



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គជំនុំជម្រះសាលាដំបូង  
Trial Chamber  
Chambre de première instance

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 25-Jan-2013, 15:30  
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

21 January 2013

Trial Day 148

Before the Judges: NIL Nonn, Presiding  
Silvia CARTWRIGHT  
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YOU Ottara  
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**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
JUDGE CARTWRIGHT	English
MR. DE WILDE D'ESTMAEL	French
MS. GUISSÉ	French
MR. KARNAVAS	English
MR. KOPPE	English
MR. LYSAK	English
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MR. PICH ANG	Khmer
MR. SENG BUNKHEANG	Khmer
MS. SIMONNEAU-FORT	French

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

2 (Court opens at 0912H)

3 MR. PRESIDENT:

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

5 Based on our changed schedule, and as all parties have been  
6 informed, the Chamber will conduct document hearing today related  
7 to Case 002/01.

8 As we all know, last week, the Accused had some health issues  
9 that needed to be treated urgently at the hospital. The schedule  
10 to hear the testimonies of certain witnesses have been adjourned  
11 and all parties have been informed of the changed schedule. And  
12 we will conduct a document hearing today.

13 The memo has been sent by the Trial Chamber, dated 17 April 2013  
14 (sic) regarding the rescheduling and the document hearing today  
15 and tomorrow -- that is, the 21st and 22nd of January 2013 --  
16 that is, document E223/3.

17 [09.14.59]

18 And we had two main purpose in the -- purposes in the memo --  
19 that is, first, the discussion of the remaining documents that  
20 have not yet put for discussion before the Chamber. And, second,  
21 the submission or presentation of documents that are deemed  
22 important to be discussed before this Chamber -- that is, related  
23 to Case 002/01.

24 And before we conduct the document hearing, the greffier, Mr.  
25 Duch Phary, could you report the attendance of the parties and

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1 individuals to today's proceeding?

2 THE GREFFIER:

3 Mr. President, for today's hearing, all parties to this case are  
4 present, except the accused Ieng Sary, who is present in the  
5 holding cell downstairs due to his health reason.

6 [09.16.07]

7 The accused, Nuon Chea and Khieu Samphan, are absent due to  
8 health reasons. However, they submitted the letter of waiver on  
9 document hearing to the Chamber -- that is, document E258/2 and  
10 223/4. Thank you.

11 MR. PRESIDENT:

12 Thank you, Mr. Duch Phary.

13 And before we proceed with the document hearing, pursuant to our  
14 memo dated 18 January 2013 -- in first, the document hearing had  
15 been scheduled from the 18th to 21st -- that is, document E236/4.  
16 However, due to the changed schedule and the health concerns of  
17 the Accused, the Chamber cannot hear the testimony of certain  
18 witnesses. We decided to move the hearing of the documents to  
19 this week. Two of the accused -- that is, Nuon Chea and Khieu  
20 Samphan -- although they are being treated at the hospital, they  
21 are mentally fit and they submitted their waivers in writing to  
22 the Chamber on Friday last week. For that reason, the Chamber  
23 will proceed with the document hearing. And before that, we will  
24 want to ask the counsels of Khieu Samphan and Nuon Chea if there  
25 is any change to the condition of your clients regarding the

3

1 waiver of their presence in the document hearing.

2 [09.19.05]

3 And it's for Nuon Chea's defence first.

4 MR. KOPPE:

5 Good morning, Mr. President, Your Honours. There is no change.

6 The client has given us a waiver to go ahead with the document

7 proceedings. The health situation is deteriorating though, so

8 that's troublesome. But there's no change in respect to the

9 waiver issue.

10 MR. PRESIDENT:

11 Thank you.

12 [09.19.42]

13 And Defence Counsel for Khieu Samphan, you may proceed.

14 MS. GUISSÉ:

15 Thank you, Mr. President. Good morning to you. Good morning to

16 the parties in this Chamber. With respect to Mr. Khieu Samphan,

17 the situation remains unchanged. We went to see him, and he

18 confirmed his waiver for the debate on the question of documents.

19 I also know that he's very weak and very tired. We are waiting

20 for fresh information from the medical team, but for the document

21 hearing, he has indeed granted his waiver, and that remains

22 valid.

23 [09.20.33]

24 MR. PRESIDENT:

25 Thank you for your latest update regarding your clients' health

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1 and the waiver of your clients' presence in hearing -- in the  
2 document hearing today. The Chamber, however, would like to  
3 inform the two defence parties -- Nuon Chea's and Khieu Samphan  
4 -- that we will give the opportunity to the two Accused for their  
5 remarks on the documents to be submitted for discussion before  
6 this Chamber in due course, if they wish to do so. As indicated  
7 in our memo -- that is, E258 -- we will hear the discussion and  
8 arguments regarding the remaining documents and the new kinds of  
9 documents to be submitted to be placed in Case 002/01. Those  
10 documents were related and referenced in the Closing Order  
11 regarding the Tuol Po Chrey killing site and the forced movement  
12 of the population -- that is, the paragraph 205, 209, 1115 -- my  
13 apology, that is, 205, 209, 698 to 711, 975 to 977, 1115, 1191 to  
14 93, and 1373 to 75, 1377 to 79, and 1781, 1415 to 1418, 1423 to  
15 1425.

16 [09.23.00]

17 And, in addition, the Chamber will hear the arguments regarding  
18 the 48 documents proposed to be submitted by the OCP before this  
19 Chamber. Those documents are not relevant to the killing site at  
20 Tuol Po Chrey and the displacement of people, as well as other  
21 documents by the OCP related to Tuol Po Chrey killing site.  
22 Other parties who have not submitted -- to have documents placed  
23 before this Chamber -- the purpose of the document hearing is not  
24 for the new discussion or argument regarding the acceptability of  
25 those documents or admissibility of those documents, as the

1 Chamber indicated previously.

2 Many of the documents have been raised and presume to be  
3 submitted before this document -- that is, the E3 type document  
4 -- as they are of importance to this case. However, the public  
5 cannot be informed of all the contents of the E3-type documents,  
6 and the documents that have already been recognized by the  
7 Chamber as submitted by various parties during the proceedings.

8 It is important for the Chamber to know the exact numbers  
9 proposed by the parties, including both the inculpatory and  
10 exculpatory documents that have not yet been discussed before  
11 this Chamber. The discussion is based on the documents deemed  
12 important by various parties in order to ascertain the truth  
13 related to Case 002/01, related to the facts that not yet have  
14 been discussed before this Chamber, and the displacement of  
15 people in the first phase, and the killing site of Tuol Po Chrey,  
16 the military structure, and the movement of people during the  
17 second phase.

18 [09.25.22]

19 We would like to inquire from the Prosecution; what is the  
20 proposal to be made by the Prosecution?

21 MR. DE WILDE D'ESTMAEL:

22 Thank you. Good morning, Mr. President. Good morning to the Bench  
23 and to all of the parties, and to the public here.

24 What we are in fact proposing is talking exclusively about  
25 questions of admissibility. The documents in Annex 1, 2A, 2B, and

6

1 2C of a response that we had given the Chamber in November 2012 –  
2 it's E223/31.1. That's Annex 1. E – I repeat, E223/2/1.2. Annex  
3 2A is E223/2/1.2. And 2B and 2C are roughly the same references,  
4 but which end in 3 and 4. So, E223/2/1.3, and the fourth is .4.  
5 [09.27.18]

6 In fact, on the 23rd of November, 2012, Mr. President, we were  
7 the only ones to respond to your request to inform you about  
8 which additional documents we wanted to bring before the Chamber  
9 concerning forced transfers and Tuol Po Chrey. That's the table  
10 in Annex 2A, 2B, and 2C. In other words, 94 documents that are  
11 distributed over three tables.

12 The first forced transfer, the second forced transfer, and the  
13 third one being Tuol Po Chrey. In addition to that, in the  
14 response to the Chamber, we also took the initiative to include  
15 an Annex 1, which concerned 48 documents which, as we see it, are  
16 the only documents that heretofore have not received adversarial  
17 debate about their admissibility. I don't think -- unless the  
18 Chamber so requests -- that it will be useful for me to explain  
19 how we reached this conclusion about the 48 documents, but all of  
20 the other documents have already been granted hearings in  
21 January, February, and March of 2012, and are essentially  
22 contained in Annexes 1 to 11 and 14 to 20 of document -- if I can  
23 just find it -- E109/4 of 22 July 2011 from the OCP.

24 [09.29.11]

25 Now, there was an exchange of emails last week on the question of



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1 whether we were talking about 48 documents or 500, and in an  
2 email to the Senior Legal Officer, we did establish that the 444  
3 documents that may be included in these ideas, in fact, belong to  
4 Annexes 1 to 11 and 14 to 20, and they've already been discussed  
5 in adversarial debate. If necessary, I can come back to this  
6 issue and explain a little bit more in detail. But to come back  
7 to Annex 1 and the 48 documents; that, in fact, includes two  
8 documents that are contained in the Closing Order footnotes which  
9 concern forced transfer and Tuol Po Chrey.

10 [09.29.57]

11 Why they're only two -- that's simply because we compared, one to  
12 one, all of the documents that are contained in the footnotes for  
13 the paragraphs concerned in the Closing Order and all of the  
14 documents, with the exception of two, have either already  
15 received their E3 code after discussions on Annexes 1 to 11 and  
16 14 to 20, held last year, or were, at the time, considered to be  
17 new documents - but the title of "new" is not entirely correct -  
18 and have already been debated even if decisions have not been  
19 taken about them as yet.

20 Once again, Mr. President, I can go into greater detail if you so  
21 wish. But just to say how we intend to proceed with respect to  
22 Annex 1; apart from the two documents from the footnotes, it  
23 includes six documents that were proposed by the Co-Prosecutors,  
24 three proposed by the civil party Co-Lawyers -- and,  
25 consequently, with respect to those documents, it would be

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1 logical for the Defence to begin to see if they have any  
2 objections to level.

3 [09.31.26]

4 And as for the 114 other documents which we have proposed to add;  
5 they concern forced transfer and Tuol Po Chrey.

6 Coming back to Annex 1, on the table, we also included a certain  
7 number of documents that were proposed by the defence teams and  
8 which haven't yet been subjected to adversarial debate in this  
9 Chamber. This includes four documents that were proposed by the  
10 Ieng Sary defence team, and 21 - if I am correct - proposed by  
11 the Khieu Samphan team. And in that respect, I will point out  
12 already that, out of the 21 documents, the OCP will be objecting  
13 to four. And the remainder of documents were proposed by the Nuon  
14 Chea team, and there were 11 in that respect, to which the  
15 Co-Prosecutors will make, again, four objections.

16 How should we proceed? I believe that, since the Co-Prosecutors  
17 have proposed the maximum number of documents in the annex, I  
18 believe that it should be the Defence teams that should tell us  
19 first what objections they encounter in these documents, and then  
20 we can response. Respond, sorry.

21 [09.33.00]

22 And, in turn, we can make our points about the eight objections,  
23 to which the Defence can then respond itself. That's how I  
24 propose that we proceed, Mr. President. And if we want to be  
25 entirely systematic, perhaps we should start with the objections

1 concerning the 48 documents, and then move on to the 80 or so  
2 other ones proposed by the Co-Prosecutors. That's how I see it,  
3 Mr. President, but, of course, I am entirely at your disposal if  
4 you wish to proceed in a different manner. Thank you very much.

5 MR. PRESIDENT:

6 Counsel, you may proceed.

7 MS. GUISSÉ:

8 Thank you, Mr. President.

9 [09.33.54]

10 Very briefly, I would like to clarify the position of our team  
11 regarding this hearing. As we've had occasion to explain in  
12 various email exchanges, the circumstance of this hearing, which  
13 comes a lot earlier than expected, is that the preparations would  
14 not have been the same if this hearing had been held in February.  
15 We've stated that we encountered difficulties in trying to  
16 cross-check the list as proposed by the Co-Prosecutors. We are  
17 not being defiant here, but no one is immune to error. Under  
18 these conditions, we are satisfied with the indications given by  
19 the Senior Legal Officer that today's hearing cannot be -- cannot  
20 put an end to discussions of these documents, subject to allowing  
21 the Defence and others to revisit the issue of the 48 documents  
22 identified by the Co-Prosecutors as documents that still have to  
23 be discussed regarding admissibility. This is an important point,  
24 because I do not want anyone to say that we did not raise the  
25 issue of admissibility at this stage, regarding documents which,

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1 in our view, have already been presented before the Chamber. On  
2 this point, let me point out the issue raised by the  
3 Co-Prosecutor himself that, initially, we had talked of 500  
4 documents that the Co-Prosecutors reduced them to 48 documents  
5 because they were of the view that some of the documents had  
6 already been discussed alongside Annexes 1 to 14.

7 [09.36.03]

8 To further shed light on what I'm saying, let me recall that in  
9 decision E72/5, the Chamber had pointed out that certain new  
10 documents could be discussed later, and that the record of  
11 proceedings E1/4850 -- that it had been pointed out that  
12 documents in Annexes 6 to 20 were new documents on which  
13 discussions were going to be held. It appears that I'm going too  
14 fast. Let me repeat what I'm saying. At the hearing during which  
15 the record E1/4847.1 -- my learned colleague has said that some  
16 documents in Annexes 6 to 20 were new documents, with respect to  
17 which discussions had been deferred because we had not had a  
18 chance to cross-check each and every one of those documents in  
19 view of today's hearings.

20 [09.37.20]

21 In order to make all objections on the part of Khieu Samphan, we  
22 want to point this out to the Chamber. This brings me to my  
23 second point. In light of your decision, E187/1 of the 3rd of  
24 December, 2012, in which you stated the conditions under which we  
25 can discuss the admissibility of certain documents, it would

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1 appear that your approach is completely different from that of  
2 other international tribunals, that adopt a broader perspective  
3 with regard to admissibility, and you placed the discussions  
4 solely in terms of probative value.

5 We want to point this out at this juncture, because it should be  
6 borne in mind by all the parties to these proceedings. This means  
7 that, after the presentation of all evidence, we should have an  
8 opportunity, regardless of the manner in which we should have  
9 such a discussion -- we should discuss the probative value, so  
10 that, in your deliberations, you may bear in mind the positions  
11 of all the parties regarding the probative value of all these  
12 documents. We cannot avoid such discussions in this trial, given  
13 the weight you attach to evidence in your deliberation. And we,  
14 the Khieu Samphan team, would like to point this out today.

