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Sann Rada
 CMS/CFO:.....

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ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
 Chambre de première instance

TRANSCRIPT OF TRIAL PROCEEDINGS

PUBLIC

Case File N° 002/19-09-2007-ECCC/TC

28 April 2015
 Trial Day 275

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

The Accused: NUON Chea
 KHIEU Samphan

Lawyers for the Accused:
 Victor KOPPE
 KONG Sam Onn
 Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:
 Roger PHILLIPS
 SIVHOANG Chea

Lawyers for the Civil Parties:
 Marie GUIRAUD
 SIN Soworn
 VEN Pov
 HONG Kimsuon

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

For Court Management Section:
 UCH Arun
 SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
JUDGE FENZ	English
MS. GUIRAUD	French
MR. KHIEU SAMPHAN	Khmer
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
JUDGE LAVERGNE	French
MR. LYSAK	English
THE PRESIDENT (NIL NONN Presiding)	Khmer
MR. VERCKEN	French

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1 PROCEEDINGS

2 (Court opens at 0901H)

3 MR. PRESIDENT:

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

5 Today the Chamber will hear the key document presentation by the

6 defence teams in relation to Tram Kak Cooperative and Krang Ta

7 Chan Security Centre.

8 Ms. Chea Sivhoang, please report the attendance of the Parties

9 and individuals to today's proceedings.

10 THE GREFFIER:

11 Mr. President, for today's proceedings, all Parties to this case

12 are present, except Mr. Son Arun, National Co-Counsel for Mr.

13 Nuon Chea is absent for health reasons.

14 Mr. Nuon Chea is present in the holding cell downstairs. He has

15 waived his rights to be present in the courtroom. The waiver has

16 been delivered to the greffier. Thank you.

17 [09.03.01]

18 MR. PRESIDENT:

19 Thank you. The Chamber now decides on the request by. Nuon Chea.

20 The Chamber has received a waiver from Nuon Chea, dated 28 April

21 2015, which states that due to his health -- that is, headache,

22 back pain and he cannot sit or concentrate for long and in order

23 to effectively participate in future hearings, he requests to

24 waive his right to participate in and be present at the 28 April

25 2015 hearing. He advises that his counsel advised him about the

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1 consequence of this waiver that in no way it can be construed as
2 a waiver of his right to be tried fairly or to challenge evidence
3 presented or admitted to this Court at any time during this
4 trial. Having seen the medical report of Nuon Chea by the duty
5 doctor for the Accused at ECCC, dated 28 April 2015, who notes
6 that Nuon Chea has a chronic back pain and feels dizziness when
7 he sits for long and recommends that the Chamber shall grant him
8 his request so that he can follow the proceedings remotely from
9 the holding cell downstairs.

10 [09.04.23]

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

15 The AV Unit personnel are instructed to link the proceedings to
16 the room downstairs so that he can follow the proceedings. That
17 applies for the whole day.

18 And the Chamber would like to hand the floor to the defence team
19 for Nuon Chea for the key document presentation in relation to
20 Tram Kak Cooperative and Krang Ta Chan Security Centre.

21 Counsel, you have the floor.

22 MR. KOPPE:

23 Thank you, Mr. President. Good morning, Your Honours. Good
24 morning, counsel.

25 Mr. President, my presentation today is divided into three parts:

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1 the first concerns documents relating to Krang Ta Chan, the
2 second deals with living and working conditions in Tram Kak,
3 while the third part relates to the treatment of targeted groups.
4 [09.05.51]

5 This morning I will present a total of 30 documents, which is a
6 little less than the list that we initially circulated as we have
7 removed some documents.

8 Let me first turn to the document that relates to Krang Ta Chan.
9 There are 138 documents on the case file listed in an OCP annex
10 called "The Tram Kak District Records". These documents are
11 allegedly contemporaneous documents relating to activities within
12 Tram Kak district during the DK period.

13 By now it is clear that these documents are by far the
14 Prosecution's core evidence for this trial segment. However, only
15 three of these 138 documents have a located original and even
16 these originals are not on our case file. The other documents are
17 simply copies and the whereabouts of the originals are unknown
18 and this makes it impossible, for example, to verify Pech Chim's
19 recent claim that all executions would have been annotated on
20 documents in red ink. Nor can we examine the nature of several
21 documents with a single E3 number, but which appear to have been
22 compilations of various separate documents, including
23 correspondence back and forth. In a court of law, this is highly
24 problematic, especially in the light of the possibility -- which
25 I will discuss later -- that certain documents may have been

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1 forgeries, intended to craft a very particular narrative of
2 alleged events at Krang Ta Chan.

3 [09.07.56]

4 It is with these concerns in mind that we will soon be filing an
5 official request for investigation into a selection of the
6 so-called Tram Kak district records.

7 Now, Mr. President, the first document I wish to present is a
8 document which provides information about the provenance of these
9 so-called Tram Kak district. This document is E3/188; it is a
10 written record of interview of Youk Chhang, Director of
11 Documentation Centre of Cambodia, and it is dated 2 April 2009.
12 The relevant ERN numbers: in English, 00342450 until 5; Khmer,
13 00334755 until 61; and French, 00485435 until 40. In this
14 document, Youk Chhang provides further information and identifies
15 important sources regarding the provenance of the Tram Kak
16 district records and their chain of custody.

17 [09.09.24]

18 He notes that the documents were found at different times and are
19 from different sources. He explains that the original documents
20 related to Krang Ta Chan were lost but that it is unclear how
21 they were lost, when and also where this loss occurred. However,
22 he does explain that Mr. Sou Phirin, the current Secretary of
23 State in the Council of Ministers, whom we have requested to call
24 as an additional witness in this trial segment, allegedly
25 received the documents from the district front and gave them to

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1 none other than Ben Kiernan. According to Youk Chhang, Kiernan
2 said he returned the documents and that they are in Tuol Sleng,
3 which they, in fact, are not. Sou Phirin, on the other hand,
4 according to Youk Chhang says, Kiernan did not return the
5 originals.

6 [09.10.34]

7 Youk Chhang also provides information concerning the so-called
8 Tram Kak district record sources. For instances he states in his
9 statement that Prime Minister Hun Sen is a source for documents
10 numbered as D documents in the DC-Cam numbering system.

11 Youk Chhang also says that other sources are from Takeo province
12 and that some documents were taken from the office of the
13 district front but it is unclear where the district front
14 received the documents from. He also says that the district front
15 supposedly collected the documents from the village and commune
16 levels but it did not take the original documents from Krang Ta
17 Chan itself.

18 MR. PRESIDENT:

19 The International Deputy Co-Prosecutor, you have the floor.

20 [09.11.50]

21 MR. LYSAK:

22 Thank you, Mr. President. I'd request that counsel when he's
23 making these references, as I did, point to the specific ERNs. He
24 is characterising the evidence rather than pointing to it. One of
25 the things he just said is exactly the opposite of what is said

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1 in the interview that he is relying on. In order for there to be
2 any reliability in this process, he needs to be citing where he's
3 getting this from so that he's not characterising them or
4 mischaracterising the evidence.

