



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**  
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

8 September 2016

Trial Day 452

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

The Accused: NUON Chea  
KHIEU Samphan

Lawyers for the Accused:  
Doreen CHEN  
LIV Sovanna  
Anta GUISSÉ  
KONG Sam Onn

Trial Chamber Greffiers/Legal Officers:  
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SE Kolvuthy

Lawyers for the Civil Parties:  
HONG Kimsuon  
Martine JACQUIN  
LOR Chunthy  
PICH Ang  
SIN Soworn

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

For Court Management Section:  
UCH Arun

**List of Speakers:**

Language used unless specified otherwise in the transcript

<b>Speaker</b>	<b>Language</b>
Ms. CHEN	English
Mr. DE WILDE D'ESTMAEL	French
Judge FENZ	English
The GREFFIER	Khmer
Ms. GUISSSE	French
Judge LAVERGNE	Khmer
Mr. PICH Ang	Khmer
The President (YA Sokhan)	Khmer

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

2 (Court opens at 0901H)

3 MR. PRESIDENT:

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

5 Today, the Chamber will hear oral responses or observations to  
6 the key document presentations by the Co-Prosecutors and the Lead  
7 Co-Lawyers for civil parties by the defence team for Khieu  
8 Samphan in relation to Regulation of Marriage and to hear  
9 responses of parties in relation to the Co-Prosecutor's request,  
10 that is, <document> E436.

11 [09.02.35]

12 Yesterday, the defence team of Nuon Chea sent an email to the  
13 Trial Chamber to clarify the scheduling orders for the  
14 proceedings before the Pchum Ben recess, and for that reason, the  
15 Chamber intends to hear responses from parties after the oral  
16 responses or observations made to the request by the  
17 Co-Prosecutors.

18 And the Chamber would also like to inform the parties that the  
19 Chamber intends to call an additional witness in relation to  
20 Regulation of Marriage. The witness is a civil party in Case 004,  
21 and the Co-Prosecutors actually read the written record of this  
22 civil party during the proceedings of key document presentations  
23 on the 6th of September 2016, that is, document E3/9820. And the  
24 Chamber intends to hear responses by the parties to the request  
25 by the Co-Prosecutor.

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1 And Ms. Se Kolvuthy, please report the attendance of the parties  
2 and other individuals to today's proceedings.

3 [09.03.56]

4 THE GREFFIER:

5 Mr. President, for today's proceedings, all parties to this case  
6 are present, except Marie Guiraud, the Lead Co-Lawyer for civil  
7 parties, who is absent for personal reasons.

8 Mr. Nuon Chea is present in the holding cell downstairs. He has  
9 waived his rights to be present in the courtroom. The waiver has  
10 been delivered to the greffier.

11 Thank you.

12 MR. PRESIDENT:

13 The Chamber now decides on the request by Nuon Chea.

14 The Chamber has received a waiver from Nuon Chea, dated 8  
15 September 2016, which states that, due to his health, that is,  
16 headache, back pain, he cannot sit or concentrate for long. And  
17 in order to effectively participate in future hearings, he  
18 requests to waive his right to be present at the 8 September 2016  
19 hearing.

20 [09.05.12]

21 He advises that his counsel advised him about the consequence of  
22 this waiver, that in no way it can be construed as a waiver of  
23 his rights to be tried fairly or to challenge evidence presented  
24 to or admitted by this Court at any time during this trial.

25 Having seen the medical report of Nuon Chea by the duty doctor

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1 for the accused at the ECCC, dated 8 September 2016, which notes  
2 that Nuon Chea has back pain and feels dizzy when he sits for  
3 long and recommends that the Chamber shall grant him his request  
4 so that he can follow the proceedings remotely from the holding  
5 cell downstairs.

6 Based on the above information and pursuant to Rule 81.5 of the  
7 ECCC Internal Rules, the Chamber grants Nuon Chea his request to  
8 follow today's proceedings remotely from the holding cell  
9 downstairs via an audio-visual means.

10 [09.06.16]

11 The Chamber instructs the AV Unit personnel to link the  
12 proceedings to the room downstairs so that Nuon Chea can follow.  
13 That applies for the whole day.

14 Now, I would like to hand the floor to the defence team for Khieu  
15 Samphan in order to respond or to make observations to the key  
16 document presentations by the Co-Prosecutors and the Lead  
17 Co-Lawyers for civil parties.

18 You have the floor.

19 [09.06.50]

20 MS. GUISSÉ:

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

22 As usual, I'll start with general remarks on the documents  
23 presented, with the usual remark regarding the fact that, as  
24 regards the written statements presented as key documents in  
25 place of oral testimonies, I'd like to remind the Chamber that

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1 the parties<, and the Defence in particular,> are limited in the  
2 exercise of their right to confront witnesses to accusation  
3 evidence, and so the probative value of these documents cannot  
4 really be ascertained insofar as the parties cannot challenge the  
5 witnesses on the basis of their presentations.

6 [09.07.53]

7 <I am really focusing on this point today, because as> part of  
8 the presentation <on this segment>, <there were very long quotes  
9 and extensive statements --> which were furthermore drawn from  
10 investigations in other cases, and not in the investigations in  
11 Mr. Khieu Samphan's case. And this is a further violation<, in  
12 our view, which is even more significant regarding> our right to  
13 be able to challenge the evidence presented by the Prosecution.  
14 This is all the more important when we look at the purpose of  
15 <these> key documents presentations when we look at the key  
16 pivotal <and, a priori, essential> documents that the Prosecution  
17 is <highlighting> and which the civil parties are also proposing  
18 to support their case before the Chamber, it is very prejudicial  
19 to the accused to not be able to test such evidence.

20 [09.09.01]

21 I note, as we have done in the past, that the Civil Party  
22 Co-Lawyers reassured us that they had <regarding the statements  
23 made by civil parties that they wished to present, that they  
24 already> cross-checked these documents. <As usual I will remind  
25 you that though I do not doubt the good faith of the Civil

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1 Parties, the cross-checks they performed have nothing to do with  
2 an examination during the hearings, carried out by the defence  
3 teams, who certainly have a different angle than that of the  
4 Civil Parties. That said -- this is in general, regarding all of  
5 the written statements that were presented -- that said, I will  
6 begin by responding, and this will be the essential part of my  
7 intervention, to the documents> presented by the Prosecution.  
8 <And when I say "respond", that means to place things in context,  
9 or cite the same documents that were not cited by the  
10 Prosecution.>

11 [09.10.06]

12 Let me start by making a remark in passing that we should pay  
13 attention to the <tendency we sometimes have to have -- so many  
14 years, so many decades after the facts -- to want to find the  
15 root of the policy on marriages. And I am basing myself that much  
16 more on this point and this argument put forth by the  
17 Prosecution, because the Prosecution notably cited a book by  
18 Elizabeth Becker, document E3/20, "Tears of Cambodia".>  
19 Prosecution <cited> part of that book, saying that Pol Pot's and  
20 Ieng Sary's marriages were marriages of convenience and that love  
21 had no place. That is Elizabeth Becker's position<, okay, that is  
22 Elizabeth Becker's position>.

23 [09.11.06]

24 In any case, I find it interesting to note that when you put to  
25 the fore the marriages of Ieng Sary and Pol Pot with a view to

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1 explaining that it was more of a marriage of alliance -- <I am  
2 simply highlighting the fact that this point will certainly be  
3 interesting to broach with experts in the future, and potentially  
4 with other witnesses, regarding the notion of love in marriage in  
5 traditional Cambodian society. And when I say "love in marriage",  
6 I mean feelings of love as a necessary prerequisite to marriage,  
7 because, and I can say this rather easily, because it is not  
8 unique to Cambodian society.>

9 It is -- it is known in numerous societies, including Western  
10 societies<, until rather recently, marriage was more of a matter  
11 of convenience, logic, or an alliance of> families of the same  
12 <socio-cultural> background. This is something that is  
13 interesting to look into in subsequent proceedings. <But I>  
14 consider it important to look at this in the light of what  
15 Elizabeth Becker said regarding Pol Pot's and Ieng Sary's  
16 marriages.

17 [09.12.39]

18 <On that note,> the Prosecution <also cited> statements made by  
19 Nuon Chea, according to the book <by>Thet Sambath, "Beyond the  
20 Killing Fields", E3/4202, <explaining that we can find the  
21 essence of what was going to be the marriage regulation> that  
22 occurred 20 years later.

23 <We need to be careful -- we need to be careful with these> kinds  
24 of extrapolations. <How Nuon Chea's marriage in 1956, and the  
25 basis on which he married his wife, would be grounds for marriage



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1 regulations in> Democratic Kampuchea<, which barely existed in  
2 1956 -- it was not even a figment of anyone's imagination. Was it  
3 even on Nuon Chea's mind at the time? I think we need to be very  
4 careful>.

5 [09.13.35]

6 Once more, I think we should be all the more so cautious when we  
7 make extrapolations because we have to recall part of the  
8 <citation> made by the Prosecution, <or in any case part of the  
9 citation made by the Prosecution,> document E3/4202. The ERN in  
10 French is 00849378; in Khmer, 00858254; and in English, 00757496.

11 And if we go by what Thet Sambath said regarding what Nuon Chea  
12 stated on the choice of his spouse, they are as follows -- and I  
13 quote:

14 "It is difficult to live with a woman <> who does not have the  
15 same objective in life. It would have been difficult for her to  
16 fight with me. I therefore chose a person who had the same  
17 determination as myself. It is of no consequence <to me> if she  
18 was charming or beautiful. I wasn't choosing her body, but her  
19 ideas and <personality>." End of quote.

20 Here I would like to say that the Prosecution is of the view that  
21 any prior statements made by the Accused <may have> corresponded  
22 to a plan to commit future crimes, but let me, nevertheless,  
23 point out that<, at least> in part of the statement by Nuon Chea,  
24 <if it had been made by anyone else, would not have been  
25 subjected to any particular criticism or comments at all. Someone

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1 may indeed choose a spouse more because they share a common life  
2 goal, than for physical characteristics.> And so we should be  
3 careful and avoid such extrapolations <taken from the Accused's>  
4 private lives.

5 [09.15.45]

6 I would now like us to talk about the documents and speeches used  
7 by the Prosecution regarding the increase in the population in  
8 relation to marriages. And let me note as a general rule that, as  
9 regards <this first> part of the documents presented by the  
10 Prosecution, that, contrary to what the Prosecution said, no  
11 mention is made of marriages in these documents.

12 Admittedly, they talk of <increasing the> population, but this is  
13 done in a specific context, a context in which they also refer to  
14 living conditions and what is <being> done to improve the living  
15 conditions of the population.

