



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): 18-Apr-2017, 10:25  
CMS/CFO: Sann Rada

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

26 February 2016

Trial Day 373

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

The Accused: NUON Chea  
KHIEU Samphan

Lawyers for the Accused:  
SON Arun  
Anta GUISSÉ

Trial Chamber Greffiers/Legal Officers:  
CHEA Sivhoang  
Niccolo PONS

Lawyers for the Civil Parties:  
HONG Kimsuon  
LOR Chunthy  
PICH Ang  
SIN Soworn  
TY Srinna  
VEN Pov

For the Office of the Co-Prosecutors:  
Dale LYSAK  
SENG Bunkheang  
William SMITH

For Court Management Section:  
SOUR Sotheavy  
UCH Arun

**List of Speakers:**

Language used unless specified otherwise in the transcript

Speaker	Language
The GREFFIER	Khmer
Ms. GUISSÉ	French
Mr. LYSAK	English
The President (NIL Nonn)	Khmer
Mr. PICH Ang	Khmer
Mr. SMITH	English

1

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

2 (Court opens at 0902H)

3 MR. PRESIDENT:

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

5 Today, the Chamber continues to <hear> the key document

6 presentation, and there will be the responses and observations to

7 those key documents presented by the Co-Prosecutors, the Lead

8 Co-Lawyers and the Khieu Samphan defence. And we will have their

9 observations and responses in this order, and this is in regard

10 to the treatment of the target groups, including the Cham,

11 Vietnamese and the former officials of the Khmer Republic.

12 And before we proceed, the Chamber wishes to inform the parties

13 that Judge You Ottara, who is the National Judge, is absent for

14 personal reasons. And after the bench deliberated the matter, we

15 decided to appoint the Reserve Judge, Thou Mony, in his place for

16 today's proceedings. And this is pursuant to Rule 79.4 of the

17 ECCC Internal Rules.

18 Ms. Chea Sivhoang, please report the attendance of the parties

19 and other individuals to today's proceedings.

20 [09.05.03]

21 THE GREFFIER:

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

23 are present except the Khieu Samphan's national counsel, Kong Sam

24 Onn, and Madam Marie Guiraud, the International Lead Co-Lawyer,

25 who are absent for personal reasons.

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1 Nuon Chea's international counsel, Victor Koppe, is absent  
2 without giving any reason.

3 And Mr. Nuon Chea is present in the holding cell downstairs. He  
4 has waived his rights to be present in the courtroom. The waiver  
5 has been delivered to the greffier.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you, Ms. Chea Sivhoang. The Chamber now decides on the  
9 request by Nuon Chea.

10 The Chamber has received a waiver from Nuon Chea, dated 26  
11 February 2016, which states that, due to his health, headache,  
12 back pain, he cannot sit or concentrate for long. And in order to  
13 effectively participate in future hearings, he requests to waive  
14 his right to participate in and be present at the 26 February  
15 2016 hearing.

16 [09.06.25]

17 Having seen the medical report of Nuon Chea by the duty doctor  
18 for the accused at ECCC dated 26 February 2016, which notes that  
19 Nuon Chea has severe back pain and dizziness when he sits for  
20 long and recommends that the Chamber grant him his request so  
21 that he can follow the proceedings remotely from the holding cell  
22 downstairs, based on the above information and pursuant to Rule  
23 81.5 of ECCC Internal Rules, the Chamber grants Nuon Chea his  
24 request to follow today's proceedings remotely from the holding  
25 cell downstairs via audio-visual means.

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1 The Chamber instructs the AV Unit personnel to link the  
2 proceedings to the room downstairs so that Nuon Chea can follow.

3 This applies to the whole day.

4 The Chamber wishes now to hand the floor to the Co-Prosecutors so  
5 that you may respond or make observations regarding the key  
6 document presentations of other parties. The combined time for  
7 the Co-Prosecutors and the Lead Co-Lawyers <is> two sessions.

8 You may proceed.

9 [09.08.02]

10 MR. SMITH:

11 Good morning, Mr. President. Good morning, Your Honours. Good  
12 morning, counsel.

13 Your Honours, I will respond briefly in relation to the documents  
14 that were selected by the Khieu Samphan defence to highlight  
15 allegations in relation to the treatment of the Vietnamese in the  
16 indictment, and my colleague, Mr. Dale Lysak, will make  
17 submissions to you on the Cham and also on the former Khmer  
18 Republic soldiers and officers.

19 So perhaps if I begin.

20 Your Honours, the Defence presented -- highlighted 13 documents  
21 from the case file, a huge case file of about six and a half  
22 thousand documents, but they presented 13 within the time that  
23 they had.

24 And when we look at the documents that they presented or  
25 highlighted, we submit they fall into two categories, one being

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1 opinions of some very distinguished researchers on the Democratic  
2 Kampuchea period, and the other group being documents that put  
3 these allegations of the treatment of the Vietnamese into  
4 context.

5 [09.09.34]

6 And Counsel for Khieu Samphan, I think, mentioned that a couple  
7 of times -- a few times when she presented on Wednesday that very  
8 much the documents they were putting forward were to make sure  
9 that we didn't forget the context in which these allegations are  
10 occurring.

11 And so just briefly in relation to the contextual documents, our  
12 submission is that, although, of course, they are important, they  
13 are necessary to be able to understand and interpret the core  
14 allegations in the indictment and particularly, of course,  
15 talking in relation to the treatment of the Vietnamese.

16 [09.10.22]

17 The documents they put forward did not directly challenge the  
18 core allegations in relation to the treatment of the Vietnamese,  
19 and that's our first main point. But before I get to discussing  
20 those documents in a little more detail, I would like to talk  
21 about the documents that they highlighted that had -- contained  
22 these very distinguished researches' opinions on whether or not  
23 genocide occurred against the Vietnamese civilians in Cambodia.

24 And Your Honour, this, of course, the document that the

25 Prosecution put forward in relation to Ben Kiernan, his book,

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1 he's another distinguished researcher that has a particular  
2 opinion on whether or not genocide occurred during -- against the  
3 Vietnamese during the Democratic Kampuchea period.

4 And what's clear is, like lawyers, academics agree or disagree on  
5 particular issues, and that's very much the issue with the  
6 genocide of the Cham.

7 On the one hand, the Defence put forward three documents that  
8 contained the opinions of Stephen Heder, Henri Locard and Philip  
9 Short as to whether or not genocide occurred against the  
10 Vietnamese in Cambodia. In those three documents, it was the  
11 perspective of each of those researchers that it did not occur,  
12 and they were particularly discussing the issue of genocidal  
13 intent, whether or not the CPK leadership had the genocidal  
14 intent. That was the issue that was on discussion, not so much  
15 whether or not crimes were committed against Vietnamese as a  
16 group.

17 [09.12.38]

18 So, I think there's two points I would like to make in relation  
19 to these opinions.

20 And the first one is; the opinions were made without the benefit  
21 of the investigation, without the benefit of the judicial  
22 investigation that has occurred from 2006 onwards. Stephen  
23 Heder's opinion was from a -- obtained from a document from 1998.  
24 Philip Short's opinion was largely based on his book, his  
25 research from 2005. And Henri Locard's opinion on this issue was

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1 put forward from a document dated 1998. In fact, I'll correct  
2 myself, Stephen Heder's article was from 1996.

3 Nonetheless, all of the -- all of these distinguished researchers  
4 did not have access to the case file. They did not have access to  
5 the 1,400 or so written records from witnesses during this period  
6 that, Your Honours, have.

7 [09.14.04]

8 They did not have access to the over 4,000 civil party  
9 applications on issues like this and other issues in relation to  
10 the crimes alleged in the indictment. They did not have access to  
11 some material, some contemporaneous documents which, Your  
12 Honours, have had access to.

13 And so to conclude the first point, we would submit, until such  
14 time that these experts, these researchers have had an  
15 opportunity to review that material, that voluminous material  
16 that, Your Honours, have had, then their opinions on the issue  
17 have to have a more limited weight, again, because they were made  
18 outside of the major investigation that was actually undertaken,  
19 certainly on a basis of a lot of the work that they had done and  
20 carried forward.

21 And the second point I would like to make is that the  
22 determination of the issue of whether or not genocide occurred  
23 against the Vietnamese, that's the ultimate legal issue that  
24 needs to be decided upon. And that really is a reserve for the  
25 Judges, for Your Honours, who have had the ability to review all



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1 of the material.

2 [09.15.49]

3 So, Your Honours, to conclude in relation to the experts' views  
4 -- and that, in fact, would include Ben Kiernan, who was of the  
5 view that genocide did occur. In relation to all of the opinions  
6 from the different academics, it's really matters that you can  
7 think about and take into account, but they don't have the  
8 probative value that they would otherwise have if they were able  
9 to read those 1,400 written records, those civil party  
10 applications, and the many, many other documents that would go to  
11 proof of these issues, or go to support these issues, we would  
12 submit.

13 Your Honors, now I'd like to turn to the next group, this perhaps  
14 second group of documents the Khieu Samphan defence have sought  
15 to highlight. And admittedly, it is a difficult task to bring out  
16 every document you would like in a short period of time.

17 [09.16.54]

18 But if we look at the types of documents that they brought to  
19 Your Honours' attention, they largely fell into two groups. And  
20 that was a group of documents that provided evidence of facts  
21 that occurred in and around 1976, and another group of documents  
22 that, by and large, referred to facts and events that occurred  
23 between about August 1978 to December 1978.