5 MR. KOPPE:

6 I can do that, Mr. President. I just thought it would get rather
7 tedious if I number every reference, but if you require so, I
8 will do it. Would you like me to get back to all the references
9 or shall I just go on from now?

10 [09.12.46]

11 MR. PRESIDENT:

12 Counsel, please make sure that you refer to the proper documents
13 and the related ERN numbers so that concerned Parties can follow
14 your presentation. Thank you.

15 MR. KOPPE:

16 I will do so, Mr. President.

17 Let me start and if that is alright with you with the second part
18 of this document where Youk Chhang provides information
19 concerning the so-called Tram Kak district record sources.

20 [09.13.42]

21 First, I just said that already but I will repeat it. Prime
22 Minister Hun Sen, so he says, is a source for documents numbered
23 as D documents in the DC-Cam numbering system -- that is,
24 English, 00342452; Khmer, 003347457; and French, 00485437.

25 He also says that other sources are from Takeo province -- that

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1 is, English, 00342455; Khmer, 003347460; and French, 00485437. He
2 also states that some documents were taken from the office of the
3 district front but it is unclear where the district front
4 received the documents from: English, 00342454; Khmer,
5 0033457459; and French, 00485439. The district front supposedly
6 collected the documents from the village and commune levels, so
7 he says, but it did not take the original documents from Krang Ta
8 Chan itself.

9 And finally, a relevant excerpt from Youk Chhang statement: "In
10 addition, when searching through S-21 again, some documents were
11 found under a wooden cabinet." English, ERN 00342543; Khmer,
12 003347458; and French, 00485438; and a number of relevant
13 documents meanwhile were found later but given numbers in the
14 relevant DC-Cam sequence -- that is, English, 00342452; Khmer,
15 003347457; and French, 00485437.

16 That concludes the first document I'm presenting to you this
17 morning, Mr. President.

18 [09.16.09]

19 Now if we even set aside concerns about the heavy reliance on the
20 Tram Kak district records and consider them for their content,
21 not all of these documents paint the universally brutal picture
22 of the regime that the Prosecution would have you believe.

23 I will now present a number of documents some of which the
24 Prosecution has already presented. They present an alternative
25 view of at least of some of the events relating to Krang Ta Chan.

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1 We have divided these documents into five categories. The first
2 category are documents illustrating that multiple attempts were
3 made to re-educate people. So these documents indicate that
4 multiple attempts were made to re-educate people into changing
5 their behaviour at the commune level before matters were
6 escalated, if that happened at all. I would like to present four
7 illustrative examples.

8 [09.17.26]

9 Mr. President, the first document shows that Lon Nol officials
10 and soldiers were among those who might be re-educated multiple
11 times. Document E3/4092, also presented yesterday by the
12 Prosecution yesterday, is a document entitled "Notebook of KTC
13 Interrogator" and contains confessions of 107 persons, including
14 women, men, youth and Lon Nol soldiers. The English ERNs are
15 00834826 until 28; Khmer, 00271162 till 4; and French, 00721306.
16 This document lists several incidents of people being re-educated
17 on multiple occasions at the commune level. It also illustrates
18 how sending people to re-education centre did not mean certain
19 death but implies that people could in fact return from the
20 education centres to the communes. Specifically this document --
21 E3/4092 --describes at least two people who were re-educated and
22 who were former Lon Nol soldiers:

23 1). That is English, 00834827; Khmer, 00271162 till 63; and
24 00721306, in French; relates to a warrant officer called Pok
25 Bunly. Pok Bunly was in Angk Ta Saom commune, committed thefts

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1 very often -- I quote: "which is why", again, I quote: "the
2 cooperative representative arrested and sent him to the
3 re-education camp many times".

4 [09.19.51]

5 Kung Vet, a Lon Nol Corporal who was also living in Angk Ta Saom
6 commune was apparently "a major thief", who, "stole potatoes,
7 five times; coconut, three times; and corn, twice; and who the
8 co-operative representative educated on several occasions but
9 "who resisted stubbornly". That is English, ERN 00834828; Khmer,
10 00271164; and French, 00721307 till 08.

11 The next document, Mr. President, shows that also New People
12 might be re-educated more than once -- E3/4101 -- that is a
13 report from Krang Ta Chan to the district office, dated 7 March
14 1977, and signed by An, on English, ERN 00322124; Khmer,
15 00271034; and French, 00854216. We can see that this report
16 describes Kim Vanny, a New Person, assigned to a youth assembly
17 unit in Srae Ronoung commune who apparently, "really stole very
18 often, such as coconuts, cassava roots and climbing up the palm
19 trees at night to steal the palm juice of the cooperative for
20 drinking it, et cetera", and it says the chief of the unit has
21 educated him several times but he still continued to commit the
22 thefts. Yet another document, Mr. President, shows how at least
23 five people, including Lon Nol officials and soldiers, New People
24 and frequent thieves faced multiple rounds of re-education to
25 correct their behaviour.

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1 [09.22.20]

2 I refer you to -- that's the next document, E3/2424, that is a
3 compilation of reports between sub districts office, district and
4 Krang Ta Chan, which appears to date from 1978. The English ERNs
5 are 00322217, ending in 20, 22 and 25; Khmer, ERN 00270755, and
6 ERNs ending in 59, 62, 63 and 75; and the French, ERN 00612215
7 and ERNs ending in 21 and 23 till 24. Now this document is report
8 E3/2424 describes the re-education history of several people. And
9 for instance, on 18 August 1978 report from Cheng of Angk Ta Saom
10 commune to, "To respected Comrade Elder Brother Police of
11 District 105" describes Kong Viet, a former military police of
12 unknown rank who "was such a great stealer". He "had been
13 educated so far by the group, unit, and by the collective
14 meetings for the past three years period". And after this
15 apparently failed, he was, "individually educated by a hot
16 measure" -- that is, English, ERN 00322220; Khmer, 00270755; and
17 French, 00612219. In the same documents we can see an 8th July
18 letter from Bin and Yat, from an unknown location to the,
19 "Beloved Base Party" and concerned, Ny, a surgical doctor from
20 Phnom Penh, who, reportedly, "committed cheap deeds of thefts
21 several times so far" and who officials had, "educated several
22 times" but nevertheless, "still abuses the Party guidelines".
23 That is 00322222; Khmer, 00270759; and French, 00612219.

24 [09.25.12]

25 In this E3/2424, there's another document, the date author and

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1 recipient unknown which details two pieces information about two
2 further people living in Angk Ta Saom. First, somebody called Pok
3 Bunly, a 27 year-old New Person of Vietnamese heritage, who "had
4 a lot of disputes, including stealing for which he was educated
5 very often until he was brought for education in the commune
6 militia office once already". However, the report complained,
7 "though he had been educated he still repeated the same
8 activities" -- English, 00322225; Khmer, 00270763; and French
9 00612223 and 00612224. Om Changtha was "serving in the enemy's
10 forces when living in the enemy's area" and "has stolen and
11 incited to fight the Revolution".