15 I thank you, Mr. President.

16 (Judges deliberate)

17 [09.40.52]

18 MR. PRESIDENT:

19 Thank you. Now, the floor is given to the Prosecution to present  
20 the 48 documents sought by the Prosecutor.

21 (Judges deliberate)

22 [09.43.53]

23 MR. PRESIDENT:

24 Following the deliberation of members of the Bench, and to make  
25 it precisely clear, I hand over to Judge Silvia Cartwright to

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1 advise the parties in relation to the hearing that we are  
2 commencing on.

3 [09.44.11]

4 I now hand over to Judge Cartwright.

5 JUDGE CARTWRIGHT:

6 Yes, thank you, President. The Chamber has agreed that the best  
7 way to proceed is to focus on the 48 documents that the  
8 prosecutors have identified. And the way in which the hearing  
9 will now proceed is this: first, the prosecutors will list those  
10 documents for the sake of the record, but make no further comment  
11 on them. Then the floor will be given to the Defence, who will --  
12 where each team will have the opportunity to object to any of  
13 those 48 documents, and any for which there are no objections  
14 will be effectively set to one side. The prosecutors -- and, if  
15 necessary, the Lead Co-Lawyers -- will then have to the  
16 opportunity to respond to the objections raised by any of the  
17 three defence counsel. So, for this portion of the document  
18 hearing, we are focusing only on the 48 documents identified by  
19 the prosecutors.

20 President, I hope that encapsulates the comments that you had.

21 Thank you.

22 MR. PRESIDENT:

23 Thank you, Judge.

24 [09.45.56]

25 Now, I hand over to the prosecutors.

1 MR. DE WILDE D'ESTMAEL:

2 Thank you, Mr. President. Let me add one point to what Judge  
3 Cartwright has said. Let me remind all of us that there will be  
4 eight objections made by the Co-Prosecutors, so eight objections  
5 to the 48 documents. So this annex does not really have to do  
6 with the documents proposed by the Co-Prosecutors, but by all the  
7 parties. And we have four objections regarding documents  
8 presented by Khieu Samphan, and four objections to Nuon Chea's  
9 statements. We will give the Defence the opportunity to respond  
10 as the Chamber would wish.

11 [09.47.00]

12 The first document in the list of 48 is from a footnote in the  
13 Closing Order. It is 3018, and it is document IS 5.3. And it's a  
14 confession by Moul Sambath alias Ros Nhim, dated the 14th of June  
15 1978. So it's IS 5.63, a Tuol Sleng confession.

16 The second document is a report on the geographic situation from  
17 the Co-Investigating Judges regarding Tuol Po Chrey, and it's  
18 document D125/217. It is quoted in the Closing Order, in the  
19 footnote 3025.

20 Then we have six documents which were not proposed by the  
21 Co-Prosecutors. The first is document E216/3.1. This is a  
22 collection of different extracts from the handwritten  
23 autobiography of Suong Sikoeun, and this was a motion made by the  
24 Co-Prosecutors, 216.

25 The next document is a book by Sambath Teth, and Gina Chon, and

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1 the number is E152.2. It is titled "Behind the Killing Fields".  
2 [09.49.22]  
3 Then we have the biography of Democratic Kampuchea, Long Norin  
4 alias Rith. The exhibit number is E3/128. The sixth document on  
5 the list -- that is, Annex 1 -- is a series of videos of  
6 interviews granted by Khieu Samphan. The references are 152.1.1,  
7 E152 -- up to 152, 53R. These are 54 parts of interview, found  
8 between the two numbers. Then we have transcripts of these videos  
9 -- transcripts where, in writing, the exhibit number is  
10 E152.1.1.1 up to E152.1.54.1.  
11 The next two documents are also videos. The first is a video  
12 produced at the 1998 Khieu Samphan interview. The reference is  
13 A190/1/15R, and E190.1.297R.  
14 Let me point out to the interpreters that I'm only following the  
15 table with reference number E223/2/1.1. If you have it before  
16 you, it will be a very useful tool.  
17 [09.51.54]  
18 The next document is a video. These are video excerpts by Teth  
19 Sambath -- an interview of Nuon Chea. The reference is E93/7.3R.  
20 And there is also a transcript of this excerpt of interviews. And  
21 it's E93/7.2R. Regarding the three documents presented by civil  
22 parties, we retained the book by Raoul Marc Jennar titled "Khieu  
23 Samphan et les Khmer Rouges". Khieu Samphan and the Khmer Rouges.  
24 And the reference is E109/2.3.1.  
25 Then we have a documentary produced by Roshane Saidnattar titled



1 "Survive in the Heart of the Khmer Rouge Madness". And in this  
2 regard, let me point out that there was some confusion, because I  
3 found the reference in Chamber Decision E90.1, but the reference  
4 was wrong. The reference was E109/2.1R. And if you would allow  
5 me, I would say that this is an error. The reference is E01/E. 3R  
6 (phonetic). Perhaps the parties could confirm this subsequently.  
7 [09.53.56]

8 The next document was proposed both by the civil parties and the  
9 Co-Prosecutors. It is a documentary titled "Enemies of the  
10 People", and was produced by Teth Sambath and Rob Lenkin. It  
11 includes the film itself, and 16 clips in the same DVD. The  
12 reference is E16.1R. Then we have four documents proposed by the  
13 Ieng Sary defence team. The first is a book by David Chandler,  
14 titled "Transformation in Cambodia". And the reference is D172.6.  
15 The next document is a book by Michael Vickery titled "Democratic  
16 Kampuchea: Themes and Variations". The reference is E190.1.407.  
17 E190.1.407. Then we have a book by Milton Osborne titled  
18 "Sihanouk: Prince of Light, Prince of Darkness". And the  
19 reference is E190/2.2. And the last document proposed by the Ieng  
20 Sary defence team, which we were able to identify, is a press  
21 article by Douglas Gillison and Ly Hor. And the titled is "177  
22 Released from S-21, DC-CAM Records Show". And the reference is  
23 D22/2052.1. D22/2052.1.

24 [09.56.28]

25 And the last document proposed by the Khieu Samphan defence team

1 -- the first of these documents is an article titled "Bombs Over  
2 Cambodia". And it has two references. The first is E190/2.6.  
3 E190/2.6, I repeat. And the second reference is D153.2 -- .12, I  
4 beg your pardon. D153.12. That document was amended in 2009 --  
5 was updated in 2009. The second document for the Khieu Samphan  
6 team is a book by Ben Kiernan. And the reference is E190/2.10. It  
7 is still on the table that was given to us by the Chamber.

8 [09.57.43]

9 And this book is titled "The U.S. Bombardment of Cambodia: 1969  
10 to 1973, Vietnam Generation". It's a long article, dating back to  
11 1997. Then there is a book by Kimmo Kiljunen. It is titled  
12 "Kampuchea: Decade for the Genocide - Report of a Finnish Inquiry  
13 Commission". And the reference is E190/2.11.

14 Then we have a series of international releases from the U.S.  
15 Department of State: the first document is E190/2.13. E190/2.13 -  
16 it is transcript of a conversation between Nixon and Kissinger,  
17 dated the 9th of December 2010 (sic); then we have a second  
18 document from the State Department, E190/2.14 - I beg your  
19 pardon, the previous release was produced on the 9th of December  
20 1970 [correction by the interpreter] - this document, E190/2.14  
21 is a transcript of a conversation between Kissinger and General  
22 Haig; then we have E190/2.16, dated 1975, "Memorandum of a  
23 Conversation between Indonesian President Suharto and Ford and  
24 Kissinger".

25 [09.59.47]

1 The next document from the U.S. State Department is E190/2.15. It  
2 is dated the 26th of November 1975. It is a memorandum of a  
3 conversation between Kissinger and Prime Minister Chatchai of --  
4 or, the Foreign Minister of Thailand, Chatchai. Then we have  
5 document E190.1.408, this is a document -- notes from the French  
6 diplomat, entitled "Conversations with Pech Lim Kuon", of the  
7 11th of August 1976. This document is from the French Ministry of  
8 Foreign Affairs. Then we have a document from the UN General  
9 Assembly: E190/2.9, dated the 14th of November 1979. It is a  
10 United Nations General Assembly Resolution, 34th Session, on the  
11 situation in Kampuchea. Then we have a number of press articles  
12 -- international press articles. The first of these articles has  
13 reference E190/2.17. It is authored by Noam Chomsky, the "New  
14 York Review of Books", dated the 4th of June 1970. And it is a  
15 special issue on Kampuchea. Then you have an AFP press titled  
16 "Arrival of Laotian Delegation, visiting Cambodia". The reference  
17 is E190.1.412. E190.1.412. Then we have a Times article dated the  
18 4th of May 1976. The reference is E190.1.411. E190.1.441, I  
19 repeat. And it is titled "Defecting Khmer Rouge Helicopter Pilot  
20 Tells of Life in Phnom Penh".

21 [10.02.35]

22 Then we have a Herald Tribune article of the 11th of May 1976.  
23 The reference is E190.1.409. I repeat, E190.1.409. It is titled  
24 "Escape Because of Khmer Brutality". Then there's an article from  
25 Newsweek from the 17th of May 1976. That's document E190.1.410

1 entitled "Cambodia: Two Views from Inside".  
2 The Final one of these international media reports is document  
3 E190/2.8 - E190/2.8. It's an article by William Shawcross,  
4 published in the Far East Economic Review, 7th of January 1977  
5 entitled "Cambodia: The Verdict is Guilty on Nixon and  
6 Kissinger". After that, there were four letters -- or four  
7 testimonies, perhaps -- on which the Co-Prosecutors will be  
8 objecting. I will make that objection at a later stage. The first  
9 is document E190/2.5. The author is Phillipe Jullian-Gaufres, and  
10 the date is the 15th of October 2010. And this is a letter in  
11 favour of Khieu Samphan.  
12 [10.04.34]  
13 The second letter is from Sam Sok. It's dated the 21st of January  
14 2011. Also a letter in favour of Khieu Samphan; and the reference  
15 is E190/2.7 - E190/2.7. The third is from Roland Dumas, dated the  
16 14th of February 2011, E190/2.18. And the fourth of these  
17 testimony letters is from Claude Katz. It was written on the 18th  
18 of April 2011 in favour of Mr. Khieu Samphan, and the code is  
19 E190/2.19. There's a further three documents submitted by the  
20 Khieu Samphan team, and they are media articles from the  
21 Cambodian national media. The first is E190/2.4. And the title of  
22 the article by Jean-Paul Desgouttes is "Interview with Laurence  
23 Picq, June 1984". Then there's an article that came out in the  
24 Phnom Penh Post entitled "Noam Chomsky Interviewed by George  
25 McLeod", dated 27th of March 2009, document E190/2.20 -

1 E190/2.20. And the third is an article by Ben Kiernan and Taylor  
2 Owen called "Roots of the U.S. Troubles in Afghanistan: Civilian  
3 Bombing Casualties and the Cambodian Precedent", dated the 28th  
4 of June 2010, document E190/2.12 - E190/2.12.

5 Then, to close, there are the 11 documents proposed by the Nuon  
6 Chea. The first is an article by Steven Heder, written in 1997,  
7 entitled "Racism, Marxism, Labelling and Genocide in Ben  
8 Kiernan's 'the Pol Pot Regime'". That was written in 1997, as I  
9 said, and its code is E131/1/13.3.

10 [10.08.00]

11 The second document is a book by Joel Brinkley -- or excerpts  
12 from said book. The date is 2011, the title is "Cambodia's Curse:  
13 The Modern History of a Troubled Land". And it's document  
14 E131/1/13.12. This is a document on which the Co-Prosecutors have  
15 an objection. There's a report next: E131/1/13.8 - E131/1/13.8.  
16 It's a report by U.S.G.A.O. of the 30th of April 1974 entitled,  
17 "Report to the subcommittee on refugees and escapees committee on  
18 the Judiciary United States Senate". After that, there's an  
19 international media report by David Shipler, dated 19th of July  
20 1973 which came out in the New York Times, and the title of that  
21 is "Saigon prodded by US, Lends Rice to Cambodia". The document  
22 is E131/1/13.6. After that, there's another international media  
23 article by Sydney Shanberg published in the New York Times on the  
24 19th of March 1975 entitled "The Cambodian Anniversary Marked  
25 only by Misery". E131/1/13.4.

1 [10.10.27]

2 Then there's an article which Angus Deming wrote in Newsweek  
3 entitled "Phnom Penh New Rulers", published on the 22nd of  
4 January 1979, document E131/1/13.7. Then there's another article  
5 by Sydney Shanberg which came out in the New York Times on the  
6 26th of February 1975, titled "Children Starving in Once-Lush  
7 Land". That's document E131/1/13.5. After that, there's an April  
8 1990 article by T.D. Allman published in Vanity Fair which was  
9 entitled "Sihanouk's Sideshow". It's document E131/1/13.2. And  
10 that again is a document to which we would be making an objection  
11 in due course.

12 The last three documents are as follows. The first is a report by  
13 the U.S. Senate entitled "U.S. Air Operations in Cambodia: April  
14 1973". The report is dated the 27th of April 1973, and it's  
15 document E131/1/13.9. Then there is a PRK Council of Minister's  
16 report, dated 23rd of August 1986 which concerns the K-5  
17 Construction Plan for Fiscal Year 1987. Document E131/1/13.11.  
18 The Co-Prosecutors will be making an objection about this  
19 document. And the last, a report by -- dated the 6th or the 7th  
20 of May 1998, concerning a visit to Thailand by second prime  
21 minister Hun Sen, code E131/1/13.10. And that's the fourth of the  
22 Nuon Chea documents proposed, to which the Co-Prosecutors will be  
23 making an objection in due course.

24 [10.13.43]

25 That brings me to an end, Mr. President, of what I admit is a

21

1 rather tiresome reading out of the 48 documents subject to debate  
2 this morning. Thank you very much, sir.

3 (Judges deliberate)

4 [10.15.29]

5 MR. PRESIDENT:

6 After having heard the identification of the 48 documents sought  
7 by -- and presented by the document, we also notice the intention  
8 to object to some of the documents by the prosecutors. We would  
9 like now to hear the objections raised by the Prosecution  
10 regarding those documents as presented just then. And, after  
11 that, the floor will be given to other parties, in particular,  
12 the defence teams. The Prosecution, you may proceed with your  
13 objections.

14 MR. DE WILDE D'ESTMAEL:

15 Thank you, Mr. President.

16 [10.16.22]

17 In fact, Annex 1 is not necessarily documents that the  
18 Co-Prosecutors want to enter into evidence, but in fact all of  
19 the documents that appear to us to be worthy of debate in this  
20 hearing, which is why there are a certain number in the list are  
21 to be objected to by the Co-Prosecutors. Let me begin by the  
22 first objections to the documents submitted by Khieu Samphan. We  
23 don't have any objections to 18 of those -- the majority -- but  
24 there are four letters to Khieu Samphan from different  
25 individuals, as you have seen.

