end of my questions, Mr. Dudman. Were  
6 you, Mr. Dudman, one of the journalists in the United States who  
7 was put on the so-called enemy list of President Nixon?

8 A. Yes, I was.

9 Q. Can you explain to the Court what that enemy list was?

10 A. I think it's just what it said it was -- the list of the Nixon  
11 administration considered enemies.

12 Q. After you were put on the enemy list by the President of the  
13 United States, were you arrested and sent for re-education by the  
14 United States government?

15 A. No, they don't do that.

16 Q. Did you continue to be employed as the Washington Bureau Chief  
17 of the major US newspaper despite being on Nixon's enemy list?

18 A. Yes. It may even have helped my standing.

19 [09.51.30]

20 Q. Based on your observations from your trip to Democratic  
21 Kampuchea, what happened to Cambodian dissenters who made the  
22 enemy list of the Khmer Rouge leaders?

23 A. Well, from what I read, they were exterminated.

24 Q. The last item I'd like to ask you about, Mr. Dudman, is from  
25 document E333.1. This is the 18 December 1978 report that was

37

1 written by Democratic Kampuchea officials about your visit to the  
2 country. And at English, 01054091; Khmer, 01047240; French,  
3 01054095; the democratic official who wrote this -- the  
4 Democratic Kampuchea official who wrote this said the following  
5 -- I quote: "The two American journalists clearly served the  
6 American government and the CIA as we have precisely identified."  
7 End of quote. Do you have any reaction to the assertion in this  
8 report that you, a person who'd been on President Nixon's enemy  
9 list, was working for or serving the interest of the CIA?

10 A. It's a lie.

11 [09.53.21]

12 MR. LYSAK:

13 Mr. Dudman, thank you very much for bearing with me today with my  
14 reading of a lot of documents. The Co-Prosecutors appreciate very  
15 much your effort to testify in these proceedings.

16 Mr. President, no further questions.

17 MR. PRESIDENT:

18 Thank you. And the Chamber would like now to give the floor to  
19 the Lead Co-Lawyers for civil parties. You may proceed.

20 [09.54.01]

21 QUESTIONING BY MS. GUIRAUD:

22 Yes, thank you. Thank you, Mr. President. Good evening, Mr.  
23 Dudman. I am Marie Guiraud and I am representing the civil  
24 parties collective in this trial. I'm going to try to take into  
25 account Judge Fenz's observations and to call upon the memory of



1 the witness and to just stick to the answers he may provide by  
2 trying to have him react towards certain number of testimonies we  
3 heard since the beginning of this hearing.

4 Q. Mr. Dudman, first I would like to mention a document -- a  
5 document that was quoted by the Co-Prosecutor a few minutes ago.  
6 And it is this famous list of requests you made to the heads of  
7 Democratic Kampuchea who organised your tour in December 1978.  
8 And this is document E3/1156. And in this document, at paragraph  
9 2 in which your requests are explicated, you say at request  
10 number 6, that one of your requests for this tour was your -- was  
11 to see the mobile units at work and to see how the cooperatives  
12 were organised, and also to visit two to three cooperatives. So  
13 my first question, Mr. Dudman, is: Do you remember having  
14 insisted to visit cooperatives and to understand how they were  
15 organised, and more particularly, do you understand having  
16 requested to see the mobile units at work?

17 A. I don't recall my request.

18 [09.56.37]

19 Q. Thank you. More generally speaking now, can you tell the Court  
20 what you remember with regard to your visits of the cooperatives  
21 you made during your stay in Democratic Kampuchea in December  
22 1978? And I will start with the first question: Do you remember  
23 the number of cooperatives you visited?

24 A. I do not remember that.

25 Q. Do you remember having visited cooperatives, generally

1 speaking?

2 A. No, I don't recall that.

3 Q. Do you remember in the slightest way having gone with Ms.

4 Becker and Mr. Caldwell to Takeo province and to Leay Bour

5 cooperative? Does the name Leay Bour ring a bell?

6 A. I don't recall that visit.

7 Q. Thank you. Do you remember in any way having met people

8 working when you toured Democratic Kampuchea in 1978? And if you

9 remember seeing people working, can you tell us what you

10 remember? Can you tell us what you remember of the worksites that

11 you visited?

12 A. A direct memory of only what I wrote at the time.

13 [09.58.38]

14 Q. Thank you, Mr. Dudman. Can you explain to us what you remember

15 today with regard to the conversations you had with the people

16 you met back then concerning the working conditions in the

17 cooperatives? Is this an issue you spoke about? It appears that

18 that is the case and if this is indeed the case, what is the

19 information you remember today?

20 A. I don't remember getting that information.

21 MS. GUIRAUD:

22 Thank you, Mr. Dudman.

23 Mr. President, it is now close to 10.00, so maybe I will take

24 advantage of this adjournment so I can reorganize my questions

25 and maybe have the witness interact a bit more, in particular by

40

1 having him react to specific excerpts of articles he wrote. I  
2 think that might be a better way of jogging his memory. So given  
3 that it's 10 o'clock almost, I suggest that we stop now and that  
4 we continue tomorrow morning for about a half an hour.