16 [09.16.30]

17 Let me take an example<, a few examples actually>. Document  
18 E3/1586 was quoted by the Prosecution, a speech by Ieng Sary on  
19 the 11th of October 1977, before the United Nations General  
20 Assembly. The ERN in French is 00617795 - or, rather, 97. And  
21 <this will make it simpler, because they are paragraphs --> it's  
22 paragraph 60, which was quoted by the Prosecution. And in  
23 paragraph 60, at the end of that paragraph, reference is made to  
24 the living conditions and the health of the people, and this is  
25 what Ieng Sary says:

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1 "We are endeavouring to rapidly improve the living conditions and  
2 the health of the people because we need our population to <be  
3 to> the tune of 15 to 20 million inhabitants in 10 years."

4 This was part of the quotation made by the Prosecution. It is  
5 relevant because this extract is at the end of paragraph 60,  
6 which starts as follows, and I quote:

7 "In the social and health domains, in order to provide for the  
8 health of the entire population rapidly, we are training  
9 revolutionary doctors, who <are driven by a deep love of the  
10 people and by a> high spirit of <self-sacrifice. And we are  
11 producing medicine using raw materials existing in our country".  
12 To put this citation made by the Prosecution in context, they are  
13 talking about social well-being and health,> and no link is  
14 established with marriages here.

15 [09.18.40]

16 This is a point that is also relevant because, in paragraph 45,  
17 in all the languages, that is, in reference to the same speech,  
18 the Prosecution <cited> a part at the end of that paragraph 45,  
19 part of the speech made by Ieng Sary referring to the fact that  
20 Ieng Sary was speaking at the time of the <size of the> surface  
21 area of Democratic Kampuchea and the number of its inhabitants,  
22 except <that in the context of paragraph 45> -- and I'll give the  
23 ERNs for the interpreters to facilitate locating them: 00617795  
24 in French; and in English, <00079813>, paragraph 45.

25 And this description of the territory and the number of

1 inhabitants as part of a message delivered by Ieng Sary is  
2 situated or found in statements he made regarding the past and  
3 the problems that may have cropped up with neighbours, including  
4 Vietnam, and this is what he says specifically at the beginning  
5 of paragraph 45:

6 [09.20.07]

7 "The people of Kampuchea wish to live in peace with dignity and  
8 honour, as masters of their own country, and to build a society  
9 in conformity with their deepest aspirations to follow a road  
10 which they have, themselves, chosen in full independence and  
11 sovereignty. Those are the <sacred> principles to which they are  
12 firmly committed, but in the past, for centuries, our country was  
13 reduced to the most abject slavery. Our country, which was  
14 subject to exploitation and domination by foreign feudal and  
15 reactionary circles, by colonialists and imperialists, lost much  
16 of its territory. Its present frontiers are the unhappy result of  
17 endless acts of aggression, expansion and annexation by foreign  
18 powers.

19 "Since 17 April 1975, the date of the total and final liberation  
20 of Kampuchea, our people has become the true master of its  
21 country and of its own destiny. It is inspired by a burning and  
22 just patriotism. Despite its painful past <>, it has no wish to  
23 open old wounds. It is looking <head-on> to the present and to  
24 the future.

25 "We have no enmity. We have no designs <or plans for aggression,

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1 expansion, or annexing the part of any country, for a simple  
2 piece of land.>. Our country is small. Our population is small.  
3 Our geographical situation and our political regime in no way  
4 predispose us to commit acts of aggression against other  
5 countries. Small, weak countries do not swallow large countries."

6 <This is how it reads in French.>

7 [09.22.12]

8 "In world history, only the reactionary ruling classes in large  
9 countries, like Hitler, invent pretexts for provoking small  
10 countries, accusing them of aggression and using such pretext for  
11 committing acts of aggression against the small countries, and  
12 increasing their own territory at the expense of the latter.  
13 Democratic Kampuchea has no motive which might impel it to acts  
14 of aggression against others." End of quote.

15 And the Prosecution <cited> a paragraph relating to the  
16 population of Kampuchea at the time, so it is important to place  
17 things in context.

18 In this context, we are not talking of marriages, nor of increase  
19 of the population in order to link it up with the family policy  
20 in which they are talking of the population and the numbers to  
21 show the difference vis-à-vis small countries as described by  
22 Ieng Sary<, that is> Cambodia<, and> a greater power like Vietnam  
23 or <former> colonial powers.

24 [09.23.30]

25 Here again, it is important to highlight this point because

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1 bringing elements out of their context and taking parts of  
2 speeches to corroborate its arguments <is a mischaracterization  
3 on the part of the> Prosecution. <> I can make the same remarks  
4 regarding another contemporaneous document, and it is document --  
5 it's still a note from the Minister of Foreign Affairs of  
6 Democratic Kampuchea, document E3/1385. And the ERN in French is  
7 00524093; ERN in Khmer, 000064617, and it continues on the  
8 following page; ERN in English, 00488637.  
9 I will read out a passage that was <"sliced up"> by the  
10 Prosecution. I'll quote it in its entirety, recalling what I said  
11 in my introductory remarks, that each time we refer to speeches  
12 made by leaders of Democratic Kampuchea regarding the increase in  
13 the population, they always do so in relation to the issues of  
14 health and the development of the country and, in particular,  
15 improving the living conditions of the population. And I'm  
16 quoting the passage in its entirety in order that the context of  
17 those statements should be well taken note of.

18 [09.25.14]

19 The first passage quoted by the Prosecution:

20 <In> the area of social affairs and health, we've had  
21 significant improvement as well, and this is what is added. And  
22 it does exist in the paragraph:

23 "The health of our population at this point in time is  
24 increasingly strong and at a higher level, and to a greater  
25 degree, generally, we've succeeded in eradicating malaria and we

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1 continue to consolidate and to multiply the results obtained  
2 without stopping for a moment."

3 A few lines later, further down in the text, it is stated that:

4 "The living conditions of our entire population are increasingly  
5 provided for at all levels. Our policy to increase the population  
6 is yielding good results in its first stage."

7 And that is the sentence that comes immediately before the  
8 quotation made by the Prosecution during its documents  
9 presentation.

10 [09.26.22]

11 What is interesting is the conclusion of that paragraph, which  
12 was not quoted by the Prosecution and which I quote now:

13 "It is imperative to be careful to sustain and improve the living  
14 conditions of our people. We must also take into account the  
15 health of our population in order that it may improve further  
16 within the perspective of demographic growth, as <rapidly> as  
17 possible." <End quote.>

18 Here, again, it's important to note that in that message  
19 presented by Ieng Sary at the United Nations, which is put to the  
20 fore, the focus was on improving the living conditions of the  
21 population as <a criterion> to increasing population growth. They  
22 are not talking of marriages here, <and they certainly are not  
23 the focus of the statement.>

24 [09.27.22]

25 MR. PRESIDENT:

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1 You may now proceed, Deputy Co-Prosecutor.

2 MR. DE WILDE D'ESTMAEL:

3 Thank you. Good morning, Mr. President, Your Honours.

4 I <did not want> to interrupt counsel, but I think counsel is  
5 wrong <regarding the document>. E3/215 is <indeed> a message  
6 delivered by Pol Pot, and it is in the "Revolutionary Flag" of  
7 September 1978, whereas the note from the Minister of Foreign  
8 Affairs has reference E3/1385. I just wanted to point this out  
9 <so we are> referring to the same documents.

10 [09.27.57]

11 MS. GUISSÉ:

12 Indeed, it's an error on my part. It is "Revolutionary Flag" of  
13 September 1978, that I've just quoted.

14 In any case, my remarks remain the same as regards the contents  
15 of the document and what is stated in the document. Indeed, I am  
16 about to turn to the note from the Minister of Foreign Affairs  
17 which restates the same principle, when <they> talk of the  
18 increase in the population, <they> are talking of making the  
19 country more prosperous and improving the living conditions of  
20 the population.

21 Another document which is important and which was quoted  
22 partially by the Prosecution is the famous speech by Pol Pot that  
23 we find both in the video, E3/7233R, and the FBIS document,  
24 E3/290, which <appears to be> a message delivered by Pol Pot, and  
25 it <appears in this document on 7 October 1977>, and it is



15

1 important to note here again that when he talks of increasing the  
2 population.

3 The ERN in English -- I think the document exists only in English  
4 -- 00168651. And this is what is stated in English:

5 [09.29.50]

6 "Our people's health is excellent. Various diseases, particularly  
7 those handed down from the old society and certain addictions,  
8 have been basically wiped out. We are now concentrating on the  
9 eradication of malaria. In '76, the first year of the four-year  
10 plan for the eradication of malaria, we have already realized 70  
11 to 80 per cent of our programme objectives. We continue to strive  
12 to improve the conditions of life and health of our people  
13 because we hope to increase our population to 15 to 20 millions  
14 in the course of the next 10 years or more."

15 Next paragraph:

16 "The good results thus achieved by our Cambodian people under the  
17 correct and clear-sighted leadership of the Cambodian Communist  
18 Party, constitutes soaring new victories of the present <phase>  
19 of our Cambodian revolution. However, in terms of the express  
20 desire of our people, they still fall short of the targets. The  
21 road ahead is a very long one. Thus, we must double our efforts.  
22 We must further improve the standard of living of people in all  
23 fields so that each person continues to be strong, healthy and to  
24 have a resolute sense of patriotism and so that the Cambodian  
25 people in general can increase in number quickly enough to

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1 effectively defend and view their Cambodia into a prosperous and  
2 development country by leaps and bounds." End quote.

3 [09.31.56]

4 They're not saying that the CPK's policy was successful or not,  
5 but it is interesting to note that, in this speech of CPK leaders  
6 from this time period, what is focused on when we talk about an  
7 increase in population is the <> improvement of living conditions  
8 and, above all, eradication of malaria and better nutrition. This  
9 is <> an interesting point because, taken out of their context,  
10 once again, the Co-Prosecution has just told <us> that there's a  
11 link and, therefore, it's a link that is clear when we look at  
12 the statements. But when we take them out of the context, it's  
13 not the same.

14 When we look back at the original statements, we see that there  
15 is a much more broad and general vision which is linked with  
16 improving the living conditions of the population. That there was  
17 a failure in what they wished to achieve, that's another point,  
18 but when we're told that the policy of CPK related to marriage  
19 was their desire and that this was the factor and the vector used  
20 in order to increase the population, that is absolutely not what  
21 was said in the documents cited by the Prosecution.

22 [09.33.28]

23 We can also find what I've just cited in the analysis that we can  
24 have from an interview with Nuon Chea. It's an interview from  
25 <1980> which is also cited by the Prosecution, E3/686; ERN in

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1 Khmer, S00644682; in English, S00030349; and in French, 00599792.

2 Here again, the first paragraph of this page in responding to the  
3 question, and I quote:

4 "<Does the> government of Democratic Kampuchea maintain a policy  
5 concerning population and development in Kampuchea?"

6 And the Prosecution quoted the first paragraph, and I would like  
7 to pick it up again at the end of the first paragraph in order to  
8 quote the two paragraphs which follow in order to place this  
9 paragraph in context.

