



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
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TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

5 February 2013
Trial Day 156

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

The Accused: IENG Sary
KHIEU Samphan

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List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MR. ABDULHAK	English
MR. ANG UDOM	Khmer
MS. GUISSÉ	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
THE PRESIDENT (NIL NONN, Presiding)	Khmer
MS. SIMONNEAU-FORT	French
MR. SMITH	English

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

2 (Court opens at 0905H)

3 MR. PRESIDENT:

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

5 Today, the Chamber will continue the document hearing regarding
6 the key documents relevant to the roles of the accused, Khieu
7 Samphan, who will be – the document will be presented by the
8 Prosecution, and after the conclusion by the Prosecution, the
9 floor will be given to the Lead Co Lawyers regarding the same
10 topic, and then the comment or objection by the defence teams,
11 including Ieng Sary's and Khieu Samphan's for those documents to
12 be presented by the Prosecution regarding the roles of the
13 Accused.

14 [09.07.01]

15 Mr. Duch Phary, could you report the attendance of the parties
16 and individuals to today's proceeding?

17 THE GREFFIER:

18 Mr. President, for today's proceeding, all parties to this case
19 are present, except the accused Nuon Chea, who is absent due to
20 his health reason. However, he waives his direct presence for the
21 document hearing.

22 The accused Ieng Sary is present in the holding cell downstairs
23 due to his health reason.

24 Thank you.

25 [09.07.43]

2

1 MR. PRESIDENT:

2 Thank you.

3 Before I hand the floor to the Prosecution, I'd like to inquire
4 from Nuon Chea's defence. On the afternoon of the 31st January
5 2013, the Chamber actually queried the -- Nuon Chea's defence
6 regarding Nuon Chea's position and willingness to waive his
7 presence to hearing the testimony of TCW 100 and/or TCCP-116.
8 Have you obtained any consent from your client?

9 MR. KOPPE:

10 Thank you, Mr. President. Good morning, Your Honours. Good
11 morning, Counsel.

12 As you are aware, Mr. President, our client was released from the
13 hospital last Thursday, but brought again, unfortunately, to the
14 hospital Saturday night where he is still at this very moment. We
15 were able to speak to our client yesterday, and he has instructed
16 us -- and he has actually signed a waiver to that effect that we
17 can continue with the civil party, as proposed by Your Honours
18 last Thursday, but he does not waive his right to be present
19 during the testimony of the proposed witness.

20 So we could continue with the civil party but not with the
21 proposed witness.

22 [09.09.28]

23 MR. PRESIDENT:

24 Thank you for the confirmation.

25 The floor is now given to the prosecutor to continue their

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1 presentation regarding key documents related to the roles of the
2 accused, Khieu Samphan.

3 You may proceed.

4 MR. ABDULHAK:

5 Thank you, Mr. President. And good morning, Your Honours. Good
6 morning, Counsel and members of the public.

7 As Your Honours will recall, we were looking at one of the books
8 authored by Khieu Samphan before we broke at the last session on
9 the 31st. Returning to that book now to put before Your Honours
10 and the public a few more relevant passages. The document is
11 entitled "Considerations on the History of Cambodia from the
12 Early Stage to the Period of Democratic Kampuchea" authored by
13 Khieu Samphan, document E3/16, and we've been quoting from
14 Chapter 5, and we will quote a few more passages from that
15 chapter.

16 [09.11.34]

17 And just by way of recalling where we left off, this was the
18 passage that I had read just before we went to the break, and I
19 might repeat it just to give context to the next part that we're
20 going to be looking at. This is at Khmer ERN 00380454; French,
21 00643883; and English, 00498277; and the passage related to Pol
22 Pot's monitoring of senior cadres who were suspected of being
23 traitors - quote:

24 "The evidence Philip Short provided about the Vietnamese having
25 created the Khmer Rumdos movement, together with the evidence

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1 that other researchers have discovered, makes it clear that all
2 of Pol Pot's monitoring, following his 3 7 8 principle, of
3 Chakrey, Chhouk, Ya, and the other cadres who had cooperated with
4 the Viet Minh was correct. Thus, Philip Short was incorrect when
5 he wrote 'The role of Prison S 21 and the confessions was not
6 primarily to provide information, but rather to provide the
7 'proof' of treason that they needed to arrest anyone they had
8 already decided to arrest. The policy of independence from
9 Vietnam required the implementation of absolute policies inside
10 the country.."

11 [09.13.33]

12 And we will leave that passage and move on a little bit further
13 down.

14 In this section, which I had started to read from when we went to
15 the break, Khieu Samphan discusses the deliberations or his
16 understanding of Pol Pot's deliberations on the confessions that
17 have been extracted from suspected cadres. Now, of course, we're
18 not reading this material for it's -- for the content of the
19 confessions, but rather, for what it contains by way of
20 commentary of Pol Pot's use of confessions and Khieu Samphan's
21 understanding of that process -- Khmer ERN 00380457 to 458;
22 French, 00643885; and English, 00498279; discussing the
23 confession of Koy Thuon: these responses were dated 4th of March
24 1977. As I understand it, in these responses there were three
25 primary themes that may have caught Pol Pot's attention.

5

1 [09.15.15]

2 Now, just insert here, a note -- it's a long passage, so we will
3 only read two brief points, and the rest, of course, is available
4 on the record. Point number 1 - quote:

5 "These confessions may have led Pol Pot to believe even more that
6 his arresting Ya was not wrong and Ya may have been an individual
7 that played an important role in the new party that they were
8 setting up."

9 And number 2: "But the issue that Pol Pot may have noticed most
10 of all was related to the confessions of Koy Thuon, meaning Doeun
11 of Office 870 having given to Ya secret information of the
12 Standing Committee on the matter of Vy and Lao, the secretary and
13 deputy secretary in Ratanakiri. Aside from Doeun, no one had
14 known this."

15 [09.16.19]

16 One page down in all three languages at footnote 193, Khieu
17 Samphan discusses the circumstances of Doeun's disappearance --
18 arrest and disappearance and the question of whether or not he,
19 that is Khieu Samphan, replaced Doeun as chairman of Office 870.

20 And this is what he says - quote:

21 "There is some opinion that after Doeun's arrest, I rose to
22 become Office 870 Chairman to replace him. In fact, that is
23 untrue. I do not know who the Standing Committee assigned to
24 replace Doeun. As I have already said, secrecy was very firm at
25 that time. Even inside the same unit, inside Office 870, there

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1 was still secrecy. I did not even want to know or hear about what
2 Doeun did or where he went. All along, he was not at the office
3 very much. My wife was in charge of the kitchen and left food on
4 the table for him. Very frequently he was not seen to come to
5 eat. After a long time, we seemed to get used to this situation.
6 Where Doeun went to and came from was not given any thought. So
7 then, neither my wife nor I even knew he had been arrested. We
8 thought even less about who they appointed in his place."

9 [09.18.09]

10 And in a few moments we will be looking at excerpts of statements
11 by others familiar with the functioning of the leadership on this
12 issue of replacement of Doeun.