24 So if we just look at the selection of those documents and the  
25 time period in which those two sets relate, when we look at the

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1 core allegations in the indictment, namely, that -- in relation  
2 to the treatment of the Vietnamese, namely, that, from 1975  
3 onwards, 150 to 200 thousand Vietnamese were expelled from  
4 Cambodia and then we look at the next, perhaps, core allegation,  
5 that from April 1977 there -- an intent was formed, is what the  
6 indictment says, that the CPK leadership had decided to destroy  
7 all or part of the Vietnamese population living in Cambodia.  
8 And that's -- that's from -- that's paragraph 214, but it says  
9 from April 1977, when the indictment says that that intent had  
10 crystallized in the leadership, the CPK leadership, to target the  
11 destruction of the Vietnamese civilian population.  
12 Prior to that, the argument or the allegations in the indictment  
13 that it -- the CPK leadership did not have that intent prior to  
14 April 1977. I'm sorry if I said '76 before.  
15 [09.19.31]  
16 So when we look at the documents -- and say if we look at the  
17 four documents that they selected in relation to what was -- the  
18 facts that were occurring in 1976 -- and I'm referring to E3/221,  
19 that's the Standing Committee meeting minutes of the 14th of May  
20 1976; and E3/794, and that's the Council of Ministers meeting  
21 minutes with a speech by Pol Pot, dated the 31st of May 1976.  
22 If we look at those two of the four documents, what the Defence  
23 is saying the probative value of those documents are is that  
24 because the leadership appeared to be, from their minutes,  
25 negotiating a peaceful solution with Vietnam to end the border

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1 conflict, that is evidence of intent that the CPK leadership did  
2 not possess the intent to target the civilian -- the Vietnamese  
3 civilian population in Cambodia.

4 [09.20.59]

5 But the issue is, Your Honours, that intent, the indictment says,  
6 did not culminate until April 1977. That's more than one year  
7 after the evidence that they put forward that they suggest shows  
8 that intent did not exist one year later.

9 Your Honours, the position of the Prosecution and the allegations  
10 in the indictment are that the intent to target the Vietnamese  
11 and to destroy them as a group, or part of a group, escalated or  
12 came into form as the armed conflict with Vietnam began to  
13 escalate. And so what we would say the probative value of what's  
14 said in meeting minutes one year before the allegation in the  
15 indictment says that that intent had been formed is really quite  
16 limited.

17 And secondly, when -- when counsel talk about this idea of what  
18 was the CPK leadership's view of the Vietnamese government in  
19 1976, even when we look behind the meeting minutes and look at  
20 some of the words in the meeting minutes, you can see that, even  
21 as of then, even though they were attempting to negotiate a  
22 peaceful solution, in E3/793, we can see at that meeting they're  
23 still referred to as "the contemptible ones".

24 [09.22.53]

25 And in Democratic Kampuchea, Your Honours, are well aware of how

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1 -- what happened to many people that were viewed to be

2 "contemptible". I mean, they were, in fact, killed.

3 But the main point being, Your Honours, is that these documents

4 really are not that helpful in determining whether or not the

5 intent was with the CPK leadership in April 1977 when the

6 indictment says that that had formed in order to target the

7 Vietnamese civilian population.

8 And perhaps if we look at two other documents from 1976, that

9 they used to show this perhaps conciliatory approach to the

10 Vietnamese government, they referred to E3/4589. And that's

11 Francois Ponchaud's report on the 10th of January 1976.

12 [09.23.58]

13 And by and large, that report supports the allegation in the

14 indictment that large numbers of Vietnamese were expelled from

15 Cambodia to Vietnam in 1975, so it's certainly probative in that

16 regard. He talks about cooperation with the Vietnamese to have

17 them repatriated and -- in his report -- and he also talks about

18 Vietnamese being forced out of the country. So by and large,

19 that's quite supportive of the -- of the allegations in the

20 indictment.

21 Where there was cooperation in places that appears in this

22 report, again, that cooperation appears 18 months to two years

23 prior to, it is argued in the Closing Order, that that genocidal

24 intent in fact came into being in April '77.

25 Now, Your Honours, if I can just move to the four documents the

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1 Defence put forward as probative in relation to the treatment of  
2 the Vietnamese in 1978.

3 There's three documents that are newspaper reports, and there's  
4 one document that is a Revolutionary Flag, and that's dated  
5 February 19, 1978. And that was E3/744.

6 The three newspaper reports at E3/7265, that's from the  
7 "Washington Post" on the 10th of August 1978. The E3/7315, that's  
8 from the "Bangkok Post", 24th of October 1978. And E3/7310, and  
9 that's a newspaper report from the 3rd of December 1978.

10 [09.26.03]

11 Just briefly, the combined effect of these newspaper reports,  
12 they essentially discuss that, on the 10th of August 1978, there  
13 was pressure by Vietnam to negotiate as a negotiating tactic with  
14 Cambodia to resolve the border dispute.

15 The next document, dated the 24th of October 1978, talks about  
16 the buildup of large numbers of Vietnamese forces on the eastern  
17 border of Cambodia and some resistant forces occupying some parts  
18 of the eastern side of Cambodia as well as some insurrections in  
19 the country.

20 And the last report, newspaper report, was the 3rd of December  
21 1978, where it talks about the creation of a United Front with  
22 the Vietnamese which would include the defectors from Cambodia.

23 [09.26.59]

24 Your Honours, it's accepted by the Prosecution, accepted in the  
25 indictment that, as the armed conflict escalated, as we move

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1 towards January 1979, when the Vietnamese ultimately took over  
2 Phnom Penh and most of Cambodia. And if we look at allegation --  
3 the allegation in the indictment in relation to the armed  
4 conflict section, at paragraph 154, it states:

5 "The scope and intensity of the international armed conflict  
6 increased steadily and resulted in two large scale incursions of  
7 the Democratic Kampuchea by Vietnamese forces in December 1977  
8 and December 1978."

9 And then it goes on to say, "This later invasion led to the  
10 toppling of Phnom Penh and the controlling of the country."  
11 Your Honour, those -- so, in a sense, the buildup of military  
12 support, the fact that there was a combined force building in  
13 order to take over Phnom Penh, it doesn't really essentially  
14 challenge or directly address the issue of what happened to  
15 Vietnamese civilians in Cambodia. It relates to the war effort,  
16 but it doesn't address the allegations in the indictment. And  
17 those allegations are that the deportation in terms of the  
18 Vietnamese in 1975; the killings and mistreatment of Vietnamese  
19 civilians living in Svay Reang and Prey Veng; the cruel treatment  
20 and torture and killings of Vietnamese or civilians or combatants  
21 taken to security centres at Krang Ta Chan, Au Kanseng, S-21 and  
22 Tram Kak cooperatives.

23 [09.29.11]

24 Those documents don't address that issue at all, the central  
25 issue as to the crimes that we say that are alleged in the

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1 indictment, so they're contextual, a buildup of military forces.

2 And so the probative value, we submit, is quite limited.

3 Needless to say, understanding the armed conflict and how that  
4 impacted on behaviour, etc., that's relevant. And we think those  
5 documents are relevant in that respect, but they're not very  
6 probative in terms of determining whether the core allegations  
7 have been proved.

8 Your Honours, there's one last document I would like to mention.

9 It was raised by the Khieu Samphan defence, and this is E3/744.

10 And it's the Revolutionary Flag in February 1978.

11 [09.30.14]

12 Now, the Defence argue that this edition of the CPK policy  
13 magazine provides evidence that the CPK specifically were  
14 excluding the Vietnamese population in Cambodia as enemies of  
15 their -- of their regime. They argue that this magazine makes a  
16 clear distinction between enemies such as the Vietnamese armed  
17 forces, the state, the military forces, resistance groups in  
18 Cambodia and Vietnamese generally, and make a clear distinction  
19 that Vietnamese people generally are not the target of their  
20 policies.

21 However, Your Honours, even though they do refer to Vietnamese  
22 civilians and military, when you look at that Revolutionary Flag,  
23 and this is at English, 00464063; Khmer, 0000786; and French,  
24 00538944; and I quote:

25 "Another 'Yvon' political defeat is that the Vietnamese people

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1 clearly see that their aggressive policies have led their country  
2 and the Yuon people into painful destruction."

3 Your Honours, we submit that when the CPK, in their magazine, are  
4 referring to the Vietnamese as something other than the military  
5 forces, they're referring to the Vietnamese in Vietnam. They're  
6 not referring to the Vietnamese in Cambodia.

7 [09.32.10]

8 In that same edition, they refer -- they state that the CPK  
9 encourages forces to resist and eradicate the pacifist and  
10 espionage networks.

11 So the probative value of that magazine to indicate that the  
12 intent of the CPK was not to target the Vietnamese civilian  
13 population in Cambodia, that's incorrect. They were referring to  
14 the Vietnamese population, we submit, in Vietnam.

15 So, Your Honours, in relation to all of the documents that were  
16 put forward, we submit that, Your Honours are in the best  
17 position to determine whether genocide occurred because of the  
18 information that you have before you as opposed to,  
19 unfortunately, what wasn't before those other experts. And  
20 secondly, the documents that have been put forward to show the  
21 context in which these core allegations occurred, they have a  
22 certain relevance, but the weight of them, being newspaper  
23 reports and dealing with military battles as opposed to what was  
24 happening in areas controlled by the CPK and what was happening  
25 to those people that are the subject of the allegations in Svay



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1 Reang and Prey Veng and sent to S-21. They have very, very  
2 limited value in challenging that evidence or those allegations.

3 [09.33.47]

4 So, Your Honours, if I may, I'm going to hand the floor to Mr.  
5 Lysak, and he will submit to you on the Cham and the former Khmer  
6 Republic officials.

7 Thank you.

8 MR. LYSAK:

9 Good morning, Your Honours. There are a limited number of  
10 documents presented by the Khieu Samphan defence on this issue,  
11 so I also will be fairly brief this morning.

12 The Defence presentation relied upon the opinions of two authors,  
13 Philip Short and Henri Locard. However, these were authors, I  
14 wish to emphasize, who had not conducted extensive, detailed,  
15 thorough research on the experiences of the Cham people under the  
16 Khmer Rouge.

17 [09.34.55]

18 Neither of those people are lawyers, Judges who understand the  
19 legal definition of "genocide". As we have said before, and as  
20 Mr. Smith reiterated, it is this Chamber -- it is for this  
21 Chamber to decide whether the evidence you've heard meets the  
22 legal requirements of genocide.

23 Let me say that the true -- the most important significance of  
24 the research and work of Ysa Osman and Ben Kiernan is not so much  
25 their opinions on these issues. It is the substantial evidence

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1 that they have collected as a result of their research that shows  
2 in detail the facts of what took place with the Cham people  
3 during the Democratic Kampuchea regime.

