



Parties Engage in Final Clash over Admissibility of Documents

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After a temporary hiatus in the trial at the Extraordinary Chambers in the Courts of Cambodia (ECCC) due to the hospitalization of the accused persons Nuon Chea and Khieu Samphan, hearings resumed on Monday, January 21, 2013. During a protracted day of proceedings, the Chamber heard arguments from the parties on any final new documents that the parties sought to introduce in Case 002/1 or documents that had not yet been debated. The resolution of these discussions is likely to be a drawn-out process, with the Chamber noting that both Mr. Chea and Mr. Samphan's defense teams would be permitted to submit written arguments on documents at a later date in light of their clients' current inability to instruct their teams on the contested documents.

The morning's proceedings featured clashes between the Office of the Co-Prosecutors (OCP), the defense teams and the Lead Co-Lawyers for the civil parties on documents that included:

- The S-21 confession of Mol Sambath *alias* Ros Nhim, the former Democratic Kampuchea (DK) era Northwestern Zone leader;
- The celebrated documentary *Enemies of the People* featuring in-depth interviews with accused person Nuon Chea;

¹ Cambodia Tribunal Monitor's daily blog posts on the ECCC are written according to the personal observations of

- A series of video interviews of accused person Khieu Samphan, featuring questioning by an anonymous, unseen journalist;
- A series of character testimonials about Mr. Samphan from some of his associates; and
- Copies of documents from the records of the district Tram Kok, which was the location of infamous Khmer Rouge worksites and the Kraing Ta Chan security center.

During the afternoon, the Chamber heard arguments from the OCP concerning documents it sought to introduce and which it argued spoke to military authority and communication structure and operations during the DK period.

Changes to Hearing Schedule and Health Status of the Accused

In the public gallery this morning were 250 high school students from Kampong Thom province, as well as 45 university students from the Royal University of Phnom Penh. After a delay of over 10 minutes, Trial Chamber President Nil Nonn opened the proceedings with a note that, due to the health issues of the co-accused, the Chamber had decided to change its schedule and proceed with a document hearing.

The parties had been notified of this change, the president reported, via a Trial Chamber memorandum dated January 16, 2013, regarding the rescheduling and the document hearing today.² As set out in that memorandum, today's hearing would have two purposes:

- Discussion of any remaining documents which had not yet been put before the Chamber, and
- Submission of documents deemed important to put before the Chamber in relation to Case 002/1.

The floor was briefly granted to Trial Chamber Greffier Duch Phary, who reported that all parties were present, except for the accused person Ieng Sary, who was participating in his holding cell due to his health reasons, and the accused persons Nuon Chea and Khieu Samphan, who remained hospitalized. Both of these accused had, however, waived their right to be present in the hearings today.³

The president continued to explain that, as ruled, document hearings had been scheduled for the 18th to the 21st of February,⁴ however due to the health issues of the accused, the Chamber could not hear the testimony of certain witnesses. Thus, the document hearings had been brought forward.⁵ He reiterated that although both Mr. Chea and Mr. Samphan were being treated in hospital, they were mentally fit and had submitted their waivers in writing to the Chamber on Friday, January 18, 2013.

International Co-Counsel for Nuon Chea Victor Koppe was given the floor to advise the Chamber on Mr. Chea's health status. He advised that there was "no change," although Mr.

² This memorandum has the document number E223/3.

³ These waivers have the document numbers E258/2 and E223/4, respectively.

⁴ Although the month was not reported in the hearing, it would appear from later discussions that these dates were slated for February.

⁵ This ruling has the document number E236/4.

Chea's condition was "deteriorating." He further advised that there was no change to Mr. Chea's waiver with respect to the document hearing. Similarly, International Co-Counsel for Khieu Samphan Anta Guissé advised that her client maintained his waiver and that, with respect to his condition, was "very weak and very tired." Mr. Samphan's team was awaiting further updates on Mr. Samphan's status from his treating doctors.

The defense counsels' comments prompted the president to advise that, as indicated by the Trial Chamber in its memorandum,⁶ it would proceed with today's document hearing but would give both Mr. Chea and Mr. Samphan an opportunity to comment on the documents raised at a later time.

Discussions Concerning the Scope and Plan for the Document Hearing

At this point, President Nonn advised that the documents today were to relate to the Tuol Po Chrey killing site and forced movement of the population. The relevant paragraphs of the indictment against the accused persons, known as the Closing Order, were 205, 209, 698 to 711, 975 to 977, 1115, 1191 to 1193, 1373 to 75, 1377 to 79 and 1781, 1415 to 1418, and 1423 to 1425.⁷

The president reminded the parties that the document hearing was not a forum for a discussion of the admissibility of documents. Furthermore, the president said, the public could not be informed about the contents of all E3-type documents. It was also important for the Chamber to be informed of the precise numbers of documents containing both inculpatory and exculpatory evidence.

The president gave the floor to Senior Assistant Co-Prosecutor Vincent de Wilde. Mr. de Wilde advised that the OCP was proposing to discuss only questions of admissibility with respect to annexes numbered 1,⁸ 2A,⁹ 2B,¹⁰ and 2C,¹¹ as first notified to the Chamber by the OCP in November 2012. The latter three annexes contained three tables setting out a total of 94 documents that related to the first forced transfer, second forced transfer, and the Tuol Po Chrey killing site, respectively.

In addition, the prosecutor said, there was a list of 48 documents set out in Annex 1 that had not yet been discussed in court, some of which were documents proposed by the defense. Mr. de Wilde noted that the OCP would be making objections to a small number of these defense-proposed documents.

As to the way forward, Mr. de Wilde proposed that perhaps the defense could advise the OCP of what documents they objected to, which the OCP could then respond to. He suggested that the Chamber begin by addressing issues concerning the 48 documents and then the rest.

⁶ This memorandum has the document number E258.

⁷ The Closing Order can be found at: <http://www.eccc.gov.kh/document/court/14888> (in Khmer), <http://www.eccc.gov.kh/en/documents/court/closing-order> (in English), and <http://www.eccc.gov.kh/fr/document/court/ordonnance-de-cl%C3%B4ture-dans-le-dossier-002> (in French).

⁸ This annex has the document number E223/3.1.

⁹ This annex has the document number E223/2/1.2.

¹⁰ This annex has the document number E223/2/1.3.

¹¹ This annex has the document number E223/2/1.4.

Granted the floor, Ms. Guissé advised that she sought to clarify the position of her team. In particular, and as she had detailed in various e-mail exchanges, she said, her team's ability to prepare for this hearing was not the same as it would have been if the hearing had been held in February. Given the limited time for preparation, they were unable to cross-check all of the OCP's proposed documents. However, she was satisfied by the assurance given by the Senior Legal Officer of the Trial Chamber that they would be able to revisit the question of the admissibility of the 48 documents. This was important, Ms. Guissé said, as her team did not want to be accused of not addressing this issue at the appropriate time.