5 [10.00.14]

6 MR. PRESIDENT:

7 Thank you. And the Chamber would like to thank you, Mr. Richard  
8 Dudman, and the hearing of your testimony today is concluded.  
9 However, your testimony is not yet finished and you will be  
10 invited once again to continue your testimony tomorrow -- that is  
11 Wednesday, the 1st of April 2015, from 8 o'clock to 10 o'clock  
12 morning time -- that is, Cambodian time. That is the same time as  
13 of today.

14 And the Chamber would like to also thank Mr. Todd Lowell and Mr.  
15 Jason Barrett for your assistance. And you are once again to be  
16 invited to accompany Mr. Richard Dudman for his testimony  
17 tomorrow from 8 to 10 o'clock in the morning, Cambodian local  
18 time. And you may now have a break and we see you tomorrow.

19 [10.01.30]

20 MR. DUDMAN:

21 Thank you.

22 MR. PRESIDENT:

23 AV Unit, please disconnect the link to the video conference. And  
24 we have two small matters to be processed: first is a ruling for  
25 the request by the Prosecution; and second, the concern raised by

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1 the defence teams regarding the victims' statement of impact, as  
2 far as the Closing Brief in the Case of 001.

3 (Short pause)

4 [10.03.05]

5 MR. PRESIDENT:

6 The Chamber will now provide an oral ruling to the request by the  
7 International Co-Prosecutor -- that is, document E342.

8 The Chamber is seized of a request filed on 3 March 2015 from the  
9 International Co-Prosecutor to admit into evidence a book titled  
10 "Brothers in Arms: Chinese Aid to the Khmer Rouge 1975-1979",  
11 authored by Andrew Mertha -- that is, document E342. The Chamber  
12 needs to assess if the requirements of Internal Rule 87.3 are  
13 met. The Chamber notes that the book is 175 pages long and only  
14 available in English and that the request came at a late stage of  
15 the proceedings. To allow for a timely decision, the Chamber  
16 requests the International Co-Prosecutor to submit a new request,  
17 identifying the relevant excerpts, within two weeks, failing  
18 which the request to admit the book will be considered moot.

19 And next, I'd like to hand the floor to Nuon Chea's defence to  
20 present their request and their supporting brief. You have the  
21 floor, Counsel.

22 [10.05.06]

23 MR. KOPPE:

24 Thank you, Mr. President, and thank you for allowing us to make  
25 some oral submissions in relation to a request done by the civil

1 parties in respect of the upcoming civil impact testimony hearing  
2 on Thursday and Friday. Yesterday, we sent via email an excerpt  
3 from our appeal brief, not our closing submissions, but our  
4 appeal brief. And in this appeal brief, in the submissions in our  
5 appeal brief, we have argued that in the judgement in Case 002/1  
6 -- 002/01, in the amount of 255 times, if we calculated  
7 correctly, evidence that has been presented during civil impact  
8 hearings was used as evidence.

9 MR. PRESIDENT:

10 Counsel Koppe, please hold on. There may be a technical problem  
11 with the interpretation.

12 Court officer, please can you check with the AV Unit?

13 Counsel Koppe, could you please start afresh, as there is no  
14 translation to what you said earlier?

15 [10.06.57]

16 MR. KOPPE:

17 Of course, Mr. President. Yesterday, we requested to be allowed  
18 to have some -- to provide you with some oral submissions in  
19 relation to an earlier request by the civil party lawyers. That  
20 request was relating to the civil party impact testimony which is  
21 scheduled coming Thursday and coming Friday.

22 And yesterday, we have sent you a few paragraphs, not from our  
23 closing briefs, but from our appeal brief. And in this, in these  
24 excerpts in our appeal brief, we have criticised the judgement in  
25 the sense that approximately 255 times testimony provided during

1 the civil impact hearings was actually used as evidence going to  
2 the guilt of the Accused and the actions of the Accused. We feel  
3 that although the Trial Chamber has clearly set out what the law  
4 is on this issue that we cannot be sure that this will not happen  
5 again when, at one point in time, the Trial Chamber will write  
6 its judgement in this case.

7 [10.08.18]

8 I would like to refer you more specifically to the arguments that  
9 we have set forth in our appeal brief. But that's the reason why  
10 our oral submission could be relatively short. Having made these  
11 arguments, I believe that the proposed schedule by the civil  
12 party lawyers would not be an adequate way of dealing with the  
13 situation. Or the schedule on Thursday and Friday, as I  
14 understand it, the proposed schedule is one hour and five minutes  
15 per civil party. However, realizing that testimony given during  
16 the civil party impact hearings might in fact be used as  
17 evidence, we feel that the hour and five minutes proposed should  
18 be equally divided in time, in the sense that if the civil party  
19 lawyers are questioning the civil party and the civil party is  
20 actually testifying about events that are being adjudicated, we  
21 should have equal time.

22 Let me, Mr. President, give you an example. If a civil party, for  
23 instance, says that she has suffered from her period in time in  
24 DK, and she's describing the ways that she has suffered, that, of  
25 course, is something that we would not anticipate asking

1 questions to the civil party about. However, if the civil party  
2 gives testimony saying that she didn't have enough to eat, that  
3 children died because of malnutrition, that relatives were sent  
4 to re-education centres and disappeared, that is, as you might  
5 realize, evidence which goes directly to the crimes that we are  
6 discussing. If that is the case, then we feel we need to have the  
7 opportunity to cross-examine the civil party on the content of  
8 the evidence.

