

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' JOINT RESPONSE TO IENG SARY & KHIEU SAMPHAN
OBJECTIONS TO THE ADMISSION OF CERTAIN DOCUMENTS**

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I. INTRODUCTION AND PROCEDURAL HISTORY

1. On 21 January 2013 the Trial Chamber held a document hearing regarding the admissibility of 48 documents proposed by various parties as listed by the Office of the Co-Prosecutors (OCP) in Document E223/2/1.1 and of 94 additional documents concerning the movements of the population (Phases 1 & 2) and Tuol Po Chrey as proposed by OCP in Documents E223/2/1.2, E223/2/1.3 and E223/2/1.4.¹ On 22 January 2013 the Ieng Sary Defence orally objected to the admissibility of 54 documents that supported the Closing Order's sections regarding the DK Military Structure. The Co-Prosecutors orally asserted that 24 of those 54 documents should not be open to debate as most of them had been previously discussed before the Chamber or were duplicate documents of those that had been previously decided upon by the Chamber.² However, the Co-Prosecutors and other parties were not allowed to respond orally to the objections of Ieng Sary's Defence on that day.
2. By its oral decision issued on 22 January 2013, the Trial Chamber requested the Defence for Ieng Sary to file by 23 January 2013 their written objections to the documents discussed at the 21 & 22 January 2013 hearings. The Ieng Sary Defence complied with this order by filing their "Objections to the Admission of Certain Documents"³ (hereinafter, "Ieng Sary's Objections"). The Trial Chamber also requested the defence teams for Khieu Samphan and Nuon Chea to file their own objections, if any, by 8 February 2013. On that date, the Khieu Samphan Defence filed their objections entitled "*Exceptions d'irrecevabilité portent sur les documents relatifs aux déplacements de population et au site de Tuol Po Chrey (avec annexes)*"⁴ (hereinafter, Khieu Samphan's Objections) and Nuon Chea filed their Response to OCP Objections to Defence Document E131/1/13.11.⁵ Nuon Chea did not object to any of the documents discussed at the 21 & 22 January 2013 hearings. The Trial Chamber requested all parties to respond by 22 February 2013.

¹ E1/161.1, Trial Chamber Transcript, 21 January 2013.

² E1/162.1, Trial Chamber Transcript, 22 January 2013, at 13:43 and from 13:51 – 14:09.

³ E223/3/2, Ieng Sary's Objections to the Admission of Certain Documents, 23 January 2013 and attached tables: E223/2/2.1, E223/2/2.2, E223/2/2.3, E223/2/2.4 and E223/2/2.5.

⁴ E223/2/4, Khieu Samphan's *Exceptions d'irrecevabilité portent sur les documents relatifs aux déplacements de population et au site de Tuol Po Chrey (avec annexes)*, 8 February 2013, with annexes E223/2/4.1, E223/2/4.2, E223/2/4.3, E223/2/4.4. Not available in English at the time of this joint response.

⁵ E223/2/3, Nuon Chea's Response to OCP Objections to Defence Documents, 8 February 2013, which discusses the single document E131/1/13.11.

II. ARGUMENT

3. As the Co-Prosecutors previously responded to numerous objections concerning the very same types or categories of documents, they hereby incorporate by reference the arguments submitted both orally at the admissibility document hearings held on 16-19 January,⁶ 16 February,⁷ 12-15 March 2012⁸ as well as on 21 and 22 January 2013⁹ and in previous written submissions.¹⁰ The Co-Prosecutors particularly refer to their 21 January 2013 detailed oral arguments in relation to the documents categorized as international communications, international media reports, Tram Kak District reports and videos.¹¹ The Co-Prosecutors also refer to the oral submissions made on 22 January 2013 regarding the twenty-four documents that we considered not to be open to debate.¹²
4. It is the view of the Co-Prosecutors that the majority of the objections that the Ieng Sary and Khieu Samphan defence teams have raised have been already rejected by the Trial Chamber in previous decisions. Moreover, the Trial Chamber has already admitted in 2012 all documents, except for a few, proposed by the parties as being *prima facie* relevant, reliable and authentic (see Section A below). The objections that were raised by Ieng Sary and Khieu Samphan's defence teams are mostly in relation to the same types or categories of documents that were previously considered by the Chamber to be put before it. In order to be consistent with its own jurisprudence, the