Ms. Guissé noted that in one of the Trial Chamber's previous rulings,¹² the Chamber had held that certain new documents could be presented. In addition, in a record of a hearing, the Khieu Samphan Defense Team had pointed out that some documents in Annexes 6 to 20 were new documents with respect to which discussions had been deferred.¹³ Her team had not had a chance to cross-check all the documents in these annexes.

In a ruling issued on December 3, 2012, Ms. Guissé continued, the Chamber had stated the conditions under which parties could discuss the admissibility of documents.¹⁴ It would appear from the ruling that the Chamber's approach was "entirely different" to the practice of other international tribunals with respect to probative value. She said that it was unavoidable to have discussions on the probative value of documents.

The Trial Chamber conferred briefly. After this, the president advised that he would give the floor to the OCP to begin its document presentation. However, before the OCP could begin, Judge Silvia Cartwright could be heard whispering to the president. This prompted a second conference between the judges of the bench, with Judge Jean-Marc Lavergne and Judge Cartwright observed speaking animatedly to their colleagues.

Some minutes later, the president gave the floor to Judge Cartwright to explain the Chamber's ruling with respect to the way with which the documents hearing would proceed. She advised as follows:

The Chamber has agreed that the best way to proceed is to focus on the 48 documents that the prosecutors have identified, and the way in which the hearing will now proceed is this: First, the prosecutors will list those documents for the sake of the record but make no further comment on them. Then the floor will be

¹² This ruling has the document number E72/5.

¹³ This record has the document number E1/4847.1.

¹⁴ This ruling has the document number E187.1.

given to the defense, where each team will have the opportunity to object to any of those 48 documents, and any for which there are no objections will be effectively set to one side. The prosecutors and if necessary the Lead Co-Lawyers [for the civil parties] will then have the opportunity to respond to the objection raised by any of the three defense counsel. So, for this portion of the document hearing, we are focusing only on the 48 documents identified by the prosecutors.

The 48 Documents Subject to Debate in the Document Hearing

At this juncture, Mr. de Wilde advised that the OCP had only eight objections in total: four relating to documents proposed by the Khieu Samphan Defense Team and four to documents proposed by the Nuon Chea Defense Team.

Before detailing his objections, Mr. de Wilde proceeded to list details of all 48 documents proposed by various parties that would be subject to debate during the hearing, in accordance with the Chamber's directive in this regard. These documents are as follows:

Documents Proposed by the OCP

1. The S-21 confession by Mol Sambath *alias* Ros Nhim, quoted in Closing Order footnote 3018.¹⁵
2. A geographic situation report from the Office of the Co-Investigating Judges (OCIJ), quoted on Closing Order footnote 3025.¹⁶

Documents Not Proposed by the OCP¹⁷

3. A collection of different extracts from the handwritten autobiography of Suong Sikoeun.¹⁸
4. A book by Sambath Thet and Gina Chon entitled *Behind the Killing Fields*.¹⁹
5. The DK-era biography of Long Norin *alias* Rith.²⁰
6. A series of 53 parts of radio interviews granted by Mr. Samphan,²¹ together with transcripts of these interview parts.²²
7. A video produced at a 1998 interview of Mr. Samphan.²³
8. Video excerpts by Thet Sambath,²⁴ together with associated interview transcripts.²⁵
9. A book by Raoul-Marc Jennar entitled *Khieu Samphan et les Khmers Rouges*.²⁶

¹⁵ This confession has the document number IS5.3.

¹⁶ This report has the document number D125/217).

¹⁷ In the English translation, it was not clear which party proposed these documents. However, some of these documents have previously been requested by the Lead Co-Lawyers for the civil parties (as reported by the Cambodia Tribunal Monitor on October 18, 2012, at <http://www.cambodiatribunal.org/blog/2012/10/detailed-discussion-party-communications-and-defendants%E2%80%99-relationships-pol-pot>), so it may be that this is a collection of documents proposed by that party.

¹⁸ This collection has the document number E216/3.1.

¹⁹ This book has the document number E152.2.

²⁰ This biography has the document number E3/128.

²¹ This series has the document number D152.1.1, and also E152R to E152/53R.

²² This has the document number E152.1.1 up to E152.1.54.1.

²³ This has the document number A190/1/15R and E190/1.297R. Further details regarding this document were not clear from the English translation.

²⁴ These videos have the document number E93/7.3R.

²⁵ These videos have the document number E93/7.2R.

10. A documentary film produced by Roshane Saidnattar entitled *Survive: In the Heart of the Khmer Rouge Madness*.²⁷
11. A documentary film produced by Thet Sambath and Rob Lemkin entitled *Enemies of the People*, together with 16 clips contained in the associated DVD.²⁸

Documents Proposed by the Ieng Sary Defense Team²⁹

12. A book by David Chandler entitled *Transformation in Cambodia*.³⁰
 13. A book by Michael Vickery entitled *Democratic Kampuchea: Themes and Variations*.³¹
 14. A book by Milton Osborne entitled *Sihanouk: Prince of Light, Prince of Darkness*.³²
- An article by Douglas Gillison and Ly Hor entitled “177 Released from S-21, DC-Cam Records Show.”³³

Documents Proposed by the Khieu Samphan Defense Team

15. An article entitled “Bombs over Cambodia.”³⁴
16. A journal article by Ben Kiernan entitled “The US Bombardment of Cambodia: 1969 to 1973,” published in *Vietnam Generation*.³⁵
17. A report edited³⁶ by Kimmo Kiljunen entitled *Kampuchea: Decade for the Genocide: Report of a Finnish Inquiry Commission*.³⁷
18. A transcript of a conversation between the then-US president Richard Nixon and the then-US Secretary of State Henry Kissinger dated December 9, 1970.³⁸
19. A transcript of a conversation between Mr. Kissinger and the then-White House Chief of Staff, General Alexander Haig.³⁹
20. A memorandum detailing a conversation between the then-Indonesian Prime Minister Suharto, the then-US president Gerald Ford, and Mr. Kissinger.⁴⁰
21. A memorandum dated November 26, 1975, detailing a conversation between Mr. Kissinger and the then-Foreign Minister of Thailand Chatchai Chunchawan.⁴¹
22. Notes provided from the French Ministry of Foreign Affairs detailing a discussion between a French diplomat and Pech Lim Kuon.⁴²
23. A UN General Assembly resolution from its 34th session regarding the situation in the DK.⁴³

²⁶ This book has the document number E109.2.3.1. This translates to ‘Khieu Samphan and the Khmer Rouge.’

²⁷ This documentary has the document number E01/E.3R.

²⁸ This documentary has the document number E16.1R.

²⁹ There were conflicting references in the English translation as to the identity of the party who proposed the admission of these documents.

³⁰ This book has the document number D172.6.

³¹ This book has the document number E190.1.407.

³² This book has the document number E190/2.2.

³³ This article has the document number D22/2052.1.

³⁴ This article has the document numbers E190/2.6 and D153.12. The author of this article was not given.

³⁵ This article has the document number E190/2.10.

³⁶ In the English translation, the editor was cited as the author of this document.

³⁷ This report has the document number E190/2.11.

³⁸ This transcript has the document number E190/2.13.

³⁹ This transcript has the document number E190/2.14.