9 [10.10.44]

10 Ideally, of course, we would not make such a request if it was a  
11 hundred percent certain that at the end of these trial  
12 proceedings, you wouldn't use whatever is being said by the civil  
13 party as evidence. However, as you have see in our appeal brief,  
14 we are of the opinion that that has not been the case. That's  
15 why, summing up our arguments and looking at the practicalities  
16 of coming Thursday and Friday, we believe that if -- no, we  
17 believe that we should have time of the allotted time, unless the  
18 civil party only speaks about her mental or physical suffering as  
19 such. Then, of course, we have the proper situation as  
20 anticipated by the Internal Rules.

21 But, of course, we cannot anticipate what the civil party is  
22 going to be saying or what the civil party is going to be  
23 testifying to. Therefore, our request is very concrete and I  
24 believe simple. From the start, we need to have half of the time  
25 or, actually, the same time as the civil parties would have when

1 leading the civil party. Thank you.

2 [10.12.16]

3 MR. PRESIDENT:

4 Thank you. And counsel for Khieu Samphan, you have the floor.

5 MS. GUISSÉ:

6 Thank you, Mr. President. I must say that we share a number of  
7 the Nuon Chea's defence's concerns. Thus far, as part of Case  
8 002/01, there has been a real distinction between hearings during  
9 which civil parties make presentations regarding the facts and  
10 their personal experiences. And this phase in which civil parties  
11 express their sufferings are part of a more personal vision of  
12 what they felt and it is important for the assessment of the  
13 degree of suffering and impact on sentencing.

14 [10.13.14]

15 The concern expressed by my learned colleague, which we share, is  
16 to know the status of these testimonies before this Chamber. Will  
17 you consider them as part of the assessment of the suffering of  
18 civil parties chosen by the civil party lawyers and on which  
19 basis they were called to testify, or would they have a broader  
20 impact in terms of the evidence before us?

21 As my learned colleague has said, our position as a defence is  
22 different. When you're talking of the sufferings of the civil  
23 parties, are they going to talk only about the sufferings or will  
24 they testify to facts, which will have an impact on what we  
25 should or should not do in terms of defending our client? We need



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1 this to be clarified at this stage before we can determine  
2 whether we need more time to examine the civil parties,  
3 particularly in light of the Chamber's prior decision. And let me  
4 give the reference of that decision. It's 236/5 of the 17th of  
5 February 2013. That decision had to do whether there's a  
6 distinction made between these kinds of hearings or whether  
7 you're going to use elements from these testimonies and use them  
8 also for sentencing. This clarification is very important and I  
9 am requesting that you clarify this matter so we can determine  
10 whether we can cross-examine the civil parties on purely factual  
11 issues.

12 [10.15.19]

13 MR. PRESIDENT:

14 Thank you, and the Deputy International Co-Prosecutor, you have  
15 the floor.

16 MR. DE WILDE D'ESTMAEL:

17 Thank you, Mr. President, and good morning to everyone. I have a  
18 few comments to make. First of all, the Nuon Chea defence has  
19 waited for the 31st of March, this afternoon, to talk about the  
20 impact of civil party hearings and the instance of the alleged  
21 crimes on the civil parties. I note what -- I know that what has  
22 been said orally before this Chamber doesn't correspond to what  
23 has been said to the Parties -- that is, the arguments developed  
24 by the Nuon Chea defence in its appeal brief. Those arguments are  
25 a lot more radical than what we have heard today.

1 [10.16.17]

2 In this tardy application, the Nuon Chea defence has relied on  
3 its late December 2014 appeal brief, it's not the arguments made  
4 in March 2015, but it has waited up to the 30th of March 2015 to  
5 make this application, just before the civil parties are  
6 scheduled to testify. The debate is not -- is due tomorrow, just  
7 before the appearance of the civil parties, at a time when they  
8 are probably already in Phnom Penh. The memorandum of the  
9 Chamber, E375, dated 17th of December 2014. And the defence had  
10 more than three months --

11 MR. PRESIDENT:

12 The International Co-Prosecutor, could you please repeat the ERN  
13 number and please do it slowly. Thank you.

14 MR. DE WILDE D'ESTMAEL:

15 Yes, Mr. President. I didn't give any ERNs. I just gave the  
16 reference of the Chamber memo, E315/1, dated 17th of December  
17 2014, regarding these hearings for the expression of the  
18 suffering of the civil parties, paragraphs 7 and 9 of the  
19 memorandum, dated 17th of December 2014. The Defence had more  
20 than three months to express its reservation on the form and  
21 contents of those hearings, but it has waited until this late  
22 hour to do so.

23 [10.18.25]

24 In the arguments presented before the Supreme Court Chamber, the  
25 Nuon Chea defence makes considerable reference to the practice in

1 common law countries. It talks of Australia, Canada, New Zealand,  
2 the United States, Israel; and in these countries, there are no  
3 civil parties. The role of victims is limited to that of  
4 witnesses or it is viewed as a role that should come into play in  
5 hearings limited to the -- to sentencing and not to the guilt of  
6 the Accused. Here before this Chamber, we do, however, have civil  
7 parties and in one of the roles of the civil parties, they  
8 support the prosecution in proceedings against those presumed  
9 responsible. Common law jurisprudence is of no interest before  
10 this Chamber and is not applicable.