⁶ **E1/27.1**, Trial Chamber Transcript, 16 January 2012 (general evidentiary issues, admissibility of documents cited in the Closing Order footnotes in relation with the historical background); **E1/28.1**, Trial Chamber Transcript, 17 January 2012 (admissibility of documents listed by OCP in Annexes 1 and 2 of E109/4); **E1/29.1**, Trial Chamber Transcript, 18 January 2012 (admissibility of documents listed by OCP in Annexes 2, 3 and 4 of E109/4); **E1/30.1**, Trial Chamber Transcript, 19 January 2012 (admissibility of documents listed by OCP in Annexes 4 & 5 of E109/4).

⁷ **E1/45.1**, Trial Chamber Transcript, 16 February 2012 (admissibility of documents mentioned in Closing Order footnotes in relation with administrative structures and communications)

⁸ **E1/46.1**, Trial Chamber Transcript, 12 March 2012; **E1/47.1**, Trial Chamber Transcript, 13 March 2012; **E1/48.1**; Trial Chamber Transcript, 14 March 2012; and **E1/49.1** Trial Chamber Transcript, 15 March 2012 (admissibility of OCP documents in A6-A11 and A14-A20 of E109/4 and various other parties' documents).

⁹ **E1/161.1**, Trial Chamber Transcript, 21 January 2013; **E1/162.1**, Trial Chamber Transcript, 22 January 2013 afternoon session

¹⁰ See **E114/1**, Co-Prosecutors' Response to 'Ieng Sary's Objections to the Admissibility of Certain Categories of Documents', 16 September 2011; **E131/19**, OCP Consolidated Response to Objections to the Co-Prosecutors' Document List for the First Trial Session, 2 December 2011; **E158**, Co-Prosecutors' Rule 92 Submission Regarding Indicia of Reliability of the 978 Documents Listed in Connection with those Witnesses and Experts who may be Called During the First Three Weeks of Trial, 23 December 2011; **E168/1**, Co-Prosecutors' Response to Khieu Samphan's '*Requête aux Fins de Production à l'Audience des documents d'Epoque en Original*', 20 February 2012.

¹¹ **E1/161.1**, Trial Chamber Transcript, 21 January 2013, at 11:17 to 11:45 and 14:00 to 14:18.

¹² **E1/162.1**, Trial Chamber Transcript, 22 January 2013, at 13:43 and from 13:51 – 14:09.

Trial Chamber should admit additional documents that present the same characteristics as those already deemed admissible (See Section B). Finally, the Co-Prosecutors will address some other objections (See Section C).

(A) Defence Objections are in Contradiction with the Trial Chamber's Jurisprudence

5. First, on 26 January 2012 the Chamber gave an oral ruling on the standards for the admission of evidence¹³ and later confirmed this in a memorandum dated 31 January 2012.¹⁴ The Chamber held that original documents and detailed information on authenticity, provenance and chain of custody were not required for the purposes of admission into evidence, stating:

*[Documents are admissible where they] satisfy prima facie standards of relevance, reliability and authenticity. Where, for example, a document does not appear to be a forgery, or unrepresentative of the original, the Chamber shall consider the document to have been put before it.*¹⁵

6. The Co-Prosecutors submit that the Defence teams have not demonstrated that any of the documents they object to are forgeries or unrepresentative of the original.
7. Second, most of the objections put forward by the defence teams, orally and in writing, are of a general nature, are not sufficiently specific and do not identify characteristics that would render the documents unreliable or inadmissible before the Chamber. As the Chamber stated in paragraph 23 of its decision E185 dated 9 April 2012:

*Objections must be clearly identified and [...] absent sufficient particularity, only objections alleging that specific documents manifestly lack reliability or relevance will be entertained.*¹⁶

8. Ieng Sary's Defence did attach tables to their motion where the same objections appear to have been copied and pasted for each document of a particular category or type. Although those objections may seem to be specific at first sight, their systematic repetition demonstrates that they are not. For example, in the annexes E223/2/2.1 and E223/2/2.5, the Ieng Sary Defence repeated 21 times the very same

¹³ **E1/34.1**, Trial Chamber Transcript, 26 January 2012, at 15:05-15:15.