4 So yes, as reflected by some of the material that was quoted by  
5 the Defence, there has been this academic debate in the past on  
6 the genocide issue with some people, Kiernan, Ysa Osman on one  
7 side, others on the other -- on the other side, Short, Chandler,  
8 but only two of these authors conducted detailed research  
9 specific to the Cham. The others did not. And none of those  
10 people heard the evidence, Your Honours, have heard in this  
11 courtroom over the past year.

12 [09.36.36]

13 One of the documents presented by the Khieu Samphan defence on  
14 this issue, E3/7283, which they described as an article written  
15 by Henri Locard, was actually a letter he wrote to the Cambodia  
16 Daily criticizing the crime sites that had been selected for the  
17 Case 002/02 trial in the Court's severance decision. It was not a  
18 research piece into what had happened to the Cham people.

19 This is not to criticize the work or opinions of Henri Locard.

20 He's done some very detailed research. We are hoping he will  
21 appear before this Chamber. But the document cited is not a  
22 research piece into the Cham, and we would submit the research he  
23 has done is minimal on this issue compared to Ben Kiernan and Ysa  
24 Osman.

25 The book written by Philip Short cited by the Defence, E3/9,

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1 contains no detailed research or interviews about the Cham. In  
2 this 500-page book, there are only a few cursory references to  
3 the Cham. You will find it on pages 230, 254, 326 and 354. And  
4 these are solely a very general discussion about the suppression  
5 of their culture, the rebellions and the movement of the Cham  
6 population. That is it.

7 [09.38.24]

8 There is no discussion at all of the organized mass killings of  
9 Cham communities, entire Cham communities, that occurred in Kang  
10 Meas, Kampong Siem and Krouch Chhmar districts in 1977 to '78. It  
11 is clear from this book that this is an issue that simply -- that  
12 Philip Short simply was unaware of and had not researched.

13 To follow up further on another point made by my colleague, when  
14 Philip Short made the statement that was quoted by counsel, when  
15 Henri Locard wrote his article or his letter to the Cambodia  
16 Daily, they were not aware not only of the evidence uncovered by  
17 the judicial investigation, but, of course, also, the evidence,  
18 Your Honours, have heard in this courtroom during the trial  
19 segments on the Cham and Vietnamese.

20 [09.39.30]

21 Short and Locard did not hear the witnesses who came to this  
22 courtroom and described how entire -- the entire Cham population  
23 of villages and communes in Kampong Cham province, the heartland  
24 of the Cham population in Cambodia, were rounded up and taken to  
25 be killed in 1977 and '78.

18

1 They were not here when Seng Kuy described how he was ordered to  
2 help transport the Cham from his commune, all the Cham in his  
3 commune, to Wat Au Trakuon, nor when he told this Court the words  
4 of the commune security chief who oversaw these arrests, "We will  
5 kill all the Cham people. We will not spare anyone."

6 They were not aware of the evidence before this Court of orders  
7 from the upper echelon to identify, arrest and kill Cham people,  
8 and those authors were not here on the 3rd of February this year  
9 when Meas Voeun, a former CPK sector secretary and deputy  
10 commander of the West Zone military, testified, and I quote:

11 "We were instructed that Vietnamese had to be smashed because  
12 they did not return to their country."

13 [09.41.08]

14 The Defence cited the argument or opinion of some of these  
15 authors that the killings of the Cham and Vietnamese were  
16 politically motivated, not racially motivated.

17 For example, in the letter he wrote to the Cambodia Daily,  
18 E3/7283, Henri Locard stated that the Khmer Rouge were not  
19 specifically racists, and that Cham were victimized because they  
20 rebelled en masse in Krouch Chhmar district and refused to  
21 abstain from performing their daily prayers.

22 This was the view he expressed in this letter, and this is a  
23 perfect example, Your Honours, of why opinions of authors on this  
24 issue, this issue of whether or not genocide occurred, are  
25 neither admissible nor of particular value or help to your

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1 decision. And that is because these opinions often rest on an  
2 incorrect understanding of the law.

3 [09.42.15]

4 Contrary to what Locard, Short and others appear to believe,  
5 genocide does not require that the perpetrators be racists or  
6 racially motivated. If you have the intent to eliminate an  
7 ethnic, religious or racial group, that is genocide. Whether you  
8 were acting for political reasons, military strategy, racism or  
9 because you don't like the colour of their clothes, it is the  
10 intent to eliminate an entire group that is genocide.

11 So the quotes we heard from the Defence that Cham were not killed  
12 for racial reasons, but because they had rebelled, do not  
13 disprove genocide. To the contrary, if you decide to eliminate  
14 the Cham people because you were worried about them rebelling  
15 again some day and you kill entire Cham communities, men, women  
16 and children, that is genocide, period.

17 If you decide to kill all the Vietnamese ethnics and nationals  
18 who stayed in the country because you are engaged in a political  
19 and military conflict with the Vietnamese government and don't  
20 trust the Vietnamese people, that is genocide.

21 The fact you have border problems and a history of antagonism  
22 with the Vietnamese government does not justify rounding up and  
23 killing the Vietnamese people who are living in your country.

24 [09.43.58]

25 Another document presented by the Defence, Your Honours, was a 14

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1 October 1975, Democratic Kampuchea government radio broadcast.  
2 This was in E3/27 -- I'm sorry, E3/272.  
3 I'm not entirely sure the reason the Defence cited this document.  
4 Counsel recognized herself that this radio broadcast was  
5 propaganda on the part of the DK government. This was a radio  
6 broadcast telling -- indicating that -- or stating that Cambodian  
7 Muslims were guaranteed their full democratic liberties.  
8 And I would observe, Your Honours, that the timing of this  
9 propaganda, mid-October 1975, shortly after the Kaoh Phal  
10 rebellion in Krouch Chhmar, is surely not a coincidence.  
11 [09.45.08]  
12 This radio broadcast, indeed, appears to be propaganda,  
13 propaganda aimed at pacifying the Cham people similar to how the  
14 Khmer Rouge gave false assurances to Lon Nol soldiers and  
15 officials before rounding up and killing them.  
16 Finally, with respect to the targeting of Lon Nol officials and  
17 soldiers, the Khieu Samphan defence presented a few news articles  
18 essentially that indicated that there were -- there was some  
19 resistance, some pockets of resistance in the country in 1976  
20 that may have been led by some former Lon Nol military, possibly  
21 operating out of Thailand.  
22 And, Your Honours, this is simply not justification to round up  
23 and kill ranking Lon Nol soldiers and officials who remained in  
24 the country and their family members. Let me remind, Your  
25 Honours, one of the documents we presented, E3/1539, the S-21

21

1 record showing over 160 Lon Nol-related people who were killed at  
2 S-21 in one week in March 1976.

3 The list includes at least 12 relatives of Long Boret, people who  
4 were not soldiers or officials themselves, and the very last  
5 entry on this S-21 list is four children. Children -- four  
6 children of a former Ministry of Education official, Thach Chea,  
7 who you've heard about during the last few years.

8 [09.47.20]

9 We would submit that to try to use the resistance of a few to  
10 justify the killing of thousands, including women and children,  
11 is shameful. It's not a legal defence. It is not a legal defence  
12 to the extra-judicial killing of so many Cambodians.

13 So we would submit these documents have little probative value to  
14 the issues, Your Honours, have to decide.

15 Thank you for the time this morning.

16 MR. PRESIDENT:

17 Thank you.

18 Now the floor is given to the Lead Co-Lawyers for civil parties.

19 You may now proceed.

20 [09.48.17]

21 MR. PICH ANG:

22 Good morning, Mr. President, Your Honours, everyone in and around  
23 the courtroom.

24 The Co-Prosecutors have already <extensively> responded to the  
25 <documents> presented by the Defence Counsel for Mr. Khieu

22

1 Samphan, and all the arguments in the responses are very robust,  
2 so we have no further responses.

3 Thank you, Mr. President.

4 MR. PRESIDENT:

5 Lastly, the floor is now given to the defence team for Mr. Khieu  
6 Samphan to register responses or any observations on the  
7 documents presented by Co-Prosecutors and Lead Co-Lawyer for  
8 civil parties.

9 You have the floor now.

10 [09.49.12]

11 MS. GUISSÉ:

12 Thank you, Mr. President. Good morning, everyone.

13 I will make a few submissions on the various documents that have  
14 been presented over the past few days by the Co-Prosecutors and  
15 the civil parties, but before starting, I would like to make a  
16 few general remarks, particularly to clarify a point in light of  
17 what I <believe I> have heard the Co-Prosecutors say, precisely,  
18 that the purpose of the Defence's presentations of documents  
19 would be to justify crimes.

20 I think that this is an important, <border-line philosophical,>  
21 point <when evoking criminal defence. That is because when we  
22 present material we do not do so as a way to justify crimes.>

23 When we present contextual documents, we are trying to present  
24 arguments to the Chamber so that it may determine what happened  
25 at the political level, at the local and national levels. <That



1 crimes have been committed -- and> we have already said and <>  
2 recalled, recently again during the appeals hearings, that there  
3 are points that are not disputed. The fact <is> that people were  
4 killed at various locations in Cambodia, <and> we, the defence  
5 teams, have a view that it should be determined whether that  
6 policy was agreed to at national level and whether Mr. Khieu  
7 Samphan endorsed such a policy and whether there are points that  
8 correspond to a <joint criminal enterprise>.

9 [09.51.04]

10 That is what we, the Defence, are presenting. When we present  
11 contextual elements <or> very diverse and varied opinions, we do  
12 so so that the Chamber can make a determination. We do not do so  
13 to justify any killings at all. This is a very important point to  
14 put forward from the very outset.

15 As regards general remarks on all the documents presented by the  
16 Co-Prosecutors and the civil parties, let me point out that we  
17 have our <opposing principle> positions <> as regards written  
18 statements that are presented in lieu of oral testimonies.

19 I would like <remind you all> that there are no  
20 cross-examinations and <therefore> we, the Defence, have not had  
21 the opportunity to challenge the credibility of those  
22 testimonies, <nor have we had the opportunity to compare them to  
23 other files or pieces of evidence in the case file>, so <of  
24 course, we> would like the Chamber to take into account such  
25 considerations when they deal with <these so-called> "key"

1 documents.