12 [09.26.36]

13 It's noted in this document, "Our Party has decided to bring into
14 the commune militia office for education once already, but", and
15 I quote: "during the education this youth fled from the office
16 twice, later the Party decided to bring him back to the youth
17 office." End of quote and a new quote: "though he has been
18 educated very often, every day he continues to steal" - English,
19 00322225; Khmer, 002702762; and French, 00612223.

20 And finally, Mr. President, in this document, E3/2424, the
21 document from Chhoeun at Tram Kak, dated 27 July 1978, addressed
22 to, "Lovely Comrade Elder Brother District Police", which
23 describes Suon Phy, a 25 year-old from District 109 in Takeo "who
24 was good at stealing things which belonged to the collective",
25 and who officials, "tried to educate in whatever manner" --

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1 English, 003222217; Khmer, 00270775; and French, 00612215.

2 [09.28.13]

3 The next document, Mr. President, Your Honours is E3/2048, this
4 is a document also presented yesterday by the Prosecution. It is
5 a report to An by an unknown author, dated 4th March, year
6 unknown, and it mentions the sub-district militia bringing in
7 those who held officer ranks and who have been re-educated before
8 -- English, ERN 00276566; Khmer, 0079094; and French, 00061163.

9 This report, E3/2048, mentions Keo Net and Chroeng, who both held
10 officer ranks. Keo Net "incited Chroeng to run off, and he has
11 stolen the belongings of the people constantly, never fearful".
12 And the report author then complained that, "the base re-educated
13 them to the utmost of its capabilities". End of quote.

14 The fourth and final document, Mr. President, also is yet, we
15 believe, another example of multiple attempts to re-educate
16 people who mostly appeared to be frequently stealing from or
17 damaging communal supplies. It is document E3/2107; also
18 presented yesterday by the Prosecution. It's a Krang Ta Chan
19 notebook - English, ERN 00290205, 22, 45-46 and 56; Khmer
20 00068050, 60, 74, 80 and 81; and French, 00655726, 39, 60-61, 68
21 and 69. In this document, E3/2107, we can read that Chou Sovann,
22 a former monk living in various locations including Kus
23 sub-district stole, and I quote: "palm sugar water, coconuts and
24 yams frequently, to the point that Angkar has re-educated and
25 built him time after time" - English, 00290205; Khmer, 00680050;

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1 and French, 00655726.

2 [09.31.16]

3 We can also read about a man called Kang Soeun who, "killed
4 cooperative cows with a hatchet" and yet, "Angkar re-educated him
5 each time". The same person allegedly did not clean rice and
6 also, "two or three times killed chicken and ate them"-- English,
7 ERN 00290222; Khmer, 00068060; and French, 00655739. It also
8 relates to a man named Krauch Pa, a district militiaman who
9 allegedly raped a girl. He "fought with our army very frequently
10 at Tik Saom and committed a violation about eating" for which the
11 unit chairman "re-educated him often". After this he had yet
12 another unspecified conflict after which the chairman
13 "re-educated him until 9 before releasing him". That is English,
14 0029245 until 6 (phonetic); Khmer, 00068074; and French,
15 000655760 until 61.

16 Chea Sophal, who joined the military in 1973, was a member of the
17 Kus sub-district youth unit and was described as, "the thief of
18 thieves". The report detailed how, "the unit representative has
19 re-educated him over and over but it has not worked" -- 00290256
20 in English; Khmer, 00068080; and French, 00655768.

21 [09.33.24]

22 Finally, Mr. President, Ngauv Kea from Cheang Tong sub-district
23 was described as having stolen manioc -- I'm not sure what that
24 is -- sugar dumplings, rice and having conflict with the cook and
25 throwing things at the cook's roof. It says, "while Angkar has

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1 frequently re-educated him about his behaviour" the report
2 complained that, "he kept on stealing like this" - 00290256; in
3 Khmer, 00068081; and French, 00655769.

4 Mr. President, I'll now move on to another category of documents
5 offering some insight into Krang Ta Chan, these documents are
6 those which showed officials behaving cautiously with respect to
7 the treatment of troubling people by sending detailed reports of
8 behaviour and requesting instructions to be issued by those
9 senior to them.

10 [09.34.45]

11 I would like to start with the document also presented yesterday
12 by the Prosecution -- E3/2453. This document is a compilation of
13 reports within Tram Kak district, including four particularly
14 relevant reports: English, ERN 00388577, 80, 84 and 86; Khmer,
15 00270773, 77, 82 and 84; and French, 00611769, 71, 74 and 75.

16 The first report is dated 13 October 1977 and written by Khun
17 from Srae Ronoung to the Party. It details the "action of Han, a
18 widow in Srae Ronoung sub-district who is a "major thief". Khun
19 requests the Party's decision about the above report -- that is,
20 English, ERN 00388580; Khmer, 00270777; and French, 00611771.

21 Another report from Angk Ta Saom to the Tram Kak district details
22 information on two persons and requests to know, "whatever Angkar
23 decides" - English, 00388577; Khmer, 00270773; and French,
24 00611769.

25 [09.36.43]

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1 A third report within this document -- E3/2453 -- is from Mie in
2 Nheang Nhang commune to the district party and this reports ends
3 with, "May the Party be informed, and request that whatever the
4 decision the Party makes be sent for information"-English,
5 00388584; Khmer, 00270782; and French, 00611774.
6 And finally, Mr. President, the fourth report also from Mien of
7 Nheang Nhang commune, that concerns four people named Luo, Suos,
8 Yun and Bang, who want to, "smash the Revolution". This report
9 also ends with, "May the Party be informed about the four of
10 them, and please provide us information on whatever the Party
11 decides" - English, ERN 00388586; Khmer, 00270784; and French,
12 00611775.
13 [09.38.11]
14 The next document -- we use that again -- that is the earlier
15 mentioned, E3/2048. Also this document appears to be a
16 compilation of documents, two of which, we believe, are
17 particularly relevant here: English, ERN 002765562 and ERN ending
18 in 64; Khmer, 00079087 ending in 91; and French, 00611658 ending
19 in 61. In this document -- E3/2048 -- the first is a note dated 3
20 April 1977, from Phan of Popel commune and it requests, "Angkar
21 pass judgement" regarding certain New People, including "whether
22 to have them send them in or what" -- that is, English, 00276562;
23 Khmer, 00079087 till 88; and French 006116658.
24 Another document, Mr. President, in the same compilation is a
25 note from Ta Phem sub-district cooperative secretary Khit to