10 [09.34.40]

11 So here, it's clearly an analysis that <took place after the  
12 fact, because it was 1981, and it is interesting to note what  
13 Nuon Chea said at that time.> So he's talking about the  
14 population in 1977, and he says at the end of this first  
15 paragraph:

16 "This increase <was> the fruit of Democratic Kampuchea's policies  
17 aiming to <safeguard citizens' lives,> principally by <solving  
18 and> improving living conditions. Second, we have also striven to  
19 eradicate malaria everywhere, from the villages to the far-flung  
20 rural areas. Eighty per cent of the population, and particularly  
21 those who are living in rural areas, suffered from malaria  
22 <before Democratic Kampuchea>. And each year, <thousands of  
23 Kampuchean,> elderly people, adults, children, and infants died  
24 from malaria. By the end of 1977, we reduced the frequency of  
25 malaria by 80 to 90 per cent. Thus, the number of Kampuchean

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1 people who would have died from malaria was therefore reduced by  
2 80 to 90 per cent."

3 [09.35.56]

4 "At the same time, we also tried to completely eradicate various  
5 other diseases which have been largely overcome. And thirdly, we  
6 also undertook efforts to train all kinds of doctors, in  
7 particular <-- sorry --> those specializing in treating all kinds  
8 of diseases such as diarrhoea, dysentery, yaws, and eye diseases  
9 which threatened the poor people in all areas as well as in  
10 provincial seats and in Phnom Penh.

11 "We have tried to procure all types of traditional and modern  
12 medicines, and we bought medicines from foreign countries at a  
13 rate of 8 to 10 million dollars per year. Thanks to the policy of  
14 Democratic Kampuchea, that is, of protecting <its citizens> and  
15 implementing these measures, our Kampuchean population increased,  
16 as I've already said." End quote.

17 So it's quite interesting to note here that, as for all the other  
18 documents that were quoted by the Prosecution, what is focused on  
19 by the leaders is not a policy on marriage but, rather, a policy  
20 of improving health conditions and improving efforts to eradicate  
21 <> the greatest causes of death <.>

22 <Once again, the question at hand is not whether the policy>, as  
23 presented by the leaders, <> was successful <or not> in the way  
24 that it was applied, but <> if we want to actually look at what  
25 the statements of the leaders said, this is what they say; they

19

1 don't say <anything> different from that.

2 [09.37.36]

3 Another document that was used by the Prosecution, and <which>

4 I'd like to read <a> part of <that was not cited, that is> is

5 E3/25, which is from <"Revolutionary Flag"> from December 1976

6 <>. In Khmer, it is ERN 000063054; in English, 00491435; and in

7 French, 00504063.

8 The end of the paragraph that was quoted by the Prosecution is as

9 follows: "In order to be able to increase, rapidly, the

10 population, the health and living conditions of the population

11 must be surely and steadily increased; therefore, <it is of

12 utmost importance to> increase <overall production> quickly."

13 And this is what he says, and what I am adding, because it wasn't

14 cited by the Prosecution is, "The funds that come from export

15 will be reserved for increasing the agricultural sector, the

16 industrial sector, and also to subsidize the needs of the

17 population. <It> won't be applied to anything outside of this."

18 End quote.

19 [09.39.14]

20 So once again, it's a paragraph that I wanted to add because it's

21 also linked with the statement of Nuon Chea of 1980 which talks

22 about <purchasing> medicines. And this was also something that

23 was brought up when the Prosecution quoted a portion of the

24 statement of a witness on the issue of asking, "<But where did

25 the rice go? Was there rice for export, do you know where it went

20

1 or not?" We know and we have documents on the case file  
2 indicating that> yes, there was <foreign> trade <under Democratic  
3 Kampuchea, simply> because it's impossible for any country to  
4 survive without any foreign trade and<, >"It was because we  
5 <managed to> have foreign trade that we had the hard currency  
6 that allowed us to buy the things that <could not> be produced in  
7 the country."

8 <And I am referring to what may have been said during> the key  
9 documents hearings, <with several statements and excerpts of  
10 "Revolutionary Flag", in which speeches discussed the need to buy  
11 agricultural material, in order for agriculture to be> more  
12 mechanized than <it> had been at that time in Cambodia.

13 [09.40.47]

14 Another document cited by the Prosecution is a speech attributed  
15 to Khieu Samphan on 17 April 1978; it's document E3/562. So the  
16 ERN in French is 00280381 and continuing on to page 2 -- ERN  
17 ending in 2; in English, S00010565; and the ERN in Khmer is  
18 00249991. In this portion, which is titled "In the Area of  
19 Improving the Standard of Living of the Population," the  
20 Prosecution cited <points> 5, 6, and 7 which are the last on the  
21 list and just so that the situation is complemented, I would like  
22 to look at points 1 to 4, which I mentioned in <this> speech.

23 [09.42.05]

24 So I quote, "In the <area> of bettering the <population's living  
25 conditions>:

21

1 "1) To strive to alleviate rapidly and improve the people's  
2 living conditions in terms of food, clothing, housing, health,  
3 culture and education;

4 "2) To implement resolutely the food rationing <as> determined by  
5 the Party <throughout> the year;

6 "3) Good cadres and good committee members are those who are  
7 enthusiastic in solving and improving the living conditions of  
8 the masses in all fields and at all times, who have a high sense  
9 of responsibility and show great ingenuity and initiative;

10 "4) To launch a movement to observe basic hygiene in all of the  
11 co-operatives, factories, <all workplaces>, ministries, and  
12 departments in Phnom Penh and in the rest of the country."

13 And it is only in this context that we have the following points,  
14 5, 6, and 7, which talk about the improving of living conditions  
15 and then population growth; keeping in mind that in this context,  
16 the <> population <increase> comes following the improved living  
17 conditions that were cited earlier that I have just read out.

18 [09.43.37]

19 Another document that I would like to come back to is the excerpt  
20 that was quoted from Khieu Samphan's work, E3/16, "A Recent  
21 History of Cambodia and My Positions Thereon," which was quoted  
22 at the French, ERN 00639883; and in Khmer, 00380467.

23 Now, I'm sorry; I have a problem here. This passage that I just  
24 quoted - or, the ERNs that I just quoted correspond to E3/16 and  
25 I'm <going to> read the first paragraph that was quoted by the

1 Prosecution begins by, "Philip Short is right when he writes,  
2 'Pol Pot did not have the intention to reduce the number of  
3 inhabitants, quite to the contrary of the goal of doubling or  
4 tripling the population.' Specifically, he wanted the Cambodian  
5 population to reach 15 or 20 million people in 10 years." And  
6 that's in <quotation marks>.

7 "This number was necessary in order to bring to fruition the  
8 various projects which were meant to bring prosperity to the  
9 country. However, how would this have been able to be possible if  
10 women <were incapable of menstruation due to malnutrition>? The  
11 leadership <recognized> this problem." This was the end of the  
12 quotation by the Prosecution.

13 [09.45.35]

14 I would like to add now what follows because it's important  
15 insofar as the Prosecution quotes this passage in this book by  
16 Khieu Samphan <it seems that Khieu Samphan> is confirming <> what  
17 is quoted by Philip Short<, with his knowledge>. But <if we read  
18 the next part of his book,> we understand that Khieu Samphan is  
19 doing what he <often> has a tendency to do; that he is simply  
20 commenting on <and interpreting> what <> was written by Philip  
21 Short.

22 "So what follows in the resolutions of the Standing Committee of  
23 that time and in the speeches that Pol Pot gave to the Central  
24 Committee in closed session, he <repeated> that it was necessary  
25 to ensure sufficient food rations, which means 500 grams of rice



1 each day for all the population. <At a conference that Pol Pot  
2 organized in the West Zone, he stressed that the most significant  
3 remedy was food. Solving the food problem was the key point of  
4 the problem.>

5 Two months later, Pol Pot talked about this again. He said, "We  
6 must sort out <the problem concerning peoples' means of  
7 subsistence,> and we must sort it out quickly; if not, there will  
8 be conflicts among us." And it's of interest to note that this  
9 passage has a footnote and the footnote quotes page 321 in  
10 English of Philip Short's book, "The History of a Nightmare."  
11 [09.47.25]

12 And then Khieu Samphan continues and I will continue my  
13 quotation. "The author -- so speaking of Philip Short - "quoted  
14 the report as <follows:>

15 'The hulled rice ration must be> if it must be two cans of  
16 <hulled> rice per day was necessary; otherwise, <people's health  
17 and their physical strength will deteriorate>."

18 And then we see the footnote <once again, a citation of Standing  
19 Committee minutes, which Khieu Samphan added to his book, again  
20 referring to Philip Short. It continues:> "The author noted that  
21 as these documents, and especially the <minutes> of the Standing  
22 Committee, were only distributed to 10 or so people, that they  
23 were confidential and were not broadly distributed to the  
24 population, we can <conclude> that the thoughts expressed by Pol  
25 Pot <> therein are sincere." <End quote>

24

1 So once again, it's important to place this quotation in context  
2 and to understand that, at that time, Khieu Samphan is commenting  
3 on the book by Philip Short.

4 [09.48.48]

5 Another <citation> that was incomplete and was of interest  
6 because <> Philip <Short's book and the part that was not  
7 mentioned is> about Khieu Samphan's marriage itself. <This is  
8 what Philip Short says,> and it's E3/9, "Pol Pot: Anatomy of a  
9 Nightmare"; <ERN in English,> 0036533 and <it continues on> the  
10 following page; in French, 00639883. <The Prosecution cited  
11 Philip Short's understanding of what the CPK's family policy, but  
12 in the middle of the citation, it says the following that was not  
13 cited,> and I quote: "Khieu Samphan got married in December '72  
14 because Pol asked him to do so and he intervened personally in  
15 form of intermediary. Traditionally in Khmer society, marriages  
16 were arranged by families. Angkar would <henceforth> play this  
17 role." End quote.

18 So a <citation> which is of interest because these are topics  
19 we're going to be talking about with the experts and in the  
20 general discussion on marriages on the issue of <what exactly was  
21 an> arranged marriages <in the> traditional <sense>.

22 [09.50.22]

23 Another document <from that period>, which I would like to come  
24 back to, is also <a partial citation> from "Revolutionary Youth",  
25 <document> E3/750. This was brought up by the Prosecution; the

1 Khmer ERN, 00063616; ERN in English, 00522461; and the ERN in  
2 French, 00525858.

3 The Prosecution quoted this first sentence, "Sentimental property  
4 is <worry, it's pity, it's> melancholy. It's a love of one's own  
5 family alone, one's own relations, one's own brothers and  
6 sisters, one's own parents" and it is here that the Prosecution  
7 stopped and it's interesting to note that this sentimental  
8 property is not contrasted with any vision of the family which  
9 would be a selfish vision <or simply a> collective vision <on the  
10 part> of the CPK.