⁴⁰ This memorandum has the document number E190/2.16.

⁴¹ This memorandum has the document number E190/2.15.

⁴² These notes have the document number E190.1.408.

⁴³ This resolution has the document number E190/2.9.

24. An article by Noam Chomsky dated June 4, 1970, in the *New York Review of Books*' special issue on Kampuchea.⁴⁴
25. An article entitled "Arrival of a Laotian Delegation Visiting Cambodia," published by Agence France Presse.⁴⁵
26. An article entitled "Defecting Khmer Rouge Helicopter Pilot Tells of Life in Phnom Penh," dated May 4, 1976, and published in the *Times*.⁴⁶
27. An article entitled "Escape Because of Khmer Rouge Brutality," dated May 11, 1976, and published in the *International Herald Tribune*.⁴⁷
28. An article entitled "Cambodia: Two Views from Inside," and published in *Newsweek*.⁴⁸
29. An article by William Shawcross entitled "The Verdict is Guilty on Nixon and Kissinger," dated January 1977 and published in the *Far Eastern Economic Review*.⁴⁹
30. A letter from Philippe Julien Gauvre, dated October 15, 2010, and in favor of Mr. Samphan.⁵⁰
31. A letter from Sam Sok, dated January 21, 2011, and in favor of Mr. Samphan.⁵¹
32. A letter from Roland Dumain dated February 14, 2011, and in favor of Mr. Samphan.⁵²
33. A letter from Claude Katz dated February 18, 2011, and in favor of Mr. Samphan.⁵³
34. An article by Jean-Paul Desgoutte entitled "Interview with Laurence Picq."⁵⁴
35. An article by George McCloud entitled "Noam Chomsky Interview," dated March 27, 1979 and published in the *Phnom Penh Post*.⁵⁵
36. An article by Ben Kiernan and Taylor Owen entitled "Roots of the US Troubles in Afghanistan: Civilian Bombings and the Cambodian Precedent," and dated June 28, 2010.⁵⁶

Documents Proposed by the Nuon Chea Defense Team

37. Article by Stephen Heder entitled "Racism, Marxism, Labeling and Genocide in Ben Kiernan's 'The Pol Pot Regime,'" and dated 1997.⁵⁷
38. Excerpts from a book by Joel Brinkley entitled *Cambodia's Curse: The Modern History of a Troubled Land*, and published in 2011.⁵⁸
39. A report by the US Government Accountability Office of April 13, 1974 entitled *Report to the Subcommittee on Ref and Esc on the Judiciary, United States Senate*.⁵⁹
40. An article by David Shipler entitled "Saigon, Prodded by US, Lends Rice to Cambodia," dated July 19, 1973 and published in the *New York Times*.⁶⁰

⁴⁴ This article has the document number E190/2.17.

⁴⁵ This article has the document number E190.1.412.

⁴⁶ This article has the document number E190.1.411.

⁴⁷ This article has the document number E190.1.409.

⁴⁸ This article has the document number E190.1.410.

⁴⁹ This article has the document number E190/2.8.

⁵⁰ This letter has the document number E190/2.5.

⁵¹ This letter has the document number E190/2.7.

⁵² This letter has the document number E190/2.18.

⁵³ This letter has the document number E190/2.19.

⁵⁴ This article has the document number E190/2.4.

⁵⁵ This article has the document number E190/2.20.

⁵⁶ This article has the document number E190/2.12.

⁵⁷ This article has the document number E131/1/13.3.

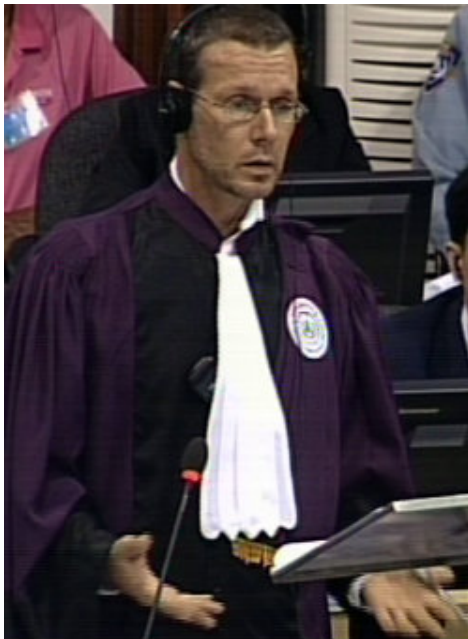
⁵⁸ This book has the document number E131/1/13.12.

⁵⁹ This report has the document number E131/1/13.8.

41. An article by Sydney Schanberg entitled “Cambodia Anniversary Marked Only by Misery,” dated March 19, 1975, and published in the *New York Times*.⁶¹
42. Article by Angus Demming entitled “Phnom Penh: New Rulers,” dated January 27, 1979, and published in *Newsweek*.⁶²
43. An article by Sydney Schanberg entitled “Children Starving in Once Lush Land,” dated February 1975, and published in the *New York Times*.⁶³
44. An article by TD Allman entitled “Sihanouk’s Sideshow,” dated April 1990, and published in *Vanity Fair*.⁶⁴
45. A report by the US Senate entitled *US Air Operations in Cambodia: April 1973* dated April 23, 1973.⁶⁵
46. A Kampuchean People’s Representative Assembly (PRK) Council of Ministers Report dated August 23, 1976, describing the K-5 construction plan⁶⁶
47. A report dated 6 or 7 May, 1998 concerning a visit to Thailand by then-second Prime Minister Hun Sen.⁶⁷

Prosecution’s Objections to Documents Proposed by the Defense

Mr. de Wilde took the floor to put forward his objections with respect to certain documents in the list. First, the prosecutor turned to the documents submitted by the Khieu Samphan Defense Team, explaining that while the OCP did not object to the majority of those documents, it did object to the four letters of support of Mr. Samphan. These testimonies had been put together by



the defense team after the closure of the investigation and had not been sought by the Office of the Co-Investigating Judges (OCIJ), Mr. de Wilde said, noting that this kind of “unilateral action” had never been authorized by the Chamber.

Moreover, he argued, it was never clear whether references could be sought in support of the co-accused. These letters related to the “facts, the historical context,” and actions Mr. Samphan had undertaken. For example, Mr. de Wilde said, Mr. Gauvre’s letter advanced arguments for why Mr. Samphan had been elevated to the position of head of state.⁶⁸ The defense team should have requested the OCIJ to speak to these individuals during the investigative stage, he asserted, also noting that three of these individuals were listed on the Khieu Samphan Defense Team’s witness list.

⁶⁰ This article has the document number E131/1/13.6.
⁶¹ This article has the document number E131/1/13.4.
⁶² This article has the document number E131/1/13.7.
⁶³ This article has the document number E131/1/13.5.
⁶⁴ This article has the document number E131/1/13.2.
⁶⁵ This report has the document number E131/1/13.9.
⁶⁶ This report has the document number E131/1/13.11.
⁶⁷ This report has the document number E131/1/13.10.
⁶⁸ The relevant ERN is 00809329 (in French).