1 And let me briefly repeat the references: it's E190/2.5, a letter  
2 from Philippe Jullian-Gaufres, dated 15th of October 2010;  
3 E190/2.7, a letter from Sam Sok, dated 21st of January 2011; a  
4 letter, then, from Roland Dumas, dated 14th of February 2011,  
5 E190/2.18; and, finally, a letter from Claude Katz, dated 18th of  
6 April 2011, which is E190/2.19.

7 These four testifying letters should, perhaps, not be on the  
8 list. They have specific difficulties connected with them. There  
9 is one question that needs to be clarified in that connection,  
10 which is that these testimonies have been put together at the  
11 initiative of the Khieu Samphan defence, after the closure of the  
12 investigative phase, and they have not been sought by the  
13 investigating Judges independently.

14 [10.18.45]

15 And it seems to us that that unilateral procedure has not been  
16 authorized by the Chamber. It was never specified, in fact, to  
17 what extent references could be requested from independent  
18 parties after the investigation was over. This is not so much  
19 testimonies on moral status of the individual concerned. But also  
20 it concerns the facts, and they concern the historical context,  
21 and the functions that were fulfilled by Khieu Samphan, and  
22 actions he undertook.

23 For example, Philippe Jullian-Gaufres, in his letter, which is a  
24 fairly long letter in E190/2.5 advances several hypothesis about  
25 the motive for Khieu Samphan's succession to Norodom Sihanouk as



1 head of state, or the reasons why Khieu Samphan was not  
2 eliminated during the course of the regime, and you will find  
3 there's hypothesis on page 8 of the document. In French, it's  
4 00809329 -- that's in the French version, I haven't had time to  
5 look up the other language versions.

6 [10.20.16]

7 We believe that the Defence could have asked the investigating  
8 Judges to have heard those people during the investigative stage.  
9 That would have presented an awful lot more guarantees, and if  
10 they want those written documents to be used and for the Chamber  
11 to consider them, then they should, I believe, insist that the  
12 people concerned should appear as witnesses. And three of those  
13 four individuals have been placed on E9/11.2, their list of  
14 witnesses, namely, Roland Dumas, number 6; Jullian Gaufres,  
15 number 10; and Sam Sok as number 19 on that list. Claude Katz  
16 does not appear anywhere. So we'd like to ask the Chamber to  
17 adjudicate on that matter.

18 [10.21.13]

19 Opposition is that those written testimonies, because they were  
20 requested at the initiative of the Defence and put on the files  
21 by them alone, should not stand as having probative value because  
22 they concern the acts of the Accused unless the other parties  
23 have a chance to question them if they come to testify. It's just  
24 a matter of fairness really, and respect for the adversarial  
25 procedures of this trial.

24

1 If these are merely letters of support which have regard to the  
2 personality of the Accused, that is another matter. But given  
3 that they also concern facts, then the individuals would be  
4 called to testify in person or else their document should not be  
5 taken into account. Perhaps, as I said at the start, I should  
6 never have put those four letters on my table, and perhaps they  
7 should be discussed at a future hearing on different statements  
8 by witnesses, whether made before investigating Judges, DC-Cam or  
9 whatever. And perhaps these four pieces of testimony should be  
10 discussed at another hearing.

11 [10.22.31]

12 The four objections concerning the Nuon Chea defence documents.  
13 We can test relevance here mainly of the four documents. The  
14 first is the book by Joel Brinkley "Cambodia's Curse -- The  
15 Modern History of a Troubled Land". The reference is  
16 E131/1/13.12. What is at issue is a chapter that has been  
17 selected by the Nuon Chea defence which does not concern the  
18 facts of which the Chamber is seized. Rather, it is an analysis  
19 of a political nature, of the current legal and political  
20 predicament of Cambodia, and it talks about certain factors that  
21 led to the creation of the ECCC itself, and the way that it  
22 functions.

23 [10.23.50]

24 We don't see any direct relevance between Joel Brinkley's  
25 writings and substantive proof relating to facts between 1975 and

1 1979, in particular as it refers to the first trial segment that  
2 is before us.

3 The second is an article by Allman in "Vanity Fair". It's  
4 E131/1/13.2. It was published in 1990, and in our estimation it  
5 has no particular interest for the dossier before this Chamber.  
6 It is a political article that concerns the personality of  
7 Norodom Sihanouk and Prime Minister Hun Sen, and which recounts a  
8 certain number of stories and anecdotes proven or otherwise. But  
9 it has nothing to do with the substance of the matter that is  
10 before us. I do not believe that the article will contribute to  
11 the elucidation of the truth in this Court and we therefore,  
12 object to it on the grounds of absence of relevance.

13 [10.25.11]

14 The last two documents are E131/1/13.11, which is a report by the  
15 PRK Council of Ministers, of the 23rd of August 1986, concerning  
16 the construction plan for K-5 for fiscal year 1987. And I would  
17 like to say that in several hearings before this Chamber, the  
18 Bench has stated that matters concerning K-5 were not pertinent  
19 to this trial and each time the Nuon Chea defence raised  
20 questions on this matter to certain witnesses. There is no, in  
21 our view, direct link between the 1986 military plan elaborated  
22 to combat the Khmer Rouge and the crimes that were committed  
23 during Democratic Kampuchea.

24 This document is consequently not relevant for this trial and  
25 suggestions about the utility of such documents for demographic

1 purposes and the number of deaths during the era of Democratic  
2 Kampuchea has never really been seriously established by the  
3 Defence, and it does not therefore seem to us, that this document  
4 provides anything useful to the debate and the Bench had  
5 adjudicated on this.

6 [10.26.41]

7 Finally, before us there is report E131/1/13.10, dated 6th or 7th  
8 of May 1998. It concerns a visit by second Prime Minister Hun Sen  
9 to Thailand and the discussions that ensued. It's a purely  
10 political document that relates to a certain context in 1998,  
11 which seems not to have any juridical value in this trial. It  
12 doesn't concern the facts that are put before us at this  
13 juncture, and what is more, I believe that the Chamber's position  
14 on this kind of document is pretty clear.

15 With respect to statements that may be contained in this kind of  
16 document by political figures, the Chamber has declared that it  
17 is independent from any recent or less recent statements by  
18 political figures, and the document does not concern facts that  
19 concern this tribunal with respect to Democratic Kampuchea  
20 between 1975 and 1979.

21 [10.28.13]

22 So that, therefore, concerning those four documents, and as  
23 regards to the four prior ones I mentioned, are ones upon which  
24 we would object. With respect to the Nuon Chea document, the  
25 Article 97 relevancy criteria are manifestly not fulfilled, and

1 that is why we do object to them and to the others before this  
2 Chamber.

3 Thank you.

4 (Judges deliberate)

5 [10.29.18]

6 MR. PRESIDENT:

7 Thank you, the co-prosecutor.

8 The time is appropriate for a short break. We will take a  
9 20-minute break and return at 10 to 11.00. The Court is now  
10 adjourned.

11 (Court recesses from 1029H to 1053H)

12 MR. PRESIDENT:

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

14 We would like now to give the floor to the Lead Co-Lawyers if you  
15 have any objections to make regarding the documents whose  
16 identifications have been presented by the Prosecutor, and if you  
17 have, please proceed.

18 [10.54.45]

19 MS. SIMONNEAU-FORT:

20 Good morning, Mr. President. Good morning, Your Honours, and good  
21 morning to everyone. Regarding the civil parties, we do not have  
22 any additional objections. However, we endorse the objections  
23 that have been made by the Co-Prosecutor on four documents by the  
24 Khieu Samphan team and four documents by the Nuon Chea team. We  
25 are of the view that these documents are not relevant; we do not

1 have any other objections to make.

2 MR. PRESIDENT:

3 Thank you.

4 The floor is now given to the Defence teams to respond to the  
5 objections raised by Co-Prosecutor regarding some of the  
6 documents of those 48 documents presented by the Prosecutor this  
7 morning. First, Nuon Chea defence is given the floor and you may  
8 also express any objections to one or several of the documents of  
9 those 48 documents you may also do so. You may proceed.

10 [10.56.03]

11 MR. KOPPE:

12 Thank you, Mr. President. At this point in time, we do not have  
13 any objections to make, nor do we have any comments on the  
14 objections made by the Prosecution.

15 MR. PRESIDENT:

16 Thank you.

17 The floor then is given to Ieng Sary's Defence; if you have any  
18 comment or objections to make.

19 MR. KARNAVAS:

20 Good morning, Mr. President. Good morning, Your Honours, and good  
21 morning to everyone in and around the courtroom.

22 Last week, we received about a dozen email exchanges and today it  
23 appears that the Trial Chamber has opted to the approach that the  
24 Prosecution has suggested. We were under the impression that one,  
25 we were to file written submissions on all of these documents,

1 and we are prepared to do that, and we will be doing that. In  
2 other words, with each document, we will have our objection in a  
3 written form, in the order in which they have been presented in  
4 the annexes.

5 As for the -- my oral presentation today, I will speak in broad  
6 terms because that's what I prepared to do base on my  
7 interpretation of the dozen or so email exchanges that we  
8 received. And I will limit my comments to the types of documents  
9 that are in this particular annex. And we note that there are  
10 nine types of documents, nine different categories; I will list  
11 them and then I will go through each one of them. And they are  
12 not necessarily in the order in which they are presented in this  
13 annex.

14 [10.58.10]

15 There is an OCIJ investigative document, it's a rogatory letter  
16 -- completion report -- there are videos, there are letters;  
17 these are particularly related to the Khieu Samphan team.  
18 Confession, Long Norin's biography, there are some foreign  
19 government documents or reports, international communication  
20 documents, media articles, books, and academic articles. And our  
21 general comments are -- and I'll go one by one -- with respect to  
22 OCIJ rogatory completion reports, why is that necessary to  
23 introduce? It offers nothing, perhaps there is a summary of a  
24 summary, but what evidentiary value does it have? Zero. The  
25 investigator can come in, or the witnesses can come in. But to

1 have a summary of a summary come in, and to present it as  
2 substantive evidence is utterly useless and has no evidentiary  
3 value. And as such any investigative letter of completion report  
4 should be outright denied.

5 [10.59.29]

6 Videos; videos are – it doesn't matter who makes them. In this  
7 particular instance we have one videographer whose even been  
8 celebrated around the world for having made a documentary  
9 concerning certain interviews that he did over a course of 10  
10 years. And while we commend that as a work of art, suffice it to  
11 say, this was based on hundreds of hours of recordings, much of  
12 which was edited away in order to present the videographer's  
13 point of view and the narrative which they had in mind. So, as a  
14 matter of principle, we would object to any videos of this nature  
15 coming in, unless all the edited material be made available to  
16 the parties, all of it. In other words, this particular  
17 individual, Sambath, can produce copies of all his archives and  
18 so we can see what exactly was left out. Because there may be  
19 exculpatory information or the material that was left out, edited  
20 away, may shed a different point of view if taken in context.

21 [11.00.59]

22 The letters in support of Khieu Samphan: We, in principle, take  
23 no position; obviously every accused is entitled to present  
24 evidence in support of one's character. We leave it to the Khieu  
25 Samphan team to expand on why the letters are important, and why



1 they were obtained in the manner in which they were obtained. But  
2 we certainly do not object to those letters, and in fact we whole  
3 heartedly support their admission at this point.

4 Confessions: well, what can I say? We've argued this point  
5 repeatedly. And so anything that is tainted by torture should be  
6 kept out, period. Which means the fruit of the poisonous tree  
7 should also be kept out. Anything that was used from a confession  
8 should also be kept out.

9 Long Norin's biography: It seems that's the only biography that  
10 we have here, Long Norin testified, the parties had an  
11 opportunity to question him, he indicated that he had written a  
12 biography. His old testimony is sufficient in our point of view,  
13 if anyone wanted to use the biography at the time they could have  
14 used it, and therefore, as a matter of principle, we see no use  
15 of it coming in at this point in time, especially since evidence  
16 was taken on that issue.

17 [11.02.45]

18 Foreign government, UN and NGO reports: Here, we strongly  
19 disagree with any of such reports no matter who tries to  
20 introduce them. It doesn't matter whether it's someone from the  
21 Defence side or someone from the Prosecution or civil parties. We  
22 think that all such documents, especially anything coming out of  
23 the United States and France is suspect, more so I would say from  
24 the United States. Since we all know they were conducting a  
25 covert dirty war where they were carpet bombing the entire

1 section up in the Eastern part of Cambodia, while at the same  
2 time lying to the American People and lying to the US Congress.  
3 And therefore anything that comes from the United States would  
4 automatically be suspect and so, therefore, as a matter of  
5 principle, we would object to those sorts of documents coming in,  
6 unless, of course, the authors can come in, and can give  
7 evidence; we do not see how possibly we can accept a report from  
8 either the US government or the World Health Organization when we  
9 have no ability to examine the author and to see what the sources  
10 of knowledge were in preparing the report.

11 [11.04.19]

12 International communications are somewhat similar; we see some  
13 documents that were provided by the US Department of State. Of  
14 course, again, I have noted how suspect we are because a great  
15 deal of disinformation was going on. Here we have some documents  
16 that were generated by the American Embassy in Bangkok, we submit  
17 that, in light of what was going on at the time, one has to be  
18 very suspect as to what was actually collected at the time, and  
19 how it was put together. The narrative that is, what was kept out  
20 for national security reasons or any other reasons. And  
21 therefore, if any such documents are to come in, then the authors  
22 should also come in to give - to have their - to give evidence  
23 and to be examined. So we think it would be a violation of our  
24 client's rights to have such documents coming in without any  
25 confrontation.

1 [11.05.26]  
2 Media articles: A newspaper article dating back either before  
3 1975 to 1979, during that period, or after, we submit, should not  
4 come in. If the author wishes to come and give evidence as to  
5 what he or she may have seen on a particular period which is  
6 relevant, relevant to the temporal jurisdiction of this tribunal,  
7 such as the fall of Phnom Penh, and the evacuation period, we see  
8 no problem. We see no problem with an American journalist, a  
9 French journalist, a Cambodian journalist coming in and giving  
10 evidence. What we do object to are media articles coming in as if  
11 that is the truth, as if the narrative is indeed an accurate one;  
12 especially when the articles are likely to be used as substantive  
13 evidence.  
14 Books and academic articles: That's the last category; we went  
15 through documents, such as books that we had initially proposed.  
16 And this trial has taken a life of its own as any trial would  
17 because it's an organic process, and as the trial begun and has  
18 progressed, obviously, our position has somewhat shifted. But our  
19 position in general is that if a book is to be introduced, then  
20 the author ought to be here to give evidence. So what does that  
21 mean? Kiernan is not here, he is not giving evidence; none of his  
22 books should come in. Same thing I would say for Osborne, I would  
23 say for Brinkley, I would say for anyone. No books, no academic  
24 articles unless the individual comes to give evidence and the  
25 parties have an opportunity to examine the author both on the

1 sources and especially the methodology. And, frankly, I think in  
2 addition to that, the Trial Chamber has to make very sure that  
3 before anything comes in, it has to be relevant, relevant to the  
4 temporal jurisdiction and the limited purposes of 002/01.