¹⁴ **E162**, Trial Chamber Response to Portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, 31 January 2012 ("Admissibility Ruling").

¹⁵ **E162**, at para 2.

¹⁶ **E185**, Trial Chamber Decision on Objections to Documents Proposed to be Put Before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, 9 April 2012, paragraph 23.

argument¹⁷ that has been explicitly rejected by the Trial Chamber in its Decision E185 for lack of specificity.¹⁸ The argument is the following: “*In accordance with Rule 87(3), the Defence objects to the admission of this document unless the OCP can sufficiently demonstrate the authenticity, reliability and relevance of this document by demonstrating who is responsible for the content of this document.*” The Defence have failed to understand that the test for admissibility is a *prima facie* satisfaction of standards of relevance, reliability and authenticity.

9. The following seven Ieng Sary’s objections have similarly been rejected in substance by the Trial Chamber in previous reasoned decisions:

(a) The first objection is that “*Mr. Ieng Sary has not been afforded the opportunity to confront the author of this document. This document should therefore be found inadmissible pursuant to Rule 87(3)(d)*” or similarly that “*the author of this document is not presently scheduled to testify in Case 002/01. Because Mr. Ieng Sary has not been afforded his absolute right under Rule 84(1) to confront the author of this article, this document is also inadmissible pursuant to Rule 87(3)(d).*” This objection is repeated by the Ieng Sary Defence 84 times out of 88 additional documents proposed by the Co-Prosecutors regarding the first movement of the population.¹⁹ It is worth noting that this objection is not raised with regards to witness statements but to categories of documents such as international communications, international media reports and Tram Kak District records. This objection is also repeated several times in the other annexes.²⁰ This objection is in contradiction with the ruling of the Chamber that “*There is no procedural requirement before the ECCC to call witnesses with personal knowledge to authenticate documents on the Case File.*” (E185, para 21, 7.) Further, the documents objected to by Ieng Sary’s Defence do not concern the acts and conduct of the accused but instead either the evacuation of Phnom Penh itself or the targeting of enemies labeled as “*Khmer Republic officials*”, “*new people*” or “*evacuees*” in Tram Kak District.

¹⁷ **E223/2/2.1**: documents bearing the numbers 2-14 and 16; **E223/2/2.5**: documents 1-3, 14, 18, 20 and 37.

¹⁸ **E185**, paragraph 23, referring to the Defence’s objection mentioned in paragraph 15 (ix) (“*Internal Rule 87(3) requires the Co-Prosecutors to sufficiently demonstrate the authenticity, reliability and relevance of all documents*”)

¹⁹ **E223/2/2.1**: documents bearing the rank numbers 2-35, 38, 40-87.

²⁰ **E223/2/2.2**, document 1; **E223/2/2.3**, documents 1-3, **E223/2/2.4**, documents 4 and 6-7; **E223/2/2.5**, 30 documents numbered as follows: 1-3, 5-9, 14-33, 35-36.