In short, Mr. de Wilde said, these letters should not be considered to have probative value unless other parties were permitted to question the authors on these letters if they came to testify; it would be another matter if these were merely letters of support, but this was not the case here.

Turning to the documents proposed by the Nuon Chea Defense Team, Mr. de Wilde advised that the OCP contested the relevance of four documents. The first was the book by Mr. Brinkley. A chapter of this book did not concern the facts of which the Chamber was seized, he asserted, but was instead a political analysis of the “current legal and political predicament of Cambodia” and the establishment of the ECCC. The OCP did not see the relevance of these writings to Case 002/1.

As for the Allman *Vanity Fair* article, the OCP’s position was that this article had “no particular interest” for the case. The article concerned the personalities of the late King Father Norodom Sihanouk as well as Hun Sen, Mr. de Wilde noted, and therefore the OCP did not believe it would “contribute to the elucidation of the truth.”

The OCP also objected to the report of the PRK Council of Ministers concerning the construction of K-5. Mr. de Wilde noted that the Chamber had repeatedly stated that matters concerning the K-5 Plan had no relevance for this trial. Therefore, this document was not relevant, he asserted, arguing also that the suggestions of its demographic importance had “never really been established by the defense.”

Finally, the OCP objected to the report concerning Hun Sen’s visit to Thailand. This document was “purely political” and related to “a certain context in 1998”; this document did not concern the facts in issue here, Mr. de Wilde said. Furthermore, the prosecutor added, the Chamber’s position on documents like this was “pretty clear”; namely, the Chamber had “declared that it is independent of ... statements made by political figures.”

The president then adjourned the hearing for the mid-morning break. Upon resuming, the floor was ceded to International Lead Co-Lawyer for the civil parties Elisabeth Simonneau Fort. She advised that the lead co-lawyers did not have any additional objections to make concerning the documents requested by the defense teams but supported the objections made by the OCP.

Objections and Responses from the Defense Teams

With the focus now shifted to the defense, Mr. Koppe advised that his team did not have any objections to make concerning the documents discussed by the OCP or any replies to the OCP’s objections to its documents. He thus ceded the floor to International Co-Counsel for Ieng Sary Michael Karnavas.

Mr. Karnavas prefaced his comments by noting that last week, he was part of about a “dozen e-mail exchanges” concerning the approach for the document hearing, noting it appeared that today the Trial Chamber was opting to follow the approach requested by the OCP. Mr. Karnavas then signaled that his team’s comments on the 48 documents in question would be broad in nature, and the team would then follow with specific, written objections to each document.

There were nine categories of documents on which the Ieng Sary Defense Team had comments. Those categories and related comments were as follows:

1. **OCIJ rogatory completion reports:** Mr. Karnavas opined that these documents had “zero” evidentiary value and were “utterly useless,” being summaries of summaries.
2. **Videos:** In an apparent reference to *Enemies of the People*, Mr. Karnavas noted that this film would have been heavily edited to present the view of the filmmaker. While “celebrated” and “a work of art,” the film should not be submitted in this form unless all recorded material, unedited, was also submitted, as this might present a different point of view.
3. **Supporting letters:** The Ieng Sary Defense Team had no objection to the submission of supporting letters in principle and indeed wholeheartedly supported their admission.
4. **Confessions:** Anything tainted by torture “should be kept out, period,” Mr. Karnavas argued. In addition, “the fruit of the poisonous tree,” that is, any information obtained under the confession, should be kept out.
5. **Biography:** Long Norin’s oral testimony was arguably sufficient. There was no apparent use of the biography being admitted at the present time.
6. **Foreign government, United Nations, and NGO reports:** All such documents were “suspect,” including documents from the United States and France. This was particularly the case with respect to the U.S., the defense counsel said, because the U.S. was, during the DK period, “conducting a covert dirty war” and lying to the public and its own Congress in this respect. In addition, the admission of such reports was particularly objectionable where parties did not have the opportunity to question their authors.
7. **International communication documents, including from the U.S. State Department:** In light of events at the time and campaigns of disinformation, there was a need to be “suspect” about such information and what information might be excluded from the narrative. The admission of such documents should be contingent on the ability for parties to confront the authors.
8. **Media articles:** Such documents should not be admissible, Mr. Karnavas argued. If the author of the article in question wished to testify on matters that were relevant to the temporal scope of the trial, this would not be objectionable. However, his team did object to the admission of such articles and reliance on them in order to establish the narrative contained in such documents as the objective truth.
9. **Books and academic articles:** The Ieng Sary Defense Team’s general position was that if a book is to be introduced, the author must be available to give evidence. Furthermore, any testimony from such individuals should relate only to the scope of Case 002/1.

Following this presentation, Ms. Guissé took the floor once more. She first voiced her support for Mr. Karnavas’s comments concerning video materials, particularly in relation a video made of her client Mr. Samphan. Where video extracts were filmed, without specifics as to where and how it was filmed and produced and in what circumstances, there was “no way to assess the probative value” of such material.

As for the letters in support of Mr. Samphan, she stated, these needed to be “viewed within the context” in which they had been put to the Chamber. These letters emanated from the list of witnesses who the Khieu Samphan Defense Team wished to call before the Chamber; Ms. Katz’s

name was not on the team's witness list as her letter arrived after the date on which the team filed its witness list. These letters concerned the authors' meetings with Mr. Samphan, and this was "very important." Ms. Guissé entreated that these people be called before the Chamber to testify. In cases where they would be called to testify, she stated, such letters would be part of the necessary documentation that would need to be put before the Chamber.

Furthermore, Ms. Guissé continued, these letters contained exculpatory material, rendering them particularly relevant in light of the lack of exculpatory material sought during the investigative stage, which would have been harmful to Mr. Samphan. These individuals knew Mr. Samphan for many years and were aware of the context in which he had lived and worked. If these witnesses were ultimately not called, then it would be important for the letters to at least be put before the Chamber as they contained "very important elements of information." This was a matter of respecting the rights of the defense, she concluded.

Prosecution's Responses to Defense Objections

Mr. de Wilde was given the floor to respond to the defense objections. Addressing the comments by Mr. Karnavas, he said that the OCP objected to the submission of written objections on the documents; this hearing was the moment in which to make such comments, and permitting written exchanges would draw the matter out.

On November 23, 2012, the prosecutor continued, the OCP had submitted its list of documents that it believed were relevant. At that time, no defense teams made any objections. However, he noted, there now appeared to be objections foreshadowed for future submission, as well as very general objections made today. Mr. de Wilde also noted that, as the Trial Chamber previously ruled, objections were inadmissible unless they were specific.

Moving to his comments on specific points, Mr. de Wilde noted, there was no rogatory letter in the list of documents. Furthermore, he said, the demographic report in question had been footnoted in the Closing Order, and as ruled by the Chamber, all such documents enjoyed a presumption of reliability, authenticity, and relevance. In addition, the Chamber had ruled that no rule before the ECCC made it possible to claim that probative value could only be established where witnesses, experts, and civil parties came to authenticate statements previously made.⁶⁹

Books and academic articles should not be excluded *per se*, as previously ruled by the Chamber, the prosecutor argued. In addition, while the Ieng Sary Defense Team seemed to object to the admission of Milton Osborne's book if he was not called to testify, Mr. de Wilde noted that it was the Ieng Sary Defense Team itself that had requested the admission of that book.