5 [11.08.15]

6 As I've noted, Mr. President and Your Honours, we will be filing  
7 written submissions in great detail as to each document that is  
8 listed here. And as I understand, we also had other annexes as  
9 well that we have been working on, so we will raise our  
10 objections in writing less there be any misunderstanding as to  
11 what our positions are. And with that, unless there are any  
12 questions from the Bench, that concludes my submissions and thank  
13 you very much.

14 MR. PRESIDENT:

15 Thank you Counsel.

16 We would like now to give the floor to Khieu Samphan's defence to  
17 comment or to make objections to the documents presented by the  
18 Co-Prosecutor; you may proceed.

19 MS. GUISSÉ:

20 Thank you, Mr. President. I should not take up too much of your  
21 time no the questions of the objections, I will simply recall  
22 what I said earlier, that reading your decision of the 3rd of  
23 December 2012 set out the broad lines of your decisions on the  
24 matter. I would echo the statement by my colleague concerning  
25 video materials, as we said in the first hearing on documents.

1 And this is a point that applies to a video of Mr. Khieu Samphan  
2 that was referred to by the Co-Prosecutor. In this connection, I  
3 would state that if we have video extracts that were filmed by  
4 some journalist or other we don't know, statements answering  
5 questions of which we are not aware and we do not know where and  
6 how the video was filmed, how it was produced, in what conditions  
7 the comments were made, then there's no way you can assess the  
8 probative value of such material. And it should therefore be  
9 considered inadmissible as evidence, that's my first point.

10 [11.10.58]

11 The second concerns these letters, and these I will just recall  
12 the references of - or, for your benefits, it's E190/2.5, and  
13 it's E190/2.7, E190/2.18, E190/2.19. The Co-Prosecutors and the  
14 civil parties object to these letters but they ought to be viewed  
15 within the context in which they have been put before the  
16 Chamber. And on that point, I would remind you of E9/9.2 dated 23  
17 February 2011 in which we listed the witnesses we wanted to call.  
18 Let this be clear, the letters we are requesting to have put  
19 before the Chamber emanate from that list, and for Ms. Claude  
20 Katz, for example, who is contained in annex - whose letter is  
21 contained in Annex 1, E223/2/1.1 whose letter itself is  
22 E190/2.19. Now, that is not on our list of the 23rd of February  
23 2011 simply because her letter arrived after that date. That's  
24 the only reason it's not on that list, let it however be clear  
25 that we did submit these references that concerned Mr. Khieu

1 Samphan's testimony but they are not ex nihilo. They concern  
2 these peoples meetings with Mr. Khieu Samphan and the context  
3 that is referred to therein is very important. We would like  
4 these people if possible to be called to testify before this  
5 Chamber and indeed we believe they should testify before this  
6 Chamber.

7 [11.13.36]

8 In cases where witnesses are called and all the prior  
9 documentation is required, we would therefore believe that this  
10 is part of the necessary documentation that precedes their  
11 appearance before this Chamber. Now, the only remaining question  
12 is whether or not the Chamber decides to call these witnesses to  
13 testify. But, as we see it, this is exculpatory material. It is  
14 part of our worries about the way in which the investigating  
15 stage was conducted, because there was not enough exculpatory  
16 evidence examined from witnesses who could provide it. And we do  
17 believe that this may be harmful to the case of Mr. Khieu  
18 Samphan. In other words, these individuals who have known him  
19 over the years and who are able to testify to his personality and  
20 to the context in which he was living and working; all of this is  
21 very important to us and we ask that these individuals be called  
22 before the Chamber to testify. We know that there is a session on  
23 hearings to be conducted and if you do not accept that all of  
24 these witnesses be called then it is at least important that the  
25 letters be included on the case file, because -- and be put

1 before the Chamber, because there are very important elements of  
2 information contained in them.

3 [11.15.29]

4 This is an issue that concerns respect of the rights of the  
5 Defence. We made it absolutely clear that we are talking both  
6 about the historical context and the personality of Khieu  
7 Samphan. We have not tried to deceive anybody on that issue and  
8 the aspects of that that are on -- described by these witnesses,  
9 belong to the historical context. This is something I wish to  
10 stress: I think these letters should be considered admissible.

11 There isn't a relevancy issue here. I believe the Co-Prosecutor  
12 mentioned that they were not relevant and he was wondering about  
13 precisely how the letters were obtained. Well, I think that's  
14 very easy to clarify, especially if the witnesses could be  
15 brought before this Court to explain themselves.

16 Those are the comments I would like to make, Mr. President, about  
17 the four objections raised by the Co-Prosecutors. There isn't an  
18 issue of relevance here; this chimes in very closely with the  
19 character of Mr. Khieu Samphan and of the historical context.  
20 Because the way in which each of these people met Mr. Khieu  
21 Samphan is part of the whole historical context question.

22 Thank you, Mr. President.

23 MR. PRESIDENT:

24 Thank you.

25 The floor is now given to the Co-Prosecutor to respond to the

1 objections raised by the Defence as well as their objections or  
2 remarks regarding the objections by the Co-Prosecutor; you may  
3 proceed.

4 [11.17.35]

5 MR. DE WILDE D'ESTMAEL:

6 Thank you, Mr. President. Let me begin by answering the Ieng Sary  
7 defence.

8 The Nuon Chea Defence did not wish to make any comments so let me  
9 go towards the comments by Counsel Karnavas.

10 First, we are opposed to written objections being sent in to the  
11 Chamber on the 48 documents. We have a chance to discuss them  
12 now; we do not believe that things should be drawn out.

13 Otherwise, what is the point in holding this particular hearing  
14 today? Other questions may of course be raised about other  
15 documents, and the future of the 94 documents that we proposed  
16 additionally on the subject of force transfer and Tuol Po Chrey.  
17 If we don't have a chance to talk about them this morning, then I  
18 imagine a decision will be taken about whether or not the Defence  
19 can submit written objections to the Chamber and the parties on  
20 those documents.

21 [11.18.46]

22 What I would note, however, is that as of the 23rd of November  
23 2012, we sent in what we believed constituted the list of  
24 documents that needed to be discussed. And none of the parties on  
25 the Defence side responded. No defence team wished to raise any



1 objections or to contest the number of documents. Now I see that  
2 we are talking about future written objections and I don't think  
3 there's any place for that. We are here to talk about it today  
4 and we have heard a certain number of objections that were raised  
5 in extremely general terms and the counsel for Ieng Sary pointed  
6 this out himself.

7 But there is another difficulty: when I hear Counsel Karnavas, it  
8 seems to me as if we are going back one year. We talk about  
9 documents submitted between January-March 2012. But since then  
10 there have been three successive decisions, unless I am mistaken,  
11 by this Chamber of which the Ieng Sary Defence is not taking any  
12 account. And in those decisions, you can see that the objections  
13 that are raised, in general terms, cannot be taken forward  
14 because they have to be specific and detailed if the documents  
15 are not to be considered inadmissible. And I think those are very  
16 general terms that we have heard today about the different kinds  
17 of objections that the Ieng Sary defence is making need to be  
18 precise and specific for this Chamber to change any of its  
19 rulings which, except for a few exceptions, concern the documents  
20 submitted by the Co-Prosecutor's last year.

21 [11.20.56]

22 Coming into one or two points of detail, let me point out that in  
23 the list of 48 documents contained in Annex 1 E223/2/1.1, there  
24 is no rogatory letter from the investigating Judges. They may be  
25 in other tables that we might discuss at a later stage, but in

1 this particular table there is not a single one. And I read the  
2 contents of the document earlier this morning; there is one  
3 document from the investigating Judges that concerns a footnote  
4 in the Closing Order. And it is a report, a geographic situation  
5 report on Tuol Po Chrey. Perhaps I need to point out, once again,  
6 that documents that have been quoted in the footnotes of the  
7 investigating Judges' Closing Order benefit from a simple  
8 presumption of reliability, authenticity, and relevance.

9 The investigating Judges have already conducted an investigation  
10 of those documents in a very meticulous way. And it -- I think,  
11 indicates the need to be very specific about these objections for  
12 documents contained in those footnotes.

13 Another ruling that the Ieng Sary defence might do well to  
14 remember is decision E185, paragraphs 21 and 31. And those terms  
15 were repeated in paragraph 9e of the second decision on documents  
16 E185/1 of the 3rd of December 2012. And what the Chamber said  
17 there concerning a certain number of categories of documents was  
18 that no rules of procedure enforced before the ECCC makes it  
19 possible to claim that the probative evidence in documents can  
20 only be produced in discussions when a witness or civil party  
21 comes to testify and can authenticate them.

22 [11.23.30]

23 With respect to books, analytical documents, and documentary  
24 films or press articles, these are not a category of probative  
25 evidence that should be excluded, per se, on the understanding

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1 that the Chamber will adjudicate on whatever weight should be  
2 given to them. That's what the document said and the Chamber has  
3 already said that you should not assume that any author of any  
4 book or article should have to be called before the Chamber to  
5 testify for the document to be considered admissible. So I am  
6 interested to hear the Ieng Sary defence saying that all of the  
7 authors of press articles and books have to testify. And he  
8 quotes the name of Osborne; well I would point out that it's the  
9 Ieng Sary defence that did propose Milton Osborne's book,  
10 E190/2.2. And contrary to the Chamber's decisions, I now hear the  
11 Defence saying that if Milton Osborne doesn't come then the  
12 Defence is objecting to its own document, and consequently can't  
13 be used before this Chamber.

14 [11.24.58]

15 I'll try and be more specific about other general objections that  
16 we have heard. Let me begin with S-21 confessions, I think the  
17 Chamber has been very clear on this point, so have the  
18 Co-Prosecutors. Everybody agrees before this Chamber that  
19 documents that emanate from torture cannot be used. But there are  
20 a certain number of authorized usage, such as confessions that  
21 were obtained in S-21 and Article 15 of the Torture Convention  
22 actually provides for this and the first document is IS 5.63 and  
23 these are Moul Sambath alias Hu Nim's (phonetic) confession from  
24 S-21, Northwest Secretary, dated the 14th of June 1978. And let  
25 me remind you that the Chamber itself judged all of the S-21

1 confessions inadmissible in its decision of the 3rd of December  
2 2012. And I refer to paragraph 17 of that decision which itself  
3 refers to paragraph 21.9 of the Chambers decision dated 9th of  
4 April 2012, E185, concerning Annexes 1 to 5.

5 [11.26.32]

6 The use of confessions is relatively limited, we totally agree  
7 with that by the Torture Convention and I believe that the  
8 parties have kept in line with that practise during this trial,  
9 but I would also point out that the use that is permitted by  
10 Article 15 of the Torture Convention is the - firstly, to  
11 demonstrate the reality of the person's attention; the reality of  
12 interrogation during such detention, or to show that torture  
13 itself has been used or the subsequent execution of the prisoner.  
14 Within the S-21 confessions -- and this is not an exception here  
15 -- there are annotations. And those annotations do not fall  
16 within the purview of the Torture Convention because they are  
17 written by the person conducting the torture.

18 [11.27.47]

19 Second document IS 5.63, this comes from DC-Cam and it's  
20 mentioned in the Closing Order footnotes and there is dual  
21 assumption of relevance and reliability here. That assumption is  
22 justified by the fact that the investigating Judges have already  
23 assessed the reliability and authenticity of the doctor and there  
24 is also the fact that the Chamber has already agreed that the  
25 methodology used by DC-Cam is reliable. And that it is not

1 reasonable to suspect that documents from that Centre may have  
2 been falsified or tampered with. And that's the subsequent  
3 decision after -- actually bringing to senior members of that  
4 institution to testify here. There is S-21 confession from Moul  
5 Sambath alias Hu (phonetic) Nhim, that I mentioned. This has all  
6 of the characteristics of a statement that is considered suitable  
7 before the Chamber. It includes a typewritten part and a  
8 handwritten part that is written by the interrogator of Hu Nhim  
9 (phonetic), and the document also contains the signature of Nhim.  
10 Kaing Guek Eav, alias Duch, recognized the authenticity of the  
11 S-21 confessions before this hearing and this one is no different  
12 in its shape or form from other confessions.

13 [11.29.49]

14 Finally, concerning these S-21 confessions, the arrest and  
15 imprisonment of Moul Sambath alias Hu Nhim (phonetic), and  
16 Secretary from the Northeast, is corroborated by testimony of  
17 Duch before this Chamber of the 25th of November 2011 -- 2009,  
18 the interpreter corrects himself -- in the first trial, and the  
19 transcript has this on page 55, line 22 in English which says -  
20 and I quote - it's in English: "She had been arrested. Nhim too  
21 was arrested. Nhim was arrested perhaps in May 1978. Nhim was  
22 arrested when Mok was appointed to be the Secretary of the  
23 Northwest Zone." End of quote.

24 [11.30.53]

25 So, Duch corroborates the fact that Nhim, Hu Nhim, was arrested

1 in May 1978. The confessions on record, dated 14th of June 1978,  
2 which corresponds to the same period. I will not dwell on the  
3 geographic report by the Co-Investigating Judges. There were no  
4 -- there were objections regarding various videos.

5 I'll say a word regarding Long Norin's biography. At the hearing  
6 of the 8th of December 2011, he discussed that biography that was  
7 presented to him by the Co-Prosecutors and he authenticated (sic)  
8 it and I don't think that document poses any problem, and the  
9 reference is E3/118. It refers to transcript E1/18.1, at the  
10 beginning of the hearing, during the hearing in which that  
11 biography was presented, regarding documents that were produce by  
12 Thet Sambath from several interviews that he conducted with Nuon  
13 Chea during a period of six years.

14 [11.32.40]

15 The three documents presented by the Co-Prosecutors that are  
16 produced by him, we requested that that person be heard as a  
17 witness. First, we have the documentary film, E186, which he  
18 produced with Rob Lenkin, "Enemies of the People". Indeed this is  
19 a film that puts together different excerpts, so it puts together  
20 a number of statements by Nuon Chea. You can argue that it is  
21 partly produced, but nevertheless, there are statements by Nuon  
22 Chea that were recorded and produced in that film. The relevance  
23 and authenticity of these interviews of Nuon Chea cannot be  
24 reasonably challenged before this Chamber, in our view.