13 There are a few more passages in this book that we wish to quote
14 from today. The next passage appears to draw a distinction
15 between the withdrawal of food from cooperatives by the Party
16 Centre and the relationship with Vietnam, or the suspicion of
17 Vietnamese subversion. This is at Khmer ERN 00380472 to 473;
18 French, 00643894; and English, 00498287 - quote:

19 [09.19.23]

20 "Depriving the people of rice in order to transport rice to the
21 State to meet quotas led to a great loss of life. In this,
22 another question that arises is: Was the Vietnamese sticking of
23 their hands deep inside to stir up the CPK that appeared clearly
24 in 1973 over, or not, during the 1975 to 1978? Regardless, the
25 turmoil at that time was an important factor that led many good

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1 cadres who had been in the past been loyal to the cause and had
2 been active in combat to turn to retreat instead. We should
3 understand their hesitance facing this situation. But the many
4 attempts of the Vietnamese communist leaders and their ultimatum
5 in May 1976 made Pol Pot and the CPK leadership reach the
6 conclusion that 'smashing the internal latch-bars
7 [door-doorkeepers] of the Vietnamese is the only way to keep
8 Kampuchea alive'. In a word, the issue was massively
9 complicated."

10 Khieu Samphan then addresses the issue of the forced evacuation
11 of the cities in 1975 and the considerations that led to that
12 decision, and here he is critiquing, it appears, the work of
13 researchers who have considered this issue. This is at Khmer ERN
14 00380493 to 494; French, 00643907; and English, 00498300. And
15 it's in a section entitled "Number 2. Some situations or events
16 that researchers did not think about" - quote:

17 [09.21.51]

18 "They have made accusations against Pol Pot about the evacuation
19 of the people from Phnom Penh and the provincial towns, but in
20 making those accusations they did not think about the incredibly
21 difficult and violence-filled situation that the young and
22 immature state authority faced."

23 In the next paragraph, he says the following:

24 "The thing that might have led to great danger for the young and
25 immature state authority was the situation in which tens of

8

1 thousands of people had already died and there were people who
2 were lying in wait to keep on killing one another like that.
3 These were very favourable conditions for the CIA agents to
4 conduct sabotage and join with the remnants of the former Lon Nol
5 army that had clearly hidden weapons in the city and in locations
6 throughout the country to create rebellion in Phnom Penh and
7 various other locations in the country.

8 [09.23.02]

9 "The greatest danger was that this rebellion and turmoil would
10 create the opportunity for Vietnam to easily intervene from the
11 outside and seize Kampuchea back from America under the pretext
12 of coming to rescue it. At the time, in actuality, like it or
13 not, the CIA and the Vietnamese communists were joining together
14 to kill the new state authority. This was the situation that the
15 leaders of the Khmer Rouge were most worried about."

16 Further on in the same chapter he discusses - or he builds on
17 this dynamic between the leadership of the CPK and the Vietnamese
18 - or, rather, the suspicions on the part of the leadership of the
19 CPK vis à vis the Vietnamese: Khmer ERN 00380498 to 499; French,
20 00643909 to 910; and English, 00498302 - quote:

21 "If the Vietnamese had liberated the south before Phnom Penh had
22 been liberated, there may have been major danger. Having outrun
23 them once, after liberation it was imperative to run again. There
24 could be no hesitation. This is why Pol Pot saw the expansion of
25 high-level cooperatives throughout the country had made 'the

1 revolution in Kampuchea 30 years faster than the revolutions in
2 China, North Korea and Vietnam'."

3 And further down, another relevant passage – quote:

4 [09.25.23]

5 "Were it not for the organization of the cooperatives, Kampuchea
6 would have had to suffer all the consequences of the situation in
7 Vietnam, including respecting the 1973 Paris Agreement between
8 Vietnam and America. In late 1972 and early 1973, because of
9 raising the level of the cooperatives that had been previously
10 organized to high-level cooperatives, the Khmer Rouge were able
11 to continue the struggle independently."

12 Again, a little bit further down on the following page, he looks
13 at the imperative to carry out socialist revolution. And what is
14 of interest here is that he seems to be speaking in the first
15 person, using the "we" – Khmer ERN 00380499 to 500; French,
16 00643910; and English, 00498300 (sic) – quote:

17 [09.26.49]

18 "Expressed differently, in order to get dams and criss-crossing
19 feeder canals to irrigate the Kampuchean countryside, when we
20 wanted to sort out sufficient food quickly, when we wanted to
21 escape from poverty, when we wanted to modernize agriculture,
22 when we wanted to lay the foundation to move in steps toward
23 industrialization, we had to carry out socialist revolution, and
24 each of us in the organization and all of us had to strive to
25 fight to eradicate private ownership and equip ourselves and our

1 units with 'collective stance'..."

2 In the next sentence: "But to reach those goals, since the
3 country had just emerged from a war of destruction and was facing
4 the dangers of starvation and death, the first initiative was to
5 overcome the situation of incredible hardship that the young and
6 immature state authorities had to face. So then, some coercion
7 was required for a while; coercion to work in a situation of
8 lacking everything for both those who were used to it and those
9 who were not, because time was very urgent."

10 [09.28.21]

11 And finally, Your Honours, towards the end of Chapter 5, some
12 reflections on the Democratic Kampuchea movement and reasons that
13 Khieu Samphan joined it, Khmer ERN 00380503 to 04; French,
14 00649912 to 913; and English, 00498305 - quote:

15 "It is my understanding that the Democratic Kampuchea movement
16 played an important role during a period of our nation's history
17 that no one may scratch out or erase. If someone were to scratch
18 out or erase or change it, the scratches or the erasures could be
19 seen. Why? Because it is clear that Saloth Sar or Pol Pot
20 sacrificed his life to fight the Americans and fight the
21 Vietnamese communists to defend the sovereignty of the nation.
22 And both of them had tricky manoeuvres to attract or confuse the
23 forces of the nation and internal forces to go along with them.
24 So then, the fight was very intense for our small country.

25 [09.30.02]

11

1 "In 1960, I, like the other 'progressive intellectuals', had the
2 profound objective of an independent economy as a foundation for
3 the independence of my country and with a firm will wanted to end
4 the special privileges and corruption that had led to a handful
5 but increasing number of people who did not know how to be
6 embarrassed about the endless suffering of huge masses of people.
7 I strived to fight with the means I had when I was a member of
8 the Parliament. But I lost, and I was forced to flee from Phnom
9 Penh to save my life. I took shelter under the protection of a
10 movement that, according to some people whom I had known in
11 Paris, was striving toward similar goals but which used a
12 different method that I could not. Now, my views are still the
13 same; they have not changed."

14 And there, Your Honours, we'll move on to the next record that we
15 wish to quote from, and this is Khieu Samphan's other book that
16 is publicly available. It is entitled "Cambodia's Recent History
17 and the Reasons Behind the Decisions I Made". The E number is
18 E3/18, and by way of introduction, Your Honours will recall that
19 we quoted from this book in our presentation of documents
20 relevant to Khieu Samphan's role in the pre 1975 period.

21 [09.32.03]

22 We will look at a few passages today where Khieu Samphan
23 discusses the events during the Democratic Kampuchea period, and
24 in particular, some of the information he learned or became privy
25 to through his attendance of meetings of the leadership. And I

1 will begin with Khmer ERN 00103840; French, 00595431 to 32; and
2 English, 00103752.

3 "During the Central Committee's successive meetings, however -
4 particularly during the first year - certain abuses were noted
5 and severely criticized. Directives were given to correct them.