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1 Angkar and it details six soldiers, all first or second
2 lieutenants, who "who have personally carried out activities
3 every single day" and it concludes this report, "whatever
4 Angkar's decision request opinion and instructions"-English, ERN
5 00276564; Khmer, 000790091; and French 00611661.
6 [09.40.14]
7 I would like to move on to the next document -- that is, E3/4105;
8 this report is apparently from Tram Kak commune militia and it is
9 addressed to Angkar of the district and dated 19 April 1977 -
10 English, ERN 0032135; Khmer, 00270993; and French, 00856212. This
11 report requests further instructions from District 105, Angkar,
12 after arrest of a member of the commune and says as follows: "We
13 beg to ask the Angkar of the district that where should this
14 person be sent to or how to solve it, please give opinion on it."
15 I now move on to yet another category within these documents, Mr.
16 President, that's the use of so-called hot methods in
17 interrogation; also contrasting with Prosecution's picture of
18 events at Krang Ta Chan are a number of documents which
19 apparently indicate that hot methods of interrogation were not
20 always used and indeed sometimes appear to be used only very
21 rarely. The first is a document which has been mentioned at
22 length by the Prosecution yesterday -- E3/4095. It's an
23 interrogator's notebook with the - I will come back to that very
24 interesting heading called "5th confession and contemptible
25 traitors: Pol Pot and Ieng Sary" - English, ERN 00747287 ending

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1 79; Khmer, 00271124; and French, 0072125 ending 61.
2 [09.42.34]
3 Mr. President, this notebook is a lengthy document containing
4 information regarding the interrogation of approximately of 105
5 different prisoners at Krang Ta Chan, including a large number of
6 Lon Nol soldiers as the Prosecution detailed yesterday. However,
7 throughout all these citations, hot methods are only mentioned as
8 being used on two of these people. Concerning the person Yang
9 Kay, the report indicates that, "this person was interrogated
10 with some of 'hot methods' to dig up his network because he
11 refused to confess" -- that is, English, ERN 00747287; Khmer,
12 00271124; and French, 00721252.
13 Concerning the person Thach Uk, the report says that he was
14 beaten during the integration", presumably a typo intending to
15 say 'interrogation', "but he did not confess." I have the
16 English, ERN 00747279; Khmer, ERN 00271118; and French, 00721261.
17 The second document, Mr. President, we believe demonstrates the
18 same phenomenon. It is E3/4092. As mentioned earlier, this Krang
19 Ta Chan interrogator's notebook contains confessions of 107
20 persons, including women, men, youth and Lon Nol soldiers, the
21 English, ERN 00834795 ending 05, 16 and 22; Khmer, 002271135
22 ending 46, 55 and 59; and French, 00721276 ending 87, 96 and 302.
23 [09.45.22]
24 Mr. President, like with the document discussed before, of the
25 107 persons detailed in this document, there seems to be only

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1 four occasions on which the persons were subjected to "intense
2 interrogation". I should note the French version interrogates -
3 "interrogation" in four different ways without using the word
4 "intense", so there seems to be a difference in translation
5 between the French and the English. But only on four occasions of
6 the 107 persons who were detained, apparently hot methods were
7 used.

8 [09.46.22]

9 Mr. President, we will revisit these documents most likely during
10 our objections later this week, but for now, let me just note
11 that, considering that both notebooks specifically seem to
12 indicate where hot methods were used, suggests that they were not
13 standard practice. Otherwise, why would they be indicated at all
14 is the question. Moreover, regarding the first notebook --
15 E3/4095 -- as the Prosecution mentioned yesterday, some of the
16 persons listed included the family of trial witness Meas Sokha,
17 and they include for instance Meas Sokha's mother, Hun Kimseng,
18 and his sister, Meas Sarat, both of whom we have recently
19 requested to appear as witnesses. Now, as we know, these people
20 are still alive today, so unless the Prosecution can produce
21 evidence to the contrary, it is very possible that several people
22 in -- many people in fact, in the notebook may have survived.
23 This goes to a broader issue, of course, which is how often
24 executions at Krang Ta Chan occurred at all.

25 MR. PRESIDENT:

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1 The International Deputy Co-Prosecutor, you have the floor.

2 MR. LYSAK:

3 Thank you, Mr. President. I just want to make one objection here.

4 Obviously, counsel is allowed to address and present these

5 documents, and explain their importance. Crossing into the realm

6 of making a closing argument, where we start to argue about what

7 witnesses have testified, I think is something we avoided.

8 [09.48.23]

9 I could stand up and respond that we've had testimony from the

10 guards, who said that everyone, with a few exceptions, was

11 killed. So, I think this is not the time for counsel to start

12 making conclusions. He has no basis to say that any time, every

13 time, torture was used, it would be documented. That's an

14 argument from him. He has no basis to say there are other people

15 in this book who were released. So I think we need to confine

16 ourselves here to presenting the documents, and not make

17 arguments, because obviously, if he's going to make arguments

18 about witness testimony, I feel an obligation to respond, and I

19 don't think we're at that point yet.

20 (Judges deliberate)

21 [09.50.44]

22 MR. PRESIDENT:

23 I'd like to hand the floor to Judge Claudia Fenz to respond to

24 the objection. Thank you.

25 JUDGE FENZ:

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1 Well, the Prosecutor has pointed to something which has obviously
2 always been a fine line in this kind of hearings. We have had the
3 same issue again and again. Obviously, drawing the line between
4 presenting a document and commenting on it in a context is, as I
5 said, fine.

6 Counsel, we just wish to remind you this is not closing speeches,
7 very obviously. So perhaps you could concentrate on what could
8 really be seen as a presentation of documents, as opposed of an
9 evaluation at this point in time.

10 MR. KOPPE:

11 I will do my very best, Judge Fenz, but sometimes I need to
12 explain in one sentence or two sentences why I'm doing this. But
13 I will try to avoid closing submissions-type arguments.

14 [09.51.49

15 Mr President, I would now like to move to documents which might
16 illustrate a different use of the word "smash". These documents,
17 included in the so-called Tram Kak district, which indicate the
18 word "smash" or "komtech" has a variable meaning, and cannot
19 simply -- or cannot always simply be equated to "execution". For
20 example, document E3/2053, this is an undated report to the
21 Party, written by Phoem of Trapeang Thom South cooperative, and
22 it sums up the confessions of two individuals: English, ERN
23 00276578; Khmer, 00079122; French, 00334996. The report relates
24 to people named Uk Phat and Sy, and identifies their network and
25 the plans they had. Specifically, it says that the two people

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1 "had a five-year plan to ensure the smashing of the
2 cooperatives". Either in five years, seven years or otherwise,
3 and I quote again, "as necessary to wear down the cooperatives,
4 and to absolutely oppose communal eating." In addition, the
5 report says that Uk Phat and Sy had "plans to contact the 'Yuon'
6 and Thailand, and use the weapons to smash the Revolution".

7 [09.53.40]

8 E3/2453, this is -- the relevant report is dated 18 October from
9 Mien of Nheang Nhang to the district base area Party -- English,
10 ERN 00388586; Khmer, 00270784; and French, 00611775. The report
11 in question identifies a network of four persons: Luo Eng-Tri,
12 Suos Ti, Yun Yean and Bang Nan, with the author concluding that,
13 "My analysis is that they have plans to smash our Revolution".
14 Document E3/4092 presented yesterday also by the Prosecution, and
15 mentioned earlier. This is a Krang Ta Chan interrogators'
16 notebook, containing confessions of 107 persons - English, ERN
17 00834818; Khmer, 00271155 till 56; and French, 00721304. At this
18 point, I draw your attention to a note which details the actions
19 of Phan Boeun who "organized a meeting to create plots with his
20 clique of four people" in order "to smash and destroy the
21 cooperative." That is on English, ERN 00834817 till 8; 00271155
22 in Khmer; and French, 00721304.