2 [09.52.11]

3 And with regard to the remark made by the civil party Lead  
4 Co-Lawyers at the end of the presentation of their key documents,  
5 stating clearly that, as regards the statements of civil parties,  
6 they had thoroughly cross-checked the documents <prior to  
7 presenting them to the Chamber>, and I am not <in any sense  
8 attempting to challenge> the good faith of the civil party Lead  
9 Co-Lawyers, but <I am aware> that sometimes information provided  
10 by the civil party lawyers as additional information has turned  
11 out to be inaccurate when we confronted the civil parties during  
12 the proceedings.

13 Consequently, whatever <verifications may emerge from a  
14 lawyer-client relationship does not allow us to write off a  
15 testimony or confront civil parties with any pieces of evidence  
16 that may be -- may be presented as evidence by these civil  
17 parties when parties and judges conduct a cross examination.>  
18 That is something I wanted to clarify from the outset.

19 [09.53.25]

20 <Finally, and I am still making general remarks here, regarding>  
21 documents from other <investigations>, let me recall the position  
22 of Mr. Khieu Samphan's <defence team> that Mr. Khieu Samphan <has  
23 not been involved in these on-going> investigations, and <that we  
24 are against such material that he> cannot respond to, <especially  
25 given the fact that certain> persons are not called to testify

25

1 before the Chamber. And so it is a violation of his right to a  
2 fair trial, <and notably> the right to be able to confront <and  
3 indeed test the validity of the accusations being made against  
4 him.

5 I am going to begin by referring to documents regarding the>  
6 treatment of Vietnamese, quite obviously, given the time allotted  
7 to me, it will not be possible for me to give comments on all the  
8 documents that have been presented, but I would like to make some  
9 remarks on the information that <emerges when reading> these  
10 documents.

11 <Another equally important point is, and this is even more  
12 important now considering the> same thing occurred again this  
13 morning when the International Co-Prosecutors gave their  
14 interpretation of documents. It is <>true> that you, the bench,  
15 will <be the ones judging and you will> make a determination in  
16 light of the evidence that has been adduced and the documents  
17 presented. You will not make a determination <solely> based on  
18 <our> interpretations.

19 [09.54.57]

20 <Regarding the treatment of the Vietnamese, I must point out  
21 that> there have been lots <and lots> of documents <in which I>  
22 have heard <a> leitmotif <on the International Co-Prosecutor's  
23 side>, and he keeps saying that <certain documents prove a will>  
24 to attack combatants and non-combatants, but when you look at the  
25 documents, nothing of the sort transpires from them.

1 It is not because the Co-Prosecutors, <in their quest for  
2 incriminatory evidence,> interpret a document in a certain way  
3 that you should rely on such interpretations, but you have to  
4 look at the documents <themselves to verify what exactly lies  
5 therein.>

6 In this regard, an example would be, for instance, document  
7 E3/7842. And this allows me to say something with regard to what  
8 happened <before 1977>, because the International Co-Prosecutor  
9 has just told us that you should remember that <> the Defence  
10 presented contextual materials relating to the period prior to  
11 <1977, but, in terms of the Closing Order, it is after 1977 that  
12 we speak of an intent of genocide>.

13 [09.56.10]

14 Insofar as <this> document refers to what happened between 1975  
15 and 1976, I would say by way of a response that we are looking at  
16 evidence that <was also put forward by the Prosecution and,  
17 consequently, it is not out of the ordinary that we too are  
18 interested in this period>

19 Be that as it may, may I ask you to place <this> document E3/7842  
20 in relation to the <material I cited that correspond to> that  
21 same period <that you will remember me having quoted a passage  
22 from> regarding the famous meeting <regarding the negotiations  
23 with the Vietnamese> in which Son Sen said <that low profiles  
24 should be maintained> and that, even though there may be <times  
25 when the Vietnamese may fire at us that we shouldn't -- that we

1 should> keep a low profile and continue with the negotiations.  
2 Another document quoted is document E3/7759. It is a  
3 <"Revolutionary Flag" edition from April 1976. Again here there  
4 is a question of interpretation at play. There is nothing --  
5 within this document we speak of the deporting of foreigners in  
6 general terms>  
7 Let me recall that this is not only the Vietnamese who left  
8 Cambodia <> between 1975 and 1976. <It> is not true that they are  
9 talking specifically of Vietnamese during that period <but all  
10 foreigners. It is therefore incorrect to reference this document  
11 as referring specifically to the Vietnamese>.  
12 [09.57.58]  
13 <There are certain materials that were also used by the  
14 International Co-Prosecutor in his interpretation, again of what  
15 certain documents meant.>  
16 And again, I must talk about the context here because when we  
17 talk of "the enemy", when we talk of <--> enemies to be <fought>,  
18 we <want to talk about> non-combatants and combatants at the same  
19 time, and the Vietnamese population in general without making any  
20 distinctions. This doesn't transpire from the documents <from the  
21 way in which they> have been quoted.  
22 And I refer you to document E3/805 of the 16th of December  
23 <1976>. And in this document, <from the division,> we are  
24 <clearly> talking of the situation of the enemy. And the ERN is  
25 00185237, in English; In Khmer, <00052333>; and in French,

1 00315067. The document was E3/805. And here, we are speaking very  
2 clearly of all the documents and we are referring to the  
3 situation on the border.

4 [09.59.12]

5 And I would also like to quote an important passage referred to  
6 <but> when they say apparently regarding internal enemy, they  
7 were <generally> smashed, <without hesitation,> but, <the  
8 incitation along> the border <saw>, the enemy <continues its>  
9 attacks.

10 If we do not understand the context of what happened on the  
11 border and link it with what <effect it may have had> within the  
12 country, we will not <in any way> understand the document in its  
13 entirety.

14 Same thing for document, <E3/742,> it's a "Revolutionary Flag"  
15 issue. Here, again, mention is made of the conflict and of what's  
16 happening with Vietnam as a country.

17 Document E3/2435. Here, mention is not made of killing Vietnamese  
18 people. It simply <requested> that the district Angkar <provide  
19 guidelines for what to do if some> Vietnamese people <were to be  
20 returned to their country>.

21 And then document E3/240, <they tell us> this is the proof that  
22 there is a desire to kill the population in general. That's what  
23 appears, but there is a segment that the Co-Prosecutor did not  
24 quote here, and this is French ERN, 00282550; English ERN,  
25 00897667 to 68; Khmer ERN, <00282550>; where the Co-Prosecutor

29

1 did not mention an important element of this report <and this>  
2 telegram, that is to say, that they heard <that a> certain number  
3 of <armed> Vietnamese soldiers were captured <> and <that an  
4 AK-47, three AR-15s, two pistols and three U.S. grenades were  
5 seized>.

6 [10.01.16]

7 So here, we are at a far cry from speaking about the Vietnamese  
8 civilian population. We're speaking here about armed combatants.  
9 Then again, E3/248, and you will see that in this document, which  
10 is a report describing the interrogation of Vietnamese spies, and  
11 you will see that, in this document, mention is also made of  
12 fighting at Dak Dam. And this is in January 1978.

13 So here again, it's important to understand the context, that is  
14 to say, when we're speaking about the Vietnamese, about  
15 Vietnamese spies or about Vietnamese fighters at the border,  
16 we're speaking, indeed, about people who are fighting, and not  
17 about civilians.

18 [10.02.08]

19 And another element that was noted by the Prosecution is document  
20 E3/200, which is a speech by Khieu Samphan. And here, once again,  
21 I have to remind you of the context because it's said that the  
22 fact they're speaking about enemies in general means combatants  
23 and non-combatants. That's how it's understood, whereas, clearly,  
24 in this document, and we can see -- and I'd like to refer you to  
25 an excerpt -- to the excerpt that's at French ERN, 00612166; at

30

1 the English ERN, <00004165>; and Khmer 00292804 and to 05.  
2 And the excerpt that was used by the Co-Prosecutor is right after  
3 the sentence I'm going to quote, which states that, "Our  
4 situation in terms of national defence is improving every year."  
5 So here, we are dealing with a speech that was given on the 17th  
6 of April when <they are taking stock of the situation and> the  
7 general prospects of the country are being described. And here,  
8 the idea is to boost the morale of the troops. And they're  
9 speaking here about improving the <defence> situation in the  
10 country.  
11 I'd like to also remind you that April 1977 -- and we've seen  
12 this in the documents that were already covered, and I'd like to  
13 refer a report regarding the activities in the East Zone,  
14 document E3/852, where <at the same time as we are speaking of  
15 --> this improvement of the situation of national defence <which  
16 shows that when we speak of national defence that we indeed are  
17 discussing the army and of the situation for the combatants with  
18 the potential enemies at the borders>.  
19 [10.04.15]  
20 The document E3/852 allows us to put things in perspective  
21 because, here, we have reports from the East Zone from the <> 2nd  
22 to the 26th of April where we see that there are various  
23 incursions <coming from the border zone>. So in this context,  
24 when Khieu Samphan is speaking about enemies or about national  
25 defence, he is speaking clearly, therefore, about fighters and



1 <non-combatants. But this is a distortion of these statements,  
2 which do not mean that in the slightest>.

3 Another element that was used to support the Co-Prosecutors  
4 theory, it's an excerpt from the book of Khieu Samphan, E3/18, in  
5 which Khieu Samphan speaks about incursions from the Cambodian  
6 army this time into Vietnam. And he tells us <> that this is the  
7 <evidence> that the CPK intended to <aggressively> attack  
8 <Vietnamese even outside of Cambodia>, however, an element that  
9 was ignored when this document was read out, that is to say,  
10 first of all, Khieu Samphan here was not speaking about what he  
11 knew back then. He's speaking about elements that he learned way  
12 afterwards.

13 [10.05.41]

14 And here, I'd like to refer you to the French ERN, 00595447;  
15 Khmer ERN, 00103850; English ERN, 00103760. And the excerpt that  
16 follows the excerpt read out by the Co-Prosecutor goes as  
17 follows:

18 "Contrary to my previous understanding, is it rather the Khmer  
19 Rouge who, without understanding their own abilities, decided to  
20 launch <> an aggressive <military> policy against Vietnam which  
21 was more powerful?