6 For example:

7 "Return to smaller cooperatives (they were easier to manage).

8 "Improve working conditions in the fields. The number of people
9 sent to the fields was to match the number of mattocks, shovels,
10 baskets or other tools. The other workers were to be allowed to
11 rest in the village or do lighter work, such as making baskets.

12 "Establish a rest schedule which was to be three days a month.
13 During those three days, extra rations were to be provided.

14 "Technicians were to be recalled to run the factories in Phnom
15 Penh and a certain number of intellectuals were to be returned to
16 the capital to participate in technical education projects, such
17 as the creation of a vocational training school."

18 [09.34.13]

19 The relevance of these passages, of course, is the extent to
20 which the central bodies of the CPK were, it appears, according
21 to Khieu Samphan, managing the conditions in the countryside or
22 giving instructions.

23 The next passage I wish to quote from also reflects on meetings,
24 although this time of the Standing Committee that Khieu Samphan
25 attended, and views about Pol Pot as a leader: Khmer ERN 00103843

1 to 844; French, 00595436 to 437; and English, 00103754 to 755 –
2 quote:

3 "In a word, Pol Pot represented the historical leader who was
4 never wrong when it came to making important decisions. Judging
5 from what I saw during the expanded sessions of the Permanent
6 Bureau, however, nothing approaching fear was apparent during
7 those meetings. Indeed, the meetings were informal; they were
8 more like a family reunion. Members would often take time out to
9 tell jokes. However, because everyone had great confidence in Pol
10 Pot, they accepted most of the ideas and analyses without much
11 discussion. Once when a member of the Central Committee – and
12 later a member of the Permanent Committee -- was arrested, the
13 committees' leadership's confidence in Pol Pot did not waver. The
14 committee considered each disappearance as a separate case and
15 probably, in the eyes of the insiders, justified."

16 In the next passage that we will quote from, Khieu Samphan
17 discusses the reasons he joined – or, rather, he accepted the
18 role as President of the State Presidium of Democratic Kampuchea
19 and the country's Chief of – or, rather, Head of State.

20 [09.37.03]

21 This is at Khmer ERN 00103846 to 847; French, 00595443; and
22 English, 00103757. And, of course, by way of introduction, Your
23 Honours, last week we looked at the confidential deliberations on
24 the resignation of the late Norodom Sihanouk and Khieu Samphan's
25 attendance at those meetings -- quote:

1 "The Khmer Rouge leaders accepted the Prince's resignation in
2 April 1976 and the title of 'President of Democratic Kampuchea'
3 was handed over to me. Despite my embarrassment, I thought, in my
4 soul and conscience, that had I refused the post, I would have
5 been failing in my patriotic duty. All things considered and
6 seeing how the Vietnamese leaders were behaving between 1970 and
7 1975, I thought that the fears of the communist Khmer leaders
8 were legitimate, and I did not want to see the mobilized national
9 force they represented weakened."

10 [09.38.36]

11 And the last passage that I wish to read from today is brief and
12 relates to the arrests in Preah Vihear which Khieu Samphan also
13 confirmed he knew of during his interviews with the
14 Co-Investigating Judges. The relevant ERNs for this passage of
15 the book are as follows: Khmer, 00103891; French, 00595513; and
16 English, 00103793.

17 "Near the middle of 1978, I did hear of massive arrests and
18 atrocities committed in Preah Vihear province. It was my wife
19 who, in tears, told me of the atrocities committed against her
20 brothers, her relatives, and many other innocent victims. But at
21 that time, the liberation of victims and the arrests of the
22 provincial secretary of the Party led me to believe that the
23 arrests were an isolated case."

24 Next, Your Honours, I propose to refer briefly to statements of
25 others who, as I indicated earlier, discuss Khieu Samphan's role

15

1 in Office 870; in particular, following the disappearance of Sua
2 Vasi alias Doeun, the former chief of that office.

3 [09.40.55]

4 Document E3/190 is a report or a summary of a discussion held
5 with Ieng Sary by Steve Heder on the 4th of January 1999 and I
6 will read a brief passage: Khmer ERN 00172248; French, 00607965;
7 and English, 00081572 - quote - and here he is referring to his
8 discussion with Khieu - with Ieng Sary - quote:

9 "I pressed him to compare Khieu Samphan's role with his own. He
10 confirmed Khieu Samphan's elevation to the Central Committee in
11 1976 and his later appointment to Chairmanship of Office 870. He
12 asserted that in the latter capacity, Khieu Samphan would have
13 seen many more documents of a general nature than him, but not
14 necessarily documents related to executions or torture. He
15 insisted that Khieu Samphan had, like him, continued to believe
16 that CPK cadre arrested were being 're-educated' not executed."

17 [09.42.45]

18 Confirmation of Khieu Samphan's elevation to Office 870 is also
19 found in document E190.1.72, which we will not be presenting
20 today, in line with Your Honours instructions, and we will be
21 presenting that document during the examination of one of the
22 upcoming experts as you have directed us.

23 And lastly, on statements by others in relation to Khieu
24 Samphan's role within the leadership, document E3/464 is a
25 written record of an interview of witness Tha Sot. As we

1 discussed last week, Your Honours, Tha Sot is deceased according
2 to the information on the case file. And Your Honours may recall
3 that we've heard evidence in this trial from witness Sa Siek, who
4 is Tha Sot's wife.

5 In his interview, by way of introduction, Tha Sot explained that
6 he was a regimental commander with some 500 soldiers under his
7 command in the North Zone, and in that capacity, he participated
8 in the attacks on Phnom Penh. For present purposes, I will quote
9 from passages where he discusses the role of Chhim Sam Aok alias
10 Pang, and the leadership of the CPK. This can be found at Khmer
11 ERN 00204741; French, 00503948; and English, 00226106; and he
12 says the following:

13 [09.45.01]

14 "Pang controlled all offices of the 'A's such as K-1, K-2, K-3,
15 K-4, K-7, and K-12. Pang was with Uncle Pol Pot. Before he made
16 any decision, first he had to meet with Pol Pot. Pang then
17 disseminated the order to other offices. Pang received the joint
18 order from all uncles such as Pol Pot, Ieng Sary, Khieu Samphan,
19 Nuon Chea, in accordance with their expertise (tasks and
20 directions). Pang managed along in all offices of the As. Pang
21 used to meet with Khieu Samphan at K-3 and Khieu Samphan used to
22 meet Pang at K-7. I saw that. Pang was the Chief of Office 870
23 until he died in 1976."

24 And just one more passage of relevance; this is the second last
25 question and answer in the interview. He says the following -

1 quote:

2 "I used to deliver the letters to the provinces; however, I did
3 not know what was written because the envelopes were sealed. Some
4 letters were from Uncle Pol Pot, Uncle Nuon Chea, Uncle Khieu
5 Samphan, and Uncle Ieng Sary, but mostly the letters were coming
6 from Uncle Nuon Chea and Pol Pot who had them sent to the
7 designated zone chiefs."