23 [09.55.50]

24 Mr. President, the last category of documents I am presenting
25 this morning, which arguably provide insight into events at Krang

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1 Ta Chan are two documents which relate to S-21 specifically, but
2 which we suggest to be relevant to other security centres in the
3 DK. The pair of documents in this category discussed the
4 apparently little known fact that some prisoners, or quite a
5 substantial number actually, were released from S-21, contrary to
6 the popular misconception that only seven people survived S-21. I
7 am referring to E3/7326. It is a fact sheet published by DC-Cam,
8 called "Pol Pot and his prisoners at secret prison S-21 -- An
9 overview on the release of prisoners of S21" -- English, ERN
10 01002075 to 85. There is no Khmer translation available yet, Mr.
11 President, and also no French translation available. Now, in this
12 document, DC-Cam provides details of several different categories
13 of prisoners who were actually released from S-21, such as
14 children and Khmer Rouge cadres. The fact sheet gives a long list
15 of prisoners who DC-Cam says were released from S-21 during the
16 DK period. And in addition, it indicates which persons are
17 reported to be alive, people whose status is uncertain, and
18 people who died after 1979. Relating to this document --

19 MR. PRESIDENT:

20 The Defence Counsel, please hold on. And the International Deputy
21 Co-Prosecutor, you have the floor.

22 [09.58.03]

23 MR. LYSAK:

24 Yes, Mr. President, I can't find any such document -- E3/7326 --
25 in the system. So, I don't know whether it has an original case

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1 file number. That might be the issue. Even though we were
2 instructed to present documents relating to Tram Kak, I don't
3 want to object to that point at this stage, because I would like
4 to see what's in this document, because -- the reason I'd like to
5 see the document is the prisoners that were found weren't
6 released, they were transferred to Prey Sar. These people weren't
7 released from S-21. That's -- so I want to see the evidence that
8 he is citing.

9 [09.59.04]

10 MR. PRESIDENT:

11 Judge Jean-Marc Lavergne, you have the floor.

12 JUDGE LAVERGNE:

13 Counsel Koppe, could you please explain to us what the relevance
14 is of this document in view of the segment that we are involved
15 with today, that is to say, Tram Kak district, and possibly Krang
16 Ta Chan prison? I must confess that S-21 does not seem to be part
17 of this segment, unless I am mistaken.

18 MR. KOPPE:

19 Correct, but S-21 has been often referred to already in this
20 segment. But the relevance of this document is to show that, also
21 from S-21 a substantial number of prisoners were released,
22 undermining the views of the Prosecution, and the view laid down
23 in the Closing Order that nobody who entered Krang Ta Chan was
24 released. So, when we are making this comparison, I think that
25 it's also relevant for a view that we might have on the release

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1 of prisoners in Kraing Ta Chan.

2 Mr. Prosecutor, the document is E307/5.2.10, and the document
3 that I'm presenting, Mr. President, Judge Lavergne, is also in
4 relation to E3/39992 (phonetic), which is an article from the
5 Cambodia Daily, from Thursday, 28 August 2008 - English, ERN
6 00548253 until 4; Khmer, 00814871 to 73; and French, 008366686
7 till 91. And consistent with the document that I -

8 [10.01.06]

9 JUDGE LAVERGNE:

10 Mr. Koppe, If I understand correctly, even though we have not
11 examined facts regarding S-21, and we didn't consider the fact
12 whether the prisoners were released at S-21, to use an article in
13 which reference is made to S-21 prisoners, can we establish the
14 fact that prisoners could have been released at Krang Ta Chan? Is
15 that the reasoning? I have a hard time following your reasoning,
16 Counsel.

17 MR. KOPPE:

18 Well, this article that I was quoting from the Cambodia Daily is
19 from August 2008. I believe it's an article before the judgement
20 of this Trial Chamber in the case of Duch, and it says basically
21 that 177 prisoners were released from S-21, which is something
22 that this Trial Chamber hasn't included in its judgement, and
23 relates to the fact that in general people were released from
24 security centres. Hence also from Krang Ta Chan, a substantial
25 number of people were released. That is our position. I think by

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1 just introducing these two documents, we should be able to put
2 our presentation into context of -- the context being prisoners
3 were in fact released from security centres.

4 [10.02.39]

5 MR. LYSAK:

6 First, Mr. President, I still can't find the first document. I
7 don't know whether he's reading it too quickly, but I cannot find
8 the first document. The article I'm familiar with. I think it is
9 premature to get into this at this point. I can tell you that we
10 followed up. We put evidence that will -- we will obviously deal
11 with in the S-21 phase. We followed up on this. These prisoners
12 were not released. They were sent to Prey Sar. Many of them were
13 then later sent back to S-21 and killed. But the idea that this
14 many prisoners were released -- but we should be dealing with
15 this at the S-21 phase, not now.

16 MR. KOPPE:

17 I'd be happy to repeat the words of the Prosecution when he was
18 -- he was questioning, I think, Richard Dudman, confronting him
19 with prisoner list. That's what the Prosecution is doing all the
20 time. I think putting Krang Ta Chan in the context of S-21 is not
21 something that goes out of the segment of this trial.

22 [10.03.44]

23 JUDGE FENZ:

24 Counsel, you're obviously making a closing-style argument, but
25 having said that -- sorry, closing-speeches-style argument.

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1 Having said that, you appear to say these were your two questions
2 in this context. Is that correct, or are you going to spend more
3 time on this?

4 MR. KOPPE:

5 No, that's it. Only those two -- two documents, indicating that
6 many prisoners, according to recent confirmation, by the way, in
7 the Guardian of -- by Youk Chhang are - were in fact released.
8 Having said that, Mr. President, I'm moving now to another topic,
9 and that is unreliable documents, or unreliable Krang Ta Chan
10 documents of particularly limited probative value.

11 [10.04.30]

12 Now, having highlighted several categories of documents which we
13 believe are relevant to establishing events at Krang Ta Chan, I
14 would like now to turn instead to highlight a number of documents
15 which, by contrast, are only of particularly limited probative
16 value because they are possibly at least partial forgeries.

17 First, forgeries possibly made after '79. I will first discuss a
18 pair of documents, documents relied on in the Closing Order at
19 paragraphs 514, 500 and 1385, as the basis for the Investigating
20 Judges' suggestion that at least -- at least 15,000 people were
21 executed at Krang Ta Chan. That document is E3/2107. It's a
22 notebook from Krang Ta Chan, containing 91 entries - English, ERN
23 00290205; Khmer, 00068049; and French, 00655725.