25 [11.33.40]

1 Furthermore, at the hearing of the 14th of December 2011, and in  
2 document E1/22.1, at 11.45 a.m., Nuon Chea admitted that he was  
3 interviewed over a period of several years by Thet Sambath. He  
4 also acknowledged that during his statements to Thet Sambath he  
5 told the truth. That is what he states at 11.47 a.m. He said he  
6 trusted him. Even though he said that, he was not aware of the  
7 fact that Thet Sambath was going to produce a documentary film  
8 that would be disseminated abroad. When Nuon Chea commented on a  
9 book that he wrote -- I will return to that shortly.

10 [11.34.33]

11 But that documentary film, E86.1R and the attachments that  
12 accompany it are very important to establish the role of the  
13 Accused, as well as the system that was put in place during the  
14 Democratic Kampuchea regime to identify and eliminate the enemies  
15 of the regime, which was one of the policies of the Party, which  
16 is a subject of this first trial.

17 The interviews in that documentary film also concern the  
18 Democratic Kampuchea regime itself, it's the historical context  
19 prior to that, and the way power was organized during that  
20 regime. Furthermore, let me point out that excerpts of that  
21 documentary film have already been presented before the Chamber  
22 on several occasions by civil party lawyers, and on those  
23 occasions the Defence did not object to that being shown.

24 [11.35.42]

25 We have a second documentary film by Thet Sambath. These are

1 videos with the reference E93/713R (phonetic) and E93/7.3R. These  
2 are video clips that the Co-Prosecutors placed on the record at  
3 the time when they didn't have any documentary films in their  
4 entirety. These are interviews of Nuon Chea by Thet Sambath from  
5 the same series of interviews of Nuon Chea which he did over a  
6 period of several years. So these interviews were found, and that  
7 is what is explained in the request E93 by the Co-Prosecutors, on  
8 YouTube. The first time was in 2011 when the documentary film was  
9 not yet available.

10 We agree that this may pose a problem of having duplications --  
11 duplicates on the record, but they are before the Chamber,  
12 they're on record. So there are three pages of transcripts of  
13 these excerpts available under reference E93/7.2, and that is  
14 what distinguishes those videos from the documentary films I  
15 refer to.

16 [11.37.21]

17 Now, I would like to talk about the book by Thet Sambath and Gina  
18 Chon, titled "Behind the Killing Fields" . This document E152.2  
19 has been the subject of specific investigations by the  
20 Co-Prosecutors, E152, regarding the videos on Khieu Samphan and  
21 the Chamber accepted that this be placed on record, pursuant to  
22 Article 187.4. We stated at the time that that book was based on  
23 lengthy interviews granted by Nuon Chea to Thet Sambath, and this  
24 is what the authors' state in the chapter at the very beginning  
25 of the book. The authors' state that this book is their version



1 of what Nuon Chea said and it's based on over 1,000 hours of  
2 interviews conducted over six years.

3 This book, essentially, contains quotations made by Nuon Chea,  
4 meetings with Nuon Chea. Adopting his point of view from the  
5 years when he was underground, up until the period of Democratic  
6 Kampuchea regarding Nuon Chea's statements, regarding the  
7 historical context and that role of the Accused, before, during,  
8 and after the period from 1975 to 1979, regarding the structure  
9 of the regime, the policies of the Democratic Kampuchea  
10 government; including the forced transfer policies, the transfers  
11 of civilian populations.

12 [11.39.12]

13 This book is very important. It should be admitted by the  
14 Chamber. It is in line with the case law of the Court and as I  
15 stated earlier, the authors of this book do not have to appear as  
16 witnesses in order for this book to be admitted into evidence.  
17 That said, we requested that the author of this documentary of  
18 film be called as a witness, something that would enable us to  
19 resolve a question regarding this book. It is the issue, who is  
20 truly the author of this book. At the hearing of the 14th of  
21 December 2011, the transcript E1/22.1, at 12 noon, Nuon Chea  
22 stated the following which establishes the reliability of the  
23 book. He stated - and I quote:

24 [11.40.10]

25 "I wrote a biography. I asked Thet Sambath to publish this book,

1 this biography, in Cambodia. He said he would prefer to publish  
2 it in New York because Cambodians did not like to read very  
3 much." And further on he states: "I authorized him to do so. I  
4 wrote on the history of the regime and Thet Sambath translated  
5 that into English." End of quote.

6 He subsequently complains that this book was published without  
7 his approval. Be that as it may, this publication shows the close  
8 link he had with this book and Thet Sambath, as well as  
9 biographies written by Nuon Chea.

10 [11.40.58]

11 In this regard, with a view to bringing to truth to light, this  
12 book should be admitted and placed on record, independently of  
13 whether the author of the book appears before this Chamber or  
14 not.

15 Let me turn to the statement by Khieu Samphan's defence. He  
16 talked about the 53 long interviews of Khieu Samphan. She stated  
17 that they didn't have the name of the journalists, nor the  
18 questions, nor the circumstances surrounding the video. It's not  
19 completely untrue. But the conclusions drawn by Khieu Samphan's  
20 counsel, focus on the probative value of those interviews, and  
21 not on the issue of admissibility.

22 [11.41.53]

23 Now, we are talking of 53 videos, the references are E152.1.1R,  
24 up to E152.1.54R, as well as all the transcripts of those  
25 interviews. That is E152.1.1 and E152.1.54.1. So, these are 53

1 videos of long interviews that last eight hours, more than eight  
2 hours, and Khieu Samphan is the only person who appears on the  
3 screen throughout those long hours. It would appear that the  
4 videos were done over two days, and these 53 videos were  
5 classified under one column, and the Co-Prosecutors gave a number  
6 of explanations in the motion E152 of the -- and these excerpts  
7 of videos have to do with the historical context of Democratic  
8 Kampuchea, the role and responsibility of the Accused, the  
9 structure of the regime and various policies, including  
10 population transfers.

11 [11.43.37]

12 We do not know, indeed, who is the journalist asking the  
13 questions, but we hear a voice, the voice of someone asking  
14 questions, contrary to what the Defence has said. However, that  
15 person is not identified, but the fact is, it is Khieu Samphan  
16 who is being questioned and we cannot imagine that this is a  
17 forgery or trafficked video. We request that the transcripts of  
18 these videos should be tendered into evidence.

19 Regarding the letters and testimonies produced, we have heard the  
20 position of Khieu Samphan's counsel who reiterates the request  
21 that those persons be called before this Chamber. And this is not  
22 in line with what would -- the arguments I raised earlier, but  
23 this Chamber should clarify under what conditions the counsel for  
24 the Accused can contact witnesses.

25 I have no further arguments to raise in support of my objections,

1 Mr. President.

2 [11.45.12]

3 MR. PRESIDENT:

4 I hand over to the Lead Co-Lawyer for the civil parties first,  
5 because that will be in addition to the objection as well as the  
6 response by the Prosecution to the objection by the defence  
7 counsel.

8 MR. PICH ANG:

9 Good morning, Mr. President. Good morning, Your Honours.

10 [11.45.43]

11 I am representing the civil parties. I would like to raise a few  
12 points in relation to the objection by Counsel Karnavas and  
13 lawyer for Khieu Samphan, in relation to Document 11, which  
14 concerns the video document. And my esteemed colleague,  
15 Simonneau-Fort, will provide additional arguments because the  
16 documents that have been put before the Chamber now, the video  
17 that lasts for several hours, and we do not know whether or not  
18 the questions will be corresponding to the answer, and we do not  
19 know under what conditions the video were produced.

20 If we look at the basis of the objections, we do not see any  
21 rational grounds, or in other words, there is no sufficient  
22 ground in order to indicate to the Court that the videos were  
23 done under exceptional circumstances. And if you look at these  
24 videos, it depicts the activities of the accused Nuon Chea and  
25 Khieu Samphan, who, at that time had full freedom to speak in the

51

1 region where he was residing at that time, and the videos were  
2 taken over there as well.

3 [11.47.30]

4 So it - we believe that these can be the reliable evidence and in  
5 addition, since this video describes the activities of the  
6 co-accused, namely the activities that the Accused were  
7 describing of the events that unfolded in the - within the  
8 temporal jurisdiction of the Khmer Rouge Tribunal and this is  
9 indeed relevant to this particular segment of trial and that  
10 should be put before the Chamber. And I believe that these  
11 evidentiary documents can be used before this Court and I fully  
12 support the argument raised by the Prosecution concerning the  
13 specificity, as well as the relevance of these documents.

14 Thank you, Mr. President.

15 [11.48.37]

16 MR. PRESIDENT:

17 Thank you.

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

19 MS. SIMONNEAU-FORT:

20 I would like to say a few words in addition to what has been said  
21 regarding the request made by the defence today.

22 We do not quite understand the attitude of the Defence today. I  
23 am asking questions as to their objectives, because in late 2011,  
24 defence counsels were given the opportunity to make all  
25 objections they had on documents proposed by the parties. Those

1 written objections were made and there were three oral decisions  
2 and the Defence – defence counsels were invited to make any  
3 objections and any others they had, and two decisions were taken  
4 by the Chamber, E185 and E185.1. In those decisions, all the  
5 objections raised by the Defence were addressed.

6 [11.49.49]

7 Let me take just two examples which were referred to by the  
8 prosecutor as well. Let me take paragraph 21.5 of E185, which  
9 clearly addresses the general objection to books, documentary  
10 films, and media articles, and the second example is the example  
11 relating to the fact that there is no absolute right to  
12 confrontation with the author. So the Chamber has already  
13 addressed a large number of objections today, on at least all 48  
14 documents drawn up by the prosecutors, I hear exactly the same  
15 objections that were raised before and which the Chamber  
16 responded to.

17 [11.50.48]

18 Let me note, by the way, that on this list of 48 documents, there  
19 are only 11 documents presented by the prosecutors and civil  
20 party lawyers, and the Defence is making the same objections to  
21 these 11 documents as they did before. So the civil parties would  
22 wish that, on one hand, the Chamber should reject these general  
23 objections in respect of which the Chamber has already responded.  
24 And the civil parties also request that the Chamber should, in  
25 particular, not authorize any written objections because this

1 hearing is for objections and if we continue to meet to hold  
2 hearings on objections, and again new hearings for objections on  
3 top of written objections which are always the same would be  
4 wasting the Court's time.

5 This is the position of the civil party lawyers. Thank you.

6 [11.51.51]

7 MR. PRESIDENT:

8 Thank you.

9 In the interest of time, we have only a few minutes left before  
10 lunch.

11 And I noted that the international defence counsel for Mr. Khieu  
12 Samphan were on her feet just now. And, if you had any  
13 observations to make, you may proceed.

14 MR. KARNAVAS:

15 Mr. President, before counsel for Khieu Samphan proceeds, let me  
16 just make some brief observations.

17 [11.52.25]

18 In the past, we have filed written objections. We don't try to go  
19 out of our way to create extra work for ourselves. We have better  
20 things to do than to spend the weekends trying to figure out what  
21 documents to object to. So if we were to -- if the Trial Chamber  
22 were to provide us with some clear guidelines, what it expects  
23 from the parties, we will do so. But in the past we have filed  
24 written objections and I don't understand why the prosecutor is  
25 getting all worked up, because that has been the procedure. So

1 give me a procedure and I'll follow it. But that's the procedure  
2 that we've used in the past.

3 [11.53.08]

4 The Prosecution also was dumbfounded why I mentioned Osborne. Let  
5 me be very clear, we've indicated that we withdrew documents and  
6 were taking a principle position, as we have in the past. So  
7 there is no dilemma and there is no need to try to create some  
8 kind of an atmosphere that somehow we don't know what we are  
9 doing.

10 We submit, Mr. President, that these oral hearings are for the  
11 benefit of the public so that they know exactly what sort of  
12 documents we are dealing with. That was my understanding. We  
13 would give brief explanations. But as far as detailed  
14 explanations, they will be provided in writing. Now, if the Trial  
15 Chamber wants it otherwise, please provide us with clear,  
16 unequivocal language and we will follow it. But we are doing what  
17 we think was expected of us, and if we got it wrong then we  
18 apologize.

19 [11.54.06]

20 But certainly we spend the entire weekend working on all sorts of  
21 documents, preparing answers to every single one that has been  
22 presented here and there's been -- there are more than one annex  
23 -- while at the same time preparing for witnesses where the list  
24 is being changing, and at the same time now that we are preparing  
25 also an appeal before the Supreme Court based on your recent



1 decision. So we are not looking for work.

2 Just provide us with some clear guidance. Thank you.

3 MR. PRESIDENT:

4 Thank you.

5 International Counsel for Mr. Khieu Samphan, you may proceed.

6 MS. GUISSÉ:

7 Thank you, Mr. President. I will try to be very brief.

8 Let me make an initial point regarding the issue raised by both  
9 the Co-Prosecutor and civil party lawyers in respect of which my  
10 learned -- counsel Karnavas has just reacted. Let me refer to  
11 your memo of the 16th of January 2013, E158, regarding the  
12 specific circumstances of this hearing, namely the admission of  
13 Mr. Nuon Chea and Mr. Khieu Samphan to hospital.

14 [11.55.37]

15 Let me repeat, since I am told that I'm speaking too fast, I'll  
16 try to slow down.

17 Regarding your memo, E258 of the 16th of January 2013, you  
18 pointed out that even if a client exceptionally waives his right  
19 to be here during this hearing -- let me quote in English, "To  
20 make additional submissions on documents, following later  
21 consultation with our clients if so requested.", end of quote.

22 I clearly pointed out at the beginning of this hearing that not  
23 only did we not have enough time to ascertain whether the 48  
24 documents referred to by the prosecutor were the only documents  
25 that call for discussion today, but it is clear that Khieu

1 Samphan's health status did not enable us to have in depth work  
2 on these documents with him.

3 [11.56.53]

4 Under these conditions, I therefore, do not understand why the  
5 Co-Prosecutor and the civil parties want the debate to be  
6 clinched, whereas you are opening the door to the possibility of  
7 entertaining further remarks. I want this to be clear for the  
8 record.

9 MR. PRESIDENT:

10 Thank you.

11 The time is now appropriate for adjournment for lunch until 1.30  
12 this afternoon.

13 The Court is now adjourned.

14 (Court recesses from 1157H to 1340H)

15 MR. PRESIDENT:

16 You may be seated. The Court is now back in session.

17 We would like to give the floor to the Prosecution regarding the  
18 submission of additional documents related to the population  
19 movement in the first phase. You may proceed.

20 MR. DE WILDE D'ESTMAEL:

21 Good afternoon, Mr. President, Your Honours. What I suggest for  
22 this afternoon is as follows: I think all of the parties have  
23 received a notification before this hearing of the fact that we  
24 were going to be talking about documents that were submitted by  
25 the Co-Prosecutors in three annexes.