22 Of course, back then, I could <only> follow the development of  
23 the fighting, militarily speaking, through reports from <army>  
24 cadres <and cadres from the major border zones at large meetings  
25 of the permanent office of the CPK, and through my own

1 conversations with them>.

2 But the conviction that I formed back then was that the  
3 incursions that were discussed here were responses to the  
4 incursions from the Vietnamese. <As> far as I know, if the  
5 leaders of the CPK were determined to assert their sovereign  
6 rights over <all of> our national territory, they were too aware  
7 of their material weakness to engage themselves in hostile  
8 policies towards Vietnam, which was much more powerful." End of  
9 quote.

10 [10.07.10]

11 So this is an important contextual element. The excerpt of Khieu  
12 Samphan's book here is not speaking about what he knew back then.  
13 It's <> just raising questions, and this is what he's saying.  
14 He says here<, "At the time,> the information that I had and what  
15 I understood was that there were, indeed, incursions <>  
16 responding to the incursions from the Vietnamese army.

17 So here, I don't see how we can say this is an element that would  
18 prove that there was a desire, a clear desire to attack the  
19 Vietnamese population even outside of Cambodia, whereas I have  
20 just reminded you of the context in which this statement by Khieu  
21 Samphan was made and also reminded you of the fact that he only  
22 understood this as military issues and as responses to Vietnamese  
23 attacks.

24 [10.08.00]

25 <In> order to corroborate this theory once again presented by the

33

1 Co-Prosecutor, that is to say, the desire to attack the  
2 Vietnamese civilian population, the Co-Prosecutor spoke about a  
3 document <E3/7338> in which <> mention is made of the incursions  
4 of the Vietnamese army in certain Vietnamese villages.

5 And I'd like to draw your attention to another excerpt of this  
6 book by Stephen Morris, which is at the ERN -- which only exists  
7 in English, so I will quote it in English, ERN 01001764. And this  
8 provides us with a contextual element that's worth looking at.

9 [10.09.01]

10 And this is the paragraph that starts as follows:

11 "As our previous discussions suggest, the Cambodian communists  
12 had good reason to fear Vietnamese ambitions toward Cambodia in  
13 the long term."

14 And the author then questions whether this fear was justified or  
15 not, if the imminent nature of the danger was justified or not.

16 And he continues as follows:

17 "As we have discussed earlier, the Vietnamese had devised a  
18 strategy for controlling the communist movements in Laos and  
19 Cambodia. A key element of this strategy involved infiltrating  
20 the communist parties of its neighbours with people it had  
21 trained and indoctrinated. In the case of Cambodia, Hanoi trained  
22 and supported the so-called Khmer Vietminh, whom it assumed would  
23 act as its agents." End of quote.

24 [10.10.18]

25 So here, this is an excerpt that I found was interesting <> and I

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1 wanted to stress it to prove to you that when we're speaking  
2 about -- <> this is <> an author. <Of> course, you will develop  
3 your own opinion, but however, it's important to note that this  
4 author states that there <> was <a practice of> infiltration  
5 occurring from Vietnamese communists into Cambodia and into the  
6 state apparatuses of the neighbouring countries.  
7 Then there is a series of documents <> which really reflect the  
8 interpretation of the Co-Prosecutors, and I would like to ask you  
9 to examine this document carefully <keeping in mind that these>  
10 documents do not describe the cases of Vietnamese who <were>  
11 identified <> and persecuted because they <were> Vietnamese.  
12 Here, each <time> what we see is that we're dealing with  
13 complaints linked to criticisms of the <revolution in general or  
14 the> regime <in particular> and reports that the Prosecution says  
15 are essential reports to show that the Vietnamese were targeted  
16 show, however, <> show <> the contrary when we look at them in  
17 detail, that the issue of the -- of the Vietnamese origin of  
18 these people, or not, is only secondary, and that the real issue  
19 here was the attitude of insubordination.  
20 [10.12.04]  
21 That's what's mentioned in the report. I'd like to refer you <for  
22 example> to document E3/4112 where it is said that, yes, indeed,  
23 there is a person who is mentioned as being Vietnamese, and that  
24 is the proof, according to the Prosecutors, that the Vietnamese  
25 civilian population was targeted. But <> in this document, what

1 is targeted is that this person did <not comply with working  
2 instructions> and that this person did not comply with the  
3 working instructions <> which had been issued by the cooperative.

4 And I can refer you to this document so you'll see that the  
5 problem is not whether the person was Vietnamese or not. It's,  
6 rather, the problem of people refusing to obey orders.

7 [10.12.54]

8 And the same thing for document, E3/2447. And you will see that  
9 -- the mention <of the person's> Vietnamese nationality <> only  
10 arrives as a post <script>, and that the real issue here is the  
11 criticism and the complaints of these people towards the people  
12 who were managing the cooperative.

13 Document E3/2050 also, again, here it's interesting to look at  
14 this because we're speaking about the arrest of three women. And  
15 among these three women, only one was <supposedly> of Vietnamese  
16 origin. And the problem here, once again, is a problem related to  
17 work, a problem related to refusing to obey orders.

18 We cannot use these elements to say that this explains and that  
19 this supports that there was a genocidal intent coming from the  
20 CPK in generic <and national> terms. And here we see that,  
21 locally speaking, we're dealing here with difficulties, with  
22 issues that were connected only to the behaviour of these people  
23 who refused to follow orders.

24 And I would also like to refer to document E3/2435 <before the  
25 break> and document E3/4127.

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1 And I think maybe you might want to take <the break> now, <is  
2 that correct>?

3 MR. PRESIDENT:

4 Thank you, Counsel. It is now appropriate for our short break.

5 We'll take a break now and resume at 10.30.

6 The Court is now in recess.

7 (Court recesses from 1014H to 1033H)

8 MR. PRESIDENT:

9 Please be seated.

10 The Court is back in session and the Chamber gives the floor  
11 again to the defence team for Mr. Khieu Samphan to resume her  
12 responses and comments on the key documents presented by the  
13 Co-Prosecutors and Lead Co-Lawyers for civil parties. You have  
14 the floor now.

15 [10.34.06]

16 MS. GUISSÉ:

17 Thank you, Mr. President.

18 I would now like to refer you to another document presented by  
19 the Prosecution and here again we find the Co-Prosecutors making  
20 an interpretation that the attacks against combatants and  
21 non-combatants, that interpretation is not part of the documents.  
22 It is document E3/741 and it is an instruction by Office 870,  
23 dated 3rd of January 1978.

24 This <analysis or> interpretation by the Co-Prosecutors is very  
25 personal. When we read the document we find that several points

1 are mentioned therein and the three points are as follows:  
2 Point number one in all languages, strike the enemy militarily;  
3 point number two, strike the enemy politically, <eliminating  
4 their spy set-up and> all the <the> elements of psychological  
5 <warfare>; and point number three, cut <off> the <food and  
6 economic> supplies of the enemy.

7 [10.35.09]

8 And <to understand that we> are talking of the Vietnamese <>  
9 military enemy, <in paragraph> three, <in all languages>, the  
10 subparagraph in paragraph three is as follows: "In order to  
11 effectively cut the supplies of the enemies and do so  
12 permanently, there is only one solution, <that is> to engage in  
13 guerilla warfare everywhere and at all locations within and  
14 beyond the perimeters of the enemy as mentioned in the point  
15 relating to the guerillas above. So we find that here <in another  
16 part of the document that> we are talking of the guerilla warfare  
17 and matters of fighting the Vietnamese army. If we <take part in  
18 vigorous> guerilla warfare <> everywhere, the enemy will not be  
19 able to loot our paddies and <will not be able to sustain  
20 themselves>. That would <exhaust and> weaken them increasingly."  
21 End of quote.

22 Here again, we find <the proof that we> are talking of <>  
23 military <enemies>. And point number four goes on to say that  
24 they should cut <off> the transport means of the enemy. So the  
25 Prosecution cannot explain to us that, in that case, they were

1 not talking of anything other than military enemies.

2 [10.36.36]

3 A <number of documents were cited and presented. Notably the  
4 content of the confessions that were shown to the Chamber, here  
5 this refers to> document E3/1249 and we also have <the> S-21  
6 list, E3/432.

7 <In addition to the fact that we are going to examine more  
8 profoundly, this type of> document <> with regard to security  
9 centres, let me point out that the Khieu Samphan defence is of  
10 the view that in spite of your <decision> on the statements  
11 obtained by torture, we maintain that there has been, on your  
12 part, an inaccurate analysis of the <> Convention <and its  
13 exceptions>, and we are, <so to say, impatiently> awaiting Judge  
14 Fenz's dissenting opinion on this subject. <However, considering  
15 that you have already made this decision and that> such a  
16 decision is not subject to appeal during the trial, let me point  
17 out that, <in general terms that we believe that the> convention  
18 was incorrectly interpreted by the Chamber.

19 [10.37.47]

20 Other documents that I would like to quote quickly and which once  
21 more correspond to the vocabulary of warfare and cannot be <--  
22 that would not be> interpreted as the International Co-Prosecutor  
23 has done, in saying that these are indications that the Khmer  
24 Rouge wanted to attack civilians and combatants  
25 <indiscriminately>. You <will> find in these documents that if



1 you analyze it clearly -- <the numbers are E3/9375>, this is  
2 military telegram, E3/726, which is a "Revolutionary Flag"  
3 article in which reference is made to the situation of the enemy.  
4 And they are talking of the invaders in regard to border  
5 conflicts, document E3/833. Once more, it is an S-21 notebook and  
6 in it we are talking of a military conflict because even in the  
7 excerpt that has been quoted by the Co-Prosecutors, the ERN is as  
8 follows: 00184607 in English, and 00077894 in Khmer. We clearly  
9 see that mention is being made of <victory> against the "Yuon"  
10 who attacked Cambodian territory and they are referring to  
11 regiments and divisions which is proof that the discussion is  
12 about military matters.