On S-21 confessions, Mr. de Wilde said, "everyone agreed" that documents emanating from torture could not be used. The Chamber had ruled all S-21 confessions inadmissible. However, article 15 of the Convention against Torture provided some exceptions to this:⁷⁰ demonstrating

⁶⁹ This ruling has the document number E185, and the relevant passages appear at paragraphs 21 and 31.

⁷⁰ Article 15 of the *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment* stipulates that "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

the reality of a person's detention; to establish that torture had actually been used; or in relation to the subsequent execution of the accused.

Documents such as this — namely those emanating from the Documentation Center of Cambodia (DC-Cam) — were considered to satisfy the requirements of “relevance and reliability,” Mr. de Wilde asserted; there should not be any suggestion otherwise. This was the purpose of having senior staffers of DC-Cam come to testify. Moreover, the authenticity of the S-21 confession of Mol Sambath *alias* Ros Nhim had been confirmed by Kaing Guek Eav *alias* Duch during his testimony before the ECCC.

With respect to the documents produced by Thet Sambath, Mr. de Wilde noted that the OCP had requested Mr. Sambath be heard as a witness. Concerning his film *Enemies of the People*, Mr. de Wilde conceded that the film “put together” statements from different people, but the documentary contained statements by Mr. Chea. The relevance of these statements could not reasonably be contested, he said. Moreover, Mr. Chea had himself stated that he had spoken the truth to Mr. Sambath as he trusted him and was unaware that Mr. Sambath was intending to produce a documentary for dissemination abroad.

Enemies of the People was “very important” to establish Mr. Chea's role and the nature of the Khmer Rouge regime, Mr. de Wilde argued. The film also spoke to the historical context and the way power was organized during the DK period. Moreover, several excerpts from this documentary had previously been put to the Chamber by the Lead Co-Lawyers for the civil parties without any objection from the defense teams at the time.

The prosecutor noted that in addition to the complete clip of *Enemies of the People*, the OCP had also put a series of interview clips by Thet Sambath with Mr. Chea on the case file, before *Enemies of the People* was available and that ultimately formed part of that documentary. These shorter clips might duplicate the record, Mr. de Wilde said, but he argued that they were distinguished by the fact that they had associated transcripts on record.

As for the book *Behind the Killing Fields* by Mr. Sambath and Ms. Chon, Mr. de Wilde said that the book contained quotations from Mr. Chea and descriptions of meetings with him relating to the periods before, during, and after the DK period. The book specifically discussed power structures and the relevant facts for Case 002/1. The authors did not have to appear in order for the book to be admitted into evidence, although the OCP had indeed requested their appearance.

There also seemed to be a contention over who was the real author of the book, Mr. de Wilde noted, as Mr. Chea had testified that he himself had written the book and gave it to Mr. Sambath to translate and publish in New York rather than inside Cambodia. Mr. Chea also complained that the book was published without his approval. In any case, the prosecutor asserted, the book showed the close relationship between Mr. Chea and Mr. Sambath, and thus, the book should be admitted and placed on the record whether or not its authors testify before the Chamber.

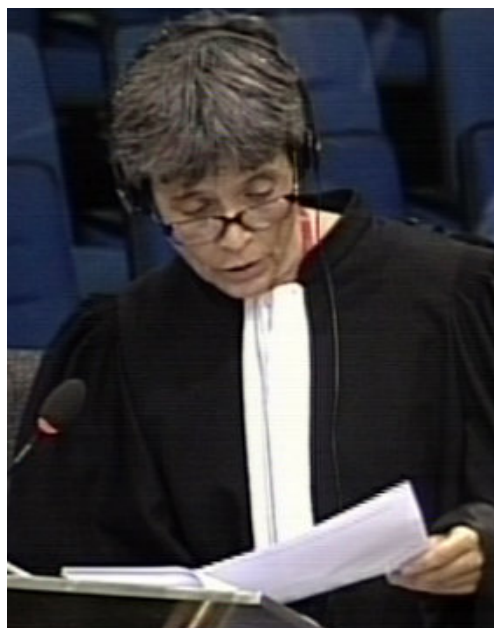
Turning to Ms. Guissé's suggestion that the 53 interview clips of Mr. Samphan did not reference the name of the journalist or the relevant circumstances of the interview, Mr. de Wilde conceded that these contentions were “not entirely untrue.” He counter-argued that these clips contained

very relevant evidence, including in relation to the authority structure and forced movement. It was possible to hear a voice on the clip, although the journalist's identity was not identified. Regardless, he contended, it was clear that Mr. Samphan was speaking and that there was no contention that this video was a forgery.

Finally, and with respect to the authors of the letters in support of Mr. Samphan, Mr. de Wilde requested that the Chamber clarify the conditions under which it was acceptable for parties to approach potential witnesses.

Responses from the Lead Co-Lawyers for the Civil Parties

Next, International Lead Co-Lawyer for the civil parties Pich Ang advised that there was no "rational ground" put forward by the defense teams to suggest that the 53 interview clips of Mr. Samphan were produced "under exceptional circumstances." The clips were relevant to the Case 002/1 trial and should be available for use before the Chamber, he concluded.



Ms. Simonneau Fort expanded on these comments by explaining that the civil party lawyers did not "quite understand" the defense objections (which it would become clear was a specific reference to the Ieng Sary Defense Team's promise to submit written objections in relation to the list of 48 documents). Defense teams had already had an opportunity to make written objections on documents, and since then, three rulings had been made in this respect, the civil party lawyer said. These decisions addressed all objections from the defense, and the current objections raised by the defense in today's hearing were the same objections as those made before, she argued. Meetings in relation to further objections on documents, particularly repetitive objections, would be a waste of the court's time, she concluded.

The president sought to grant the floor to Ms. Guissé to make comments. However, before she was able to do so, Mr. Karnavas interjected to make a brief comment, clarifying that it was not his team's intention to undertake repetitive activities, but his team required the Chamber to clearly articulate the procedure his team was to follow. The Ieng Sary Defense Team would follow whatever procedure was instructed, and the submission of written objections was what it had been required to do in the past. Furthermore, Mr. Karnavas's understanding was that the purpose of document hearings was to provide a general outline of documents that the parties thought were relevant for the benefit of the public and that specific details should be confined to written documents. He concluded by clarifying that his team was not looking for extra work but "clear guidance."

Finally, and before the Chamber broke for the lunch break, Ms. Guissé took the floor to relay the comments of her team. She began by noting that, regarding the Trial Chamber's memorandum of January 16, 2013,⁷¹ the Chamber had pointed out that even if a client waived their right to be

⁷¹ This memorandum has the document number E258.

present, the parties were permitted to make later written submissions concerning documents. She then reiterated that, as she said this morning, her team did not have sufficient time to prepare for this hearing and to undertake “in depth work” with Mr. Samphan on the documents in question. Her understanding was that this hearing was to be seen as the opening of the door for the discussion on these documents, and not, as the OCP seemed to suggest, the “clinching” of the position on these documents.