1 [13.41.58]

2 If each of the parties do have table E223/2/1.2, which is the  
3 main table that concerns the evacuation of Phnom Penh, and two  
4 other tables; namely, E223/2/2.2 concerning the second forced  
5 transfer and E223/2/1.3 -- excuse me, I got that wrong;  
6 E223/2/1.3 concerning second transfer and /2/1.4 (phonetic)  
7 concerning Tuol Po Chrey, if everybody has those tables in front  
8 of them, then what I would suggest to save a lot of time, Mr.  
9 President, would be not to go through each reference of each of  
10 the documents one by one, but rather that, the Defence merely  
11 point out if they do have objections and then we will strive to  
12 respond to them, but I don't think it's necessary to read out  
13 each reference of each of the 94 documents contained in those  
14 annexes since everybody has them in front of them.

15 [13.43.41]

16 Thank you, Mr. President.

17 (Judges deliberate)

18 [13.45.20]

19 MR. PRESIDENT:

20 Thank you.

21 Since there is a clear presentation by the Prosecution regarding  
22 the documents they intended to put before the Chamber and all the  
23 documents are attached in the annex and all parties have access  
24 to the annex with the particular document number, as indicated by  
25 the prosecutor -- that is, E223/2/1.2; the second one is

1 E223/2/1.3, and the third one is E223/2/1.4, the documents are  
2 available and accessible to all the parties.

3 The floor is now given to the defence teams to make the remark or  
4 to express their objection to any of the documents in regards to  
5 the list of all the documents listed in the three annexes.

6 We start from Nuon Chea's defence, if you have any remark to  
7 make.

8 [13.46.48]

9 MR. KOPPE:

10 Thank you, Mr. President.

11 Just to be sure that we are talking about the same annex because  
12 I couldn't quite find the number that was given by the  
13 Prosecution. Is that the -- is that the 14-page document  
14 consisting of 86 -- to be precise, 86 documents? That's the Annex  
15 2A, and then Annex 2B, and Annex 2C; that's -- those are the  
16 ones.

17 Assuming that I'm correct, at this point, we don't have any  
18 objections to make since we clearly have not been able to discuss  
19 these documents, on the content, with our client, so we have  
20 received no instructions as these documents are concerned. So at  
21 this stage, we cannot make any informed or intelligent  
22 observations on these specific documents.

23 [13.47.55]

24 So we would like to accept your invitation to be allowed to give  
25 any written submissions, in the case that we have them, once we

1 are -- have been able to discuss them with our client.

2 (Judges deliberate)

3 [13.50.34]

4 MR. PRESIDENT:

5 I would like to give the floor now to Judge Cartwright. You may  
6 proceed.

7 JUDGE CARTWRIGHT:

8 Thank you, President.

9 Yes, the Chamber acknowledges that it has indicated in respect of  
10 Nuon Chea and Khieu Samphan defences' that they will have an  
11 opportunity at a later stage to comment on these documents and  
12 the Chamber will advise in due course as to the method and timing  
13 by which those comments are to be received. Thank you.

14 MR. PRESIDENT:

15 What about the other two defence teams; do you have any  
16 observation to make regarding the documents outlined by the  
17 Prosecution?

18 MR. KARNAVAS:

19 Thank you, Mr. President, and good afternoon, Your Honours, and  
20 good afternoon to everyone in and around the courtroom.

21 I have, as far as the first annex, 65 pages that I could read  
22 into the record on my comments. For the second one, I have two  
23 and then for the third one, I have three pages.

24 [13.52.03]

25 These are the written submissions that we prepared that we were

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1 planning on filing so that there's no misunderstanding that  
2 somehow we did not show up prepared which is why I thought I  
3 would take this opportunity not to read into the record 65 pages,  
4 but rather to just cover what hasn't been covered this morning  
5 because some of the topics or some of the types of documents in  
6 these three annexes cover not only the categories of documents  
7 that I discussed this morning, but I would say there's two  
8 additional types of documents that I can speak of very quickly in  
9 general terms.

10 [13.52.50]

11 The Prosecution can object to whatever -- to this approach, but  
12 be that as it may, it would seem that in addition to what I said  
13 earlier, as far as why certain categories of documents should not  
14 be admitted, we have photographs. So this morning, we had videos;  
15 this afternoon, these have photographs.

16 We would object to any photograph coming in unless: one, either  
17 the photographer comes in, or there is some independent indicia  
18 of reliability that gives context as to how the photograph was  
19 generated, what period, what it purports to be, etc.

20 [13.53.35]

21 We do have on the witness list one photojournalist who's expected  
22 to testify. I understand that some of his photographs will be  
23 shown to him. Obviously, at that point in time, he can provide  
24 information.

25 Another example is where, for instance, a journalist would come

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1 in where they wrote an article, but used photographs that were  
2 actually generated by someone else. Certainly, we have no  
3 objections to the commentary as far as what the photograph  
4 purports to be since it was attached to an article written by  
5 journalists.

6 Suffice it to say, these sorts of documents should not come in  
7 unless either the photographer comes in or there's some  
8 independent indicia to other evidence -- testimonial evidence  
9 that would shed light on the content and context of the  
10 photograph.

11 [13.54.40]

12 The other type of documents that were not included in this  
13 morning's -- my morning's presentation are those that were  
14 generated or those that are part of the Tram Kak district records  
15 and you may recall that when Mr. Youk Chhang came and testified,  
16 he had indicated that the original documents had been lost and  
17 that Ben Kiernan had told the OCIJ that he had given -- that he  
18 was given the original ones, made photocopies, and somehow, the  
19 original ones have disappeared or have been misplaced.

20 [13.55.27]

21 Obviously, Mr. Youk Chhang is not in a position to provide  
22 evidence or was not in a position, I should say, to provide  
23 evidence concerning the chain of custody and therefore -- and  
24 since the documents have been lost, we would object to any of  
25 these documents coming in unless some sort of, again, independent

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1 indicia of reliability and authenticity can be shown.

2 Barring that, I incorporate all my comments that I made this  
3 morning as to other types of documents that are referenced in  
4 these -- in these annexes such as letters, international  
5 communications, media articles, FUNK-GRUNK publications, OCIJ  
6 investigative reports or letters.

7 [13.56.25]

8 And so that's the end of my presentation, Your Honours. And as  
9 I've indicated, we do have prepared written answers to every  
10 single document; that way you can sift through our submissions  
11 when we file them. And we have filed submissions of this sort in  
12 the past and there have been no objections from the Prosecution  
13 and certainly the Trial Chamber has not -- has not advised us or  
14 ordered us not to do so. Thank you.

15 MR. PRESIDENT:

16 Thank you.

17 We would like now to give the floor to the defence team for Khieu  
18 Samphan if you have any observation to make.

19 MS. GUISSÉ:

20 Thank you, Mr. President.

21 [13.57.22]

22 Very briefly, once again, in the light of your decision of the  
23 3rd of December 2012, there are certain objections that we will  
24 not level even if, generally speaking, we might have done so.

25 We do have one objection on the documents that are entitled "Tram



1 Kak District Record" by the Co-Prosecutors and more specifically  
2 on the documents that are listed after number 40, the ones that  
3 follow number 40 in Annex 2A; E223/2.

4 And basically, we're asking questions about the admissibility and  
5 the reliability of these documents; specifically, those where  
6 there is not an identifiable author in number 40, 41, 43, 44, 45  
7 -- and I won't bore you by listing them all, but all of those  
8 documents that do not have an identifiable author should not, in  
9 our view, be used for probative value.

10 And one small point that was brought up this morning by my  
11 colleague on the subject of the rogatory letter reports, to the  
12 extent that these refer to written statements, then I think,  
13 again, there is a question about admissibility there that should  
14 be discussed jointly with the discussion that we should have in  
15 April with the allied discussion on written statements. In fact,  
16 I'm referring to number 39 on the list; D277/9. Thank you.

17 [13.59.56]

18 MR. PRESIDENT:

19 Thank you.

20 The Prosecution, would you like to make any response to the  
21 objection raised by the Defence team?

22 MR. DE WILDE D'ESTMAEL:

23 Yes, thank you, Mr. President.

24 This morning we heard a number of objections raised by counsel  
25 for Ieng Sary and we think they shouldn't be repeated this

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1 afternoon. That will enable me to gain time so that I can focus  
2 exclusively on categories that were specifically identified by  
3 the two defence teams while bearing in mind what I said this  
4 morning regarding other categories of information, international  
5 media, articles.

6 [14.01.02]

7 I recall your jurisprudence that we do not need to have those  
8 authors appear before us in order for the documents to be  
9 admitted in evidence.

10 The four photographs are in different annexes. Some have to do  
11 with the first forced transfers. It was taken by TCW-555 and it  
12 is D366/7.1.416 -- D366/7.1.7.16. And another photograph is from  
13 TCW-470. The reference is D313/1.2.238.

14 These photographs, from what we know, were taken at the time of  
15 the evacuation of Phnom Penh around the 17th of April 1975. They  
16 are relevant because they are contemporaneous documents of the DK  
17 era. They show a crowd welcoming Khmer Rouge combatants including  
18 one Khmer Rouge soldier armed. Then these also show Khmer Rouge  
19 around the Olympic Stadium at the time of the evacuation.

20 [14.02.52]

21 These documents are important and they will enable the Judges and  
22 the parties to visualize the events that were contemporaneous  
23 with the evacuation of Phnom Penh.

24 And then TCW-555 will, in the course of his or her testimony, be  
25 confronted with such photographs and, again, the admissibility of

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1 these photographs is not necessarily related or it does not  
2 necessarily call for the appearance of the – those who took those  
3 photographs.

4 There's another photograph, DC document D223/1.4. It has to do  
5 with the Tuol Po Chrey execution site and it's in Sector 7 of the  
6 Northwest Zone in Pursat province. These two photographs have the  
7 following references; D313/1.2.104 and D313/1.2/106 and these two  
8 photographs were taken by DC-Cam in 1977 at the time when the  
9 Documentation Centre of Cambodia was put in place.

10 On DC we also have document IS 18.78. This report, IS 18.78,  
11 mentions the name of a person identified on your list as TCW-699  
12 and that person is on the first photograph -- the first of the  
13 two photographs I mentioned a while ago. That person was also  
14 questioned by OCIJ Investigators in document D125/90 - /70, I beg  
15 your pardon. These are documents that were forwarded by DC-Cam  
16 and they are related to the testimony of the director of that  
17 centre before this Chamber.

18 [14.05.48]

19 Now, regarding the archives of Tram Kak district, there is one  
20 thing we should not overlook and it is that last year; that was  
21 in March 2012, we had already discussed a number of other  
22 documents from the same archives from the Tram Kak district.  
23 There were 57 in number and we had a lengthy debate on the  
24 relevance and reliability of those documents at the time.  
25 It should be noted that the Chamber ruled that all the 57

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1 documents were admissible, unless I am mistaken, in its decision  
2 of the 3rd of December 2012; E185/1. I will not revisit all the  
3 arguments we raised last year. However, I will touch on some of  
4 them because those 49 documents are part of the same batch of  
5 documents, so there's no distinction between different documents.  
6 So we don't think the Chamber should change its position, but  
7 I'll insist on some of the specific aspects of some of those 49  
8 documents regarding the forced population transfers;  
9 particularly, the transfer from Phnom Penh.

10 [14.07.22]

11 Now, the 49 documents selected here are relevant, if you look at  
12 the title, first of all, with regard to the communication system  
13 used by local authorities in District 105; secondly, regarding  
14 the administrative structure of District 105; and lastly,  
15 regarding the policies of the Communist Party of Kampuchea  
16 regarding re-education of bad elements and the elimination of  
17 enemies, both within the Party and outside the Party, then we  
18 have the policy which entailed taking specific measures against  
19 specific groups, former senior officers of the Khmer Republic --  
20 that is, the Lon Nol military officers and their families as well  
21 as a series of people belonging to the New People, hence the link  
22 with the forced transfers of people from urban areas to rural  
23 areas; particularly, from Phnom Penh to the Southwest Zone.  
24 Now, what do we find in the 49 documents? They are essentially  
25 reports drawn up by the different communes and which were sent to

1 District 105.

2 [14.08.53]

3 We also have reports of the Krang Ta Chan Security Centre also  
4 sent to District 105.

5 We also have instructions that were issued by the senior  
6 echelons in the districts to lower sectors, communes, and  
7 security centres.

8 As a general rule, these reports essentially consist of list of  
9 persons drawn up by communes and which, on each occasion, specify  
10 that one person or the other was a soldier or a civil servant in  
11 the Lon Nol regime or belonged to the New People.

12 Another type of document among the 49 documents is reports,  
13 biographies, or confessions from the Krang Ta Chan Security  
14 District Centre. These reports have to do with detainees who were  
15 specifically identified as members of the New People or as former  
16 soldiers of the Khmer Republic or officials of the Khmer  
17 Republic.

18 Then we also have mention made of prisoners from France – that  
19 is, S18.32 of the 25th of April 1977. This shows that particular  
20 attention in that district with regard to security matters was  
21 paid to New People who were evacuated from Phnom Penh as well as  
22 officers, non-commissioned officers, and civil servants who had  
23 been in the Lon Nol civil service.

24 [14.10.54]

25 I will not insist on the fact that these 49 documents, as we

1 pointed out last year, show a unique case of written  
2 communications at local level because we have here a long series  
3 of documents from the same place and we can see the different  
4 links with the various levels of authority. These are documents  
5 in the archives that are very important. This shows us how  
6 efficient communication means where: it talks about the control  
7 through the power exercised by district level and sector level  
8 authorities on local communities; particularly, regarding the  
9 monitoring of the New People from the Khmer Republic.

10 I would like to mention a few elements regarding indicia of  
11 reliability. Counsel Karnavas recalled under what circumstances  
12 those documents were found. The originals have not been found; it  
13 is true, and that is what Mr. Youk Chhang said at the hearing of  
14 the 6th of February 2012, in transcript E1/39.1. He specifically  
15 described all those circumstances and the fact that the original  
16 documents were obtained from Mr. Sou Phirin, but subsequently,  
17 they were not found. Copies were found where TCE-38 said he had  
18 left them -- that is, at the Tuol Sleng Museum.

19 [14.12.55]

20 Now, we know that TCE-38 will not testify. However, information  
21 at our disposal is sufficient given the credit worthiness of the  
22 Documentation Centre's archives. And also in view of the prior  
23 reliability, which I'll talk about, all the 49 documents from the  
24 Tram Kak district are very coherent and they are also coherent in  
25 relation to the 51 documents that were already deemed admissible.