11 [10.19.36]

12 The Chamber should recall that all evidence can be used -- all  
13 evidence presented before the Chamber can be used. Such evidence  
14 can be governed in a legal and credible manner, and parties  
15 should be able to discuss them. So, we have two situations before  
16 this Chamber, two situations that are very similar. The first is  
17 one in which the civil parties are heard, as a matter of  
18 priority, on facts, on evidentiary issues and all the parties can  
19 examine the civil parties and the civil parties are allowed to  
20 express their sufferings in the end. In the interest of  
21 adversarial hearings, the Chamber has always stated that in this  
22 second part, which has to do with the expression of suffering, if  
23 there are any new issues that impinge on the guilt of the  
24 Accused, the parties may put questions to any civil parties.

25 [10.20.47]

1 The second situation is the one we are facing on Thursday and  
2 Friday. The civil parties will express their sufferings and the  
3 incidents of the crimes alleged. I recall that we've already  
4 debated this matter before this Chamber, and the civil party Lead  
5 Co-Lawyers and myself, had explained that it is not possible to  
6 completely separate or dissociate the sufferings endured from the  
7 crimes alleged. In order to understand the sufferings of the  
8 civil parties, you have to explain the root cause of those  
9 sufferings and the consequences -- that is, the effects. This  
10 falls within the scope of the trial, and the Defence is entitled  
11 to ask questions. These are evidentiary issues which the Chamber  
12 can rely on including in its judgement.

13 We should also emphasize the fact that as part of Case of 002/01,  
14 all the parties had the opportunity to ask any questions they  
15 wished to ask to the civil parties during the four days of  
16 hearings that were devoted to the suffering of the civil parties  
17 in terms of the crimes alleged. That was 28th of May, 27th, 29th  
18 and the 30th of May 2013, as well as the 4th of June 2013.

19 [10.22.30]

20 We know that the time is limited but questions were nevertheless  
21 put to the civil parties both by the Prosecution and Defence  
22 regarding the contents of the crime and not only on the  
23 sufferings faced so the defence cannot say that, they did not  
24 know that certain portions of the testimonies of civil parties  
25 regarding alleged crimes could and would be used by the Chamber

1 in its judgement.

2 For example, in the hearing of 27th May 2013, Son Arun, defence  
3 counsel, between 11.42 and 11.57 put questions to the civil  
4 party, Aun Phally, not only with regard to the sufferings but on  
5 the circumstances of the evacuation of Phnom Penh, and he also  
6 questioned the civil party on coercion and the use of violence.

7 [10.23.40]

8 He put a question to the civil party, Yos Phal, on the 27th May  
9 2013 for about 20 minutes from 15.14 and 4.00 p.m., and the  
10 Chamber gave the Defence more time to put questions to the civil  
11 parties on the fate of Lon Nol soldiers at the time of the  
12 evacuation of Phnom Penh. This is not purely matters that were  
13 incidental but on facts of the case that the civil party -- the  
14 Defence continued putting questions to the civil party for 10  
15 minutes and I can give many other examples we saw during the four  
16 days of hearings that the Defence had a lot of time and latitude  
17 to put questions to the civil parties and these questions had to  
18 do with the substance of the case.

19 Now, Nuon Chea wants to eat the cake and have it. They want to  
20 challenge the civil party, challenge their testimony and the  
21 evidence they will provide. At the same time, they're telling the  
22 Appeals Chamber that it is not acceptable that evidence adduced  
23 before this Chamber should be used -- evidence adduced during  
24 those days of hearings. That is essentially what transpires from  
25 the Appeal brief.

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1 [10.25.11]

2 Today we're being told that we don't have time and they want the  
3 Chamber to clarify whether it intends to use such evidence or  
4 rely on it in its judgement. Yes, it is possible to give the  
5 Defence more time, more than the 15 minutes allotted to the  
6 Defence. In Case 002/01, the Chamber has been flexible in the  
7 past and there's no reason why it would change this practice.  
8 Nevertheless to ask that the Defence and the civil parties should  
9 have the same time is an exaggerated request because we're  
10 talking of suffering, you will focus mostly on the suffering of  
11 the civil parties and not on the facts, so the application of the  
12 Defence is exaggerated when it asked for the same time allotted  
13 to the civil parties and perhaps to the Prosecution and Defence.  
14 That is all I wanted to point out, Mr. President.