Defense Objections to Documents Submitted by the OCP in Annexes 2A, 2B, and 2C

There was a delay of some 10 minutes in the commencement of the afternoon’s proceedings, with a new audience of approximately 80 villagers from Kandal Steung district, Kandal province waiting patiently in the public gallery. Many of these people appeared to have been born during or before the DK period.

After the hearings reconvened, Mr. de Wilde was again given the floor, this time to proceed with the OCP’s presentation of proposed new documents. He first directed the parties that the relevant documents that would be needed for the afternoon’s proceedings were Annexes 2A,⁷² 2B,⁷³ and 2C.⁷⁴ He suggested that, to proceed most efficiently, the defense teams should perhaps merely signal which of the documents among these annexes it objected to, rather than go through each document in turn.

This suggestion prompted the president to confer with his colleagues Judges Cartwright and You Ottara, with Judge Lavergne looking on from afar but remaining seated. The president then took up the prosecutor’s suggestion in light of Mr. de Wilde’s clear document presentation and the availability of the annexes in question.

Mr. Koppe was the first to be given the opportunity to outline his team’s objections. He advised that as his team clearly had been unable to discuss these documents with Mr. Chea yet, they were at this stage unable to make any “informed or intelligent observations” on them. Accordingly, his team wished to accept the Chamber’s invitation to submit written observations on the documents once it had been able to discuss these documents with Mr. Chea.

All Trial Chamber judges huddled in conference. The president could be seen resting his chin in his hand thoughtfully. After a few minutes, Judge Cartwright was given the floor. She advised:

The Chamber acknowledges that it has indicated — in respect of Nuon Chea and Khieu Samphan defenses — that they will have an opportunity at a later stage to comment on these documents. The Chamber will advise in due course as to the method and timing by which those comments are to be received.

Picking up for the defense again, Mr. Karnavas said that, seeking to counter any imputation that his team had not come prepared for today’s hearings, he had at least 65 pages of comments he could read into the record concerning the first annex, and lengthy comments prepared for the

⁷² This annex has the document number E223/2/2.2.

⁷³ This annex has the document number E223/2/2.3.

⁷⁴ This annex has the document number E223/2/2.4.



other annexes also. However, he would not deliver his comments selectively so as to focus only on comments that had not already been made this morning.

First, he said, these document lists included photographs. Consistent with his comments during the morning's proceedings, he requested that the admission of these photographs be contingent on their photographers being called to testify in relation to the photographs taken. Alternatively, the existence of other independent indicia was necessary in order to ensure the reliability of the photographs.

Second, in relation to the Tram Kok district records which were on these document lists, Mr. Karnavas noted that DC-Cam Director Youk Chhang had mentioned that the original documents had been misplaced, and Mr. Kiernan had also said this. Mr. Chhang was not in a position to testify as to chain of custody, and thus, the Tram Kok district records should not be admitted unless there were some independent indicia as to their reliability.

Ms. Guissé echoed Mr. Karnavas's concern regarding the Tram Kok district records, being the documents numbered after 40 in Annex 2A. She said that her team's specific concern was with documents for which there was no author specified and that these documents should not be used for probative value. Noting Mr. Karnavas's comments concerning rogatory reports, she said that a discussion of written summaries of the reports should occur during a scheduled hearing in April on a related issue.

Prosecution's Responses to Defense Objections, Specifically on Documents from Tram Kok

In relation to the photographs discussed by Mr. Karnavas, Mr. de Wilde first listed the document numbers for the photographs⁷⁵ and then advised that these photographs were relevant, as they depicted Khmer Rouge soldiers coming into Phnom Penh. One showed an armed Khmer Rouge soldier, and another depicted the area around the Olympic Stadium at the time of the evacuation. There were another two photographs taken by DC-Cam⁷⁶ in 1977.⁷⁷ These photographs included the image of a person who had been mentioned in a document forwarded by DC-Cam⁷⁸ and interviewed by the OCIJ.⁷⁹

Concerning the Tram Kok district records, Mr. de Wilde said that the Chamber had already heard a lengthy debate on those documents and had decided in December 2012 that all of those documents were admissible. Thus, the prosecutor did not wish to discuss all Tram Kok district

⁷⁵ These photographs have the document numbers D366/7.1.7.16 and D313/1.2.238.

⁷⁶ This was not clearly audible in the English translation.

⁷⁷ These photographs have the document numbers D223/1.4, D313/1.2.104, and D313/1.2.106.

⁷⁸ This document has the document number IS18.78.

⁷⁹ This document has the document number D125/70.

record documents proposed at length but instead focus, in particular, on the 49 documents contained in the relevant annexes. The substantive content of these documents related to communication and administrative structures and Communist Party of Kampuchea (CPK) policies relating to the re-education of internal and external enemies, and in relation to former officials of the Lon Nol regime and “new people.”

As to their form, the documents included district reports, reports from the Kraing Ta Chan security center, and instructions issued by the upper echelon of the districts to lower echelons in communes, Mr. de Wilde said. Some of these documents were lists of persons drawn up by communes that specified that the listed individuals were Lon Nol soldiers, civil servants or officials, or “new people.”

In addition, the prosecutor continued, there were reports and biographies from Kraing Ta Chan security center concerning people who were either identified as officials or former soldiers of the Lon Nol regime, “new people,” or prisoners from France. These documents showed that particular attention was shown in that district to “new people” and officers and civil servants of the Lon Nol civil service. In addition, they illustrated the efficiency of DK communication and the power enjoyed by the district level over the local levels. On the question of reliability, Mr. de Wilde conceded that the originals of these documents had not been located, as Mr. Chhang had previously testified before the Chamber. He also noted that the copies were found through Sou Phirin.⁸⁰ Given the “creditworthiness” of DC-Cam’s archives, however, Mr. de Wilde suggested the documents should nevertheless be admitted.

The form of the Tram Kok district records were generally handwritten, Mr. de Wilde elaborated further. They were often written on schoolbooks. The language was typical of the DK period, mentioning words like “Angkar,” “smashing,” “revolutionary vigilance,” “Brother,” “Comrade Brother,” the “contemptible Yuons,” and so on. Moreover, information in several of these documents was corroborated by testimony of several witnesses, the prosecutor said.

Finally, Mr. de Wilde reiterated, these documents were relevant because these documents “systematically prioritized” the targeting of members of the Lon Nol regime and “new people.” Ms. Guissé’s arguments as to the evidentiary weaknesses of these documents did not outweigh their relevance to the Chamber.

Mr. Ang advised that the Lead Co-Lawyers for the civil parties did not have anything to add to these comments. With this, the Trial Chamber judges huddled in conference yet again. Several minutes later, the president advised that the Chamber would take an extended mid-afternoon adjournment of around 40 minutes in order to deliberate on certain issues.