1 It would not be coherent to dissociate them from one another.  
2 Regarding the form, these reports are generally hand written  
3 which shows that the presentation is not always very clear. The  
4 authorities -- the local authorities use the means at their  
5 disposal, at the time, in the communes and the security centres.

6 [14.14.10]

7 As we found in the other 59 documents from Tram Kak, we've seen  
8 other documents written on school notebooks including  
9 modification tables.

10 The language in these reports is typical of the Democratic  
11 Kampuchea period. Mention is often made of Angkar; words like  
12 "the enemy, smashing, purges, revolutionary vigilance". We also  
13 find reports addressed to "Comrade Brother, Beloved Comrade";  
14 then we see the "New People, 17 April People, contemptible, Yuon,  
15 traitor, and re-education".

16 And lastly, still with regard to indicia of reliability in these  
17 documents, many witnesses were heard by the Co-Investigating  
18 Judges and they authenticated (sic) some of these reports. They  
19 corroborated others given -- giving, for instance, the names of  
20 local authorities at the time, the names of the different  
21 communes in District 105. Now, these names correspond to what we  
22 find in Sector 1 -- or District 105 reports.

23 [14.15.33]

24 Witness TCW-680 can be mentioned in point in D232/93; witness  
25 TCW-505, in two records of hearings; D232/16 and D232/73. This

1 witness was a former district secretary -- that is, District 105.  
2 One of his brothers took over from him. He gave some details  
3 regarding the administrative structure in District 106 and Sector  
4 13. He identified the document 101830 which is in this batch of  
5 documents regarding Tram Kak.

6 We have TCW-518. We have D323/18. And lastly, witness TCW-301 and  
7 the record is D232/46.

8 Now, to conclude on these 49 documents from the Tram Kak  
9 archives, I would say that they are relevant because they have to  
10 do not only with the local administrative structure and the  
11 communication system at the level of the sectors, but also  
12 because they concern a number of people who were soldiers  
13 belonging to the Lon Nol regime or members of the New People and  
14 these facts are systematically prioritized and they should enable  
15 us to -- they enable them to identify who was the enemy during  
16 the DK era.

17 The reason given by Khieu Samphan's defence for her objections  
18 that these documents were not signed and they didn't bear any  
19 names is not sufficient reason for the Chamber to rule that these  
20 documents are inadmissible.

21 [14.17.59]

22 I believe I am done with my comments regarding these categories  
23 of documents. I do not have any further objections at this stage.

24 Thank you, Mr. President.

25 MR. PRESIDENT:



1 Thank you.

2 How about the Lead Co-Lawyers for the civil party? Do you have  
3 anything to add to what the Prosecution?

4 [14.18.29]

5 MR. PICH ANG:

6 Mr. President, thank you, but we do not have anything to add.

7 (Judges deliberate)

8 [14.21.45]

9 MR. PRESIDENT:

10 The time is appropriate for the adjournment and, in addition, the  
11 Chamber has a few things to deliberate among members of the  
12 Bench. We will adjourn now and resume at 3.00.

13 The Court is now adjourned.

14 (Court recesses from 1422H to 1503H)

15 MR. PRESIDENT:

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

17 Before I hand over to the Prosecution to present some of the most  
18 relevant documents concerning the substance of paragraph 4 of the  
19 memorandum of the TC dated the 7 of January 2013 - document  
20 E3223/3, the Chamber wishes to advise parties and members of the  
21 public that the Chamber is seized of the request by the defence  
22 team for Mr. Ieng Sary requesting to put before the Chamber 56  
23 documents in the proceeding of the hearing of documents. The  
24 Chamber does not know whether or not other parties other than the  
25 defence team for Mr. Ieng Sary has received the list of documents

1 -- 56 documents, and the Chamber wishes to advise the parties  
2 that the Chamber will hear this document tomorrow afternoon  
3 because the Chamber is of the opinion that parties be given times  
4 to examine these documents.

5 [15.06.05]

6 And in addition, the Chamber wishes to grant leave for other  
7 parties to object or have any observation concerning the 56  
8 documents sought by the defence team for Mr. Ieng Sary.

9 Next, the Chamber wishes to hand over the floor to the  
10 Prosecution to identify the key documents pursuant to paragraph 4  
11 of document E223/3 focusing on the military structure first.

12 You may proceed.

13 [15.07.01]

14 MR. SENG BUNKHEANG:

15 Good afternoon, Mr. President, and good afternoon, colleagues.

16 First, I would like to present the relevance of document  
17 concerning military structure as well as the review of the  
18 military deployment by the leadership of Democratic Kampuchea and  
19 we would like to request your permission, Mr. President, to have  
20 this document displayed on the screen.

21 MR. PRESIDENT:

22 You may proceed.

23 MR. SENG BUNKHEANG:

24 Thank you, Mr. President.

25 The first document concerns the role and structure of the

1 military structure of the Democratic Kampuchea following the 17  
2 of April 1975. This document is the revolutionary document  
3 "Revolutionary Flag" dated August 1975, document E3/5. This  
4 publication published the speeches of the 22nd of July 1975 which  
5 in ERN in Khmer, 000633 and 24; English, 004014 (sic) and 88;  
6 French, 00538963. It reads:

7 [15.09.08]

8 "On the 22nd of July 1975, on the occasion of the ceremony of the  
9 Communist Party of Kampuchea Centre to establish the  
10 Revolutionary Army, the comrade chairman of the High-Level  
11 Military Committee of the Party convened an important political  
12 conference of the Communist Party of Kampuchea Centre for  
13 approximately 3,000 representatives of every unit of the  
14 Revolutionary Army. And the complete content of this important  
15 conference was as follows:

16 "1. The meaning of the great historical victory of our nation,  
17 people, army, and Party;

18 "2. A brief history of our Revolutionary Army;

19 "3. The reasons for the great victory of our Revolutionary Army";

20 "4. The new missions of our Revolutionary Army."

21 [15.10.21]

22 On the second part of this document concerning the history of the  
23 building of the Revolutionary Army of Kampuchea; ERN in Khmer,  
24 000633 and 28; English, 00401491; French, 00538966, it reads:

25 "Our Revolutionary Army was born of the strategic political line

1 of the Communist Party of Kampuchea, which states in one clause  
2 that: 'The enemy uses violence. They use acts of political and  
3 military cruelty as weapons to oppress, to kill, and to wreck and  
4 destroy the people. Therefore, the Party must lead the people in  
5 the use of violence, in the use of acts to repay in blood,  
6 whether politically or militarily.'" End quotes.

7 [15.11.47]

8 This means that the Party must use revolutionary violence and  
9 must assemble the people to use revolutionary violence to oppose  
10 the reactionaries and the oppressor classes and to oppose the  
11 colonialists and imperialists.

12 On the third part of this document in Khmer, ERN 0030 -- English,  
13 00401498; French, 00538973 to 74, this particular section  
14 mentioned the reason for the great victory of the Revolutionary  
15 Army and subsection 1 of this main section 3, it reads: "The  
16 Party equipped the ideological lines of the Party and military  
17 would understand it, so both the regular army as well as  
18 militiamen understood the ideological training from the Party."  
19 In the last section, section 4 of the speech concerning the two  
20 duties of Revolutionary armies entrusted by the Party: one,  
21 national defence; and two, building the nation or nation  
22 building.

23 The first mission concerning the defence of the country by the  
24 Revolutionary Army of Kampuchea, if you look at relevant ERN in  
25 Khmer, 00063340 to 42; in English, 00401501; French, 00538975 to

1 76, the roles of the Revolutionary Army of Kampuchea are as  
2 follow:

3 "The main role of the -- the primary mission of the army is to  
4 defend the country. Why must the country be defended, when our  
5 country has already been completely liberated? We have already  
6 driven away and scatter all the imperialists. We have already  
7 liberated our country, but a war situation still rears its head  
8 because in the world imperialism and colonialism, both new and  
9 old, still exist. They carry out all kinds of activities all the  
10 time to wreck and destroy the people, to wreck and destroy weak  
11 countries, and to wreck and destroy the Revolution."

12 [15.15.23]

13 And then this section continues.

14 "This is in terms of the external enemy. However, the external  
15 enemies contact the internal enemies. The feudalists and  
16 capitalists in their status as oppressor classes have already  
17 been attacked and overthrown. However, in being overthrown, will  
18 they entirely disappear and will they never return, or what?"

19 This is the end of the extract of this.

20 And then as for the next when they advise the Revolutionary Army  
21 as follow:

22 "That is why our military has to fulfil the obligation to defend  
23 the country and we must exercise utmost revolutionary vigilance.  
24 We have to defend our nation; defending entire country, defending  
25 the territory, both the interior and the borders, defending the

1 territorial waters, defending the airspace: all this is the  
2 mission of the army."

3 [15.16.33]

4 And it continues: "It is the defence of Phnom Penh, smashing  
5 espionage groups and smashing saboteurs that want to wreck and  
6 destroy our revolution and we will continue to smash the defeated  
7 enemy remnants."

8 And as for the next document concerning the examination of the  
9 military document E3/214 entitled "Statute of the Communist Party  
10 of Kampuchea". Particularly, on Article 27 of this paragraph, it  
11 reads:

12 "The three categories of the Party's army has to defend the  
13 country of all situation and it also devise the structure of the  
14 armies of the Party in different levels and it also provides for  
15 the authority as well as responsibility of the Party's leadership  
16 on the military structure."

17 [15.18.17]

18 And this was also noted in the meeting of the Standing Committee  
19 with which the co-accused attended.

20 Next, I am going to present a few more documents concerning the  
21 situation of military reporting to the Party's leadership and  
22 this issue was brought to the attention of the leaders and it was  
23 deliberated and adopted in the meeting.

24 The first document I'm going to present is E3/182. This document  
25 is the minutes of the meeting of the Standing Committee dated the

1 9th of October 1975. In this Standing Committee's meeting;  
2 particularly, on page 6 and 7, it reads that:

3 "The Standing Committee deliberated and decided on a number of  
4 military issue concerning the re-arrangement of the General Staff  
5 as well as the new deployment of military personnel, both navy as  
6 well as infantry, as well as the examination of the overall  
7 situation of the armies."

8 [15.19.45]

9 Now, the next document, E3/1150, this document dated the 11 of  
10 November 1975. This document is the letter sent to Comrade Ya who  
11 is the Secretary of the Northeast Zone. In this letter, the  
12 Angkar received the telegram from Comrade Ya sent on the 9 and  
13 10th of November 1975. Angkar responded to this telegram with  
14 instruction -- with specific instructions concerning the  
15 arrangement as well as the mobilization of forces in that region  
16 in order to be ready for combat against the enemy.

17 And we may -- we can also see some examples in paragraph 2.2 as  
18 well as .3 of the same document and .6 of the document which  
19 elaborated the conclusion of this document and it provides, at  
20 the end, that "Angkar have also received a telegram on New People  
21 this morning and they will report later".

22 Next, document E3/229; it is the minutes of the meeting of the  
23 Standing Committee on the 22nd of February 1976. The agenda of  
24 this meeting includes the national defence matters.

25 [15.21.58]

1 This meeting also recorded the attendance of the participant;  
2 namely, Comrade Secretary, Comrade Deputy Secretary Nuon Chea,  
3 Comrade Van, Comrade Vorn, Comrade Khieu, Comrade Thuch, Comrade  
4 Khieu Samphan alias Hem, and Comrade Sua Vasi alias Doeun.

5 And in these minutes of the meeting, it indicated that, Son Sen  
6 reported the situation of the enemy in the Eastern Zone and he  
7 also reported the military aid by the Chinese as well as the  
8 transport of ammunition and the request for the establishment of  
9 a military hospital.

10 [15.22.53]

11 In these minutes of the meeting, it recorded some of the decision  
12 made by the members of the Standing Committee. It also mentioned  
13 that "the committee agreed that we had to be ready at all times.  
14 When the enemy came, we had to attack them swiftly. So these were  
15 some of the decision made over there.

16 And the Standing Committee also requests that "they locate a new  
17 place for the construction of a new airfield and a place for the  
18 construction of a military hospital proposed by the General  
19 Staff."

20 Next, I would like to present a document concerning the working  
21 procedure with people down the lines of the military structure;  
22 particularly, the structure from the base up to the Centre;  
23 document E3/366 -- 386, rather - 3866 (sic), rather. This  
24 document was sent from the Northeast Zone, sent to Brother Van  
25 and Doeun and archive.



1 On the bottom line of the telegram sent by Ya, it reads: "If  
2 Angkar agrees to it, we request 89's side to advise 920's side to  
3 slow down the fighting for a while."

4 Another document, E3/217; it is the minutes of the meeting of the  
5 Standing Committee dated the 11 of March 1976 concerning the  
6 overall situation of the borderline in the Eastern part of the  
7 country. There were presence of Nuon Chea, Ieng Sary alias Van,  
8 and Khieu Samphan alias Hem.

9 In this particular meeting, Son Sen alias Khieu, reported the  
10 overall border situation in the Eastern part of the country;  
11 namely, Mondulkiri province and the communication with the  
12 Vietnamese counterpart.

13 [15.25.52]

14 These minutes also recorded the armed clashes between the  
15 military of the Democratic Kampuchea and the opposing forces of  
16 Vietnam along the Eastern border of the country in Mondulkiri and  
17 Takeo province and he also raised the military and political  
18 measures as proposed by the Standing Committee.

19 The next document is E3/235. This document summarized the  
20 decision of the Standing Committee dated the 19th, 20th, and 21st  
21 of April 1976.

22 On the third part of this document, page 4 and page 5, it  
23 recorded the national defence matters decided by the Standing  
24 Committee following the three-day meeting. These decisions  
25 include the arrangement for the operation of the airfield in

1 Kampong Chhnang as well as the appointment of staff members to  
2 the General Staff.

3 [15.27.26]

4 And in the - in point number 4 of the third section, it reads  
5 that "there was a request to reinforce the forces".

6 The next document, E3/221, is the minutes of the meeting of the  
7 Standing Committee dated the 14 of May 1976. In that meeting,  
8 Nuon Chea, Ieng Sary alias Van, and Khieu Samphan alias Hem,  
9 attended the meeting.

10 The meeting, at that time, discussed the negotiation with  
11 Vietnam, and Comrade Ya reported the overall situation. And every  
12 participant were invited to offer their opinions and at that  
13 times, there were discussion of the incident of the -- the attack  
14 on the -- on the ship donated by Chinese to Democratic Kampuchea  
15 at that time. And then Ieng Sary also raised an opinion in that  
16 particular meeting.