24 [10.05.57]

25 Now, at ERN 00290205, there's an annotation from the ECCC Khmer

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1 to English translator, concerning a scribbled note on that page.

2 The translator says, "separate page, scribbled note, not in the
3 same handwriting as the rest of the document."

4 An examination of the Khmer original confirms that indeed this
5 handwriting appears to be quite different. The scribbled note
6 itself states that "up until now -- up until today, we have
7 smashed 15,000 enemies." End of quote. And it's the note that the
8 Investigating Judges rely upon, as I said, in the Closing Order.
9 Indeed, the scribbled text itself is written in two different
10 handwritings. The first four lines are written by one
11 handwriting, and the last two lines are written by a different
12 handwriting.

13 In addition, of all the 19 entries in the notebook, the scribbled
14 note is clearly out of context. The rest of the notebook records
15 individual confessions, unlike this high-level statistical
16 remark. This comment is the only one with an addressee, and the
17 sentence, "May the Party be informed of this," a clear indication
18 where it was written, and the signature, making it completely out
19 of place among the other entries in the notebook.

20 [10.07.37]

21 I note that the credibility of this scribbled note has been
22 discussed with several witnesses during the hearings. I will not
23 go into this argument that I have presented here, although it's
24 very brief. But I would like to conclude with the statement -
25 with our conclusion that we are absolutely convinced that this

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1 document is a post-1979 forgery, designed to inflate the Krang Ta
2 Chan death toll as much as possible. Indeed, the document's cover
3 page indicates that it is entitled "Fifth Confession:
4 Contemptible Traitors, Pol Pot and Ieng Sary", which is blatantly
5 a notation added after the DK period.

6 MR. PRESIDENT:

7 The International Deputy Co-Prosecutor, you have the floor.

8 MR. LYSAK:

9 This is clearly argument, but that's not actually the reason I'm
10 standing up. He's talking about two different documents. The
11 notebook in which this 15,000 note appears -- and I certainly
12 agree with him. This is a different document than the notebook.
13 The fact it's in two handwritings, he's using that to say it's a
14 forgery. If he wants to make a request to the Court, fine. The
15 document that has the handwriting on the cover, "Fifth
16 Confession: Pol Pot and Ieng Sary", is a different notebook, so
17 he's misstating the documents he's presenting here. That I do
18 object to; if he wants to make some arguments to explain why he's
19 presenting these, that's fine.

20 [10.09.33]

21 MR. KOPPE:

22 I agree that these are two different documents, but I'm making
23 the point that this other document, which says the "Ieng Sary,
24 Pol Pot traitors", is clearly a post-'79 term. This meaning that
25 these notebooks have been in the hands of the authorities after

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1 '79. So, I'm making the connection with this 15,000 scribbled
2 note to the other annotation clearly dating post-'79. So, I agree
3 with the Prosecution. These are in fact two documents.
4 Document E3/4145, Mr. President, this document appears to be a
5 compilation of different prisoner lists from Kraing Ta Chan -
6 English, ERN 00762844 and ERN ending in 37; Khmer, 00068736; and
7 French, 00761100 and ERN ending in 093. Another page with English
8 ERN 00762844 is a messy, handwritten page, with -- containing
9 corrections, that lists Yuk Sen as one of the prisoners detained
10 for years, pending the Party's decision, and that Say Sen
11 confirms was a reference to him. The same page also names Krang
12 Ta Chan as M105, and is the only document in the so-called Tram
13 Kak district records collection to do so. It also lists Hun
14 Kimseng and Meas Sarat as other prisoners, but records their
15 biography details completely incorrectly, in contrast with other
16 so-called district records.
17 [10.11.27]
18 And by contrast, the page with English ERN 00762837 in the same
19 compilation document appears, at least from a visual and basic
20 content perspective to be a real document, being typewritten,
21 being written on an apparent template, and referring to prisoner
22 information, the accuracy of which has been confirmed by other
23 witnesses. So, we also hold that this is a forgery, a forged
24 document. We will obviously come back to that at another stage in
25 this segment.

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1 [10.12.06]

2 Now, Mr. President, these documents, and I will conclude my
3 remarks maybe before the break, these documents, if forgeries,
4 seem likely to have been made after 1979, as a means of
5 constructing the narrative of what occurred at Krang Ta Chan.
6 There are also other documents, the authorship of which has been
7 attributed to people who have testified during this trial
8 segment, but which those people denied were written by them.
9 These are possible DK era forgeries, and looking at the clock, I
10 think I should pause here.

11 MR. PRESIDENT:

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

13 MS. GUIRAUD:

14 Thank you, Mr. President. For the record, my objection is
15 belated, but it is clear that we are facing a situation in which
16 our learned friend is pleading. He's making submissions. What
17 he's doing is not a presentation of documents. It is impossible
18 for us to read the ERNs he has referred to. We have gone well
19 beyond the limit. I hope that the Chamber will give us the same
20 latitude to present our documents. It is clear that our learned
21 friend is pleading.

22 [10.13.42]

23 MR. PRESIDENT:

24 That is true, since the Chamber scheduled the key document
25 presentation, and of course they have their own discretion to

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1 present whatever documents, they seem, are key documents. And we
2 set aside a day for the observations by the other Parties, and
3 that will be held on Thursday, 30 April 2015. If you are to
4 object to the presentation by the other party, then there is no
5 need to have another day for the presentation of your views and
6 objections to those key document presentations. Therefore, please
7 be patient. Take note, and then you can request to be on your
8 feet when the time comes for your observations. That will be the
9 right time for you to express your objections to the documents
10 that you deemed are not appropriate.

11 The time is convenient for a short break. We'll take a break now
12 and return at 10.30.

13 The Court is now in recess.

14 (Court recesses from 1015H to 1031H)

15 MR. PRESIDENT:

16 Please be seated.

17 The Court is now back in session, and I now give the floor to the
18 defence counsel for Mr. Nuon Chea to resume the key document
19 presentation. You have the floor.

20 MR. KOPPE:

21 Thank you, Mr. President. I have four more Krang Ta Chan
22 documents to go. First one is what we believe is a possible DK
23 era forgery, E3/2785. It's a letter signed by San -- a person
24 named San, rather, addressed to Brother An, dated 7 March,
25 English, ERN 00322193; Khmer, 00079115; French, 00753636. The

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1 letter mentions persons who were trying to escape to Vietnam;
2 however, during testimony before this tribunal, Ta San testified
3 that while he accepted that other documents were written by him,
4 "this document was not my handwriting".
5 [10.33.26]
6 The next document, Mr. President, is E3/2423. It's a note from
7 San -- person called San, to an unknown recipient of unknown
8 date, asking for further investigation or interrogation of
9 certain prisoners -- English, ERN 00322210; English -- Khmer,
10 0079128; and French, 00611732. The document mentions two
11 prisoners: Hul and Sean, and asks about their network. Also
12 during his testimony, San -- Ta San said, "This is not my
13 handwriting."
14 Lastly -- finally, document E3/2452. This document appears to be
15 a compilation, including a letter written by Nouv, dated 8
16 October 1977, from Srae Ronoung -- English, ERN 00843036; Khmer,
17 00270998; French, 00872836. The letter in question mentions a new
18 person named Sen Keo, who deserted his unit for two days.
19 Witness Nut Nouv, who appeared in this trial segment, agreed that
20 he had been a Srae Ronoung commune chief during the DK; however,
21 he said twice in his live testimony that the letter was, "not my
22 handwriting" and that he could not recognise the handwriting.
23 Nouv then clarified that there was no other person who may have
24 been called Nouv, and speculated that perhaps someone else, like
25 a clerk, wrote this letter.