8 [09.46.57]

9 And a little bit further down in the same passage - quote: "I
10 used to deliver the letters from Pol Pot, Nuon Chea, Ieng Sary,
11 Khieu Samphan to chief of Preah Vihear sector, Man; chief of Siem
12 Reap sector, Sot; chief of Prey Veng zone, So Phim; chief of
13 Stung Treng sector, Vy; chief of Kratie sector, Tom; chief of
14 Pursat sector, Keu, (deceased); chief of Battambang sector, Yim,
15 (deceased); chief of Kampot sector, Ta Mok, (deceased); chief of
16 Kampong Speu sector, Si, (deceased). I knew that the letters from
17 the uncles were sent to the regions, districts, and villages, but
18 I did not deliver them."

19 And the second last document that we wish to present today, Your
20 Honours, is E3/3512. It is a journal article written by Ben
21 Kiernan which discusses the role of Khieu Samphan during the
22 Democratic Kampuchea period and it is, in fact, a response to the
23 second book from which I quoted earlier.

24 [09.49.02]

25 And I will start with this passage at Khmer ERN 00755594 --

1 rather that was the French ERN. The Khmer ERN is 00758170;
2 English is 0080475.

3 "Like most Cambodians, Sihanouk has since seen everything, but
4 unlike them, Samphan has learned little. Having taken to the
5 jungle, he emerged 32 years later without much to add. Vainly
6 discreet, he seems unaware how much documentation of the internal
7 workings of his regime is now in the public domain."

8 Two paragraphs down, he states the following - quote: "Samphan
9 thinks people will believe him-"

10 Or, rather, I will read that again - quote:

11 [09.50.30]

12 "Samphan thinks people will believe that only patriotism kept him
13 going, and that he accepted the job of Head of State after the
14 1975 CPK victory only out of duty to his country.

15 "It is astonishing that he pleads near-total ignorance of the
16 genocide which occurred when he was Head of State (1976 to 1979).
17 He claims that rarely-specified 'Khmer Rouge leaders' (not him)
18 bore sole responsibility for those deeds and failed to keep him
19 informed. For all DK's crimes, which he is shocked (shocked!) to
20 discover now, Samphan expects sympathy from the surviving
21 victims.

22 "Though based at CPK headquarters, for instance, Samphan claims
23 he was 'profoundly upset' by his Party's forced evacuation of
24 Phnom Penh on its fall in April 1975. While others like Hou Youn
25 opposed it, Samphan calls the evacuation something 'I was not

1 expecting at all'. Meanwhile, the CPK had forcibly collectivized
2 the countryside. 'Great was my surprise', he claims, on learning
3 this soon after the 1975 victory. Until then, he could have been
4 the sole Cambodian in the countryside unaware of its
5 collectivization.

6 [09.52.08]

7 "Documentary evidence belies Samphan's claimed ignorance of
8 high-level policy at every turn. He admits to full membership of
9 the CPK Central Committee from 1976, but not of its powerful
10 Standing Committee (SC). He says he attended only 'enlarged' SC
11 meetings. However the extant minutes for 1975–1976 record Samphan
12 in attendance at 12 of 14 SC meetings (gatherings not 'enlarged'
13 by lesser invitees). Samphan, indeed, attended the CPK's closed,
14 high-level deliberations.

15 [09.53.00]

16 "After the point when he now concedes learning of the urban
17 deportations and rural collectivization, Party documents reveal
18 not only Samphan's important role in the regime, but his
19 awareness of looming purges. On October 9, 1975, he attended the
20 SC meeting at which it appointed itself as Cambodia's secret
21 government. The minutes rank Samphan fourth in the cabinet
22 hierarchy, after Pol Pot, Nuon Chea, and Ieng Sary. At this
23 closed meeting, Pol Pot targeted a general, Chan Chakrey: 'We
24 must pay attention to what he says, to see [if] he is a traitor
25 who will deprive himself of any future'. Then, moving also

1 against Chakrey's deputy, Pol Pot added: 'We must be totally
2 silent... we must watch their activities'."

3 And the last passage from this article that I wish to read is at
4 Khmer ERN 00758173 to 174; French, 00755596; and English,
5 00080476 - quote:

6 [09.54.42]

7 "Samphan was not so quiet about the fate of Hu Nim, a leftist
8 parliamentarian, who unlike Samphan, protested DK policies and
9 was arrested in April 1977. Nim's torturer reported: 'we whipped
10 him four or five times to break his stand, before taking him to
11 be stuffed with water'. Samphan may not have read that report,
12 but knowing Nim was in danger, he stated on the radio the next
13 day: 'We must wipe out the enemy... neatly and thoroughly... and
14 suppress all stripes of enemy at all times'. On July 6, CPK
15 security forces massacred Hu Nim and 126 others. Posing now as a
16 victim, Samphan claims Nim as 'my friend' and recoils at the
17 'suffering in his soul and in his body, what a nightmare'. This
18 performance cannot convince us of Samphan's claimed 'naïveté' --
19 or that at the time he 'was unaware even of the existence' of
20 'massacres and crimes'."

21 [09.56.10]

22 Mr. President, the last document or record that we wish to put
23 before you today is a -- an excerpt from a video recording which
24 is indeed a documentary that we've seen parts of before. It is
25 entitled "Pol Pot and Khieu Samphan: Facing Genocide." The

21

1 document number is E109/2.3R. This is a six- minute-
2 and-20-second segment in which Khieu Samphan discusses the crimes
3 committed during the Democratic Kampuchea period, his alleged
4 responsibility, and the role played by Pol Pot and lastly, the
5 role of the prison, S-21.

6 So, Mr. President, with your permission, we will ask the AV
7 section now to play a video which, in their table, is found under
8 J2.

9 If we have your permission, President, I will ask the AV Unit to
10 now play that video.

11 MR. PRESIDENT:

12 You may proceed.

13 The AV booth officials -- officials are now instructed to make
14 sure that the video clip is displayed.

15 [09.58.07]

16 (Presentation of audio-visual document)

17 "[Question:] (No interpretation)

18 "[Answer:] When I came back to Pailin in the end of 1998, I heard
19 talk of massacres, but to learn about S-21 properly, I had to see
20 a film by Rithy Panh.

21 "[Question:] What was your first reaction when you understood
22 that, when you saw the suffering?

23 "[Answer:] My first reaction was surprise.

24 "[Question:] When you realized that they had killed elderly
25 people and children in mass, weren't you horrified?

1 "[Answer:] I was still surprised. Why these killings after the
2 victory?

3 "[Question:] But weren't you horrified by the killings of all
4 these children?

5 "[Answer:] But who killed them, that was the point? I can't
6 imagine that it was Pol Pot who killed the children. Tell me when
7 you saw Pol Pot killing or torturing children. Tell me.

8 [09.59.50]

9 "[Question:] Many murderers were children as well. They were
10 selected and trained by the Khmer Rouge. What do you think of
11 those children?

12 "[Answer:] Please, please, I told you about Cambodian street kids
13 in the 1970s. They wanted to enlist in the army and they were
14 encouraged by their parents, if you please. So that's how it was;
15 they were participating in the liberation of the country. They
16 felt they had to do something to fight for social equality which
17 they hadn't had since the post-Angkor Wat period.

18 "[Question:] The youngest at S-21 were only 10 years old; do you
19 realize that?

20 "[Answer:] I don't know the reason for that, but a few youngsters
21 is not a reason to erase a whole period of history.

22 "[Question:] But what can make a 10-year-old child want to kill
23 other children?