Trial Chamber’s Ruling on Ieng Sary Defense Request to Present 56 New Documents

Reconvening after a five-minute delay, the president advised:

The Chamber is seized of the request of the defense team of Ieng Sary to put before the Chamber 56 documents in the proceedings of document hearings. The Chamber does not know whether or not other parties ... have received the list of

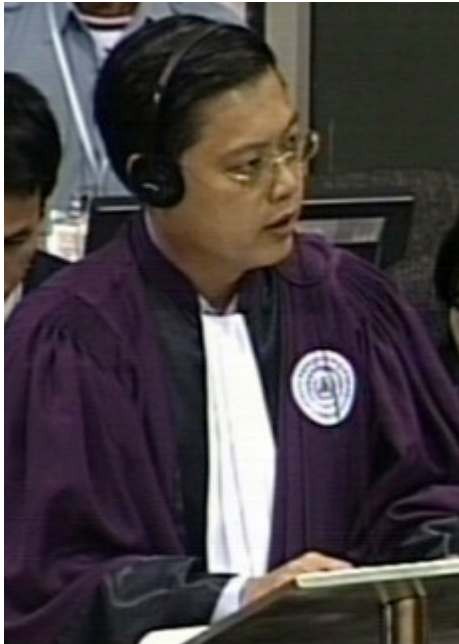
⁸⁰ The supporting document has the document number E1/39.1.

56 documents. The Chamber wishes to advise parties that it will hear [arguments] on these documents tomorrow afternoon, because the Chamber is of the view that parties should be given time to examine these documents. ...

Presentation by OCP of Documents on Military Structure, Operations, and Communication

For the remainder of the afternoon's proceedings, the president gave the floor to the OCP to highlight key documents of relevance set out in a January 2013 memorandum.⁸¹ The first OCP presenter was National Assistant Co-Prosecutor Seng Bunkheang, who began by referring to an issue of the *Revolutionary Flag* magazine that the prosecutor said was relevant to the military structure of the DK after 1975.⁸² This issue detailed proceedings at a conference at Olympic Stadium attended by more than 3,000 people and detailed, among other things, the meaning of the Khmer Rouge's April 1975 victory and the Revolutionary Army of Kampuchea's (RAK) new tasks. In addition, the *Revolutionary Flag* highlighted that the enemies used military and political cruelty as weapons to destroy the people, and it was the Communist Party of Kampuchea's (CPK) to lead the people in the use of revolutionary violence to oppose reactionaries.⁸³

In addition, Mr. Bunkheang continued, the *Revolutionary Flag* issue highlighted that national defense and nation-building were of utmost priority. In this respect, the RAK was to "defend the country" because there were "worse situations" still existing, including foreign imperialism. External enemies contacted internal enemies in turn. Thus, it was crucial for the RAK to "exercise utmost revolutionary vigilance." "Smashing espionage groups ... and saboteurs" was also necessary.⁸⁴



Mr. Bunkheang turned to another document, entitled the *Statute of the Communist Party of Kampuchea*. At article 27 of that statute, the role and structure of the RAK and the responsibility and authority of the Party's leadership with respect to military structure were discussed.⁸⁵ These issues, he said, were noted at Standing Committee meetings attended by the co-accused.

In the minutes of a Standing Committee meeting dated October 9, 1975, Mr. Bunkheang highlighted next, the Standing Committee decided on issues including the deployment of new military staff and the examination of the overall situation of the army.⁸⁶

The prosecutor continued his presentation with a telegram sent from Angkar regarding a letter sent from Comrade Ya,

⁸¹ This memorandum has the document number E223/23/3.

⁸² This magazine has the document number E3/5, and the relevant ERNs are 00063324 (in Khmer), 00401488 (in English), 00538963 and (in French).

⁸³ The relevant ERNs are 00063328 (in Khmer), 00401491 (in English), and 00538966 (in French).

⁸⁴ The relevant ERNs are 00063340 to 42 (in Khmer), 00401501 (in English), and 00538975 to 76 (in French).

⁸⁵ This statute has the document number E3/214.

⁸⁶ These minutes have the document number E3/182.

the head of the Northeast Zone. Dated November 11, 1975, the telegram contained instructions in relation to the mobilization of forces in that zone in order to be ready for combat with the enemy.⁸⁷ The telegram also noted that Angkar had received a telegram on “new people” and would report on this later.

Standing Committee meeting minutes of February 22, 1976, was also of particular relevance, the prosecutor asserted.⁸⁸ This document noted the attendance of Mr. Sary and Mr. Samphan among other Standing Committee members. At the meeting, Son Sen discussed the situation of enemies in the Northeast Zone, aid from the Chinese, the establishment of a military hospital, and the need to identify a new location for the construction of a military airfield.

Moving on, Mr. Bunkheang presented a document sent from the Northeast Zone by Ya. This document addressed the working procedure with people from the base to the Center, and requested that fighting be slowed down for a while.⁸⁹ In addition, minutes from a March 11, 1976, Standing Committee meeting concerning the overall situation of the eastern border recorded the attendance of Mr. Chea and Mr. Samphan. In this meeting, Mr. Sen again reported on the military situation, detailing clashes with opposing forces from Vietnam.⁹⁰

Another relevant document, Mr. Bunkheang said, was a document recording Standing Committee decisions made during a three-day meeting from April 19 to 21, 1976. The Standing Committee’s military decisions at this meeting included operational arrangements for the Kampong Chhnang airfield and appointments to the General Staff.⁹¹

In a May 14, 1976, Standing Committee meeting minutes, which recorded Mr. Chea, Mr. Sary, and Mr. Samphan as attending, the committee discussed the conflict with Vietnam and an attack on a ship donated to the DK by the Chinese. According to the prosecutor, Mr. Sary also commented during this meeting that “sooner or later, the Vietnamese side would agree with the ... line.”⁹²

Some days later, on May 30, 1976, the Standing Committee held another meeting, Mr. Bunkheang presented, again attended by Mr. Chea and Mr. Samphan. As detailed in its minutes, the meeting discussed the duties of the RAK and the defense of four battlefields and coastal areas. The document also identified the “intervention battle” within Phnom Penh as a significant battlefield and discussed a work assignment relating to agricultural production to the northwest and southwest of Phnom Penh.⁹³

In addition, the prosecutor highlighted a report by a Vietnamese messenger regarding an announcement by the National United Front of Kampuchea (FUNK) and Royal Government of National Union of Kampuchea (GRUNK) on the composition of the RAK. This announcement

⁸⁷ This telegram has the document number E3/1150.

⁸⁸ These minutes have the document number E3/229.

⁸⁹ This document has the document number E3/38.

⁹⁰ These minutes have the document number E3/217.

⁹¹ These minutes have the document number E3/235.

⁹² These minutes have the document number E32/221. In the English translation, it was not clear what line was referred to here.