(b) The second objection raised by the Ieng Sary Defence is the following: “*Should this document be admitted, the defence submits that limited weight, if any, should be given to it unless the content of the document can be verified or supported through independent criteria*” or “*Should this document be admitted, it must be accorded little weight since, as the Trial Chamber has previously ruled, ‘original documents are a preferred method of proof and will be accorded more weight than photocopies of documents’*. See E185, para. 21.”²¹ This is not an objection as such and therefore it is irrelevant to the assessment of the conformity of documents with the admissibility test. The parties will have the opportunity later, in their final submissions, to discuss the probative value of documents. As recalled by the Trial Chamber in E185/1, “*the probative value and thus weight to be accorded to all evidence put before the Chamber [...] will be determined by the Chamber at the conclusion of the hearing of evidence in Case 002/01 and in connection with the verdict.*”

(c) Third, Ieng Sary’s Defence repeated at least 46 times²² the following objection in relation to international communications, international media reports or analytical reports: “*The Defence recognizes that the Trial Chamber has previously found that ‘material such as analytical reports, books, documentary films and media articles may be relevant and will not be excluded as a category’ (E185, para. 21(5)). However, the defence submits that media articles cannot be accepted at face value as being accurate and objective, especially when the journalists may have been engaged by governments to present a particular version of the events or even to formulate disinformation. Simply, it is virtually impossible to test the validity of media articles without, at a minimum, adducing evidence from the author. It is impossible to verify the reliability of the reporting herein. The article contains information and conclusions not based on direct observation of events*”.

Under the same objection, the Defence affirm being aware of the decision of the Trial Chamber not to exclude some categories of documents as such whenever documents are deemed relevant, and attempt to object to all media reports (one

²¹ This is repeated 83 times in document E223/2/2.1, in objections formed against documents ranked 2-35 and 40-87

²² E223/2/2.1: objection repeated as for 20 documents, numbered 15, 17-35; E223/2/2.2, Document 1; E223/2/2.4, including at documents 4 & 9; E223/2/2.5, 23 documents listed as numbers 5-9, 15-17, 19, 21-33 and 35.

such category) and to contradict the Chamber's ruling by speculating about the unsubstantiated fact that some "*journalists may have been engaged by governments*".²³ The other considerations raised by the Defence in the same objection actually relate to the probative value that the Trial Chamber should attribute to such evidence. Further, the Defence failed to mention that many of the articles or reports to which they objected do actually contain information or conclusions based on direct observation of events. For example, D108/28.33 is an ICRC Annual Report on Cambodia for 1975, 1978 and 1979: as far as the evacuation of Phnom Penh is concerned, the ICRC's descriptions are based on direct observations of the events, including the evacuation on 17 April 1975 of the hospital and safety zone that they established at 'Hotel Le Phnom'. This fact has been corroborated by the witness Al Rockoff at the hearing of 28 January 2013²⁴ and by TCW-536 in his book E243.1.²⁵ Other documents written prior to the 17th of April 1975 also rely on direct observation of events, such as D153.13 (USAID Report dated 4 February 1975)²⁶ or D172.16 (Newsweek article dated 10 March 1975),²⁷ among others.

- (d) Fourth, Ieng Sary's Defence once again raised an objection concerning torture-tainted evidence as regards to most of the Tram Kak District records and one S-21 confession: "*This document contains material which may be torture tainted. Torture-tainted material is, under all its forms and in every circumstance (except against a person accused of torture as evidence that a statement was made), inadmissible in judicial proceedings before the ECCC. All preliminary biographical information and other derivative evidence contained in this document derived from torture-tainted material {are} inadmissible. Torture-tainted material is not allowed under the law and is inherently unreliable.*" Khieu Samphan also argues that the confession IS 5.63 of Muol Sambath was obtained under torture and is further irrelevant. The Trial Chamber has already rejected such objection several times in the past, allowing limited use of evidence obtained

²³ Emphasis added.

²⁴ E1/165.1, Trial Chamber Transcript, 28 January 2013, at 09:57 hrs.

²⁵ E243.1, book published by TCW-536 on 23 October 1976, at FRE ERN 00862144, ENG ERN 00862031, KHM ERN 00862293.

²⁶ E223/2/2.5, number 5.