24 [10.01.28]

25 "[Answer:] I don't know the reason. You have to dig deep to find

1 the answer. That's why I say that there are a lot of things that
2 still remain to be investigated. You have to realize that without
3 Pol Pot, without the Khmer Rouge, after the 1970 coup d'état,
4 Cambodia would have been in the hands of the Vietnamese
5 communists. Now, if you please, don't forget that. And what does
6 it mean to be in the hands of the Vietnamese? What does it mean
7 to us, Cambodians? What would that have meant? It wouldn't have
8 taken long for the whole of Cambodia to become a part of Vietnam.
9 Millions of Cambodians live in South Vietnam today. Do you know
10 how the Cambodians live in the South of Vietnam today? I'll tell
11 you. It's an immense S-21; isn't it? So, they talk about S-21
12 here so as to make people forget that gigantic S-21 over there,
13 in South Vietnam. It's a very clever manipulation. They're
14 manipulating world opinion. They present Cambodia and Pol Pot,
15 demonizing Pol Pot to make people forget the other side. They
16 accuse him of being a dictator and use the word genocide. It's
17 not correct. A great leader of such a movement could never act
18 like that. If so, he wouldn't have been able to create this
19 movement. I'm going to shout that out loud at the trial."

20 (End of presentation)

21 [10.04.33]

22 MR. ABDULHAK:

23 Your Honours, that concludes our presentations of documents
24 relevant to the role of the accused Khieu Samphan during the
25 Democratic Kampuchea period. We thank you for time allocated for

24

1 this presentation and we conclude here. Thank you.

2 MR. PRESIDENT:

3 Thank you, the Prosecution.

4 The floor is now given to the Lead Co-Lawyers for civil parties

5 if you wish to make any comment supplementary to the presentation

6 made by the Prosecution regarding the roles of the accused, Ieng

7 Sary and Khieu Samphan. You may proceed if you wish to do so.

8 [10.05.25]

9 MS. SIMONNEAU-FORT:

10 Mr. President, good morning. Your Honours, good morning. Good

11 morning to all parties.

12 I will remind this Chamber, once again, that as far as the civil

13 parties are concerned, we will be presenting our documents

14 following the outcome of these proceedings. The Chamber has asked

15 us to abide by international jurisprudence by stating that we

16 could not introduce any documents - pardon me, I'll restart that.

17 We will not be admitted to introduce any documents without

18 allowing the Defence to hear from the authors of this document;

19 therefore, we believe that it would be logical to hear documents

20 and testimony on the role of the Accused after which we would be

21 presenting our documents.

22 [10.06.34]

23 Based on our initial list, we have identified a certain number of

24 civil parties who would be speaking to the role, acts, and

25 conduct of the Accused and if they are to be confronted by the

25

1 Defence, pursuant to jurisprudence, we would only then be in a
2 position to introduce documents.

3 Once again, we believe that it would be logical for us to make
4 our presentation of documents following the end of the
5 proceedings and following the summons of particular witnesses.

6 Thank you.

7 MR. PRESIDENT:

8 Thank you for your comment, but I think there is a
9 misunderstanding here. The floor is given to the Lead Co-Lawyers
10 for civil parties if you wish to make additional comment to the
11 documents presented by the Prosecution regarding the roles of the
12 Accused, the two Accused – that is, Mr. Ieng Sary and Mr. Khieu
13 Samphan. And I clearly stated that the floor is given to you if
14 you have additional comments to make.

15 Of course we clearly understand the – your proposal that you
16 cannot prepare the document on time for your submission regarding
17 the roles of the Accused; that is a separate matter.

18 [10.08.35]

19 MS. SIMONNEAU-FORT:

20 Yes, thank you, Mr. President, for that clarification which is
21 entirely appropriate.

22 At this stage, we have no comments to make on the presentation of
23 documents made by the Co-Prosecutors.

24 Thank you.

25 MR. PRESIDENT:

1 Thank you.

2 The floor is now given to Ieng Sary's defence so that you can
3 make comment or objections to the documents presented by the
4 Prosecution regarding the role of your client, Ieng Sary.

5 You may proceed.

6 [10.09.13]

7 MR. ANG UDOM:

8 Good morning, Mr. President, Your Honours. Good morning everyone
9 in and around the courtroom.

10 I have some observations and comments to make.

11 First of all, we reserve the right to make our objections to
12 certain documents as my colleague and I raised - that is, the
13 categories of documents, not the particular document itself.

14 Secondly, it is my observation and as I raised it earlier, the
15 Prosecution made some documentary presentation to support the
16 alleged facts regarding the crimes and not just the roles of the
17 Accused.

18 And my third observation and objection is the following: The
19 Prosecution have attempted to present the written records of
20 interviews of witnesses; for instance, that of the witness Tha
21 Sot, and Tha Sot is deceased and his wife, Sa Siek, also
22 confirmed before this Chamber that she never heard her husband,
23 Tha Sot, say anything about what he did during the time under the
24 Khmer Rouge regime. And that is my observation and objection in
25 the third point.

27

1 [10.11.10]

2 If a written record of interview of a deceased witness is used,
3 then the opposing parties - in particular the Defence - do not
4 have the opportunity to question the interviewee and for that
5 reason, this kind of record shall be removed from the case.

6 Thank you, Mr. President.

7 MR. PRESIDENT:

8 Thank you.

9 The floor is now given to Khieu Samphan's defence so that you can
10 make a comment or express your objections to the documents
11 presented by the Prosecution regarding the roles of your client,
12 Khieu Samphan.

13 You may proceed.

14 MS. GUISSÉ:

15 Thank you very much, Mr. President. First and foremost, good
16 morning to you. Good morning to Honourable Members of the Bench.
17 Good morning to all parties.

18 [10.12.17]

19 Just a few comments on the presentation of key documents made by
20 the Co-Prosecutors, specifically relevant to Mr. Khieu Samphan:
21 my first comment would be to remind this Chamber that, at this
22 particular stage at which we are presenting key documents is
23 rather delicate since this is not the end of the proceedings.
24 Obviously, there's a very fine line between presentation of
25 documents and confusion.

1 Last week, my learned friend, Mr. Koppe, said that the terms used
2 by the Co-Prosecutor lent themselves to a pleading rather than a
3 demonstration of the relevance of the documents he sought to
4 present. This is a very important point to retain because I
5 realize the difficulty of this exercise and the possibilities
6 available to the Prosecution.

7 What I can say today is that I will resist from making final
8 closing arguments; however, I do wish to present to you some
9 general observations.

10 [10.13.54]

11 The first is as follows: As indicated, with respect to a letter
12 signed by the deceased king father which was introduced by Mr.
13 Abdulhak, I would note that it is rather regretful that the
14 Co-Prosecutor should only, at this particular stage, cite such a
15 document when his testimony would have been rather intriguing and
16 interesting as he has made many statements, and there is
17 significant footage of the deceased king father and at this time
18 it is too late to hear more from him, and it is impossible to put
19 questions before this Chamber. Having access to the archives is
20 one matter, but carrying out a discussion and inquiring on the
21 probative value within these Chambers is an entirely different
22 matter.

23 The second observation is as follows: During these sets of
24 hearings on the presentation of documents relevant to Mr. Khieu
25 Samphan, it would appear that the Co-Prosecutor - the

1 International Co-Prosecutor has circumvented certain procedures
2 with respect to some of the documents on trade and commerce.