11 Here's what is said next: "On the other hand, the population, if  
12 they are sick, if they are hungry or <starving>, we <bat an eye>  
13 and think that it's normal. On the other hand, <we do not love  
14 only those who> know how to flatter<, compliment,> and please  
15 <us. We are indifferent or even unsatisfied with fighters who  
16 have striven to work perfectly, but who did not go polish their  
17 shoes.> These are all dysfunctionalities which are caused by  
18 private and personal property." End quote.

19 [09.52.45]

20 So there, in this context, this situation, it's not meant to  
21 simply criticize the fact of having a family, but the fact that  
22 only thinking from a personal point of view without thinking  
23 about the rest of the population is problematic.

24 And I would like to, therefore, <compare this quote> with the  
25 dysfunctionalities and the bad behaviour that <may have also

26

1 been> evoked in the exercise of their power of local authorities  
2 because we note, in <this issue of "Revolutionary Flag" is that  
3 they consider not caring for> the wellbeing of the population is  
4 considered to be a dysfunctional phenomenon. It's important to  
5 emphasize this because we hear a lot from the Prosecution that  
6 the policy of CPK is found in these <"Revolutionary Flag"  
7 publications -- it is important to note that> this is something  
8 that does not correspond to practice<, which may have been  
9 promoted> in certain documents.

10 [09.54.04]

11 In the same way, very briefly, in document <E3/732>, the  
12 Prosecution read at length from "Revolutionary Youth", talking  
13 about the revolutionary Thorn, saying that he was talking about  
14 the vision of the family held by CPK and I would just like to put  
15 things in their proper context that the revolutionary history  
16 takes place in '71, <is more of> a story exalting the sacrifices  
17 that could have been made during the period where <there was  
18 fighting> against the Lon Nol troops, <than> a particular vision  
19 of the family <>.

20 [09.55.00]

21 <To believe this, you just have to read the following, which was  
22 not cited by the Prosecution>. The ERN in French is 00611527; in  
23 Khmer, 00064309; and in English, 00392451. And I would like to  
24 recall that <> the story <> as it is reconstituted <> occurred in  
25 1971, and here is what he said:

1 "Enemies became increasingly atrocious, ferocious and  
2 increasingly fascist. They continued to carry out operations  
3 meant to oppress innocents from Mukh Kampul district and all  
4 other <regions under their> control <>." This is what is said in  
5 this context. So here, we're looking at a <story, which aims to  
6 recall what happened> in Mukh Kampul at a time when Lon Nol  
7 troops were there<, defending the pre-Democratic Kampuchea  
8 regime.>

9 [09.56.28]

10 It's important to re-orient these <citations> that were <used> by  
11 the Prosecution by placing them in the broader context of the  
12 situations wherein these comments were made, and it's even more  
13 important that when taken out of their context, <these citations  
14 form the basis for the Prosecution's conclusion, which is:> "The  
15 Defence regularly quotes number 6 of the 12 moral principles,"  
16 which are recalled in E3/765 at ERN -- well, it's number 6 in all  
17 languages, and the Prosecution <basically> says, "We can't  
18 understand this rule if we don't understand that it doesn't  
19 necessarily <mean what we say it does,> because there are the  
20 other elements that we spoke of before."

21 [09.57.41]

22 So that's the position of the Prosecution, and I <would like to  
23 remind you also that> it's important to say that this rule is  
24 written down in black and white and it is among the principles  
25 that are regularly brought up in the context of Democratic

1 Kampuchea and the training of cadres and <> the population <in  
2 general>.  
3 And it's also important to recall that it's not because a rule  
4 was violated or was not implemented that it means that the people  
5 who initiated it, the legislators, or in this case here, the CPK  
6 evoked a principle, and it's not because the principle was  
7 violated that the CPK did not have the intention of ensuring that  
8 it was respected, as it was written, as is very clear when we  
9 read the sixth principle of <the 12 points of> revolutionary  
10 morals; that it was necessary for both parties and the  
11 <collectivity> to consent>.  
12 [09.58.50]  
13 When we <take> any rule on marriage in any country, we <note>  
14 that the authorization of the marriage by the community is also  
15 an element that exists and that is why we have the publication of  
16 the <bans>, for example, in <most> Western societies as well. So  
17 in any case, to say that because there were violations of this  
18 rule, as it was recalled in <this issue of "Revolutionary  
19 Standard>, E3/765, to say that this rule was violated and that  
20 it, therefore, <> didn't mean anything<, that is tantamount to  
21 saying that> because there <are> crimes <and> rapes that <take>  
22 place in <any> society <even when there is> a criminal code that  
23 prohibits them; <that> doesn't mean that the rule didn't exist  
24 and that there was no intention to <> enforce it. <So we do not  
25 dispute that there were violations, but to say that this was the

1 goal and aim of the CPK policy is going too far.>

2 [10.00.01]

3 Now, let's move beyond these documents from the period and the  
4 speeches by some of the leaders. We then have the use by the  
5 Prosecution of <parts of documents and> written <statements> or  
6 works relaying <> what was stated during <interviews>. So once  
7 again, I must say that we need to pay attention to the  
8 extrapolations and <personal> interpretations, <> on behalf of  
9 the Co-Prosecutor.

10 For example, I'm looking at E3/1094, which was cited by the  
11 Prosecution, where the Prosecution talks about a suicide, which  
12 was reported in the July 1978 report and tells us that, in fact,  
13 the explanation that was given by the cadre was <supposedly  
14 invalid> because he said he didn't know the cause for the suicide  
15 because the Co-Prosecutor feels that it must have been the  
16 marriage.

17 Where this assessment comes from, we don't know. It's an  
18 interpretation by the Prosecution and in any case, once again, we  
19 need to be wary of this type of extrapolation.

20 [10.01.31]

21 Another point that was advanced by the Prosecution has to do with  
22 a report in which the number of couples who got married is  
23 mentioned and it is report E3/1092. The ERN in French is 00611449  
24 and it continues on the next page; ERN in English, 00289924; and  
25 the ERN in Khmer, 00143579.

1 The Prosecution quoted the last paragraph in the column titled  
2 "Living Conditions of the People" and it is the very last  
3 paragraph which refers to the number of marriages that were  
4 organized in District 26 and Region 32.  
5 What is relevant here is that this reference is anecdotal  
6 <compared to> all the other elements mentioned in that column <I  
7 will read them out now, they> have to do with the living  
8 conditions of the people: <"The food problem:>  
9 "<In general, they> eat rice consistently morning and evening.  
10 <But now>, the food is mixed with <corn and potatoes sometimes.  
11 The food accompanying the rice> includes meat and fish <and  
12 vegetables> in very moderate quantities. The problem <of dessert:  
13 It was> resolved by the regime as decided by the Party to a  
14 certain extent. In some regions and some districts, the rule <has  
15 not been> applied regularly <as of yet>."

16 [10.03.32]

17 "The problem of housing: We took care to build houses, to roof  
18 houses, and to build walls conveniently <as they were needed>.  
19 "The problem of the health of the people: Generally, the people  
20 are not very sick; however, in some areas, there are still  
21 diseases by fever, diarrhoea, and oedemas. In Region 37,  
22 throughout the week, there were many patients suffering from  
23 fever <compared> to <the> previous <month>. This was caused by  
24 the abundant rainfall that was a daily occurrence. <What's more,  
25 we have launched a work offensive, even stronger than before,



1 because> there are enough seeds and water. In this regard, we are  
2 struggling every day.

3 "Measures: We have <a group of> all levels of medics to <work on  
4 the ground, and> follow up with patients regularly and  
5 <furthermore> we instructed them to <use proper hygiene -- to  
6 consume> boiled water and to <sweep> their houses regularly."

7 [10.04.42]

8 And the last paragraph quoted by the Prosecution, "Building  
9 families: <We have married off ten couples> in District 26,  
10 Sector 32." End of quote.

11 It's important to note, here, that marriage is not the first  
12 point mentioned as regards the issue of increasing the  
13 population. It has to do with improving the living standards of  
14 the people. <Marriage> comes last, because this is in line with  
15 what was said in the speeches as I <cited earlier, what> was  
16 <most> important was to focus on the living conditions of the  
17 people.

18 I'll very quickly look at the written statements and <excerpts>  
19 of books referring to interviews conducted with witnesses, <or>  
20 persons who are not testifying before this Chamber <and so we  
21 will not be able to examine them.> Simply to recall that  
22 <notably> in Elizabeth Becker's book, <> on several occasions, <>  
23 assertions are made based on interviews that are isolated. So, it  
24 is a choice of the author and it is <her> strict right to make  
25 general remarks, but we cannot use the same approach in a court

1 of law. Confronting the witnesses with their evidence is  
2 important. Using a statement without such confrontation cannot be  
3 the basis for making a general remark.

4 [10.06.37]

5 I'll look at Raoul Jennar's book, <cited> by the Prosecution,  
6 specifically, to make reference to a book by <Samdek> Sihanouk.  
7 <the book by> Raoul Jennar -- it's <E3/3993>. This <means that it  
8 is not an extremely dated book, as it was> written at <a> time  
9 when there were very few documents used by the author. <And,  
10 above all,> it is more of a pamphlet than an academic work. In  
11 any case, I have, indeed, understood that the purpose of <citing>  
12 of this passage from Raoul Jennar's book <was to cite> King  
13 Sihanouk's book, E3/2813.

14 [10.07.53]

15 <The Chamber certainly remembers the citation presented by the  
16 Prosecution on this matter. We understand, in any case, that  
17 Norodom Sihanouk is being ironic with regard to Khieu Samphan's  
18 position, but when we read his book, we note that he was still  
19 obliged> to indicate that Khieu Samphan never referred to forced  
20 marriages. As for his analysis of the marriages of handicapped  
21 soldiers, <I would like to say that his> comparison with <the  
22 monster> Frankenstein in the analogy regarding <> handicapped  
23 soldiers <and the famous book on the monster> is rather  
24 <inappropriate. In any case, if the Chamber had agreed, we could  
25 have, as we requested, summoned Samdech Sihanouk> to appear when

1 he was still alive. <Unfortunately, it is too late for that. We  
2 will have to settle for this evidence without the possibility of>  
3 confronting him. <But in any case, to compare handicapped  
4 soldiers with the monster Frankenstein, when many of these>  
5 soldiers heeded <Norodom> Sihanouk's call <to fight against the  
6 Lon Nol regime seems, at the very least, somewhat problematic.>  
7 [10.09.24]  
8 <The last point that is that there's> another issue of coherence  
9 in regard to the evidence presented if we look at the evidence  
10 presented <hitherto, if I have understood, and it stems from  
11 evidence put forth by the Prosecution or Civil Parties> when they  
12 examined witnesses <or> civil parties. If we were talking of the  
13 need for people with similar biographies to get married and  
14 <therefore> the assertion, according to which I'm referring to  
15 here -- this will be the last point I will make before the break,  
16 Mr. President <I'm conscious of the clock> -- the assertion in  
17 Norodom Sihanouk's book, E3/2813; in Khmer, 00632843 and it  
18 continues on the following page, in English, 00632939; and in  
19 French, 00395353. <And it says the following:>  
20 <"But from that to accepting with joy in our hearts the idea> of  
21 <sacrificing> gentle virgins <taken> from <our secondary schools,  
22 high schools, and universities> on the altar of such <a form of>  
23 patriotism, it's something that <our spirits are incapable of  
24 accepting." End quote. I understood from the statements presented  
25 hitherto, in any case, that the soldiers-->

34

1 MR. PRESIDENT:

2 Counsel, please slow down for proper interpretation record.

3 [10.11.04]

4 MS. GUISSÉ:

5 Court's indulgence, Mr. President; I'll try to slow down.

6 What I was saying was that that assertion that there were young  
7 girls from <high schools>, secondary schools, and the  
8 universities who <were> married to handicapped soldiers does not  
9 square <at all> with the evidence we've heard so far, because we  
10 <have> heard that handicapped soldiers <were> married to <women  
11 who> were considered to be revolutionaries <and who> had been  
12 committed for a very long time. So these were <not in principle>  
13 the New People.