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1 [10.35.28]

2 The very last Krang Ta Chan document that I would like to present
3 this morning, Mr. President, is an execution list -- an alleged
4 execution list of Lon Nol soldiers. It is purported -- a
5 purported execution list of Lon Nol soldiers and officials in
6 Tram Kak district, and the document's details are as follows:
7 E3/4083. It's a document named "Number of Prisoners". English ERN
8 numbers are 00323943 until 78; Khmer, 00068024 until 37, and
9 French, 00778851 until 79.

10 As already discussed earlier, there are significant discrepancies
11 between the Khmer document and its English and French
12 translations. In the Khmer document, a notation appears in places
13 throughout the document which we understand is translated as the
14 initials "KT". However, the English version used an "X" instead,
15 while the French version used the word "éliminer". But we contend
16 that it has not been proven that the annotation "KT" appearing
17 throughout the list clearly means "komtech" -- or that "komtech"
18 unequivocally and only means executed.

19 [10.37.12]

20 I further note that at least one soldier's alleged execution date
21 is recorded as 8 January 1979 -- that is, as we all know, one day
22 after the Vietnamese invaded. That is English, ERN 00323945;
23 Khmer, 00068025; and French, 00778863.

24 Finally, Mr. President, I note that the Khmer original document
25 is not an original at all, but a very poor quality copy. Indeed,

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1 the first Khmer to English translators believed they were unable
2 to translate the document, instead placing a document on the case
3 file indicating that the document was illegible, and there was no
4 translation.

5 This concludes, Mr. President, Your Honours, my first part of my
6 presentation. I move now to the second part -- that is, the
7 living and working conditions in Tram Kak -- in the Tram Kak
8 cooperatives. In this very short part, I will present a small
9 group of seven documents.

10 [10.38.28]

11 First, I would like to present a pair of documents that provide
12 some insight into DK policies in relation to health, E3/226.

13 These are minutes of a meeting of the Ministry of Health and
14 Social Affairs, dated 10th June 1976 - English, ERN 00183365
15 ending 67 and 69; Khmer, 00017150, ERNs ending 52 and 55; and
16 French, 00296159 and ERNs ending on 61 and 63.

17 Mr. President, during this meeting several reports were made
18 concerning the health situation in DK, including the following --
19 and I quote:

20 "We were able to distribute medicines to bases as set forth in
21 the Party's direction. Up to date, there was no medicine that was
22 decayed or destroyed by fire. The diet ration could be resolved
23 by ourselves and we made many -- and we made clothes for many
24 units. In May 1976, we did not go and get fishes from the
25 Ministry of Commerce. We were self-supported."

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1 You can find that on English, ERN 00183365; Khmer, 00017150; and
2 French, 00296159.

3 [10.40.14]

4 The following quote is -- reads as follows: "We had produced
5 medicine for malaria and all kinds of medicines and serums.

6 However, we had postponed production of a number of medicines due
7 to a shortage of raw materials. The capability of producing
8 medicine was in line with what Angkar planned." English, ERN
9 00183367; Khmer, 0017152; and French, 00296161. Although I also
10 note that the word "Angkar" does not appear in the Khmer and
11 French version of this document. This report, Mr. President, goes
12 on to say that concerning medicine production -- and I quote,
13 "During the past one or two months, we had received much

14 progress, more experiences in production and quality-controlling
15 sections, and as well as for those who operated the machines" --

16 English, ERN 00183367; Khmer, 00017152; and French, 00296161. And
17 in some readers' document concludes -- and I quote, "The health
18 issue was too much alleviated if compared to last year, but still
19 there was significant shortfall of medicine, both for people and
20 domestic animals diseases. After the war, many poisonous
21 substances made life of people and domestic animals dangerous".

22 End of quote. English, ERN 00183369; Khmer, 0017155; and French,
23 00296163.

24 [10.42.05]

25 The next document is E3/166. That's a "Revolutionary Flag",

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1 Issues 2 and 3, February–March 1976, ERNs 00517833 to 4; Khmer,
2 00063214 until 17; and French, 00492779 till 80. The issue of
3 this "Revolutionary Flag" reported that -- and I quote:
4 "Since modern medicine is currently not plentiful, in their
5 position as leaders, our cadres must think about making large
6 sufficient quantities of traditional medicines of every type to
7 treat and maintain the health of our people, during the offences
8 to put up new paddy dyke systems and dig new canals during this
9 dry season and also for storage for when our people have their
10 hands tied up in the rice-farming offensive during the
11 approaching rainy season." End of quote.

12 It was also noted that -- and I quote, "The Ministry of Social
13 Affairs and Public Health must think about the entire country."
14 We can therefore see, Mr. President, Your Honours, that access to
15 medicine and hospitals was a CPK priority, and moreover there is
16 no indication of a policy to systematically deny New People
17 access to medicine and hospitals.

18 [10.43.47]

19 The second part that I would like to discuss are CPK guidelines
20 about so-called unacceptable behaviour, goes to acceptable and
21 unacceptable behaviour of people and of cadres, specifically
22 during the Democratic Kampuchea regime. And I would like to
23 present four documents in this category. The first is a document
24 that sets out the CPK leadership's overall view of Base and New
25 People. Document E3/216, these are Standing Committee minutes of

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1 24 August 1975, English, ERN 00850976; Khmer, 00008489; and
2 French, 00343377. And in this document, it is written that -- and
3 I quote, "We prefer to talk about the overwhelming majority of
4 Base and New People who are good."
5 CPK leadership was also very careful to give guidelines
6 throughout the DK period about bad behaviour and how this should
7 be corrected.
8 Next -- my next document is E3/10. It's a "Revolutionary Flag" of
9 September and October 1976, English, ERN 00450530; Khmer,
10 00063061; and French, 00491892. In this Issue, E3/10, the CPK
11 leadership stresses that -- and I quote, "Internal contradictions
12 must be sorted out as internal contradictions. They are our flesh
13 and blood. They are not counter-revolutionary. They do not
14 provoke and attack the Revolution. These are contradictions due
15 to misunderstanding. They must be sorted out by successive
16 education." End of quote.
17 [10.46.09]
18 As to how to do this, the "Flag" goes on to explain that -- and I
19 quote, "One way is to educate, to do political, ideological and
20 organizational work within the general framework in order to
21 lessen or postpone the contradiction and not let them be sharp
22 all the time." End of quote.
23 In E3/746, our next document, which is a "Revolutionary Flag" of
24 July 1978, we can read the following on English, ERN 00428305;
25 Khmer, 006450 -- that cannot be correct. I will give you a minute

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1 later. Mr. President, if that's alright, the full number -
2 French, 000611886. The Party leadership comments that -- and I
3 quote: "They must be most vigilant about the stances and
4 attitudes of carrying out work in bureaucratic, Mandarin,
5 authoritarian, militaristic, liberal, single-minded (aekachet),
6 styles, the styles of taking no responsibility for anything
7 vis-à-vis the Party, the Revolution, and the people." End of
8 quote.