3 [10.15.29]

4 I do hope to remind this Chamber that the written record of Mr.
5 Sar Kimlomouth, cited by the Co-Prosecutor, is questionable,
6 including the way certain telegrams were delivered. But, once
7 again, this is not something that I am able to delve into given
8 the restrictions of these proceedings because, once again, they
9 speak to the merits of the case.

10 The third observation I wish to make at this particular point in
11 time, as was raised by my learned friend for the civil parties,
12 there are certain documents for which the full significance and
13 the full meaning can only be understood if we were to hear direct
14 evidence from their authors and this may go to future testimony
15 which is particularly important.

16 We've also lodged objections to the testimony of those who are
17 deceased or absent and I've spoken at length about the testimony
18 of Ben Kiernan, university researcher, who's already demonstrated
19 that he is disinclined to appear before this Chamber, yet he is
20 the author of several key documents and the fact that we are not
21 hearing from him leaves me rather astonished and perplexed. These
22 documents concern him and yet, once again, we simply do not have
23 the possibility to cross-examine him. That is an additional
24 comment.

25 [10.17.35]

30

1 My final comment is quite specific to a document that raises
2 several issues and that recurs in many documents. There seem to
3 be translation discrepancies that may have an impact on the
4 meaning. I would refer you to document E3/165 as cited in English
5 by the Co-Prosecutor. The document makes reference to a speech
6 supposedly delivered by Mr. Khieu Samphan.

7 To be more specific, I will quote what the International
8 Co-Prosecutor read on the 31st of January and I would refer Your
9 Honours to the draft transcripts of the French version. Just
10 prior to 10.15 a.m., the Co-Prosecutor stated as follows: "The
11 next relevant document pertaining to Mr. Khieu Samphan's
12 activities on the creation of a new state is E3/175, which is a
13 document that we have previously sought to have admitted."

14 [10.18.57]

15 A little bit later, after 10.15, the Co-Prosecutor indicated
16 that: "This document is rather lengthy. However, I will only cite
17 one passage where we can find a speech given by Mr. Khieu
18 Samphan."

19 I will give you the specific references to the documents with a
20 special note that the English version, cited by the
21 Co-Prosecutor, is not a translation that was written by the ECCC,
22 but rather a translation provided by DC-Cam.

23 For the sake of clarity, I will provide you the version in
24 English, the DC-Cam English translation. I will then provide you
25 with our French translation which was based on the original

31

1 Khmer. And with the assistance of my colleague, Mr. Kong Sam Onn,
2 I will ask him to read in Khmer exactly what the original text
3 says.

4 [10.20.18]

5 Once again, I refer to document E3/165. The first excerpt that I
6 wish to draw your attention to is on English ERN page 00184048.
7 This is a summary of the document entitled, in French, "Document
8 on the First Conference of the First Legislature of the People's
9 Representative Assembly of Kampuchea", April 11 to 13, 1976. The
10 English version, as cited by the International Co-Prosecutor,
11 reads and I will cite this in English: "Speech by the Chairman of
12 the Presidium at the opening of the First Legislature of the
13 People's Representative Assembly of Kampuchea".

14 In French -- based on the original Khmer -- can be found on ERN
15 page 00301335, and the literal translation of the French reads:
16 "Opening Speech of the President of Delegates of the First
17 Congress of the First Legislature of the Assembly of
18 Representatives".

19 And for the sake of clarity, I will seek the assistance of my
20 learned colleague so that he may read into the record the
21 original Khmer which can be found on ERN 000536. I will now cede
22 the floor over to my colleague.

23 I beg your pardon, I believe that my ERN numbers were not
24 completed; 00053604.

25 [10.22.57]

1 MR. KONG SAM ONN:

2 Thank you, Mr. President. I'd like to read the relevant portion
3 as indicated by my international colleague.

4 The document E3/165 and the title of the document has already
5 been indicated by my international colleague -- that is, "The
6 First Session of the General Assembly of the People's
7 Representative Assembly", dated 11 to 13 April 1976.

8 The title of the document has already been outlined by my
9 international colleague and there was an incorrect translation of
10 that in the English version. Allow me to read in Khmer, "the
11 speech made by the Chairman of the Dignitary", but the English
12 translation is "the Chairman of the Presidium". We can't actually
13 rely upon the Khmer version with the ERN 00053610, which clearly
14 states that it is "the speech made by the Chairman of the
15 Dignitary at the opening of the First Legislature of the People's
16 Representative Assembly of Kampuchea". So, actually, the content
17 of the table of content is not in full and if you refer to page 9
18 of the document, it clearly states the full title.

19 Thank you, Mr. President.

20 [10.25.37]

21 MS. GUISSÉ:

22 To continue on this same vein, the same translation error appears
23 within the same documents on the English ERN page 00184051 that
24 reads: "President to take the place of honour".

25 Whereas the French equivalent on 00301338 reads: "Invite the

1 President of the delegates to take the place of honour".

2 On the ERN of the original Khmer, on which the French translation
3 was based, 00053609, once again, the accurate term is used.

4 [10.26.58]

5 These translation errors recur a third time within the same
6 document on ERN English, 00184052. I repeat 00184052. This is the
7 DC-Cam translation and it refers to a speech of the Chairman of
8 the Presidium at the opening of the first conference of the First
9 Legislature of the People's Representative Assembly of Kampuchea;
10 whereas, the equivalent French version which again is based on
11 the original Khmer, 00301339, the translation reads: "The speech
12 of the President of delegates at the opening of the first
13 conference of the first legislature of the People's
14 Representative Assembly of Kampuchea". The original Khmer can be
15 found on 0053610.

16 It goes without saying that since we have gone to great lengths
17 in order to demonstrate the discrepancies between the three
18 versions, there is reference to the Presidium in the document
19 used by DC-Cam and it is misleading and not, in actual fact, a
20 speech of the President of the Presidium, but a speech made by
21 the Chairman or President of the Representatives or Dignitaries
22 of the People's Representative of Kampuchea.

23 [10.28.56]

24 We would, therefore, hereby request that the Chamber oversee
25 rectification of this error. We believe that it is a rather grave

34

1 mistake and we may have to evoke this issue once again before
2 Your Honours because, as you have seen, this has a great impact
3 on the meaning and relevance of these documents. Those are the
4 comments I wish to make. I have no other observations which would
5 not lend themselves to a closing argument at this point, but I do
6 remain available to this Court's translation services in order to
7 specify once again these particular issues and discrepancies, and
8 I hope that the ERN numbers will be of use.

9 Thank you.

10 MR. PRESIDENT:

11 The Prosecution, please wait.

12 Judge Lavergne, you may proceed.

13 [10.30.10]

14 JUDGE LAVERGNE:

15 Thank you, Mr. President.

16 A first question to counsel Guissé; has that request already been
17 made to the translation services to make a correction, if
18 necessary, to the mistake which you believe is contained in the
19 document?

20 MS. GUISSÉ:

21 Mr. Lavergne, no, we have not yet indicated this mistake. We
22 didn't do so before the document was presented.

23 We were working in our team on the English document and on the
24 Khmer document and it was only during the hearing when we heard
25 it read out by the International Co-Prosecutor that we actually

1 pinpointed the translation problem.