²⁷ E223/2/2.5, number 7.

through torture²⁸ and admitting all S-21 documents and Tram Kak District records previously proposed by the parties.²⁹ Moreover, the Defence has not established the fact that torture was used to produce the documents to which they objected. Most Tram Kak District documents listed in E223/2/1.2 consist of prisoner lists communicated by the Kraing Ta Chan security office to the upper echelon, notes by security office's interrogators or lists of enemies or suspects sent by various communes to the District 105. Those reports sent by DK officials to the higher administrative authorities are not torture-tainted documents. As stated several times in court, the Co-Prosecutors will never use confessions obtained under torture for their content; however annotations and reports by interrogators, and biographical information obtained prior to any infliction of torture might legitimately be used in accordance with those uses allowed under the International Convention on Torture. As for the relevance of the confession IS 5.63 challenged by the Khieu Samphan Defence, the document is relevant regarding the role of the accused, the policy of eliminating enemies as well as the DK administrative structure (position of Ros Nhim as Secretary of the Northwest zone). Further, all those contemporaneous DK-era documents originating from DC-Cam, are, according to the Trial Chamber's Decision E185, "entitled to a rebuttable presumption of *prima facie* relevance and reliability (including authenticity)".³⁰

- (e) Fifth, Ieng Sary's Defence repeat previous arguments concerning DC-Cam's alleged bias or partiality, accusing the organization of acting "*not to seek the truth {...} but to verify its predetermined conclusion that these crimes occurred.*"³¹ The Trial Chamber addressed this question of the credibility and alleged bias of DC-Cam in its decision E185, at paragraphs 25-28, dated 9 April 2012, following the testimonies of both Vanthan Dara, DC-Cam Deputy Director, on 23-24 January 2012 and Youk Chhang, DC-Cam Director on 1-2 February 2012.
- (f) Sixth, Ieng Sary's Defence argue that 20 documents cited in the Closing Order's paragraphs related to the DK military structure "*predate the time period at issue in*

²⁸ E185, paragraph 21 (9); E185/1, Trial Chamber Decision on Objections to Documents Proposed to Be Put Before the Chamber in Co-Prosecutor's Annexes A6-A11 and A14 –A20 and by the Other Parties, 3 December 2012, paragraph 17.

²⁹ E185/1, dispositive.

³⁰ E185, paragraph 28.

³¹ E223/2/2.3, document 1 (IS 18.78). See also E223/2/2.5, document 4 (D125/97) where the Defence state that they consider DC-Cam as biased.

Case 002/01 and {are} not relevant to the proceedings.” As acknowledged by the Defence “the Trial Chamber has previously stated that evidence falling outside the temporal jurisdiction of the ECCC may be admitted where relevant to establishing background (information) or context. See E185, para. 29”. The Co-Prosecutors submit that the Defence have failed to establish that each of the 20 documents concerned would be “irrelevant and repetitious” as they state in their objections. On the contrary, those documents, such as D172.21, D178.11 or D248/5.1.28 are relevant as they report about the living conditions in Phnom Penh under the Khmer Republic or elsewhere in the country and tend to establish the exact situation of inhabitants and refugees immediately before the seizure and evacuation of Phnom Penh by the FUNK forces.

- (g) Finally, in annex E223/2/2.5, Ieng Sary’s Defence failed to address the issue of the presumption of relevance and reliability (including authenticity) attached to all documents cited by the Co-Investigating Judges in the Closing Order. The Trial Chamber has justified the existence of this presumption as early as 26 January 2012 and has repeated it since then in both decision E185 and E185/1.³²

(B) The Trial Chamber has previously admitted documents presenting the same internal and external features to those objected to by Ieng Sary and Khieu Samphan’s Defence

10. On 9 April and 3 December 2012 respectively, the Trial Chamber rendered two important decisions admitting thousands of documents proposed by the parties, including all but twelve documents listed in Annexes 1-5 of the OCP Rule 80 Revised Document List dated 22 July 2011 (E109/4) and all non-new documents listed in Annexes 6-11 and 14-20 of the same motion E109/4, with the exception of seven documents.
11. The Co-Prosecutors submit that whenever categories of documents have been considered by the Trial Chamber to be admissible, any other document presenting the same characteristics (type, internal and external indicia of reliability - including authenticity - and relevance) should be admitted as evidence put before the Chamber, in conformity with the past Chamber’s jurisprudence.