14 That is a remark I wanted to make on those statements, which,  
15 once more, were made by Norodom Sihanouk <himself> and we are  
16 unable to confront him on this evidence because we could not call  
17 him to appear before this Chamber in this trial <002/01>.

18 <I have a few more documents to comment on after the break, but I  
19 do not need much more time.>

20 MR. PRESIDENT:

21 Thank you, Counsel.

22 It is now time for a short break and the Chamber will take a  
23 20-minute break from now.

24 (Court recesses from 1012H to 1030H)

25 MR. PRESIDENT:

35

1 Please be seated.

2 Counsel for Mr. Khieu Samphan, you may now resume your  
3 observations.

4 [10.30.51]

5 MS. GUISSÉ:

6 Thank you, Mr. President.

7 I would now like to move to several comments on the written  
8 statements that were used by the Prosecution and, more generally,  
9 to <cite> passages that were not <cited> by the Prosecution and  
10 which, I think, are of interest, still with a background of the  
11 fact that a written statement is, nevertheless, not the same as a  
12 hearing at which we <would> be able to <clearly examine a person  
13 on everything> and perhaps point out contradictions.

14 [10.31.30]

15 So the first document <that I will be referencing> is E3/10620,  
16 Ruos Suy's <statement>. The questions and answers noted were 5,  
17 78, 79, 83, and 84, so I will be quoting this in English <to the  
18 attention of the interpreters>. First the question and answer 81  
19 and 82.

20 "You said that there was a plan to marry 100 per month. Was that  
21 successful?"

22 Answer: "No."

23 Question: "Why?"

24 Answer: "Because some people agreed to get married as assigned,  
25 whereas some who understood the plan or had learned Party policy

1 through their friends refused to get married." End of quote.

2 <This passage is interesting, and if were possible,> in the  
3 context of an interrogation, to <compare this last response from  
4 the witness with> the policy of the Party related to marriage  
5 that we see in Rule 6 saying that the interested parties need to  
6 give their consent. And along the same lines another question;  
7 the question and response 90, and I will quote in English.

8 "You said that order to get married 100 couples a month was from  
9 the ministry; do you know who issued the order?"

10 Answer: "I do not know where the order came from. I just know  
11 that Rith alias Roeung ordered my chief, and my chief ordered me  
12 to prepare vehicles." End of quote.

13 [10.33.57]

14 It's of interest to note that Ruos Suy does not know where the  
15 order for the marriage came from. It's important because I  
16 understood that the position of the Prosecution is systematically  
17 when the word "trade" appears somewhere, Khieu Samphan is always  
18 to be held responsible. So here Ruos Suy says he doesn't know  
19 where the order for marriages <under these> conditions <came  
20 from>.

21 So, in response 92 of this same document, Ruos Suy is a bit  
22 clearer in the way he talks about the <the spouses to be being  
23 asked for their consent,> and here is what he says in the middle  
24 of answer 92 again. I will be quoting in English.

25 [10.34.50]

1 "Some couple, who were reluctant to agree with the wedding, came  
2 to see each other. I arranged for them to see each other, but  
3 whether they agreed or not depended on them. Previously, they had  
4 assigned women to sit in a row and the men in the other row, and  
5 then they chose each other to be their spouses. But there were  
6 many complaints that although they lived with their parents, they  
7 were not to be brought in to be placed on sale like that.

8 Therefore, they changed strategy. In some cases, I had to arrange  
9 for them to see each other, asking them why they had a difference  
10 of opinion. I mean that when there were different opinions, I  
11 would contact the women's unit chairperson to request four women  
12 and the men's unit chairperson to request four men to help work,  
13 and then they saw each other. When the man was satisfied with  
14 that woman, he would ask her if she agreed to accept him."

15 Question: "When the woman was proposed to, did she have right to  
16 refuse?"

17 Answer: "Yes, she did. The woman had the right to agree or  
18 disagree. But in order to achieve this plan, they always tried to  
19 persuade the woman to agree to accept the proposals. When they  
20 persuaded them, those couples mostly did not stay with each other  
21 for a long time. But in some cases, if that woman truly rejected  
22 it, it would be ended and there would be no marriage." End of  
23 quote.

24 [10.36.53]

25 So these were passages that I felt were useful to quote in

38

1 addition to those brought up by the Prosecution.

2 Another comment on another document; it's document E3/9000. It's  
3 a work called "The Mystery of Sexual Violence under the Khmer  
4 Rouge Regime." The ERN in English, 00992194.

5 This is an example that was cited by the Prosecution saying that  
6 people were encouraged to get married in spite of their true  
7 desires. But I <note> that what comes out of this passage would  
8 be two people who have completely disparate biographies because,  
9 if I understood correctly, the women in this example came from an  
10 aristocratic family of the former regime while the man was a  
11 peasant -- <Again, the same comments go for what I stated earlier  
12 regarding the statements made in Norodom Sihanouk's book.>

13 [10.38.21]

14 This example, seems to me, to run counter to the other examples  
15 we've heard here and the notion according to which the people who  
16 were marrying each other had to have similar biographies. So this  
17 is an example which shows that if there had been a CPK policy, it  
18 was in any case not applied correctly throughout the territory.

19 Another passage that I would like to read in passing is the WRI  
20 of Ms. Thuch Sithan, E3/378; the ERN in French, 00342203; in  
21 English, 00345541; and in Khmer, 00349538.

22 This is just the beginning of a response as it was <omitted> by  
23 the Prosecution when he referred to this passage talking about  
24 the disappearance of Madam Thuch's husband.

25 [10.39.48]



1 The answer to the question, "How did you notice the disappearance  
2 or learn of the disappearance of your husband?", and she answers,  
3 "In January 1978, I <> gave birth to my son and I note that in  
4 the Khmer Rouge regime women who <had just given> birth were  
5 allowed to rest in the house for two months. <While I was staying  
6 at the resting home, my husband came three times to visit me and  
7 see his son. Then for two weeks I did not see him again." End  
8 quote.>

9 <This little excerpt which was omitted, is> just to say that when  
10 we talked about <the living conditions> of the population, we  
11 spoke of the fact that, in certain worksites, women who had just  
12 given birth were forced to work, etc., and here, we have a  
13 statement which came from a person who does not seem to have any  
14 desire to give any <mitigating evidence> but, yet, she states  
15 that women who had just given birth had the right to two months  
16 of rest.

17 [10.41.01]

18 Another document I would like to come back to is document  
19 E3/9575. I think I do not have the right to say the name of this  
20 person but the answers in this WRI <cited by the Prosecution> are  
21 <65, 66, 67,> 73, 76.

22 And, <notably,> it is <stated> that this witness was married at  
23 the age of 15. <At least this> is what she says in her WRI --  
24 <yet,> the Chamber will note in reading this document that the  
25 French ERN 0114036; in English, 01025287; and in Khmer, 00996490

40

1 -- that the birthdate of this person is 12 March 1958 and in  
2 answer 6 of this statement <she herself stated that> when the  
3 Khmer Rouge arrived in her village <> she was <apparently> 15  
4 years old. This was in April 1975, so 15 years old in '75. She  
5 indicates that she was allegedly married in 1977.

6 So this does not seem to correspond. If we take her date of  
7 birth, this does not correspond to 15 years and, in any case,  
8 when we do the calculation with her 1958 birth date. So if this  
9 marriage took place in 1977, we come up with an age of 19 years  
10 old.

11 [10.43.25]

12 So in any case, I think we can say many things on the CPK's  
13 policies but we cannot say they encouraged early marriage<, and I  
14 think that we have now heard enough evidence, whether from>  
15 witnesses or civil parties who have stated that there was a  
16 minimum age for women which was about 20 years. <So this  
17 contradiction with the birth date aside, this does not>  
18 correspond to what we have heard in these hearings.

19 Another point I would like to emphasize in another document,  
20 E3/9808, it's a document that the Prosecution quoted, '73, '74,  
21 '77, '78 and '79 in the answers and I would like to come back to  
22 an answer that was skipped by the Prosecution when we asked this  
23 person if it was the hierarchy who <ordered> the forced  
24 marriages. <They asked him the question, it is question 76 -- in  
25 English -- it is the next -- in French, excuse me, in all of the

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1 languages it is as follows:>

2 <What are you referring to when you say that the order came from  
3 the hierarchy?>

4 <Answer 76:> "I do not know. Maybe the upper echelon ordered Ta  
5 Hab, who then passed the order on to me. The men <had to say they  
6 were in love with a certain girl, then> Ta Hab <came to order me  
7 to summon the man and woman to get married."> End quote.

8 [10.45.23]

9 So it's interesting to note here <that> concerning the order,  
10 this cadre who <arranged> the marriages says he doesn't actually  
11 know who ordered the marriage and that it is important to note  
12 that he indicates that he is the one who summoned the people,  
13 summoned the women that the <men were in love with> in order to  
14 move forward with the marriage.

15 And to conclude, two small comments on the documents that were  
16 presented by the Co-Lead Lawyers of the civil parties, the first  
17 document, E3/9662 in answer 31, which was not <cited> and which  
18 is important, the question asked, "Did you hear that they were  
19 arresting people who refused to get married?", and answer 31, "I  
20 did not hear of arrests of people who refused to get married.  
21 This being as it is, colleagues from mobile units and villagers  
22 talked about negative consequences of refusals to marry."

23 [10.46.49]

24 And then we have once again statements of people that we cannot  
25 question so we know there is no direct witness statement on these

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1 possible negative consequences. In fact this person says that she  
2 did not hear of any arrests and the rest is hearsay. This is  
3 important to note because it's something that we must know when  
4 we are using only written statements.

5 <Last> document that I <would> like to make a comment on is  
6 E3/9790, and especially answers 92 and 93 which were <cited> by  
7 my colleague representing the civil parties. Just to recall that  
8 in <in this answer, a> reference <is made to> a rape outside the  
9 context of marriage was cited, and so I understand the position  
10 of the Co-Lead Lawyers for civil parties that when they made an  
11 appeal against decision E306/7/3 that <you confirmed that> rapes  
12 outside the context of marriage are not to be considered by this  
13 <current> trial.