⁹³ These minutes have the document number E3/224.

publicly appointed Mr. Samphan as the president, commander, and army chief, Saloth Sar *alias* Pol Pot as the chief leading the army, Mr. Chea as protocol leader of the army, and Mr. Sen as army chief.⁹⁴

A Foreign Broadcast Information Service (FBIS) report from October 1972 included a broadcast from Pyongyang radio on Pol Pot's biography, Mr. Bunkheang explained. This report advised that from 1970 to 1975, Pol Pot, as the head of the military, conducted military negotiations and was then elected Party chief and army head in 1976.⁹⁵

Next, the prosecutor referred to an interview conducted between February and March 1980 with a refugee on the Cambodian-Thai border detailing an interview with a Standing Committee member in Kampong Som and the offensive on Phnom Penh in 1974 and 1975. In particular, the interview noted that the army was under the control of Pol Pot and Mr. Chea, while Mr. Sen was in charge of the battlefield.⁹⁶

Mr. Sary had also discussed military authority in his previous interviews, notably one on July 22, 1981, Mr. Bunkheang went on. In this interview, Mr. Sary had reportedly said that the "most senior leaders" made these decisions and reported to the Standing Committee. The "most senior leaders," he testified, were Pol Pot, Mr. Chea, Sao Phim, and Son Sen.⁹⁷ In another interview on August 28, 1996, the prosecutor continued, Mr. Sary denied being the "right hand man of Pol Pot," identifying this person instead as Mr. Chea; he also described how there was a committee that decided on all matters concerning security, this time identifying them as Pol Pot, Mr. C, Mr. Sen and his wife, Yun Yat.⁹⁸

Finally, Mr. Bunkheang presented a September 8, 1996, communiqué from Ieng Sary entitled *The Truth about the Dictatorship Regime of Pol Pot: 1975 to 1978*. This communiqué described the CPK government as a screen to hide Pol Pot's dictatorship, as well as involving in decision making Mr. Chea, Son Sen, and Yun Yat – a "gang of four who decided on all the killings and massacres."⁹⁹

Communications to the Central Military Divisions of the RAK

International Assistant Co-Prosecutor Dale Lysak took the floor to begin his presentation of documents concerning the "surviving contemporaneous documents from the General Staff and the Central military divisions of the RAK." These included minutes of meetings between Son Sen and division secretaries; reports from the divisions showing they were forwarded to other Party leaders; and instructions conveyed by Son Sen to the divisions under the command of the Center.

⁹⁴ This report has the document number D56/10.008.

⁹⁵ This report has the document number E3/290.

⁹⁶ This interview has the document number E3/1714, and the relevant ERNs are 00324763 (in Khmer), 00170748 (in English), and 00649010 to 11 (in French).

⁹⁷ This interview has the document number E3/94, and the relevant ERNs are 00578895 (in Khmer), 00342501 to 02 (in English), and 00602000 (in French).

⁹⁸ This interview has the document number E3/93, and the relevant ERNs are 00224443 (in Khmer), 00078618 (in English), and 00347376 (in French).

⁹⁹ This communiqué has the document number E3/86, and the relevant ERNs are 00224430 (in Khmer), 00081215 (in English), and 00614094 (in French).

First, Mr. Lysak presented a June 4, 1975, order conveyed by Comrade Pin,¹⁰⁰ the commander of Division 703, which was a Center division originating in the Central Zone. The document listed 17 former Lon Nol soldiers as traitors and stated that all 17 had been examined and the Party had decided to “smash” them. Most of the 17 were lieutenants or lieutenant-colonels. In a number of cases, it was stated that all members of the family were considered traitors. Among the names were Sisowath Rataravang,¹⁰¹ who was described as having a “feudal, people-betraying lineage,” and Prak Vanaran, who was described as a “contemptible guy ... absolutely opposed to the revolution.”¹⁰²

A January 5, 1976, report from Division 164 Secretary Muth, to Brother 89, Mr. Lysak continued, related to fighting on Koh Traol, and made several references to implementation of decisions by the Party and showed the coordination between the Center, Zones, and military divisions.¹⁰³

The prosecutor moved to a January 23, 1976, telegram to “Uncle 89” from “05”, who the prosecutor noted had been identified as So Sarun. According to Mr. Lysak, this telegram described attacks by Vietnamese troops and the fact that Mr. Sarun’s forces had not yet fought back as they were “waiting from the final decision from the Party.”¹⁰⁴ The telegram also concluded with a request for immediate advice from Uncle.

Mr. Lysak highlighted a February 26, 1976, daily report “on the situation relating to CIA enemies.” In this particular report, the prosecutor said, two individuals identified a Brother Kom as a CIA agent. The document was also signed with two handwritten annotations: the first was signed Khieu and ordered the report be transmitted to Angkar, while another requested inquiries in every commune and sector requesting to know whether Kom had been arrested.¹⁰⁵ Khieu, the prosecutor noted, was a revolutionary alias for Mr. Sen.

On March 3, 1976, Mr. Lysak moved on, Chin — the Secretary of Division 920 — sent a report to Brother 89, copied to Brother 87 and Brother Van, the alias of Ieng Sary. This document detailed the arrest of five people “with bad elements,” namely people who had, among other things, inspired people to go home and also brought grenades to destroy vehicles. These people were interrogated and their file would be sent to the report recipients later.¹⁰⁶

The March 16, 1976, report from Division 310 Secretary Poeun that Mr. Lysak highlighted next had a handwritten note at the top stating, “To Angkar, to be informed.” It detailed the situation as to internal enemies and the requirement for internal study sessions to eliminate enemies and “unruly types.” In the report, Secretary Poeun also noted that at the Chip Tong factory, women had been seen dancing to the European-style songs of the previous regimes, and women and men playing with each other and then going in pairs into a room and turning off the light. It seemed,

¹⁰⁰ The spelling of this name was unclear in the English language.

¹⁰¹ The spelling of this name was unclear in the English language.

¹⁰² This order has the document number E3/832.

¹⁰³ This report has the document number E3/1016.

¹⁰⁴ This telegram has the document number E3/887.

¹⁰⁵ This report has the document number E3/1175.

¹⁰⁶ This report has the document number E3/923.

the report said, “that corruption and vice have occurred again.” The brothers were now being secretly watched, the report continued. Signaling the severity with which the situation was regarded, Mr. Lysak suggested, was the handwritten note at the top of the report stating, “Please report to Comrade Vorn.” He asserted that this was a reference to Vorn Vet, the Standing Committee member responsibility for industry.¹⁰⁷

The prosecutor then presented a May 26, 1976, report from Comrade Poeun that detailed how biographies were checked and sent to the Center. At paragraph 3, the report noted that in Special Battalion 312, three comrades continued to lie about their biographies. In particular, Comrade Eak¹⁰⁸ said that he did not have any political tendencies, but it was subsequently discovered that his father had been the member of an ambush unit in the Lon Nol army. The two other soldiers were also discovered to have relatives in the Lon Nol army.¹⁰⁹

At this point, the president adjourned the hearings for the day.

Hearings in the ECCC will continue at 9 a.m. on Tuesday, January 22, 2013, with the continuation of today’s document presentation by the Office of the Co-Prosecutors. The Ieng Sary Defense Team is also scheduled to present some 56 documents that it is also seeking to have admitted in the case.

¹⁰⁷ This report has the document number E3/1176.

¹⁰⁸ The spelling of this name was unclear in the English language.

¹⁰⁹ This report has the document number E3/1162.