³² E1/34.1, Trial Chamber Transcript, 26 January 2012, 15:05 to 15:17 hrs; E162, Admissibility Ruling, 31 January 2012, paragraph 3; E185, paragraph 2; E185/1, paragraph 9 (a).

12. As for the list E223/2/1.1 of 48 documents proposed by different parties, the defence teams for Ieng Sary and Khieu Samphan have objected to the admissibility of a few books (E216/3.1, E152.2), one S-21 confession (IS 5.63), one site identification report (D125/217) and four videos (E152.1.1R to E152.1.54R, E190.1.297R, E93/7.3R and E93/7.2R, E186.1R). These documents display identical features to numerous documents admitted by the Chamber's Decision E185/1 as part of the following annexes of E109/4: Annex 10 (320 S-21 confessions), Annex 14 (2 OCIJ site identification reports),³³ Annex 16 (more than 300 audio and video materials) and Annex 19 (more than 200 academic articles, analytical reports and books).
13. Concerning the 94 additional documents listed by OCP in E223/2/1.2, E223/2/1.3 and E223/2/1.4 relating to the movement of the population (phases 1 & 2) and Tuol Po Chrey, the Defence teams did not object to the GRUNK Publication D199/26.2.116 but did effectively object to all the other contemporaneous documents, including 15 international communications (French and US official documents), 21 international media reports (mainly articles published in the US), 4 photographs, 49 Tram Tak District reports as well as to 3 OCIJ rogatory reports and one analytical report. The vast majority of the documents previously proposed by the OCP under such categories of documents have been admitted by the Trial Chamber's Decision E185/1 dated 3 December 2011. The documents considered by the Chamber to be put before it possess the exact identical characteristics (in terms of format, origin, dates, language used, etc.) as the documents now objected to by the Defence. The Chamber has admitted over 100 international communications (Annex 17 to E109/4), more than 300 international media reports (Annex 18), more than 50 Tram Kak District records (Annex 8), over 200 maps and photographs and 100 rogatory reports. There is no objective reason for the Trial Chamber to depart from its previous decisions and reject the admissibility of any of the documents listed in E223/2/1.2, E223/2/1.3 and E223/2/1.4 .
14. Finally, Ieng Sary's Defence objected to all documents cited in the Closing Order's footnotes relating to the DK military structure that they identified to be open to

³³ Although the Khieu Samphan's Defence allege that this report mainly comprises a summary of witnesses' statements, (at E223/2/4.1, Document No.2) they cannot argue that it is repetitious as it also comprises valuable other information such as photos, site description, GPS measures and location of mass graves. Those elements add a specific value to the document as it allows the parties to visualize the Tuol Po Chrey site.

debate. For the most part, those documents can be classified under the same categories mentioned above and previously put before the Chamber and should therefore be admitted.

(C) Additional Observations on Ieng Sary's and Khieu Samphan's Objections

15. A few objections put forward by the defence teams need to be separately addressed in addition to the arguments developed under sections (A) and (B) and to the oral submissions developed at the hearing of 21 January 2013
16. Both teams objected to the BBC SWB report entitled "Party Anniversary Speech by Pol Pot" referenced as D366/7.1.302 in the OCP annex 2 A (E223/2/1.2).³⁴ This is the first part of the speech pronounced on 27 September 1978 by Pol Pot at a mass meeting, as broadcasted by Radio Phnom Penh on 29 September 1978. Ieng Sary objects to this document "*unless evidence is introduced demonstrating authenticity, not only of the BBC transcript itself, but also of its contents; i.e. that this is indeed a verbatim transcript of a speech Pol Pot actually gave.*"³⁵ Khieu Samphan's Defence argue that the content of the speech cannot be checked against the original in Khmer language, which is not available.³⁶ The Co-Prosecutors have previously demonstrated at other document hearings that both FBIS and BBC SWB transcripts were consistent with each other, as these agencies were listening and transcribing the very same DK broadcasts. In the present case, not only the speech of Pol Pot is also transcribed in 29 September and 2 October 1978 FBIS documents which have already been admitted on the case file,³⁷ but the Revolutionary Flag magazine dated September 1978 also reproduces the same speech integrally in Khmer original.³⁸ The three contemporaneous sources, taken together, leave no doubt as regards to the authenticity and reliability of the speech and therefore document D366/7.1.302 should be admitted.
17. It is significant that Nuon Chea's Defence has not objected to the book E152.2 entitled "Behind the Killing Fields" by Thet Sambath, Gina Chon (and likely Nuon