14 [10.48.21]

15 I <understand that they had the intention of appealing> this  
16 decision but I would like to note Internal Rule 104 of the  
17 Internal Rules that in the case of an immediate appeal which will  
18 be considered by the Supreme Court, and we will see what the  
19 outcome is, but in any case in the case of an immediate appeal,  
20 there is no suspensive effect. <In these conditions, integrating>  
21 elements that are outside of the scope of this trial <falls  
22 outside the scope of the Chamber's Internal Regulation,> and I  
23 <obviously ask you to take that into consideration> in the  
24 context of these excerpts and perhaps even what follows.

25 Finally, to conclude, I would like to simply indicate that the

1 disparity of the treatment and implementation of <the marriage  
2 regulation depending on> the place and the cadres in charge of  
3 enforcing these regulations indicate that there are many diverse  
4 experiences and this is an element that will be extremely  
5 important in the context of the <debate and final pleadings> to  
6 come.

7 [10.49.28]

8 I have finished, Mr. President, in responding to these pieces of  
9 evidence proposed and just to say that it is clear that the goal  
10 is not to make a definitive pleading but to just make some  
11 <follow-up> comments on what the Lead Co-Lawyers and the  
12 Prosecution have put forward. Thank you.

13 MR. PRESIDENT:

14 Thank you, Counsel.

15 The hearings on the presentation on key documents relating to the  
16 regulation of marriage have now come to an end. Next, the Chamber  
17 is intended to hear <responses by parties to> the Co-Prosecutor's  
18 request to call one additional civil party on the role of the  
19 accused and also to hear the request to admit documents related  
20 to the civil party into evidence, request <E336 (sic)>. Parties  
21 were informed in the email by the legal officer of the Trial  
22 Chamber on the 5th September 2016 to register their responses to  
23 the request mentioned above today after the hearings on key  
24 documents.

25 First, the floor is given to the Lead Co-Lawyers for civil

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1 parties to register their responses. You may now proceed.

2 [10.51.11]

3 MR. PICH ANG:

4 Good morning, Mr. President, Your Honours, parties, everyone in

5 and around the courtroom. Concerning the request of the

6 Co-Prosecutor, E436, that is the request to summon one additional

7 civil party and also to admit related documents; again, the

8 request is to summon one additional civil party to come and

9 testify. The Lead Co-Lawyers are of the opinion that the

10 concerned civil party has relevant information on the activities

11 of the accused (sic).

12 We, therefore, do not have any objection to the request to call

13 that concerned civil party to come and testify before the

14 Chamber. I thank you very much, Mr. President, and please be

15 informed.

16 [10.52.27]

17 MR. PRESIDENT:

18 Next, the floor is given to the defence team for Mr. Nuon Chea to

19 respond to the request. You may now proceed.

20 MS. CHEN:

21 Good morning, Mr. President, Judges, parties and everyone

22 watching. We have no submissions on this point.

23 MR. PRESIDENT:

24 Thank you, madam <> Counsel.

25 Next, the floor is given to the defence counsel for Mr. Khieu

1 Samphan.

2 [10.53.02]

3 MS. GUISSÉ:

4 One time does not make a habit, Mr. President, but clearly we do  
5 not have the same position on this subject as the other parties.

6 And I will explain briefly why. We have an 87.4 request to  
7 <summon> an additional civil party who will explain -- comment on  
8 the role of Khieu Samphan, the role of the accused. This is a  
9 late request and it is supposedly <important> because this civil  
10 party will address the role of the treatment of the Vietnamese<,  
11 treatment of former RKs,> and the fact that Khieu Samphan  
12 allegedly spoke during the <III displacements> of the population.

13 The first comment I would like to make is that this is <an>  
14 extremely late <request>. Why? The document has been available  
15 since at least 2015. This civil party was known by the  
16 Prosecution because she appears in the footnote of the Closing  
17 Order, that none of the parties at the time of establishing the  
18 list of witnesses had included this civil party in the list of  
19 witnesses.

20 And just a few weeks before we are going to be wrapping up  
21 evidence in this <trial>, we are presented again with this civil  
22 party saying it's important that she appear.

23 [10.54.40]

24 If it <were> so important that she appear, then why, in contrast  
25 to the indications of the Chamber in <its ruling> E3/363/3 and

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1 then again <in June 2016,> why does the Prosecution<, which  
2 provided the statement by this civil party, forward us this civil  
3 party statement and tell us that this is a exculpatory  
4 statement>? Why did the Prosecution not <issue a 87.4 motion at  
5 the time it forwarded this statement?>  
6 <From the other side of the Bar, we heard: "Yes, but this  
7 document was only translated recently.">  
8 Well, <that> was nevertheless seven months ago and the authority  
9 to communicate this document was 19 months ago, the <25th> of  
10 August 2015. So I'd like to know what is new in this statement  
11 when, well, it is more than 19 months ago that the Prosecution  
12 became aware of it. That the <translations> were available later  
13 does not eliminate the fact that this was an extremely tardy  
14 request. <Because if the> Prosecution <had> communicated this  
15 statement to us <long ago, even only> in Khmer, I would like to  
16 remind you that the request comes from the International  
17 Co-Prosecutor and I would think that before submitting a document  
18 then they have at least become familiar with it.  
19 [10.56.31]  
20 So saying that they only received this document very late does  
21 not correspond with the facts. So to say that this civil party  
22 would have a relationship with the treatment of the Vietnamese  
23 does not correspond with reality, at least insofar as I have  
24 read. I rapidly read the statement. There is nothing on the  
25 treatment of the Vietnamese.



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1 So I would like to clarify that this civil party, in the context  
2 of the Closing Order, is quoted on the <III> displacements of the  
3 population but <does not fall within> the <scope>of what is  
4 seized in Case 002/02.

5 [10.57.13]

6 So finally and generally, the timing of this request has an  
7 effect. I think that the Chamber has understood that the Defence  
8 particularly recently has become quite tired of the way in which  
9 <at a point when the trial is reaching an end, new statements are  
10 being introduced systematically, added to --> And I do understand  
11 the challenges that can occur in correctly aligning witnesses but  
12 <with the contingencies that WESU is aware of, but despite all of  
13 that we need to know that these new witnesses called at a late  
14 date,> in the context of the organization of the Defence's work  
15 has an extremely negative effect on providing a full and complete  
16 defence.

17 And, therefore , I would simply ask the Chamber to reject the  
18 request of the Prosecution, noting that -- taking into account  
19 the chronology of the facts and the chronology of the  
20 communication of these documents, that it is a particularly late  
21 request and, in addition, it is not justified given the fact that  
22 the elements of evidence noted<, notably> the treatment of  
23 Vietnamese, do not correspond with what appears in the statement  
24 <and the treatment of former RKs, as mentioned, was more than  
25 largely covered, and that this would nevertheless be a repetitive

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1 statement.>

2 [10.58.49]

3 <Regarding alleged speeches given by Khieu Samphan, in the case  
4 file we have> sufficient public statements <for the Chamber to  
5 make a determination whether or not -- on the public statements  
6 given by Khieu Samphan, but in any case,> I would like to just  
7 note that the Defence is ill at ease with the fact that we <note  
8 that this civil party has had an attorney since 2008, and> and  
9 suddenly in September 2016, there are elements introduced  
10 relating to <statements given by> Khieu Samphan. So the very  
11 tardy nature and the particularly negative consequences  
12 concerning the appropriation of Khieu Samphan's team that this  
13 would have, are noted.

14 Thank you.

15 MR. PRESIDENT:

16 Thank you.

17 And Judge Lavergne, you may now proceed.

18 [10.59.47]

19 JUDGE LAVERGNE:

20 Yes, Mr. President, just a clarification to Khieu Samphan's  
21 defence, the request of the Co-Prosecutors in fact contains two  
22 pillars, one concerning the request to summon this person to  
23 appear in the hearing and the other to see admitted as proof, an  
24 additional document in addition to the statement of the civil  
25 party. Are you asking for the two aspects of this request to be

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1 rejected or are you making a distinction between these two  
2 requests?

3 MS. GUISSÉ:

4 I am asking that the entire application be rejected for the  
5 reasons I have just given.

6 MR. PRESIDENT:

7 Co-Prosecutor, you have the floor.

8 [11.00.46]

9 MR. DE WILDE D'ESTMAEL:

10 Thank you, Mr. President. I will try to set the record straight.

11 I believe the Defence <is misunderstanding this motion, because  
12 we issued the motion, notably to call <civil party> 2-TCCP-1063,  
13 <> in order to testify on the role of Khieu Samphan. I don't  
14 believe I saw in our application that we are relying on the issue  
15 of the treatment of the Vietnamese <or> the treatment of former  
16 soldiers of the Lon Nol army.

17 In any case, what we should note here is that if we are asking  
18 that for this witness to be called to testify, it's because it  
19 deals with the acts and conduct of <an> accused. And if that  
20 civil party doesn't appear, such a statement cannot be used  
21 because it is the Defence's right to cross-examine directly any  
22 persons who testify to the acts and conduct of their client. That  
23 is the reason and the general interest that we are calling that  
24 person to appear before this Chamber. I believe that application  
25 was very clear on the statements that were made by the civil

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1 party according to the supplementary civil party information  
2 form, <and the Chamber gave, if I am not mistaken, number  
3 E319/57/2/7 to this form.>

4 [11.02.38]

5 Here we are talking of a speech by Khieu Samphan delivered before  
6 people who were displaced from the East Zone to the West Zone.

7 When they arrived in Phnom Penh, that speech <was> delivered, and  
8 <in particular> he states the following in the form, and I quote.

9 So I am quoting what is attributed to Khieu Samphan and I am  
10 quoting in English:

11 "Please follow the Democratic Kampuchea policy. Please be loyal  
12 to the Party forever. If anyone betrays the Party, that person  
13 will be killed. As the saying goes, to keep you is of no benefit;  
14 to kill you is of no loss." End of quote.

15 [11.03.25]

16 Now, this is particularly relevant because it is related to Khieu  
17 Samphan's role directly regarding people transiting <via> Phnom  
18 Penh<, but> it also <obviously> relates to the policy vis-à-vis  
19 <the> enemy <and the> treatment of the enemy, persons who did not  
20 <> comply with the discipline. So it is related to paragraphs 156  
21 and 178 of the Closing Order since we are talking <about a> joint  
22 criminal enterprise <based on five policies, including the one>  
23 with regards to the enemy.

24 And <so, for us,> this is directly in line with the segment of  
25 the <trial> relating to the role of the Accused. I do not see

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1 <what> prejudice that <> the Defence <would suffer,> since that  
2 segment has not yet started.