13 [10.39.28]

14 Another document that was partly used by the Prosecution is  
15 document <E3/928>, which <is a report from> Commander Meas Muth,  
16 and I will quote the beginning of this secret phone conversation  
17 of the 1st <April> 1978 <-- excuse me, indicating that this> was  
18 proof that the Vietnamese were arrested and killed, but there is  
19 a sentence that follows what was quoted by the Co-Prosecutors.  
20 And the ERN in French is 00611668; and the ERN -- I don't know  
21 whether it is Khmer or English -- is <00183357> -- that's Khmer;  
22 and 00017026; that is <April> 1978. It is an important date  
23 because mention was made of the escalation of the conflict with  
24 Vietnam from late 1977 to late 1978. And this is what is stated  
25 in the documents: "Five boats of <10 to 37> horsepower were

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1 seized, <some weapons including an M-79> as well as other  
2 materials." And here again they are not talking of <Vietnamese>  
3 civilians but of boats with military equipment as part of an  
4 armed conflict.

5 [10.41.03]

6 Another absolute distortion of Pol Pot's speech is E3/4604. <I  
7 will not go in-depth into this speech as it is very long, but  
8 when we try to show this speech as referring to the civilian  
9 population and those who were not involved in combat, we are  
10 entering into subjective waters on the part of the Prosecution  
11 because this is, essentially, a war speech. We are speaking here  
12 of, like in> the documents I quoted earlier regarding the  
13 directives of 870 Office, <guerilla warfare; of> war techniques  
14 in order to wage <a combat>. And here again, I refer you to the  
15 testimony of Prum Sarat, who recalled that speech and was at the  
16 hearing of the 26th of January 2016, document E1/382.1. And it is  
17 shortly after <15.38.48> and he says that, "No, that speech was  
18 aimed at inspiring Cambodian soldiers to prepare their lines of  
19 attack and to win victory." End of quote.

20 This is how Prum Sarat, who was a soldier, understood this.

21 <Objectively, if> we want to read this speech without any bias we  
22 will find that his speech was directed at armed forces preparing  
23 for military combat.

24 [10.42.37]

25 Another interesting document is E3/863, which is a report of Nhim

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1 describing the situation on the Thai border. And we should link  
2 this up with the documents I quoted on Wednesday regarding  
3 activities on the Thai border. And the date of the document is  
4 interesting. It is 17th May 1978, and here again we are talking  
5 of the escalation and the difficulties <associated with it>. And  
6 we should remember that in this document, Nhim -- and this  
7 transpires from the passage read by the Prosecution -- Nhim is  
8 asking for what should be done with Khmers married to Vietnamese  
9 <women>, which means that in 1978, in any case in May 1978, he  
10 was asking what was to be done. Pointing out, furthermore -- and  
11 the ERN in French is 00623409, and the ERN in English is  
12 00321962. It is very useful as it is specifying in May <'78> as  
13 follows: "However, they haven't carried out any activities of <>  
14 opposition against us." They are talking of mixed couples.  
15 [10.44.24]  
16 And he is pointing out that there hasn't been any opposition  
17 activities against us, which means that all he was trying to do  
18 was to ask what had to be done, which means that as regards the  
19 Vietnamese, it means that <> there was <not an extremely  
20 clear-cut> policy to <systematically> exterminate all Vietnamese.  
21 <Furthermore this means that if there was a policy to exterminate  
22 all Vietnamese in Cambodian> territories since <1977>, we  
23 wouldn't understand how in May 1978 that question was still being  
24 asked.  
25 <We do not understand either why it was necessary to indicate

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1 that there were no> opposing activities. This ties in with the  
2 Defence position which is that they were not targeting the  
3 Vietnamese because they were Vietnamese. They were talking in  
4 general terms about the situation. When there were arrests <they  
5 involved> persons who were opposed to <policy, persons who  
6 opposed instructions>. And to say that it was not legitimate to  
7 <punish> people when they were in opposition <is one thing, but  
8 to say that this is genocide is another thing entirely>  
9 And <here, again, note that the date, the 3rd May 1978 is of  
10 particular importance>.

11 [10.45.19]

12 The same is true of other documents that once more reflect the  
13 biased analysis of the Prosecution, and I will refer you to a  
14 document which was quoted, document E3/8404, and I find it  
15 important to quote the ERN in French, S00017543; and the ERN in  
16 English is 00419728; and the ERN in Khmer is 00716183. This is a  
17 passage that wasn't quoted by the Prosecution, but it clearly  
18 states that it is appropriate to wage a war in general terms,  
19 and, <I'll summarize and> I quote: "In the world against Vietnam  
20 and <international> Soviet expansionism, and the <> Warsaw Pact  
21 who are criminal allies."

22 It is important to say that here we are dealing with Cold War and  
23 the international context is important. And when we talk of  
24 Vietnam, we have to place this situation in the same context as  
25 the Soviet international expansionist movement. <We speak of the

1 Warsaw Pact.> And here again we are talking about policies and  
2 <about the military in the context of the aggressions that were  
3 reported at that time by the> Democratic Kampuchea government.  
4 [10.47.06]  
5 An important point which we need to raise <when we speak of, and  
6 I will return to it later,> -- and it ties in with what the  
7 experts said that their studies were not <always> in-depth <but>  
8 that <there> were <even> confirmed authors.  
9 I must say that I am <rather> surprised at the criticisms that  
10 are made against Henri Locard saying that he did not, <for  
11 example> carry out any research in the region <or> on the Cham in  
12 particular.  
13 Furthermore, I find that this is not <completely> accurate  
14 because in document E3/2649, which is a report by Henri Locard in  
15 which he refers to investigations in Kampong Cham between 1993  
16 and 2005, so it is not really foreign to the region and it is  
17 indeed <>true> that he carried out research on that region.  
18 In any case, document E3/4524, we have a report by Elizabeth Do,  
19 and <I must> say that in the French version we faced some  
20 difficulties because this document has been translated as if it  
21 were a thesis. It is <not a thesis but more of a Master's  
22 dissertation, carried out by a student, and in its>  
23 conclusion,<we find material that was, obviously,> not quoted by  
24 the Prosecution -- and the ERN in French is 00751022, and the ERN  
25 in Khmer is 00768967, the ERN in English is 00548861. There is an

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1 error in the French and <that's why> I would like to draw the  
2 Chamber's attention to it. And it is in the second paragraph in  
3 which that person explains what her methodology had been. And she  
4 says that she <questioned> in a particular location, 48 persons.  
5 And she gives the percentage and the results of her studies,  
6 saying that, "The data tends to show that there were no manifest  
7 differences between the general daily treatment meted to the  
8 Vietnamese and the Khmer by the Khmer Rouge. The data  
9 nevertheless shows some cases of differentiation in treatment as  
10 regards <forced uniformity, the evacuation, and the  
11 extermination">.

12 [10.49.48]

13 Let us recall that it's a student doing a Masters <degree> so she  
14 doesn't really have a <legal> mastery of the situation. This is  
15 not a legal report but it's a report being done <for a sociology  
16 degree, if I've understood correctly.>

17 As mentioned earlier, 67 per cent <in the English version> -- and  
18 in French we have 37 per cent, so it varies, a discrepancy here  
19 -- 37 per cent of the informants don't think the Vietnamese and  
20 the Khmer were treated differently in their villages. So here we  
21 are. This is what this report by a student quoted <at length> by  
22 the Prosecution says. And she goes on to say in the next  
23 paragraph, "Although the majority of the informants denied any  
24 difference in the treatment of Khmer and Vietnamese, the studies  
25 and interviews with informants show signs of differences in

1 treatment."

2 [10.50.51]

3 Here again we find that this is only an interpretation by <a  
4 student of sociology. This is a> very limited study <> being  
5 used. <It is limited geographically and in terms of numbers  
6 because> when we look at this sample, it is only 48 persons <who,  
7 in addition, on the whole, do not fit in with the Accusation's  
8 theory. To> use this document to conclude that there was <proof  
9 of> a national policy in Cambodia nationwide <of> discrimination  
10 against the Vietnamese is going too far.

11 Another point which I would like to mention, and it ties in with  
12 the issue of experts, particularly <excerpts> of <Ewa Tabeau's  
13 report or other reports with excerpts on figures and such>. And  
14 it is very complicated to talk about <these> documents, to look  
15 at the figures provided without looking at her methodology,  
16 <sources or> her working method. And we can see that in such a  
17 situation we cannot really make use of this document in an  
18 exhaustive manner. So <at the beginning when I was presenting my  
19 documents>, I said that we are awaiting the decision of the  
20 Chamber as regards to <a number of people whose> appearance to  
21 testify before this Chamber <has yet to be decided>. And that  
22 <that could be useful when discussing articles or works from  
23 various authors.>

24 [10.52.29]

25 Let me conclude by <touching upon the question of the treatment

1 of the Vietnamese. Just to remind ourselves that it is> one thing  
2 to have a thesis and to try to corroborate it. Reading the  
3 documents in question and looking at them with neutrality and a  
4 critical eye is something else<; something that we, naturally,  
5 ask the Chamber to do>.

6 Now, let me talk about the issue of the treatment of the Cham and  
7 the treatment of the former <Khmer Republic> troops. I see that  
8 my time is short and I am doing everything to conclude by the  
9 lunch break.

10 I would like <also> to remind the Chamber that as regards the  
11 Cham, the Co-Prosecutors quoted <no less than 15 times Ben  
12 Kiernan's work,> explaining that <he> worked at length on the  
13 subject, and that was important and so on and so forth.

14 [10.53.39]

15 Let us also remember that the difficulties that were raised by  
16 the Prosecution as regards the basis <on which authors base their  
17 work, because we could write a book -- but the question is what  
18 are the sources and what are they based on? Are we dealing with  
19 hearsay? Who> were the persons interviewed? How were the persons  
20 chosen?

21 We have not been able to ask those questions.

22 And <I am> obliged to refer you to your memorandum, <E166/1/4,  
23 that you handed in on the 13th June 2012, as part of Case 002/01,  
24 where we spoke precisely of Ben Kiernan and the fact that you  
25 were not able> to call him to testify before this Chamber.