³⁴ **D366/7.1.302**, International Media Report entitled "Cambodian Home and Foreign Policy: Party Anniversary Speech by Pol Pot" (BBC SWB), 29 September 1978.

³⁵ **E223/2/2.1**, Ieng Sary's Objections, at no. 36.

³⁶ **E223/2/4.2**, Khieu Samphan's Objections, under no. 36.

³⁷ **E3/76** and **D262.45**, DK Media Reports for September 1978 (FBIS), at ENG ERN 00170446-55;

E3/294 and **D262.46**, DK Media Reports for October 1978 (FBIS), at ENG ERN 00170162-69.

³⁸ **E3/215** and **D243/2.1.19**, CPK Publication entitled "Revolutionary Flag" Issue 9, September 1978.

Chea), to the documentary film “Enemies of the People” (E186.1R) by the same Thet Sambath (and Rob Lemkin) or to the Nuon Chea videos E93/7.3R and E93/7.2R. Contrary to the defence of Nuon Chea, Ieng Sary’s and Khieu Samphan’s Defence argued that the authors of the book and videos selected only a few excerpts of more than hundreds or thousands hours of interview of Nuon Chea and that “*the editing process was designed to promote a particular point of view*”; therefore they requested those materials to be rejected unless the entire archive is placed on the case file, transcribed and translated or Teth Sambath testifies in court. Khieu Samphan’s Defence even stated that the documentary film and 16 additional footages were “largely irrelevant”.³⁹

18. The Co-Prosecutors have explained at length at the 21 January 2013 hearing that Nuon Chea, at the hearing of 14 December 2011, acknowledged having met Teth Sambath and having been interviewed by him for years and that he trusted him.⁴⁰ Further, excerpts of the documentary film E186.1R were played by the Civil Party Lead Co-Lawyers at the document presentation hearing of 18 October 2012⁴¹ with no objections from the Defence. As for the book E152.2, the Co-Prosecutors refer to their submissions made in their motion E152 and at the hearing of 21 January 2013 as regards to the fact that Nuon Chea has stated that he wrote an autobiography and gave it to Teth Sambath to be published.⁴² The abovementioned videos and book should be admitted as evidence before the Trial Chamber independently of any testimony of their authors. These materials, being Nuon Chea’s statements, are highly relevant to the historical background, role of the accused, the CPK policies including the elimination of enemies, the administrative structures, communications and military structure.

19. Khieu Samphan’s Defence also objected to the admission of Document D108/31.28 dated 1 June 1977, as described in Ieng Sary’s list E223/2/2.5 (No.3). It is one of the letters sent by (Sou) Met to Duch. Khieu Samphan alleges that the document is solely available in English and that, absent the original document, DC-Cam translations

³⁹ E223/2/4.1, Khieu Samphan’s Objections, under document no.8; E223/2/2.4, Ieng Sary’s Objections, no. 8.

⁴⁰ E1/22.1, Trial Chamber Transcript, 14 December 2011, at 11:45 hrs.

⁴¹ E1/134.1, Trial Chamber Transcript, 18 October 2012, from 15:19 hrs.