3 And even though we have in our possession <right now> a  
4 preliminary list of witnesses, unless I am mistaken, which is  
5 provided by the Chamber, <this list can still evolve,> and it is  
6 not a question of hearing those persons immediately. So there  
7 will be a <time lag between> this hearing and <hearing those  
8 witnesses or civil parties,> and I believe the Defence will have  
9 all the time they need to prepare for that testimony<, even more  
10 so, as these appearances and> testimonies <may> be very, very  
11 short<, given that what is of interest to us is really this  
12 passage in a speech delivered by Khieu Samphan>.

13 [11.05.00]

14 <So a> half a day for all the parties would be sufficient.  
15 As regards the issue that our application is tardy, I would like  
16 to remind the parties that regarding this case, we have hundreds  
17 of thousands of documents tendered into evidence. Of course we  
18 have given priority to the records of interview. As regards the  
19 statements of civil parties, we try to catch up in the way we  
20 call these witnesses, given the fact that the criteria for  
21 disclosing <or communicating> civil party forms are a lot more  
22 restrictive and the probative value of these WRIs may be less  
23 than that of <WRIs. I do not know where the Defence came up with  
24 this information regarding the supplementary information  
25 document, what> we know as regards the supplementary information,

1 we know that as of August 2015, there is an English translation  
2 that has enabled us to review the documents in January 2016. At  
3 the time, we were attending Court proceedings and we were looking  
4 at the criteria defined by the Chamber, looking at the WRIs from  
5 other trial investigations<, knowing that it was urgent to  
6 communicate them if they concerned the upcoming trial segments>.  
7 [11.06.55  
8 <So indeed,> we noted tardily that that particular document  
9 included elements regarding Khieu Samphan and as soon as we  
10 discovered that, we asked the Co-Investigating Judges to allow us  
11 to disclose those documents to the Chamber and to all the  
12 parties. And we received from the Co-Investigating Judges a  
13 decision in that regard dated the 25 August 2016 and which has a  
14 reference number in <another case file,> D193/94. <So it is true  
15 that there was a bit of a time lag, between the translation and  
16 discovery, so to say of the statements by the civil party in the  
17 case file -- in another case file, but in my opinion> but there  
18 is no prejudice suffered by the Defence because they will have  
19 enough time to prepare themselves . Given the importance of  
20 hearing the testimony of that person, and also for the Defence>  
21 and the other parties, <to confront this person with the  
22 questions,> we therefore request that our application be admitted  
23 and that <this> person be summoned to appear before this Chamber  
24 <in the context of this segment> to give evidence <as to the role  
25 of the Accused>.

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1 Thank you.

2 [11.08.41]

3 MR. PRESIDENT:

4 Lead Co-Lawyer for civil parties, you have the floor.

5 MR. PICH ANG:

6 Thank you, Mr. President. I'd like to add a bit to what I said  
7 earlier.

8 The proposed civil party informs the Lead Co-Lawyers that he's <>  
9 available to testify.

10 [11.09.07]

11 MR. PRESIDENT:

12 Thank you for the update, Counsel.

13 And now the Chamber would like to hear oral submissions by  
14 parties concerning the scheduling order before the Pchum Ben  
15 recess.

16 JUDGE FENZ:

17 May I just ask a question, please, before we move on?

18 Why is the civil party not available?

19 MR. PICH ANG:

20 I think there is an issue in the interpretation. In fact, the  
21 civil party is able -- or is capable to come to testify.

22 JUDGE FENZ:

23 Thank you. There was, indeed, a translation issue.

24 [11.10.08]

25 MR. PRESIDENT:

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1 The Chamber now wishes to hear oral responses or observations by  
2 parties concerning the scheduling before the Pchum Ben recess.  
3 And before I hand the floor to the parties, I'd like to hand the  
4 floor to the Nuon Chea defence to summarize their submission. You  
5 have the floor.

6 [11.10.29]

7 MS. CHEN:

8 Good morning, again, Mr. President. In our email of yesterday, we  
9 made a couple of observations. And the first one, regarding the  
10 hearings prior to Pchum Ben, we noted that in earlier email  
11 correspondence the Lead Co-Lawyers for the civil parties had  
12 suggested that the Chamber perhaps hear the new witnesses  
13 scheduled for the fourth segment.

14 So we took that to be the segment on Security Centres and  
15 Internal Purges and, effectively, to be the new witnesses that we  
16 had requested. So, in my notes they are 2-TCW-961 or 2-TCW-960,  
17 2-TCW-1041, 2-TCW-1037, 2-TCW-1036 and 2-TCW-1031.

18 So we--

19 MR. PRESIDENT:

20 Counsel, please slow down <for proper interpretation.>

21 [11.11.17]

22 MS. CHEN:

23 Sorry about that.

24 So we just wanted to say that even though the Lead Co-Lawyers  
25 later withdrew that suggestion, these were the witnesses that we



1 had requested and we wanted to advise the Chamber that we are in  
2 a position to examine those witnesses in the week prior to Pchum  
3 Ben should the Chamber decide to schedule them.

4 I also wanted to take the opportunity to note -- and this is not  
5 in my email -- that we are currently preparing a short filing in  
6 relation to another witness, 2-TCW-959 -- who the Chamber has  
7 been making attempts to locate. So we just have some observations  
8 in relation to that witness and further possibilities for  
9 locating that witness.

10 [11.12.01]

11 The second item in our email of yesterday was regarding the  
12 Regulation of Marriage and the remaining civil parties and  
13 witnesses that were supposed to come to testify.

14 We noted that there were, in our records, four civil parties and  
15 witnesses who had been previously announced for testifying but  
16 whose status is currently unknown.

17 So we're just unsure as to how to proceed. Do we continue to  
18 prepare them, do we put them on hold? And we were looking for the  
19 Chamber's guidance on this. Those civil parties and witnesses are  
20 2-TCCP-264, 2-TCCP-251, 2-TCW-1025 and 2-TCCP-298.

21 And then, in addition to those, we noted that there are now two  
22 new civil parties who the Chamber have added to the schedule. So  
23 they appear to be 2-TCCP-283, who is going to be appearing at the  
24 end of next week according to the projection, and also the new  
25 civil party mentioned just this morning being a civil party whose

1 statement was mentioned in the Prosecution's document  
2 presentation of yesterday.

3 [11.13.05]

4 In this regard, we would just like to reiterate earlier comments  
5 made by the Khieu Samphan team. We would appreciate the Chamber's  
6 early advice on whether these people will be coming to testify in  
7 the end because it does cost us a lot of resources to prepare  
8 them and then that's wasted if these people don't turn up.

9 I appreciate that there's challenges in this, but we just wanted  
10 to bring this to the Chamber's attention.

11 And then the third item in our email was regarding 2-TCE-83, the  
12 expert that had been originally scheduled for the Nature of the  
13 Armed Conflict segment.

14 [11.13.38]

15 We noted that in our oral submissions on 16 August, we had  
16 requested that alternative modalities be explored in terms of  
17 this expert's appearance. For example, testifying by video-link,  
18 perhaps exceptionally testifying on a Saturday. So we just sought  
19 the Chamber's guidance as to whether there were any updates on  
20 this expert.

21 While I'm on the subject of the expert and of the Nature of the  
22 Armed Conflict segment, I also just wanted to take the  
23 opportunity to say that should that expert not come to testify  
24 and should the Chamber advise us of such, we will then be  
25 considering filing a written motion requesting two other experts

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1 that we had mentioned in those oral submissions earlier. They  
2 were Steve Heder and Stephen Morris and that is the order of  
3 preference in which we would like to call those two experts.  
4 And, obviously, we would also always be keen to hear one of the  
5 witnesses who we have requested many times and who we believe  
6 would be a very important witness for The Nature of the Armed  
7 Conflict and that is 2-TCW-831.

8 [11.14.43]

9 And just, finally, we note the Chamber's email from yesterday  
10 concerning Patrick Heuveline and we just wanted to take this  
11 opportunity to confirm we will be filing a written submission  
12 seeking his appearance.

13 Thank you very much.

14 [11.15.05]

15 MR. PRESIDENT:

16 Thank you, Counsel. And now I hand the floor to the  
17 Co-Prosecutor.

18 MR. DE WILDE D'ESTMAEL:

19 Thank you, Mr. President. As regards the first point, it appears  
20 that another application was made by the Khieu Samphan defence,  
21 notably Counsel Anta Guisse. It will be more logical for us to  
22 hear her position because her position <is> different from that  
23 of Nuon Chea, if I refer to her emails "to discuss this subject  
24 and to say that no one is obliged to do what's impossible" and I  
25 suggest that we cannot hear the witness proposed by Nuon Chea

1 before Pchum Ben. I think Ms. Guisse can enlighten the Chamber on  
2 that.

3 [11.16.04]

4 But, in any case, what we have to say is that the witness is  
5 testifying in relation to the fourth segment, that is Internal  
6 Purges. And the Nuon Chea application has been on file for quite  
7 some time now so there is no reason why the parties wouldn't be  
8 ready to examine that witness before Pchum Ben if, indeed, it is  
9 confirmed that the witnesses and civil parties testifying in  
10 relation to forced marriages cannot appear immediately and can  
11 only appear after Pchum Ben.

12 So we're not going to take the parties unawares because this  
13 segment has been going on for some time and the Chamber will have  
14 to take decisions regarding a number of witnesses.

15 We already have applications that were made a long time ago.

16 We've been able to read documents relating to those specific  
17 witnesses so we, of the Prosecution, believe that we are ready  
18 and will rely on the Chamber's discretion as to the scheduling of  
19 future proceedings. If the hearings take place earlier, it would  
20 be better for us and we'll be better prepared.

21 [11.17.29]

22 As regards other motions requesting information to know where we  
23 stand, whether or not we'll hear this civil party or not, we have  
24 nothing to say on that as regards the application that experts be  
25 called and to know whether 2-TCE-83 will be called or not, we

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1 will also rely on the discretion of the Chamber.  
2 If there are other applications that will be made subsequently in  
3 the case -- in case that expert doesn't appear, <we will reserve  
4 the right to respond at that time, but a priori> we will not  
5 object to the summoning of any experts or witnesses in future to  
6 compensate the non-appearance of 2-TCE-83. I have nothing to add  
7 in particular on these issues, Mr. President.

8 MR. PRESIDENT:

9 I'd like now to hand the floor to the Lead Co-Lawyer.

10 [11.18.36]

11 MR. PICH ANG:

12 Once again, good morning, Your Honours and everyone.

13 In relation to the request to call <additional> witnesses or  
14 civil parties, we the Lead Co-Lawyers do not have any particular  
15 observation and we rely on the discretion <of the Chamber> and  
16 the availability of those civil parties and witnesses.

17 However, two civil parties, 2-TCCP-264 and 2-TCCP-251, who have  
18 health issues or one of them is busy taking care of an elderly  
19 mother, we actually have contacted the said civil parties and we  
20 await a report from WESU on the result of the communication with  
21 the said civil parties.

22 And, again, we the civil parties relied on the discretion of the  
23 Chamber and, of course, we will abide by the instructions of the  
24 Chamber.