1 [10.54.30]

2 The last paragraph of that memorandum reads as follows: "In  
3 accordance with the norms required to meet the requirements of a  
4 fair trial <as per> international rules<,> the difficulties faced  
5 by the Chamber to call <Professor> Ben Kiernan to testify  
6 <implies that Professor Kiernan's conclusions would be of low  
7 probative value, if of any value,> in Case 002 since the author  
8 cannot be called for cross-examination." End of quote.

9 So, I would ask you to refer to what you pointed out in your  
10 decision and in your memorandum of 2012 saying that that author  
11 was quoted abundantly without any possibility being offered to  
12 the parties to cross-examine him on his sources. <Naturally there  
13 are academic discussions to be had. Naturally there> are persons  
14 who are perhaps more informed than others.

15 [10.55.37]

16 <But when we on the Defence raised> a number of criticisms,  
17 <especially> regarding Stephen Heder and Henri Locard -- I do  
18 recall that both Locard and Heder worked, at a point in time, for  
19 this tribunal. Heder criticizes the <position, the analysis and  
20 the> manner in which the evidence is analyzed <or -- that is the  
21 pieces of evidence that -- in any case the pieces of evidence  
22 that were not tendered into evidence at the time when Ben Kiernan  
23 was analyzing them, but, in any case the> testimonies and so on  
24 and so forth.

25 When those criticisms were raised, we had a situation in which

1 Heder was <fully aware of the majority of the material in the  
2 case file because he> worked for the prosecutor <and at the same>  
3 time, with the Office of Co-Investigating Judges, unless I am  
4 wrong.

5 <Therefore we> cannot say that <Steve> Heder <does not know what  
6 lies within the documents that are available to the Chamber. It  
7 is even worse to claim that considering that Steve Heder  
8 contributed significantly --> contributed significantly to the  
9 translation of a number of documents and Ben Kiernan relies, on  
10 several occasions, <in his work, on the translations carried out  
11 by> Steve Heder.

12 [10.56.57]

13 To say that, <essentially, that that could contribute to the>  
14 academic discussions -- <but academic discussions themselves are  
15 -- they are, in any case in the case of Steve Heder and Henri  
16 Locard, reliant on the on the ground investigations as well, just  
17 like, perhaps, Ben Kieran at another stage. And if we want to  
18 speak of the distance or of the -- of the distance between the  
19 moment when people -- when people wrote certain articles and the  
20 moment when you -- or when we arrive in front of this Chamber  
21 where there are other pieces of evidence that are being tendered.  
22 I remind you that there are many pieces of evidence that  
23 correspond to material from that time and there are  
24 interpretations of documents from the CPK that were available to  
25 different authors and that, as it happens -- and that is the

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1 great challenge regarding the Cham -- we don't have anything that  
2 could -- on the part of the policies of the CPK, we don't have  
3 any document that could confirm that there was indeed a will to  
4 exterminate the Cham in general.>

5 <There were things related to or indeed moments of repression.>

6 Let me remind you of document E3 -- by Ben Kiernan -- /1593. Here  
7 we have various materials relating to what Ben Kiernan said and  
8 he says that the <revolts> at Krouch Chhmar should rather be  
9 likened to a local repression.

10 [10.58.31]

11 And as regards discussions on Locard-Heder's work, in terms of  
12 their academic value, we don't have any documents that would  
13 corroborate the argument that prior to 1975 and up to 1979, there  
14 had been a commitment on the part of the CPK <and from the upper  
15 echelons to> exterminate the Cham, <for being> Cham.

16 <The true question that emerges> is that the difficulties we  
17 faced in this case is that when we <say that -- when we> examine  
18 the situation at certain locations, <is it a question of local  
19 responsibilities, that is what happens at a local level -- is  
20 this question being posed or not?>

21 We've heard a number of witnesses testify before this Chamber  
22 <but> to link that with what happened at national level and say  
23 that that was a directive of the CPK, <is, for the moment, is a  
24 matter of debate>.

25 [10.59.36]

50

1 Of course, you, the Chamber, will examine all the evidence. I  
2 cannot engage in any discussions -- any legal discussions; it is  
3 not timely at this <key> documents presentation here. So these  
4 are issues that we will discuss at one point or the other, but it  
5 is not the right time during these documents presentations. to  
6 discuss that since we are still dealing with the evidence.  
7 <I also want to remind everyone that we are lawyers and that  
8 there are definitions of genocide, and for the moment, I, in  
9 legal terms, do not know of any type of political genocide. So  
10 it's a discussion that we will have at some point in time but  
11 this is not the time nor place considering that we are still  
12 presenting documents of evidence.>  
13 Another point that's worth focusing on and that comes up again  
14 and that reminds us of what happens when an author decides to  
15 write, not with a legal perspective, but with the perspective of  
16 a sociologist or a historian; <these latter agents often use what  
17 we can> theses, and often we say that there's no history, but  
18 there are historians.  
19 <And an> interesting example is to see that in the book by Ben  
20 Kiernan, there is mention of Mat Ly. Let me find the reference.  
21 [11.01.07]  
22 So mention is made of Mat Ly saying that in -- let me -- I will  
23 find the reference.  
24 Well, it is said that the order to kill the Cham, apparently,  
25 came from Pol Pot; however, on the case file, we have his DC-Cam

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1 statement and this is what is said at document E3/7821. This is a  
2 segment that was not quoted by the Prosecution, at English, ERN  
3 00441579; Khmer, ERN 00229131; and this is what is said.

4 The question put is: "Back then, did Pol Pot hate the Cham?"

5 Answer: "No, he did not hate the Cham; however, he said that we  
6 were in the Revolution and that the burial depends on the  
7 Revolution." That's a poor French translation, but it's an answer  
8 to the discussion brought up by Mat Ly about how the Cham people  
9 were buried. And Pol Pot said that the Cham had to be buried like  
10 everybody else.

11 [11.02.46]

12 And when we come to how this is mentioned or interpreted in the  
13 book by Ben Kiernan, and this is at -- I can't find the ERN. I  
14 can't find the reference, but I'll get back to it.

15 But well -- another point -- another difference that's  
16 interesting to note is when we discuss -- when Kiernan discusses,  
17 rather, Heng Samrin regarding the Krouch Chhmar rebellion -- and  
18 this is in his book, <E3/1593>; French, ERN 00639036; English,  
19 001150140; and Khmer, 00637773; and this is what Ben Kiernan  
20 writes. He said, "Heng Samrin <> has no doubts about who was  
21 really responsible for the events. He heard Pol Pot <declare> the  
22 abolition of religion in 1975."

23 [11.04.20]

24 And when we see the footnote that he refers to in this excerpt,  
25 this is what we can see in the footnote. <This was an interview>

1 with Heng Samrin in 1991 which states: "I did not receive any  
2 direct orders from Pol Pot regarding this since the liberation  
3 <but> those who would get orders from Pol Pot would say, "Angkar  
4 Kang Leu (phonetic), the Supreme Organization, said so."  
5 So here, we're -- we go from, the Supreme Organization said so,  
6 to the people would take their orders from Pol Pot and I conclude  
7 -- and then we move on to Heng Samrin <who> has no doubts about  
8 <it>. So these maybe are subtleties in the formulation, but this  
9 proves that when we read the work of a historian and when we read  
10 assertions and we want to use them, we have to know on what these  
11 assertions are based and how they are being interpreted.  
12 [11.05.21]  
13 And, of course -- and this is maybe why there's so much academic  
14 discussion about this, same facts and same statements may be  
15 interpreted in very different ways in the same way as what  
16 happens before this Chamber with regard to the same documents  
17 that are interpreted in different ways by the Prosecution and  
18 then <> by the Defence. So what's important is to go back to the  
19 source and to see exactly what was said by each one.  
20 And another observation that I would like to make in regard to  
21 the events that were presented concerning the Cham -- and this is  
22 the memoir of Ms. Farina So, document E3/4519, where here, it's  
23 the same -- I have the same observation to make as earlier  
24 regarding the <Masters dissertation. "Thesis" is a specific word  
25 and is perhaps not being translated well here. This is a

1 dissertation.

2 Consequently we do not have equally viable authors who have  
3 worked for years on the same subject. We have a student who has  
4 compiled opinions and documents related to the Cham.>

5 [11.06.38]

6 <In> particular, she explains in her segment on the methodology  
7 that she relied a lot on DC-Cam interviews. So she relied  
8 <heavily> on Ysa Osman's work and also compiled excerpts from  
9 other authors. So it's <> very hard for us to rely on the work of  
10 <this> student to prove that this is work done by experienced  
11 researchers allowing us to convict on the basis of this kind of  
12 work.

13 And the last point that I would like to discuss is that there are  
14 a certain number of documents in here -- once again, we <must  
15 look again at -- we will not make you listen again to what you  
16 have already heard. These are elements that you will> examine  
17 this in detail during your deliberation and that we will examine  
18 more in detail when we make our final submissions. But in any  
19 case, the Defence's case is the same. That is to say that we have  
20 no desire to eliminate the Cham <> because they were Cham as part  
21 of a national policy. Of course there was repression. Of course  
22 people who were opposing the regime or considered to oppose the  
23 regime were repressed, but it was not <just> because they were  
24 Cham. And regarding genocide, <that's certainly> an important  
25 issue.

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1 [11.08.22]

2 Now, I'd like to move on to my observations regarding the former  
3 Khmer Republic soldiers and here I'm going to try <> be quick, in  
4 particular, by making a generic observation saying that, of  
5 course, I understood that when the Co-Prosecutor presented his  
6 documents that he said that he was presenting his documents  
7 essentially to object to Sao Van's testimony and to say that  
8 <the> instructions he received from Ta Mok regarding the fact of  
9 not attacking all the former Khmer Republic soldiers were <> not  
10 true <or at least limited>. And so the Co-Prosecutor, to  
11 contradict this, based himself on elements that we had already  
12 reviewed.

13 [11.09.14]

14 <We did this> when we discussed the evacuation of Phnom Penh,  
15 regarding facts that are disputed in Case 002/01 and that are now  
16 the subject of an appeal, so I'm not going to get back on that.  
17 So we'll see what the Supreme Court will conclude regarding this,  
18 but in any case, I'm not going to redo Case 002/01 again in front  
19 of you here now.