15 Mr. President, I would like to correct something.

16 MR. PRESIDENT:

17 Thank you very much. You may now proceed, Civil Party Lead  
18 Co-Lawyer.

19 MS. GUIRAUD:

20 Thank you, Mr. President. I have a few comments to explain as  
21 clearly as possible. I hope the way that we have come up with  
22 this proposed schedule and I would like to propose possibly a  
23 solution that may satisfy everyone's request if the Chamber was  
24 to consider that these requests are legitimate. The three  
25 elements that guided our thinking in order to come up with this

1 proposed schedule is first of all the fact that these hearings  
2 about suffering are the main way for the civil parties to  
3 participate in this trial and to explain why they're  
4 participating in this trial through the civil party collective  
5 and therefore it is essential that at one point in this trial, we  
6 speak about the harm they have suffered --more harm, physical  
7 harm and material harm that justifies that they're participating  
8 in this trial. And it's even more so important with regard to  
9 Tram Kak because we have a number -- a very great number of civil  
10 parties that were admitted by the Co-Investigating Judges for  
11 this particular segment. We have 51 civil parties who have been  
12 admitted for this segment, so therefore, it is very important to  
13 us to propose the testimony of the greatest amount of civil  
14 parties during these two days.

15 [10.28.13]

16 And the second element that guided us was to preserve the special  
17 quality of these hearings with regard to the harm the civil  
18 parties suffered from. By making a distinction but also a link  
19 with the facts, I think that all parties agree that the harm and  
20 the facts are intrinsically linked and it is necessary, of  
21 course, to speak about the facts, to speak about the harm.  
22 And, I would like to react to the two examples that were provided  
23 by my colleague, Victor Koppe. We believe that the deprivation of  
24 food is a form of harm and therefore we will speak -- or, the  
25 civil parties will speak about this question of food when they

1 will testify about the harm they suffered. We believe that  
2 psychological harm was also the result of the loss of loved ones.  
3 So when the civil parties will speak about the loss of their  
4 loved ones, it is clear to us that they should speak about the  
5 conditions in which they lost their loved ones.

6 [10.29.32]

7 So, on the one hand, we agree with the parties to say that, yes,  
8 indeed there is a intrinsic link between the facts and the harm  
9 suffered, and therefore it is necessary for these hearings to  
10 mirror this link, but we do not agree with the Defence when -- we  
11 believe that it's the same thing. The fundamental difference is  
12 that the civil parties, when they speak about their harm, are  
13 speaking about what they experienced personally, directly and  
14 only what happened to them and they're not heard by the Chamber  
15 about what they saw or about what they knew. But only about what  
16 they experienced, about what they lived through. So, therefore,  
17 this of course reduces, in a considerable way, the scope of the  
18 facts they're speaking about before the Chamber and this is why  
19 it seems to us necessary for the other parties to only put  
20 questions on the facts that regard the civil parties directly and  
21 therefore the time should not be equally shared between the civil  
22 party lawyers and the Defence.

23 [10.30.39]

24 And the third element that guided us, of course, is the  
25 adversarial principle. We are -- of course, it is in our direct



1 interest to have the civil party testimonies on Thursday and  
2 Friday be debated in an adversarial way, in the most transparent  
3 way possible. Now the question that is raised is: how are we  
4 going to respect this principle with regard to this specific kind  
5 of hearing, the hearing about suffering? So what guided us to  
6 make this proposal are the words of the Chamber. Simply speaking,  
7 that is the memo that was sent to us last January, E315/1 in  
8 which the Chamber keeps the right to give the possibility to the  
9 parties to question the civil parties if new facts are brought up  
10 by the civil parties or if allegations against the Accused are  
11 formulated during these testimonies and it's in paragraph 8 of  
12 this memo, E315/1, in which you filed in December 2014, it  
13 explains this: In order to understand a little bit better what  
14 the Chamber means by new facts, we relied on a new memo which you  
15 filed last year. It's E267/3, it's a memo that was filed  
16 following the Khieu Samphan defence's request to question a civil  
17 party again that had challenged its client and you considered  
18 that it was necessary to consider new facts in relation to the  
19 victims joining a civil party -- or, in relation to the victim's  
20 information forms. And anything that was new in relation to these  
21 documents could, therefore, justify questions coming from the  
22 Defence. So, it is on the basis of these two memos that we made  
23 this proposal and this proposal is indeed, as it's stated, a  
24 proposal and we are waiting for the Defence to make comments in  
25 relation to these proposals and in particular in light of the

1 appeal that the Nuon Chea's defence team, as well as the Khieu  
2 Samphan's defence team have filed. We did not know if the Defence  
3 was going to make a request, it appears to be the case today.

4 [10.33.30]

5 The Nuon Chea defence apparently says that they do not have  
6 enough time to question the civil parties with regard to the  
7 facts and I believe may be that Khieu Samphan believes that the  
8 Chamber should be clearer about what the Chamber wishes, but we  
9 consider that it is up to the Chamber to decide, either to  
10 approve our proposal or to ask us to change it or to decide if  
11 the time that we have proposed for the other parties is adequate  
12 or not. Once again, we believe that the more we respect the  
13 adversarial principle, the more we will benefit from this. It is  
14 not at all in our interest to prevent the other parties from  
15 expressing themselves in these hearings about the civil parties'  
16 sufferings.