25 MR. PRESIDENT:

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1 Thank you.

2 [11.20.16]

3 JUDGE FENZ:

4 Can I just ask a question? I seem to remember there's also a  
5 request from you to push the Harm Suffering hearing after the  
6 holidays? Can you give a short reason for that?

7 MR. PICH ANG:

8 Your Honour, in relation to the Impact Hearing, our position is  
9 the same as what we set out in our email sent to Your Honours via  
10 my Lead Co-Lawyer counterpart, Marie Guiraud. We have some  
11 financial issues as far as the arrangement with some civil  
12 parties who we deemed as having potential information concerning  
13 the impact hearing and we are trying to solve these challenges at  
14 the present time.

15 And we hope that we would have sufficient information next week  
16 and that by Tuesday next week or Wednesday the latest, we would  
17 have the list of civil parties for Your Honours' consideration so  
18 that you are in a position to select them for the Impact Hearing.  
19 Once again, allow me to repeat, we shall be able to hand you the  
20 list by Tuesday or Wednesday next week.

21 As for the scheduling for their appearance after you receive the  
22 list and it is at Your Honours' discretion.

23 [11.22.24]

24 MR. PRESIDENT:

25 Thank you, Lead Co-Lawyer for civil parties. And now I hand the

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1 floor to the defence team for Khieu Samphan.

2 MS. GUISSÉ:

3 Yes, thank you, Mr. President. I would like to make a correction  
4 for a start regarding my email. When I read the Civil Party  
5 Co-Lawyers' application to postpone hearings regarding the Impact  
6 of Suffering and their application that witnesses be called for  
7 the fourth segment of the trial, <I read things very quickly,  
8 and> I had understood that they were calling for <> an earlier  
9 appearance of certain witnesses on the segment on Armed Conflict  
10 and that is why I reacted rather promptly.

11 [11.23.16]

12 I have understood in the course of discussions on <rectification  
13 and in conversations> with the Nuon Chea team that these  
14 witnesses testifying on the fourth segment, so the problem is a  
15 lesser one. It does exist all the same, but it's a lesser problem  
16 as regards the segment on Armed Conflict.

17 Generally speaking, I have apprised myself of the application  
18 made by the different parties and I do understand the  
19 difficulties that the Chamber and WESU may face as regards  
20 calling witnesses scheduled by the Chamber. As the Prosecution  
21 has noted as regards the Nuon Chea application regarding any  
22 witnesses called that date back to March and April, when we  
23 learned in late August/early September that the Chamber intends  
24 to call <some of> those witnesses, I must say that the  
25 organization system that the teams have in place <is rather

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1 restrictive, and> doesn't enable us to anticipate the appearance  
2 of witnesses unless we are sure that the Chamber really intends  
3 to call them.

4 [11.24.30]

5 Even though <we understand that> the initial wish of the Chamber  
6 may change with time given certain contingencies relating to WESU  
7 as regards any additional witnesses that the Chamber would like  
8 to call, it's important for us to <organize ourselves and> know  
9 whether or not it is more likely for one witness or -- rather  
10 than another to be called. And that is why I reacted promptly by  
11 email and that is why today I would request the Chamber to --  
12 bearing in mind the difficulties that we know you <> have in  
13 <calling witnesses expected to testify>, it's important for us to  
14 have a clear idea as to the witnesses <and civil parties> that  
15 the Chamber intends to call. That would enable us to work as  
16 efficiently as possible.

17 I do understand that on the side of the Prosecution we have the  
18 same concerns as the Prosecution in terms of time <there may be  
19 more time, etc., and I remind you of the contingencies faced by  
20 the Defence and Prosecution are not the same, and when we are in  
21 Chambers, we cannot -- we cannot take the time for these  
22 applications, we cannot take the time for the responses, and we  
23 cannot take the time to prepare witnesses if we are not sure they  
24 are going to be called.>

25 These are my remarks for the time being, and for the rest I will



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1 leave it to the discretion of the Chamber.

2 [11.26.00]

3 MR. PRESIDENT:

4 The Chamber will notify the parties on the scheduling order as  
5 soon as possible.

6 The Chamber will take a break now for lunch and resume at 1.30  
7 this afternoon.

8 Security personnel, you are instructed to take Khieu Samphan to  
9 the waiting room downstairs and have him returned to attend the  
10 proceedings this afternoon.

11 (Short pause)

12 [11.27.00]

13 The Chamber would like to cover another issue for today's  
14 proceeding.

15 As the Chamber informs the parties this morning that the Chamber  
16 is considering to call another additional witness whose statement  
17 appears in E3/9820 in relation to Regulation of Marriage.

18 Therefore, the Chamber wishes to hear oral responses from parties  
19 concerning the summons of this witness. And the pseudonym for  
20 this witness is 2-TCCP-1064 and please refer to this person by  
21 the pseudonym.

22 And, first, I'd like to hand the floor to the Co-Prosecutors to  
23 make his observation.

24 [11.27.54]

25 MR. DE WILDE D'ESTMAEL:

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1 Thank you, Mr. President. We are happy that that civil party will  
2 be called to testify before this Chamber. I think the situation  
3 was <rather> clear on Tuesday when I read <long sections of his>  
4 record of interview of that witness, <E3/9820>.

5 It is very relevant because that person explains that she was  
6 married to a handicapped person she didn't love. Secondly, she  
7 says that it was explained to her that handicapped persons had  
8 made sacrifices on the battlefield and they had to be compensated  
9 by being given a wife.

10 [11.28.56]

11 If she had had the choice, she wouldn't have been married to that  
12 person. She was told that anyone who didn't have intercourse with  
13 <their> spouse and didn't consummate <their> marriage was  
14 executed. <She also establishes the link between increasing the  
15 population and the marriages, in answer> number 31 in that record  
16 of interview. She says that <during the meetings a superior on  
17 the ground announced that> Angkar needed more manpower and so  
18 they had to <get married, and young girls in order> to make  
19 children for <the revolution. This is the counterpoint to the  
20 Defence's document presentation this morning, or from their  
21 observations rather.>

22 And, lastly, <she also mentions> the fact that some boys who were  
23 in love with certain girls, asked the heads of units to allow  
24 them to marry those girls<, but the unit chiefs would sometimes  
25 refuse their requests,> and those boys protested and they

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1 <subsequently disappeared>.

2 These are the reasons that prompt me to say that the testimony of  
3 that civil party is particularly relevant and it is at the very  
4 heart on the segment on Regulation of Marriages. I think it is  
5 relevant for that civil party to be confronted in relation to  
6 these statements given by other parties. Thank you.

7 [11.30.33]

8 MR. PRESIDENT:

9 Thank you, Co-Prosecutor. And the floor is now given to the Lead  
10 Co-Lawyer for civil parties.

11 MR. PICH ANG:

12 Once again, good morning, Your Honours and everyone.

13 In relation to this civil party, I'd like to also clarify that  
14 she is also a civil party in Case 002 and, as outlined by the  
15 Co-Prosecutor, her information is related closely to the  
16 Regulation on Marriage and that she receives such information  
17 when she was forced to get married.

18 She said that the announcement during a general meeting was that,  
19 "Angkar needed additional forces. For that reason, male and  
20 female youths are required to produce more children in order to  
21 build the revolution."

22 Furthermore, the civil party possesses some interesting  
23 information and she spoke about the suffering she received since  
24 she <was> severely mistreated by her husband during their sexual  
25 encounters. She actually did not consent to sexual intercourse,

1 but she was beaten by her husband.

2 [11.32.21]

3 And there are also other information that are related to the  
4 Regulation of Marriage, and for the above information and reason,  
5 we support the request by the Co-Prosecutor to call this civil  
6 party to testify.

7 MR. PRESIDENT:

8 Thank you, Lead Co-Lawyer for civil parties. And I'd like now to  
9 hand the floor to Nuon Chea's defence.

10 MS. CHEN:

11 Hello again, Mr. President. In terms of relevance, we have no  
12 particularly observations, it's just more of a question of  
13 timing.

14 So, from our point of view, it's a little different to the  
15 witnesses for the fourth segment and for whom we are very  
16 familiar. This is someone that's new to us, it's a background we  
17 don't know, so we would need a little bit of time to prepare  
18 that. The earliest, at this point that we could say we could be  
19 ready, barring any emergencies happening in between, would be  
20 perhaps the last day prior to the Pchum Ben break. Otherwise,  
21 perhaps it may make more sense for this person to appear after  
22 Pchum Ben together with the remaining witnesses for the  
23 Regulation of Marriage and with the second expert on Regulation  
24 of Marriage.

25 Those are the observations that I have for now. Thank you.

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1 [11.33.33]

2 MR. PRESIDENT:

3 I'd like now to hand the floor to the defence counsel for Khieu  
4 Samphan.

5 MS. GUISSÉ:

6 Thank you, Mr. President. I would simply like to note that in the  
7 context of Case 002/02, the list of witnesses constituted by the  
8 parties whether it be the Co-Lawyers for civil parties,  
9 Co-Prosecutors or the defence team, were submitted in May 2014.

10 [11.34.09]

11 If I understand the presentation of the Co-Lead Lawyers <for the  
12 Civil Parties> today, <this> civil <party was party to Case  
13 002/02> at that time. <And so to tell us today that we cannot  
14 move forward without hearing her testimony, because it would be  
15 so important for> a segment on which much evidence has already  
16 been obtained, because outside of this submission, the <marriage  
17 policy was already accepted by the Chamber, at a national level,  
18 and so more or less all of the witnesses have spoken about the  
19 matter at one time or another -- nearly all the witnesses, anyway  
20 -- and today the Chamber is telling us, in June 2016, that it  
21 wants to hear this witness, and we make a note of that.>

22 <Of course we support the opinion and comments made by the Nuon  
23 Chea team, that, given the tardy nature of this information,> we  
24 need the time to prepare but, generally speaking, I find it truly  
25 regrettable that in a context of preparation of this trial just a

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1 few weeks before the end of the trial, additional witnesses are  
2 being added that could have been identified earlier.

3 [11.35.30]

4 MR. PRESIDENT:

5 Thank you, Counsel.

6 The Chamber thanks all parties in relation to your responses and  
7 the Chamber will consider those responses so that we can issue  
8 our decision in due course.

9 And we will adjourn the proceedings today and we'll resume on  
10 Tuesday next week, that is, 13 September 2016, commencing from 9  
11 o'clock in the morning.

12 And on Tuesday next week, the Chamber will hear testimony of  
13 expert 2-TCE-82 concerning Regulation of Marriage. Please be  
14 informed and attend the proceedings.

15 Security personnel, you are instructed to take the two accused,  
16 Nuon Chea and Khieu Samphan, back to the detention facility and  
17 have them returned to attend the proceedings next week, Tuesday,  
18 13 September 2016, before 9 o'clock in the morning.

19 The Court is now adjourned.

20 (Court adjourns at 1136H)

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