20 But there are a certain number of documents that are relative to  
21 lists from S-21 -- and here again, we will review this in detail  
22 when we get to that segment, so I'm not going to dwell on this  
23 right now -- and I think, in particular, document E3/1539 or  
24 <E3/3973>.

25 [11.10.03]



1 I'd like to, however, stress that there are a certain number of  
2 documents that were used to support the Prosecution's case that  
3 correspond to documents and facts that are outside of the scope  
4 of the trial and I have in mind the different decisions to reject  
5 our different objections regarding the policy towards the former  
6 Khmer Republic soldiers and officials, but I think it's important  
7 to understand, in this presentation of key documents, that we, in  
8 the Defence, believe that relying on documents outside of the  
9 scope of the trial is without any sense and I'm referring to  
10 document <E319/19.3.125> and I'm referring to document  
11 E319.13.20, and in document E3/9598, in document E3/2120. I'm  
12 referring also to document E3/5637 and to document E3/832.  
13 [11.11.19]

14 And, of course, I must also stress what I said at the beginning  
15 of my submission this morning is that we still have an issue with  
16 using WRIs coming from investigations that are not a part of  
17 <Case 002>.

18 And another -- well, a few short observations regarding certain  
19 documents, in particular, there <are> press articles E3/604 of  
20 December 1975 on Ieng Sary's interview stating that -- and this  
21 is connected to the evacuation. Well, simply to remind you that  
22 in this interview and in ERN - French, ERN 00599741 and -- and in  
23 the following ERN in French <too>, 00599742 and, unfortunately, I  
24 do not have the ERNs in the other languages. Of course I can get  
25 back to you about this, <> Ieng Sary only speaks about two high

1 senior leaders who, apparently, were executed; that is say, Lon  
2 Nol and Long Boret and does not speak about any others.

3 [11.12.43]

4 So <using these statements to conclude> that there was,  
5 <generally> speaking, a national policy aimed at eliminating the  
6 former officials of the Khmer Republic is really extrapolating a  
7 lot from Ieng Sary's statement.

8 Another point that's important here is because during this  
9 interview, Ieng Sary, apparently, was questioned about the  
10 existence of mass executions and this is what he answered. When  
11 he was asked to comment the reports regarding mass executions of  
12 refugees who had returned to Cambodia after the Khmer Rouge  
13 victory, Mr. Sary said: "Most of those who left Cambodia had  
14 committed illegal acts; therefore, their statements and their  
15 information is not reliable." So this is how Ieng Sary spoke back  
16 then, <> it's important to place things back in their context.

17 [11.13.40]

18 And another interview that was used -- and this is an interview  
19 before the OCIJ, document <E319/23.3.42>. Aside from <the  
20 criticism> that I brought up earlier, I would like to refer the  
21 Chamber to answer 30 and 32 of this person who was questioned  
22 which proves that this person did not know exactly how things  
23 happened, nor who was who because at answer 32 and she says and I  
24 quote in English, <"Ta Mok was Angkar"> -- and this is an  
25 important element because if we're speaking about what national

1 policy meant and about what -- and about the power invested in  
2 the zones and what was the real power that people had based on  
3 their location, but when this person answers, she said that  
4 Angkar was <none other> than Ta Mok -- and this is an important  
5 element to consider when we examine the statement <> or this  
6 brings us back to the necessity of having people appear before  
7 the Court because when we read this, we want to know more and we  
8 want to know where this person got the information from and which  
9 are the elements that allow this person to make such statements.  
10 [11.15.12]

11 And another point, again, since we used the statement to say that  
12 -- and, in particular, at question 30, <> to say that there was a  
13 national policy targeting the former Khmer Republic soldiers and  
14 officials and that people would have been executed, but the last  
15 sentence that was not quoted by the Prosecution at answer 30 <>  
16 is: "Yes, indeed, these people were sent to the West." As that  
17 person said here, "<However> I do not know where they were sent."  
18 So, here again, limited information <> that only appears in the  
19 written statements, so it's very <> hard to go further to know  
20 exactly what -- where this person got that information from and  
21 what happened to these Khmer Republic soldiers who apparently  
22 were sent to the West.

23 [11.16.18]

24 We'd like to remind you that we heard people before this Chamber  
25 who explained that some former people from the Khmer Republic

1 were sent to be re-educated.

2 And there are other press articles, in particular, E3/3393,

3 E3/3394 in which communication from the American Secret Services

4 is described, in particular, the <infamous> cables that <were

5 used to listen in on or not used to listen in on -- and that were

6 supposedly listened to or intercepted by> the US Secret Service.

7 I'd like to remind you a contextual element.<We were in the

8 middle of> the Cold War. The USA lost the war because they were

9 supporting Lon Nol and, of course, back then, we can imagine that

10 there was also propaganda and communication work that was done

11 that was a major part of what was done on each side.

12 [11.17.24]

13 Another point that was mentioned by the Prosecution -- it's

14 another document, it's an interview by Ieng Sary by Steve Heder,

15 document E3/89, and this is a document that was intended to

16 support the fact that somewhere after 17 April and before the

17 20th of April <roughly>, there was a decision that was made

18 concerning the former Khmer Republic officials. But I'd like to

19 draw your attention or the Chamber's attention to another excerpt

20 of this interview which -- unfortunately, I only have the French

21 ERN here; I apologize; I will find the rest later, but which is

22 at French ERN 00332690 and I'm going to quote slowly since I

23 don't have the translation -- which explains what Pol Pot and

24 Nuon Chea's relations were with So Phim. And this is what he

25 says:

1 [11.18.45]

2 "It was even Pol Pot and Nuon Chea, once they arrived in So  
3 Phim's zone, they were also afraid of him. I went there once with  
4 them; this is why I knew. Even Pol Pot, himself, never dared to  
5 go there because he was afraid of Ta Phim; therefore, in this  
6 zone, So Phim could do what he wished, even kill, without asking  
7 <> the hierarchy's approval. So that was how things were  
8 organized. That means that each one was almost independent which  
9 we could say was killing as one wished and doing as one wished."  
10 End of quote.

11 And this excerpt is important because, with regard to the  
12 Defence's case, <and this is something you have heard a number of  
13 times, the true question was to know if there> was <always a  
14 consolidated movement <that was extremely close-knit> or were  
15 there differences between zones or were there differences between  
16 the different locations and <> this <well-known> criminal  
17 enterprise is not so easy-- to prove simply because there <were  
18 these> tensions between the zones and there wasn't necessarily  
19 absolute control from the Centre as is <being presented here?>

20 [11.20.30]

21 Another point that I want to bring up is document E3/4627, which  
22 is an interview of Eap Duch, and which was brought up by the  
23 Prosecution. And in this document, it's important to remind  
24 <ourselves that> the witness indicates in the segments indicated  
25 by the Co-Prosecutors that the witness said that he attended no

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1 district meeting.

2 So this witness is deceased, however, but still like when people  
3 make statements in writing, it's interesting to read the totality  
4 of <any given> statement and to see what were the sources of  
5 information and, in this case, this witness confirmed that he  
6 attended no district meetings and that he could not say what was  
7 said and who ordered what <> at <any given> moment.

8 [11.21.31]

9 This is something that we can keep in mind, as well, when we look  
10 at document <E319/19.3.125>. Aside from the criticism that was  
11 leveled against this document, I'd like to draw the Chamber's  
12 attention to answer 18 of this witness. And the question that was  
13 put to him was the following: "Who ordered these soldiers to show  
14 up to present themselves; was it Chan or someone else?" And the  
15 answer was the following: "I do not know where these orders came  
16 from, but I know that it was Chan who announced this."

17 So here, once again, regarding the issue of -- of possible  
18 corroboration of the national policy elaborated by the CPK  
19 against the Khmer Republic officials and soldiers, the witness <>  
20 can only speak about an order that was given at the local level,  
21 but he is not able to tell us if this corresponded to higher  
22 instructions.

23 [11.22.42]

24 And another -- now, this is the reference I was missing regarding  
25 document E3/89 relative to Steve Heder's interview with Ieng Sary

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1 and the excerpt that I quoted is at ERN in English, 00417608; and  
2 in Khmer, 00062464.

3 And now, we come to the end of my presentation and, as I said,  
4 there are a certain number of documents and of things that we  
5 will get back to. And, in particular, I'd like to refer to  
6 document E3/832 <> -- or to reports or to statistics from the  
7 security centres; these are elements that will be discussed more  
8 in detail and more completely in the segments regarding the  
9 security centres. But in any case, I wanted to make these  
10 observations on the documents such as they were presented by the  
11 Prosecution already.

12 And now I am done with my presentation for today, Mr. President.

13 Thank you.

14 [11.24.05]

15 MR. PRESIDENT:

16 Thank you, Counsel.

17 The Chamber will adjourn today's proceeding now and resume on  
18 Monday, 29th February 2016, starting from 9 o'clock in the  
19 morning.

20 For the proceedings on next Monday, the Chamber will hear the  
21 statements of harms and the sufferings by some of the civil  
22 parties who claim to be suffered during the Democratic Kampuchea  
23 regime in relations to the facts concerning the targeted groups,  
24 namely, the Cham, the Vietnamese, and the former <> officials of  
25 the Khmer Republic.

1 [11.24.58]

2 And soon the Chamber will proceed with the swearing in of two  
3 investigators who have been accredited as investigators for the  
4 Office of the Co-Investigating Judges by the letter of  
5 accreditation on the 17 February 2016 by the Ministry of Justice.  
6 For that information, all relevant parties and interpreters,  
7 please remain in your booth to assist the Chamber for the  
8 swearing in of the testimony.

9 And Court officer, please liaise with the investigators to be  
10 sworn in soon.

11 Security personnel, you are instructed to take the two accused,  
12 Nuon Chea and Khieu Samphan, back to the detention facilities of  
13 the ECCC and have them returned to attend the proceedings on  
14 Monday, 29 February 2016 before 9 o'clock in the morning.

15 The Court is now adjourned.

16 (Court adjourns at 1126H)

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