2 So we wish to advise the Chamber that we certainly intend to do
3 so as you suggest, but the absence of any request, at this stage,
4 is due to the fact that we only understood there was a mistake
5 very recently.

6 [10.31.12]

7 JUDGE LAVERGNE:

8 Another question I would like to ask you concerns this idea of
9 the "president of delegates or representative". As you are aware,
10 is there any document that specifies precisely what this function
11 of president of delegates is? I, personally, don't remember
12 having ever seen an explanation of that, and then, of course,
13 that would allow us to understand whether or not there is a
14 mistake.

15 (Recording malfunction, no audio)

16 (Court recesses from 1032H to 1112H)

17 MR. PRESIDENT:

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

19 We had some issue with the recording equipment before we took a
20 break. That's why there is a delay in the resumption of the
21 hearing. And the national counsel for Khieu Samphan's speech was
22 also lost in the recording in his response to Judge Lavergne's
23 question.

24 For that reason, I'd like the national counsel for the Accused to
25 respond again to the question posed to you by Judge Lavergne.

1 You may proceed.

2 [11.14.25]

3 MR. KONG SAM ONN:

4 Thank you, Mr. President. Allow me to once again respond to the
5 question put to me by Judge Lavergne, Your Honour's question as
6 to who would be the president of the delegate. And allow me to
7 respond.

8 As I indicated before the break, in document E3/165, there is a
9 major translation for the word "chairman of the delegate" to "the
10 Chairman of the Presidium". And that arose the question.

11 In the Khmer text, it clearly states that it is "the speech of
12 the President of the delegate at the opening of the First
13 Conference of the First Legislature of the People's
14 Representative Assembly of Kampuchea". It also clearly states on
15 page 9 in the Khmer text the entire speech of the President of
16 the delegate.

17 [11.16.11]

18 Also, the content of this text is about the closing of the
19 meeting as well as the additional confirmation by the president
20 of the delegate. It is on ERN in Khmer, 0053628. My apologies, it
21 is 00053 - started with "000"; and in French, 00301350; and in
22 English, 00184063.

23 In the document, the president of delegate informed about the
24 agenda of the meeting and in the agenda there are nine points,
25 and in point number 5, it talks about the selection and the

1 appointment of the head of the State of Democratic Kampuchea or
2 the Presidium of the State of Democratic Kampuchea. It actually
3 started on 14 April 1976, and this -- the meeting was open one
4 day earlier -- that is on the 13th.

5 And this is my illustration of the mistranslation regarding the
6 term of the speech by the president of the delegate. It is not
7 the president of the State Presidium who opened the speech of the
8 first legislature by the People's Representative Assembly of
9 Kampuchea.

10 [11.18.30]

11 And if the Chamber would like to know who made that announcement,
12 then it is the role of the Prosecution to say so.

13 I'm grateful, Your Honour.

14 MR. PRESIDENT:

15 Thank you, Counsel.

16 The floor is now given to the Prosecution to respond to the
17 objections or comments made by the defence teams. You may
18 proceed.

19 MR. SMITH:

20 Good morning, Mr. President. Good morning, Your Honours. Good
21 morning, counsel. Good morning to the general public.

22 Your Honours, the Prosecution only has a few brief responses to
23 the observations made by both the Ieng Sary team and the Khieu
24 Samphan team. I'll restrict my response to the observations made
25 by the Ieng Sary team.

1 [11.19.28]

2 Firstly, Your Honours, as you're aware the purpose of these
3 hearings was to demonstrate the probative value of the evidence
4 contained in the admitted documents before this Court, primarily
5 for the public and, hopefully, as some guidance for Your Honours.
6 Now, the purpose of the hearing wasn't to address the issue of
7 admissibility of documents, the documents that have been referred
8 to in this hearing have been admitted by the Chamber in your
9 decision of June 2012. So the comments by the Ieng Sary team that
10 they reserve their right to object to the admissibility of
11 certain types of documents, that right cannot be reserved. As
12 Your Honours are aware, Your Honours have decided on that
13 particular matter.

14 As far as the observation in relation to a statement that was
15 used by the Prosecution, a witness statement of Tha Sot, who -
16 that witness has apparently died - that, again, is allowed -- has
17 been allowed by Your Honour in your decision allowing for
18 statements of deceased individuals to be used in the proceedings.
19 But, nonetheless, that statement wasn't used in the presentation
20 in relation to Ieng Sary.

21 [11.20.57]

22 Secondly, Your Honours, the second main point of the Ieng Sary
23 defence was that the submissions made by the Prosecution were not
24 relevant to proving the role of the Accused. And we would submit
25 that that is clearly incorrect.

1 The Prosecution put forward a number of documents in relation to
2 Ieng Sary's role to demonstrate his role, and in doing so
3 intended to support five propositions, five relevant
4 propositions, to his role, the first one being, "What were the
5 positions he actually held in Democratic Kampuchea?"
6 The second proposition being, "What was the level of authority
7 that he possessed in the Standing Committee and in the Ministry
8 of Foreign Affairs?"
9 And the third proposition was, "How did he participate in the
10 Standing Committee and how did he participate in the Ministry of
11 Foreign Affairs?"
12 [11.22.05]
13 And the fourth proposition was, "How frequent was his
14 participation to understand the extent and scope of his role?"
15 And the last proposition was, "What was the substance of his
16 role? What was the purpose of his role?" Not just what positions
17 did he hold, but what was the purpose of the activities that he
18 carried out in that position?
19 And to conclude on that, the Prosecution have submitted that the
20 probative value of all of these documents taken together show
21 that Ieng Sary's role substantively was to further and further
22 the cause and participate in building a socialist agrarian
23 society at a rapid pace, and to defend that process by
24 eliminating or killing any enemies that are real or perceived by
25 the Party, whether they be internal or external.

1 [11.23.21]

2 And that proposition of the substantive role that the Prosecution
3 say that he played, we submit, has been demonstrated by the
4 probative nature of all of those documents that were presented.

5 The fact that the documents came from different sources, the fact
6 that they were produced at different times, the fact that they
7 were produced during the regime, and the fact that the documents
8 were both internal or secret documents to the Party, as well as
9 external documents such as his speeches before the UN General
10 Assembly.

11 The fact that all of those documents all point to the same thing
12 or the same role, that being to defend socialism in an agrarian
13 society, to build that society, and defend it no matter what the
14 consequence to individuals and their lives.

15 That, we submit, is the power or the probativeness (phonetic) of
16 the documents; the fact that they all corroborate and are
17 consistent with that fact.

18 [11.24.40]

19 And the Defence have decided not to address that, address the
20 probative nature of the documents, and that's a matter for them,
21 but we submit that's the relevant issue Your Honours should be
22 considering, not whether the documents are admissible. That
23 discussion has been had and you've decided and not whether or not
24 what was said was relevant to proving his role. We would submit
25 it was clearly relevant and is a matter that Your Honours should

1 take into account.

2 Your Honour, that finishes the reply in relation to the Ieng Sary
3 defence, and now I'd hand over the podium to my colleague, Mr.
4 Abdulhak, in relation to the Khieu Samphan defence.

5 MR. ABDULHAK:

6 Thank you, Mr. President, for the opportunity to respond. I will
7 make a brief response to the observations by the defence for
8 Khieu Samphan and I'll address them in the same order in which
9 they were made.