17 He said, sooner or later, the Vietnamese side would agree with  
18 the Brévié Line.

19 [15.29.19]

20 Next, I would like to refer to the next document, E3/224. It is  
21 the minutes of the meeting of the standing committee dated the  
22 30th of May 1976. The attendants of the meeting included Pol Pot,  
23 Nuon Chea, Vorn Vet, Son Sen alias Khieu, and Khieu Samphan alias  
24 Hem. The meeting discussed the tasks and duties that the armies  
25 needed to carry out; in particular, it related to the agriculture

1 and production.

2 In the first main part of the record, it notes the main duties of  
3 the Revolutionary Army and that they needed to defend four  
4 battlefields, and the coastal area defence and the territory  
5 defence were mentioned in the two defence duties. It continues to  
6 read that the third battlefield is the intervention battle. That  
7 there should be one force to take intervention in Phnom Penh; and  
8 the fourth battlefield is the security defence surrounding the  
9 leading apparatus of the Party and of the state government.

10 [15.31.04]

11 The meeting also continued to discuss and decided on the work  
12 assignment related to the agricultural production to the  
13 northwest of Phnom Penh to offer Comrade Oeun -- that is, Sector  
14 10; and the assignment of the task to the southwest of Phnom  
15 Penh, that is Meth, secretary of Sector 502 and Comrade Pin of  
16 Sector 703. Then the work assignment continues to Choeng Ek area  
17 of Pin in Sector 703 and the instructions were further given to  
18 Comrade Pin to dig canal to link to Bassac River.

19 I will also make another presentation regarding a document  
20 identifying the roles of the Party in the military structure.  
21 Document D56/10.008, it is a report from a Vietnamese messenger  
22 regarding the public announcement by the FUNK and the GRUNK on  
23 the composition of the Peoples' Liberation Army. In that  
24 announcement it referred - it was referred in the ceremony of the  
25 FUNK and it was made in public, that Khieu Samphan was appointed

1 as the president and the commander, and the army chief of the  
2 army; and Saloth Sar was appointed as the chief leading the  
3 military of the army; and Nuon Chea was appointed as the  
4 political leader of the army; Son Sen was also appointed as the  
5 army chief.

6 [15.33.46]

7 The next document is E3/290. It is a media -- international media  
8 report, FBIS. It was made in October 1972. On page 38, it  
9 includes the broadcast by the Pyongyang radio on the biography of  
10 Pol Pot, which reads:

11 "From 1970 to 1975, in his capacity as the head of the army of  
12 the centre, he conducted military negotiations in addition to the  
13 Party's affairs and the leading role against the Americans, and  
14 he was successful in gaining victory for the nation. In January  
15 1976 he was elected, once again, to take the position as the  
16 secretary of the Party's centre of the Communist Party of  
17 Kampuchea and the President and the head of the army in the  
18 fourth congress."

19 [15.35.27]

20 The next document is E3/1714, which is an interview with a  
21 Cambodian refugee at the Khmer-Thai border. It was conducted from  
22 February to March 1980. In particular it was on the ERN in Khmer,  
23 00324763; and in English, 00170748; and in French, 00649010 to  
24 11. It includes the interviews with the standing committee  
25 members of Kampong Som. It also provides the detailed description

1 on taking control of Phnom Penh by the Khmer Rouge force during  
2 1974 and 1975. I'd like to make the following quote: "The  
3 offensive was under the control of the centre's army and under  
4 Pol Pot and Nuon Chea. Son Sen was in charge of the setting up  
5 the battlefield."

6 [15.37.01]

7 At the same time the real composition of the military and the  
8 security part of the Centre under the Standing Committee were  
9 stated by Ieng Sary in his previous interviews. In particular, in  
10 document E3/94. It was an interview by Ieng Sary on the 22nd of  
11 July 1981, in ERN in Khmer, 00578895; in English, 00342501 to 02;  
12 and in French, 00602000. In his interview, Ieng Sary stated the  
13 following: "Question: Who was in charge of security?"

14 And Mr. Ieng Sary replied: "The most senior leaders, and there  
15 was three or four of them, discussed the matter and then they  
16 made a report to the standing committee."

17 [15.38.39]

18 The next question is the following: "Who were those three or four  
19 leaders?"

20 Ieng Sary answered: "Pol Pot, Nuon Chea, So Phim, and Son Sen --  
21 Son Sen was in charge of security. They relied on regional people  
22 for reporting on security matters."

23 In document E3/93, which is also an interview by Ieng Sary  
24 conducted on the 28 of August 1996, particularly on Khmer ERN  
25 00224443; and in English, 00078610; and in French, 00347376. In

84

1 this interview, Ieng Sary replies that – quote:

2 "I am not the right-hand man of Pol Pot. In fact, his right-hand  
3 man is Nuon Chea. And there was a committee which considered all  
4 questions about security and that committee comprised of four  
5 people; namely, Pol Pot, Nuon Chea, Son Sen, and Son Sen's  
6 advisor, Yun Yat." End of quote.

7 My last document to be presented is E3/86. It is a communique by  
8 Ieng Sary's group dated 8 September 1996. It's entitled "The  
9 Truth About the Dictatorship Regime of Pol Pot 1975 to 1978". ERN  
10 in Khmer is 00224430; in English, 00081215; and in French,  
11 00614094. It states the following – quote:

12 [15.41.51]

13 "The government was only a screen to hide Pol Pot's personal  
14 'dictature' firmly based on the Secret Security Committee  
15 composed of Nuon Chea, head of the Secret Committee; Son Sen  
16 called Khieu, and Son Sen's advisor, that is his wife, Yun Yet  
17 alias At. So, from 1975 to 1978, it was this 'gang of four' --  
18 that is, Pol Pot, Nuon Chea, Son Sen and Yun Yat who decided on  
19 all the killings and massacres." End of quote.

20 [15.42.40]

21 I conclude my presentation of my documents and my colleague will  
22 continue to make his part of the presentation.

23 MR. PRESIDENT:

24 Thank you.

25 You may proceed.

1 MR. LYSAK:

2 Thank you, Mr. President.

3 In my presentation of documents which I will start today and  
4 continue tomorrow, I will focus primarily on the surviving  
5 contemporaneous documents from the general staff and from the  
6 centre military divisions of the RAK, including minutes of  
7 meetings between Son Sen and the division secretaries, reports  
8 from the divisions, including annotations showing that these  
9 reports were forwarded by Son Sen to other leaders of the Party,  
10 and instructions or orders that were conveyed by Son Sen to the  
11 divisions under the command of the centre.

12 The documents I will present show the frequent and detailed  
13 reporting by military divisions to the senior leaders in Phnom  
14 Penh and the communication to the RAK of orders, party lines and  
15 policies that were to be implemented by military.

16 And I will present these documents in chronological order in  
17 order to allow the Chamber to see how the general structure of  
18 reporting authority and the hierarchical chain of command largely  
19 remained constant throughout the regime, yet at the same time, to  
20 see how policies and issues that were the subject of these  
21 communications evolved over time.

22 [15.44.56]

23 And the first document I would like to present is from the months  
24 ensuing after the capture of Phnom Penh on the 17 of April 1975.

25 It is document E3/832 - that's E3/832 - and it is a 4 June 1975

1 order conveyed by Comrade Hin, who was the commander of Division  
2 703, a Centre division that originated in the Special Zone. The  
3 document lists 17 traitors who are former Lon Nol soldiers and  
4 states at the bottom -- and with your permission, Mr. President,  
5 we'd like to put this on the screen. At the bottom of this order  
6 is stated - quote: "All these 17 persons have been examined by  
7 the Party and the Party has decided that they are to be smashed.  
8 The comrades are asked to implement this policy of the Party".  
9 End of quote.

10 The descriptions of these 17 Lon Nol soldiers to be smashed, most  
11 of whom were lieutenants or lieutenant-colonels, is also  
12 revealing. A number of them specifically state that all members  
13 of that person's family were also traitors.

14 Number 7 on this list was Sisowath Ritharavong, who is described  
15 as having - quote - "a feudal, people-betraying lineage". End of  
16 quote.

17 The description of number 12 on the list, Prak Vannarin, states -  
18 and I quote: "This contemptible guy wrote a biography criticizing  
19 us very strongly; by nature absolutely opposed to the  
20 revolution." End of quote.

21 The next group of documents, Mr. President, I will present are  
22 from the first half of 1976, and document E3/1016 - I repeat,  
23 E3/1016 - is a 5 January 1976 report from Division 164 Secretary  
24 Muth to Brother 89, the alias for Son Sen. This report is a  
25 report on fighting on Koh Tral island, and the report is



1 described at the end of the document as -- quote: "The monthly  
2 report of Unit 164 submitted to Brother by train." End of quote.

3 [15.48.36]

4 It makes several references to implementation of decisions by the  
5 Party and shows the coordination between the centre zones and  
6 military divisions. In the document, division secretary Muth  
7 states that he is at Koh Rong island to - quote - "follow-up and  
8 help make sure that the decision by the Party is effectively  
9 implemented" - end of quote.

10 He also reports - quote: "Comrade Chhan went to meet Brothers  
11 Nhoek, Sae, and Comrade Kim to execute the decision by the  
12 Party." End of quote.

13 Nhoek was the secretary of sector 37, Koh Kong province area and  
14 Sae was the alias of Kang Chap, at the time the secretary of  
15 Kampot sector, sector 35.

16 [15.49.41]

17 The next document is E3/887 - that's E3/887. It is a 23 January  
18 1976 telegram to Uncle 89 from 05 who has been identified by  
19 witnesses as Sar Sarun, the secretary of Division 801. This  
20 telegram describes attacks by Vietnamese troops and reports that  
21 his forces have not fought back because they are still awaiting  
22 orders from Angkar. And specifically paragraph 5 of the telegram,  
23 if we may display that, paragraph 5 states - quote: "I am  
24 organizing the forces while testing and waiting for the final  
25 decision from the Party. As in the above report [I] request to

1 attack any place [where there are Vietnamese]." End of quote.

2 Continuing later – quote: "[We] have not counter-fired even a  
3 bullet while [we are] awaiting Angkar's advice first." End of  
4 quote.

5 And an update is added at the bottom of the telegram which reads  
6 – quote: "At 11 o'clock on this 23 January 1976, they sent more  
7 troops to attack us again. We have not fought back yet." End of  
8 quote.

9 The telegram concludes: "I would like to request some advice from  
10 Uncle immediately." End of quote.

11 [15.51.46]

12 The next document I would present is document E3/1175 -- that's  
13 E3/1175. It is a 26 February 1976 daily report on the situation  
14 relating to CIA enemies. This report discusses two individuals  
15 who were detained for interrogation and who, during that  
16 interrogation, identified a Brother Khan as being involved with  
17 them.

18 And if we may show this document on the screen, the typed report  
19 contains two handwritten notes. The first of those notes on the  
20 upper left-hand margin is signed by Khieu, one of the aliases  
21 used by Son Sen, and states -- quote: "Transmit to the  
22 organization or Angkar for information." End of quote.

23 [15.53.01]

24 And the handwritten note at the bottom of this report requests  
25 Angkar to -- quote: "Enquire in every department or sector as to

1 whether someone named Khan has been arrested or not." End of  
2 quote.

3 The next document is E3/923 - to repeat, E3/923 - and this is a 3  
4 March 1976 report from Chhin, the secretary of Division 920, to  
5 Brother 89 which was copied to Brother 87 and to Brother Van, the  
6 alias used by Ieng Sary, and paragraph 2 of the section of this  
7 report titled "Internal Problems" concerns reporting to the  
8 Centre of arrests and interrogations and states - quote:

9 "[I] have arrested five people with bad elements. First, they  
10 inspired people to flee home. Second, they brought grenades in  
11 preparation for smashing vehicles. They have gradually carried  
12 out such activities. Seeing that, I am further interrogating them  
13 and will send you the file on his case later." End of quote.

14 The next document is E3/1176 -- that's E3/1176 -- which is a 16  
15 March 1976 report from Division 310 secretary, Oeun, which has a  
16 handwritten note at the top stating - quote: "To Angkar, to be  
17 informed." End of quote.

18 The document begins with a detailed report on internal enemies,  
19 noting at the end of the second paragraph that regiments and  
20 battalions have been required to -- quote: "Study issues in  
21 relation to getting rid of the enemies and unruly type." End of  
22 quote.

23 [15.55.53]

24 And in paragraph 4 towards the end of the document -- and I'll  
25 note that the Khmer page here is 00021470 -- and it is the

1 right-hand side of that page. The following matter is reported by  
2 division secretary Oeun -- quote:

3 "An event occurred at Chip Tong factory in Tuol Kork, according  
4 to brothers patrolling at night, they have seen the women at Chak  
5 Angrae dancing to revolutionary songs adapted to European-styled  
6 songs of the previous regimes. At the same time, they saw women  
7 and men playing with each other; then they went in pairs into the  
8 rooms and turned off the light." End of quote.

9 [15.56.57]

10 Continuing later -- quote: "Based on our observation for a period  
11 of time, it seems that corruption and vice have occurred again.

12 "Now I have our brothers secretly watched clearly; then record  
13 the voice as proof to submit to Angkar." End of quote.

14 And the incident at the factory that is described here was  
15 considered serious enough that there was a handwritten note next  
16 to this part of the report that states - quote: "Please report to  
17 Comrade Vorn", referring to Vorn Vet, the Standing Committee  
18 member and minister responsible for industry.

19 The next document, Mr. President, is E3/1162 -- E3/1162 -- and it  
20 is a 26 May 1976 report also from division secretary Oeun. This  
21 document contains a discussion in paragraph 7 of how biographies  
22 of division cadres were checked and reported to the Centre.

23 Paragraph 7 states -- quote:

24 "In special Battalion 312, there remain three comrades who still  
25 hide their biographies [did not tell the truth about one's own

1 biographies]:

2 "A Hiek: In his biography, he said he has not any political  
3 tendency, but when investigating his house, we found that his  
4 father was a soldier of an ambush unit in Kampong Thom." End of  
5 quote.

6 [15.59.12]

7 The other two individuals in this paragraph are also reported as  
8 having relatives who were soldiers in the previous regime.

9 Mr. President, I may continue but I have a substantial number of  
10 documents to present so I may continue tomorrow morning with your  
11 leave.

12 MR. PRESIDENT:

13 Thank you, Mr. Co-Prosecutor. The time is appropriate for today's  
14 adjournment. The Court will adjourn now and will resume tomorrow  
15 morning, commencing from 9 a.m.

16 Security guards, you are instructed to take the accused Ieng Sary  
17 back to the detention facility and have him returned to the  
18 holding cell downstairs, with the facility of audio-visual link  
19 so that he can participate for the following up here, before 9  
20 a.m.

21 The Court is now adjourned.

22 (Court adjourns at 1600H)

23

24

25