⁴² E152, Co-Prosecutors’ Request for the Admission of Relevant Testimonial Statements and Annotated S-21 Documents collected during the judicial investigation, 19 August 2009; E1/161.1, Trial Chamber Transcript, 21 January 2013, starting at 11:37 hrs.

cannot be relied upon. The Co-Prosecutors argued on 22 January 2013 that this document constitutes in reality another version of an English translation of the original Khmer document E3/1049 or D108/7.3 and that it was unnecessary to discuss this translation D108/31.28 cited in a Closing Order footnote or, as far as the Chamber is concerned, to take a new decision upon it. Ieng Sary's Defence underlined the slight differences in the English translations of the same Khmer document to conclude in opposition to the Co-Prosecutors that it should effectively be open to debate but at the same time be rejected as inadmissible. As the original document in Khmer (E3/1049) has already been put before the Chamber, it is unnecessary for both Defence teams to raise any objection regarding a duplicate English translation.

20. In E223/2/4.2, Khieu Samphan's Defence objected to 34 contemporaneous international communications and international media reports listed by OCP at Nos. 2 – 35 of E223/2/1.2 (Annex 2 A). In addition to other arguments already addressed above, the Defence mention that those documents would be repetitious because other witnesses than those describing the events in the documents will testify on the same facts and that oral testimony is the best possible form of evidence. The Defence also indicate that many of these documents would be irrelevant as they discuss the living conditions at the French Embassy between 17 April and early May 1975. The Co-Prosecutors are in disagreement with these arguments.
21. First, it must be mentioned that Khieu Samphan's Defence proposed several documents that can similarly be classified as international communications and media reports⁴³ and that the Defence refrained from considering those types of documents as not authentic or unreliable as such. Second, as for their relevance, the documents proposed by OCP are contemporaneous documents written mostly at the time of the evacuation of Phnom Penh or immediately afterwards, in April and May 1975 and directly relate either to the evacuation itself of the Phnom Penh population, to the arrest of Khmer Republic officials at the French Embassy, to the situation prevailing in the empty city of Phnom Penh or to living conditions within the French Embassy and the situation observed at the time of the foreigners' trip to Poipet. They are not repetitious but are corroborating and reinforce the credibility of witness testimonies already heard before the Chamber or to be heard in the future. Aside from oral testimonies, DK contemporaneous documents are equally important to meet the Co-

⁴³ See for example E223/2/1.1, Nos. 19-30 and 35-37.

Prosecutors' onus to prove the case. Documentary and testimonial evidence is bound to be complementary, not mutually exclusive as suggested by the Defence. For example, document D199/26.2.194 is a French telegram dated 18 April 1975 mentioning that sick people had been chased away from the city hospitals. This is not only confirmed by two other telegrams from French officials⁴⁴ listed on the same Annex 2 A (E223/2/1.2) or by a US report dated 4 May 1975 (D313/1.2.65), but also by various witnesses who did take shelter at the French Embassy (like TCW-536)⁴⁵ or were merely evacuated with the population, such as the nurse Meas Saran, for example.⁴⁶

IV. CONCLUSION

22. For these reasons, the Co-Prosecutors respectfully request the Chamber to reject all objections raised by the Defence of Ieng Sary and Khieu Samphan to the admissibility of the documents proposed by the OCP or the Civil Party Co-Lead Lawyers in annex E223/2/1.1 (documents 1 to 11), proposed by OCP in annexes E223/2/1.2, E223/2/1.3 and E223/2/1.4 and to the admissibility of the 30 remaining documents cited in the footnotes of the Closing Order's paragraphs in relation to the military structure as listed at the hearing of 22 January 2013 by Ieng Sary and corrected by the Co-Prosecutors.

Date	Name	Place	Signature
22 February 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLE Co-Prosecutor		

⁴⁴ **D199/26.2.205**, 19 April 1975 (No. 4 on the list E223/2/1.2) and **D199/26.2.219**, 21 April 1975 (No. 8 on the list E223/2/1.2)

⁴⁵ **E3/370**, OCIJ Written Record of Interview of [TCW-536], at FRE ERN 00282826 (p.3), ENG 00333951 (p.3), KHM 00286606 (p.6).

⁴⁶ **E1/144.1**, Trial Chamber Transcript, 14 November 2012, between 15:28 – 15:35 hrs; **E1/145.1**, Trial Chamber Transcript, 22 November 2012, starting at 10:20