17 It is true that the time that we had to plan for each civil party  
18 is limited, it's limited for everyone, for us, as well, 40  
19 minutes for each civil party, that's not much time and we were  
20 obliged to take into account the shortened hearings because of  
21 the break at 11.30 upon Khieu Samphan's request. So this had  
22 essentially an impact on our speech time and here again we made a  
23 proposal -- now it's up to the Chamber to decide whether or not  
24 this proposal still abides by the principles of a fair trial and  
25 the principles of an adversarial trial. So therefore, we informed

1 ourselves as we were expecting the -- or, reactions we could make  
2 a proposal to the Chamber possibly, which would be to start the  
3 questioning of two civil parties tomorrow afternoon, which  
4 therefore would allow the Chamber to have much more leeway in the  
5 management of the speech time for each of the parties, and if the  
6 Chamber is open to this proposal, we have identified already two  
7 civil parties that would be willing to testify tomorrow afternoon  
8 which therefore would make it much easier to manage time and  
9 therefore to give more time for the Defence to put questions with  
10 regard to the factual elements in the civil parties' testimonies.  
11 So we are quite flexible.

12 [10.36.02]

13 So we believe that the proposal that was made addresses the memo  
14 and the instructions of the Chamber and complies with prior  
15 jurisprudence and we respected the same model that was drafted  
16 last year in Case 002/01. But if you consider that this proposal  
17 should be amended, well our request is that there be that all  
18 civil parties be heard in so far that all of the civil parties  
19 are already in Phnom Penh so we would like to be able to hear  
20 eight civil parties during these hearings and it seems to us that  
21 it is not exactly fair to give equal time to the Defence because  
22 what we're speaking about, once again, we're speaking about the  
23 personal experiences of the civil parties and not what they saw  
24 and not what they knew back then, and therefore, we're proposing,  
25 finally, to show our goodwill to begin tomorrow afternoon with

1 two civil parties so that we enjoy all of the time necessary to  
2 put the necessary questions to the civil parties. These are my  
3 submissions, Mr. President.

4 MR. PRESIDENT:

5 Thank you very much. You may now proceed, counsel for Mr. Khieu  
6 Samphan.

7 [10.37.31]

8 MS. GUISSÉ:

9 Yes, Mr. President, I have a few small observations to make; else  
10 I would like to make a small correction in what I said. The  
11 decision I was referring to E2367/3 (sic) which my colleague also  
12 referred to -- yes, I wanted to correct that small mistake in the  
13 number.

14 MR. KOPPE:

15 Thank you, Mr. President. I feel the need to react to both Deputy  
16 Co-Prosecutor and civil party lawyer. I'm not quite sure if I  
17 follow the argument made by the Prosecution about us being too  
18 late with this point. I would like to remind the Chamber that,  
19 obviously our appeal brief was due on the 29th December -- that  
20 was day we filed our brief, our appeal brief and were able to  
21 fully develop our argument. So both parties -- all parties are  
22 aware of this fundamental problem that we have. However, on the  
23 16th January of this year, in E336, we filed a request with the  
24 Chamber that has been already decided upon by the Chamber, it is  
25 called our request regarding certain practices to be undertaken

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1 when examining upcoming civil party TCCP-271 -- that is Sory Sen,  
2 and you will read in paragraph 12, that we developed that  
3 argument already. So I think this argument is known to all  
4 parties, so I'm not quite sure if I follow the point of us being  
5 too late.

6 [10.39.28]

7 What I would also like to point out is something that I haven't  
8 heard either from the Prosecution or from the civil party lawyers  
9 and that is that our analysis that we have made in our appeal  
10 brief, meaning that in the judgement, civil party impact  
11 testimony was used as evidence 255 times; that has not been  
12 contested, that I find interesting. This means we seem to be in  
13 agreement that whatever civil party might say during his or her  
14 civil impact testimony is in fact evidence, and then if that is  
15 the case, then we have a serious situation, and if that is the  
16 case, we should fundamentally think what the law is. As you know,  
17 we have quoted the Trial Chamber itself when it set out its  
18 ruling on this matter and I have been trying to be practical as  
19 to the division of time, but it doesn't change the fact that the  
20 law, the rules, and as indicated by yourself, is quite clear.  
21 Whatever a civil party is saying during civil impact is not  
22 evidence that goes to the fact.

23 [10.40.52]

24 I see you're not, Judge Fenz, asking why? But that's how we  
25 interpret your ruling and if we see it wrongly, then please,

1 enlighten us. What we can do, what we have done is, identified  
2 255 instances in which the Trial Chamber in Case 002/01 used  
3 civil party impact testimony as evidence. That is what we believe  
4 the situation. If that is going to be the issue -- not only in  
5 this segment but in coming segments -- we need to have maybe a  
6 ruling from the Trial Chamber on this issue of big principle, I  
7 believe and we should know what the situation is. If evidence  
8 given on food shortages, et cetera, is in fact evidence, then we  
9 need to have the opportunity and we need to exercise our right to  
10 cross examine the particular civil party.

11 MR. PRESIDENT:

12 What about your requests? What about the requests of Lead  
13 Co-Lawyers to hold the hearing tomorrow afternoon of two civil  
14 parties, what is your response to that?