10 [11.26.00]

11 The counsel expressed regret that it is only now that we seek to
12 rely upon material written by the late King Father Norodom
13 Sihanouk. This, of course, is not a correct statement of fact. We
14 relied on this document as early as August 2010 in our final
15 submissions prior to the conclusion of the investigation. We had
16 this document on our Rule 80 list. We've always intended to use
17 it. It's a document that is on our proposed evidence list.

18 Furthermore - and I'm mindful here of the need to respect the
19 confidentiality of documents which have not been made public -
20 but if all parties in the courtroom and, of course, the Chamber
21 refer to document E131/1.1 - E131/1.1 - and in particular item
22 number 23 in the table that is contained in that document, it
23 becomes clear as to why it would have been inappropriate for us
24 to seek to put this document before you at an earlier stage in
25 the proceedings.

1 [11.27.27]

2 Now, moving on to the issue of the trade and commerce documents,
3 I'm not quite sure what my learned friend refers to when she
4 accuses us of circumventing procedures. What we have done is put
5 before Your Honours a representative sample of a large collection
6 of records which indicate that reports were being submitted on a
7 continuous and ongoing basis by the Ministry of Commerce to Khieu
8 Samphan.

9 As I indicated in my submissions, there are no less than 28 such
10 reports and, in addition, there are 50 other documents, Ministry
11 of Commerce records, which contain annotations referring to Khieu
12 Samphan.

13 Reference was made to testimony of witness Sar Kim Lomouth.

14 Without being taken to a specific page, it is difficult to
15 respond, but even without access to the network during the break,
16 I was able to recall that the witness actually confirmed the
17 subordination of Van Rith in the Ministry of Commerce to both
18 Khieu Samphan and Vorn Vet. That, of course, is on the record for
19 Your Honours to consider.

20 [11.28.48]

21 As to the report written by Ben Kiernan, here there is room for
22 agreement between the Defence and the Prosecution. We, of course,
23 requested Mr. Kiernan to be brought to testify as an expert in
24 this trial. That has proved difficult and the Chamber has ruled
25 that he will not be heard in this trial.

1 That does not make his reports inadmissible. Of course, the fact
2 that he is not being examined is a matter that the Chamber will
3 take into account, I am sure, in considering the weight to be
4 attached to various pieces of evidence.

5 Lastly, on the alleged discrepancies in document E3/165, of
6 course, we have no intention of impugning to Mr. Khieu Samphan
7 any statement that was not made by him. We act in good faith and
8 we will, of course, double-check and triple-check the records.
9 There are, in fact, a number of versions of this minute of the
10 parliamentary meeting in April 1976. We will review them and we
11 will join the Defence in seeking appropriate corrections to
12 translations if there are errors.

13 [11.30.18]

14 But I do wish to say the following. The Defence have been on
15 notice of this document since at least September 2010 when the
16 Co-Investigating Judges referred to it in their Closing Order in
17 the same context in which I referred to it during the course of
18 these presentations.

19 If Your Honours look at paragraph 1166 of Closing Order in
20 Footnote 4771, the Co-Investigating Judges rely on this document
21 as evidence of a speech by Khieu Samphan. And then, at paragraph
22 1173 in Footnote 4796, the Co-Investigating Judges cite this
23 document in support of a conclusion that it was, indeed, Khieu
24 Samphan that chaired that inaugural session of the Parliament.
25 The original document reference for this record was 13.13, and if

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1 one searches the Closing Order for that number one finds numerous
2 references to it. So certainly, Your Honours, we will endeavour
3 to verify the accuracy of that record and if there are errors we
4 will, of course, seek to correct them.

5 Having said that, this is one out of a series of speeches that we
6 presented before you, and it certainly no way appears different
7 in its endorsement of policies as the other speeches given by
8 Khieu Samphan with which the Defence takes no issue.

9 So, those are our submissions. And thank you, Your Honours.

10 MR. PRESIDENT:

11 Is there anything else parties wish to add on this?

12 [11.32.20]

13 MS. GUISSÉ:

14 Mr. President, just to come back on what my colleague, Prosecutor
15 Bill Smith, has said on the subject of probative value, in fact,
16 we were talking about relevance. The discussion on probative
17 value can only take place at the end of the discussions once we
18 have all of the documents, testimonies and proof to look at
19 together. That is just one point I wanted to make at this
20 juncture so that we do not lose sight of the issue at stake here
21 in the presentation of key documents which is, of course,
22 relevant.

23 [11.33.09]

24 MR. PRESIDENT:

25 Thank you very much.

1 Next, the Chamber wishes to remind and inform the party that on
2 the 18 January 2013, Mr. Nuon Chea waived his right to be present
3 during the presentations of the key documents concerning the
4 first and second transfer and also a -- population transfer and
5 also the document 208/2. And later, Nuon Chea's counsel withdrew
6 this waiver, document E258/3.

7 For this reason, the Chamber cannot conduct the proceedings when
8 Mr. Nuon Chea is absent or when he has already withdrawn his
9 right to be present.

10 On 31 January 2013, Mr. Nuon Chea was discharged from the
11 hospital and returned to the detention facility. The doctors who
12 are treating him also recommended that he be allowed to have some
13 rest. On the afternoon of the 31 January, the Trial Chamber asked
14 counsels for Mr. Nuon Chea to confirm the position of Nuon Chea
15 regarding his rights to be present during the testimonies of
16 TCW-100 and TCCP-116.

17 [11.35.26]

18 Mr. Nuon Chea was again admitted to the hospital for treatment.

19 Currently, Mr. Nuon Chea is still being admitted to the hospital.

20 On 4 February 2013, through his counsels, Mr. Nuon Chea shows his
21 position that he has not waived his rights to be present during
22 the testimony of TCW-100.

23 However, when it comes to TCCP-116, his position has already been
24 confirmed by his counsels during the morning session. According
25 to the report we obtained, TCCP-116 can be present before the

1 Chamber on Thursday.

2 With that, the Chamber wishes to also inform the public and
3 parties to the proceeding that the sessions regarding the roles
4 of Mr. Nuon Chea and the presentation of other documents will be
5 deferred to a later date in which -- or by then the Chamber will
6 inform or notify the parties accordingly.

7 Regarding the testimony of TCCP-116, the Chamber will schedule
8 the hearing on Thursday, commencing from 9 a.m. We hope the
9 parties to the proceedings and the public are well informed and,
10 in particular, the parties are prepared to appear before the
11 Chamber during the testimony of TCCP-116.

12 [11.37.58]

13 For the time being, the hearing on the presentation of documents
14 comes to a conclusion, and the Chamber will suspend this hearing.
15 The next session will be resumed on the 17th (sic), which is
16 Thursday of February, at 9 a.m. During that morning session, the
17 Chamber will hear the testimony of TCCP-116 - [Interpreter
18 corrects, the next session will be resumed by 7 February, which
19 is Thursday.]

20 Security personnel are now instructed to bring Mr. Khieu Samphan
21 to the detention facility and have him returned to the courtroom
22 on 7 February 2013.

23 Mr. Ieng Sary is instructed to return to the detention facility
24 and returned to his holding cell only where he can observe the
25 proceedings from there.

1 The Court is adjourned.
2 (Court adjourns at 1139H)
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