15 [10.42.45]

16 MR. KOPPE:

17 This may be a methodological issue, I suppose we need to know  
18 what the law is, what the procedures are. If the Trial Chamber is  
19 of the opinion that whatever is being said by the civil party  
20 during impact testimony is in fact evidence hence confirming the  
21 judgement, then we would need to have time and then it would be a  
22 proper suggestion to follow, I believe from the civil parties to  
23 maybe start tomorrow and have equal time.  
24 However, if you, Mr. President, Your Honours, confirm your  
25 earlier ruling, then there is no place for any evidence being put

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1 forward during civil party impact testimony and then of course we  
2 would do the same thing as we did in Case 002/01 and only briefly  
3 ask some questions to the civil party. I might recall and we also  
4 briefly mentioned that in our appeal brief when Nuon Chea was  
5 very sick at the time in 2013, he was requested if -- despite his  
6 illness -- we could nevertheless continue with having hearings on  
7 civil party impact because, as you've indicated, it wasn't going  
8 to be used as evidence and at the time we said, of course, no  
9 problem, we can continue, but then, of course, we were quite  
10 shocked to realise what was said during his absence was used at  
11 times as real -- as hard evidence and that is, I think, the  
12 situation we are facing.

13 Maybe before talking practicalities, we need to know from the  
14 Trial Chamber what the law is.

15 [10.44.44]

16 MR. PRESIDENT:

17 What about the defence counsel for Mr. Khieu Samphan, what is  
18 your response to the request of Lead Co-Lawyers to hold hearings  
19 of two civil parties tomorrow afternoon? Because Lead Co-Lawyer  
20 mentioned already that the defence counsel for the Accused want  
21 to have equal time to put questions to the civil party who will  
22 come to express their impact statement. The Chamber decided to  
23 hold two days hearing and we have also considered the time  
24 reserved for parties to put some relevant questions. We have  
25 taken into account all factors, and as a result, we now hear the

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1 request from the Lead Co-Lawyer to hold the hearings tomorrow  
2 afternoon of two civil parties. So this matter concerns the  
3 arrangement of our Court proceeding as effective as possible. So  
4 what is your response to that, Counsel for Mr. Khieu Samphan?

5 [10.46.18]

6 MS. GUISSÉ:

7 Mr. President, with regard to the time that will possibly be  
8 necessary for us to question the civil parties, well, I have a  
9 problem assessing this. Because, as you know, most times we're  
10 only facing testimonies of civil parties that are not very  
11 detailed or that are only in Khmer terms, so I have a hard time  
12 projecting how much time we will need, that's my first point. In  
13 any case what's clear is that if there are new elements that  
14 appear or if elements that do not regard the personal experience  
15 of the civil parties, of course we will put questions. With  
16 regard to point two, which is: Are we opposed to the idea of  
17 coming tomorrow afternoon? Well then, I would like to rely on the  
18 Chamber's decision. We are in Phnom Penh and when there are  
19 hearings, well, we come. It's clear that the afternoon would have  
20 allowed us to go over elements that were not translated from the  
21 civil party documents that we just received, that's true, it  
22 would have been useful in that case for us not to -- not have the  
23 hearings in the afternoon, today and tomorrow and yesterday. But,  
24 of course, we will rely on the Chamber's decision as far as what  
25 the Chamber may consider is the most practical solution.



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1 [10.47.57]

2 MR. PRESIDENT:

3 Please hold on, International Deputy Co-Prosecutor. The DVD is  
4 running out and we need some time for the AV to change the DVD  
5 first.

6 (Short pause)

7 [10.48.35]

8 MR. PRESIDENT:

9 You many now proceed, International Deputy Co-Prosecutor.

10 MR. DE WILDE D'ESTMAEL:

11 Thank you. I will be short. We have no objections to manage the  
12 time in such a way that all civil parties -- or, in any case, the  
13 eight that are scheduled for tomorrow can come. I think it will  
14 be a bit hard to say right now, well no, you cannot come now. So  
15 maybe tomorrow, on an exceptional basis, we have no problems with  
16 having the hearings tomorrow afternoon.

17 Now, with regard to the documents in one single language, I don't  
18 think that with regard to the eight civil parties it should be a  
19 big issue. I have been able to generally find all the documents  
20 in English and in French, if you look carefully in ZyLab. So the  
21 Khieu Samphan defence could also come see me if they have a hard  
22 time finding certain documents in French or in English. Thank you  
23 very much.

24 [10.49.54]

25 MS. GUIRAUD:

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1 Well, simply a small comment, Mr. President, and thank you for  
2 giving me the floor again.

3 As Mr. Koppe suggested and concerning the way that you have used  
4 the statements unharmed, does not concern the discussion that we  
5 have today, this is a discussion that will happen at the appeals  
6 stage. Of course we're going to answer point by point the appeal,  
7 the points in the Nuon Chea appeal brief; we disagree with much  
8 of the analysis that is done with regard to this specific point  
9 but we don't believe that it is useful to have this debate today.

10 And I would like to say again, that essentially speaking, we  
11 believe that the schedule, as proposed, meets the requests as  
12 well as the previous jurisprudence of the Chamber and as a side  
13 point, if you believe that it is necessary to have more leeway  
14 for the parties to organise their questions, well, we have  
15 already identified two civil parties and I can give you the names  
16 now or by email after the break -- two civil parties that are  
17 willing to come to testify tomorrow afternoon.

18 [10.51.21]

19 MR. PRESIDENT:

20 Thank you very much; you may now proceed, Judge Fenz.

21 JUDGE FENZ:

22 This is about basically what the appeal's brief is saying and  
23 while we're clearly not at the appeal stage, I have wondered  
24 about the possible mistake that has been made and might have led  
25 to wrong conclusions. I am referring to 189 -- paragraph 189 of

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1 the appeals brief where, I think the core argument is quoted what  
2 the Chamber has said, but the fact is, this paragraph, or this  
3 ruling by the Chamber referred to character witnesses and it's  
4 very clear if you look at the reference. To quote one by one what  
5 we said in the decision you actually quote, 723, about character  
6 witnesses. Now obviously character witnesses, the whole purpose  
7 is to enable the Trial Chamber to determine et cetera, et cetera.  
8 But that's about character witnesses. Now, then you quote all  
9 kinds of international jurisprudence, I'm not going into this and  
10 in paragraph 193 you say, "Had the Trial Chamber not informed the  
11 Accused that victim impact testimony would be used only to  
12 determine sentences and reparations, the Defence would have  
13 objected et cetera". Now, provided this is not a wrong reference,  
14 wherever did we tell the Defence that victim impact testimony  
15 would only be used to determine sentences? That would perhaps  
16 help if we could get that clarification.

17 [10.53.15]

18 MR. KOPPE:

19 I, of course, don't expect the Trial Chamber to readily accept  
20 errors of law or fact. I'm not now in a position to go standing  
21 on my feet reply quickly to what you're saying but I do note  
22 another reference which was quoted in paragraph 189 and that's  
23 also -- I mean that's how we understood it and that's how we --  
24 that's how Nuon Chea understood it at the time; that's why he was  
25 asked if it's okay not to appear while civil parties were giving

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1 civil impact testimonies, that's what our understanding was. And  
2 again, if you're saying now, your understanding was wrong, then  
3 we know that, then if having said that, having heard that, then  
4 of course, our request to have equal time becomes much stronger.  
5 And maybe the other parties can correct me, but I think this is  
6 how everybody understood the way civil party impact testimony was  
7 to be treated. If we're now hearing you saying, well, on what did  
8 you base that? Then we already have a, I suppose another  
9 situation. I agree that this is an issue that should be dealt at  
10 the appeals stage, but if you're now saying, yes, whatever is  
11 being said during civil party impact testimony can be used as  
12 evidence, then the situation right now to us is crystal clear, we  
13 need at least the same time as the other parties.

14 [10.55.13]

15 JUDGE FENZ:

16 And my next question is a practical one and this is to the  
17 Co-Lead Lawyers: Do we understand correctly that, basically, all  
18 the civil parties you have suggested or put forward for suffering  
19 are also fact witnesses, meaning can say something about the  
20 facts?

21 MS. GUIRAUD:

22 Well, if I -- well, I cannot predict what they're going to say.  
23 All civil parties were admitted as direct victims of Tram Kak. So  
24 potentially, all of them may, in their testimonies, bring up  
25 questions that may be questions of fact or that could be

1 considered as such.

2 MR. PRESIDENT:

3 You may now proceed, International Deputy Co-Prosecutor. You are  
4 the last person to speak today.

5 [10.56.37]

6 MR. LYSAK:

7 I just wanted to respond quickly to the issue that Mr. Koppe has  
8 raised. I have a different recollection than him and I'm in the  
9 process of searching the very huge transcript of these  
10 proceedings but I remember being in this Court, this issue being  
11 debated about whether victim impact testimony could be used not  
12 only for that, but also for facts and ruling being made that it  
13 would be used and that we all have that understanding, very clear  
14 understanding. I remember being rather outraged when I saw this  
15 argument in the Nuon Chea brief. I will search through the record  
16 and find where this discussion took place because I think it is  
17 an important point but I completely disagree with what Counsel  
18 has said here. Our understanding, and I believe there was a  
19 debate about this in this courtroom, was that victim impact  
20 testimony could be used for that purpose.

21 [10.57.52]

22 MR. PRESIDENT:

23 The Chamber told already that the International Deputy  
24 Co-Prosecutor was the last person to speak today after other  
25 parties.

1 The Chamber thank you very much for your submissions in relation  
2 to the request by counsel for Mr. Nuon Chea. The Chamber will  
3 take all information into account and will issue a decision in  
4 due course, and the Chamber also will take into account and  
5 decide the request of the Lead Co-Lawyer in relation to the  
6 hearing tomorrow for two civil parties.

7 Actually we scheduled to hold hearing for the eight civil parties  
8 on the 2nd and 3rd April 2015, the Chamber will take all the  
9 relevant information into account and we will inform Parties via  
10 the Senior Legal Officer of the Trial Chamber.

11 The hearing today comes to an end. It will resume tomorrow on the  
12 1st April 2015, starting from 8.00 a.m., and the hearing  
13 tomorrow, we will continue to hear the testimony of Richard  
14 Dudman via video link from the USA. Parties are invited to be in  
15 the hearing as scheduled.

16 Security personnel are instructed to bring Mr. Nuon Chea and Mr.  
17 Khieu Samphan back to the detention facility and have them  
18 returned here before 8.00 a.m. tomorrow.

19 The Court is now adjourned.

20 (Court adjourns at 1059H)

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