9 [10.47.46]

10 And then, "Revolutionary Flag" of July 1976, which is E3/4,
11 English, ERN 00268924; and I apologise, maybe the Khmer number is
12 just a smaller number. It's, I see here, Khmer, 0062918 -- and
13 the Khmer ERN number of the previous document is 006450 -- and
14 the French ERN of E3/4 is 00349978. And this issue, Mr.
15 President, explained that -- and I quote: "In order to build the
16 designated Party branches in the cooperatives, it is imperative
17 to totally eradicate the leftist and rightist viewpoints,
18 'leftist' meaning not believing in the masses, underestimating
19 the mass movement, seeing all the masses as being the enemy;
20 'rightist' meaning just continue to induct them carelessly, not
21 based on the foundation of the Party statutes". It is wrongly
22 said by me, and I apologise, Mr. President, the Khmer ERN number
23 of E3/746 is 00064500, and the Khmer ERN of E3/4, I will give you
24 in a short moment.

25 Mr. President, the final document I would like to present--

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1 MR. PRESIDENT:

2 Counsel Koppe, please repeat the ERN number again, thank you.

3 [10.50.05]

4 MR. KOPPE:

5 Yes, the E -- the Khmer ERN of E3/746 is 00064500, and the Khmer

6 ERN of E34 will follow shortly.

7 Mr. President, the final document I would like to present in this

8 second part of my presentation is an S-21 confession of Chou

9 Chet, the former secretary of the West Zone. As a preliminary

10 measure, I noted that during yesterday's document hearing, the

11 Prosecution's response to our appeal brief was--

12 MR. PRESIDENT:

13 Counsel Koppe, please hold on, and Judge Lavergne, you have the

14 floor.

15 JUDGE LAVERGNE:

16 Yes, Counsel Koppe, what is the objective of using this document?

17 Wouldn't it be better to wait for us to examine the facts

18 regarding S-21 before referring to this document?

19 [10.51.16]

20 MR. KOPPE:

21 Yes. However, the excerpt that I would like to cite relates

22 directly to very relevant people in Sector 13 and District 105.

23 JUDGE LAVERGNE:

24 Counsel Koppe, do you intend to read the content of the

25 confessions provided by Chou Chet at S-21? Are you aware of the

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1 fact that the crimes of torture are part of the accusations
2 levelled against the Accused, the torture at S-21?

3 MR. KOPPE:

4 I'm certainly aware, Judge Lavergne, but I think I'm tending to
5 do the same thing, the exact same thing as a matter of fact, that
6 the Prosecution was doing yesterday, reading a small part of a
7 confession of a detainee. In this specific case, it is a passage
8 relevant to Tram Kak district and Sector 13, so it is our
9 position that if the Prosecution is allowed to read excerpts from
10 alleged confessions at Krang Ta Chan, we would be able to do --
11 we should be able to do the same in relation to this specific
12 S-21 confession from Chou Chet when he speaks about Saom, the
13 Sector 13 secretary, Ta Keav, Saom's deputy; Phen; and like I
14 said, Ta Kiev, a member of the Tram Kak district.

15 [10.52.51]

16 So, I think in essence there is no difference whatsoever between
17 what the Prosecution did, reading excerpts of his confession to
18 make his point and reading -- me, by me parts of the confession
19 of Chou Chet, making our point.

20 MR. PRESIDENT:

21 The International Deputy Co-Prosecutor, you can proceed.

22 MR. LYSAK:

23 Thank you, Mr. President. There is a world of difference between
24 what we did and what Mr. Koppe wishes to start doing right now.

25 First of all, we read from an interrogator's notebook. As is

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41

1 clear from the references I was reading, this is different than a
2 confession signed by a prisoner. The note -- the identification
3 of the prisoners' statements by the interrogators describing why
4 they were arrested -- that is admissible evidence. What Mr. Koppe
5 wants to do now, if I understand, is to read statements in the
6 body of the confession of Chou Chet, making assertions that
7 certain cadres from the Southwest Zone were part of traitorous
8 networks.

9 [10.54.23]

10 He wants to use, and let's be very clear about this, Nuon Chea,
11 in this courtroom, wants to justify killing people by the
12 confessions his people obtained by torture back in the '70s.
13 Nothing could be more barred by the Torture Convention than that.
14 That is exactly the purpose of the Torture Convention, is to
15 prevent people from relying on confessions obtained by torture to
16 prove the guilt of that person. So, to say that we're doing the
17 same thing, I could not disagree more.

18 MR. KOPPE:

19 Mr. President, we made a -- can I -- we made a special appeal
20 ground on this very issue. The Torture Convention absolutely
21 protects the use -- protects the Accused or any accused or
22 suspect against torture. The question whether certain elements
23 from a confession which might possibly be torture-tainted,
24 whether they can be used for other purposes is something now to
25 be debated by the Supreme Court Chamber. But again, I do not see

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1 any difference in why it is that the Prosecution is allowed to
2 use parts of these confessions from Krang Ta Chan for their
3 purposes, and we are not allowed to use parts of these
4 confessions for our purposes.

5 (Judges deliberate)

6 [10.57.33]

7 MR. PRESIDENT:

8 Counsel Koppe, the Chamber would like to advise you that the
9 content of the records as a result of tortures will not be
10 allowed to be read. When the Chamber allows the Prosecution to
11 read that record, only the annotation part was allowed by the
12 Chamber. So, there is a difference between allowing the
13 annotation or the content of that record as a result of torture.
14 Thank you.

15 MR. KOPPE:

16 So I understand that I have to move on. I cannot use part of his
17 confession, which not necessarily is the result of torture. But
18 I'll move on. Just to make sure that I will actually be in time
19 -- yes, I think so.

20 [10.58.52]

21 Mr. President, I move on to document E3/294, and this is a --
22 this is a document relating to the treatment of targeted groups.
23 In this part, I will focus on three specific groups: the Khmer
24 Krom, the Buddhists, and former Lon Nol soldiers and officials.
25 Khmer Krom is coming up all the time in this part of the segment,

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43

1 that's why we would like to say something about it as well. As we
2 said yesterday in our earlier submissions, we questioned whether
3 the Khmer Krom have a place as a targeted group within Case
4 002/02 trial. However, assuming that the Chamber's forthcoming
5 decision determines that they do, I want to mention two documents
6 which we consider to be irrelevant. First of all, E3/294 -- that
7 is a Foreign Broadcast Information Service compilation for
8 October '78, which includes a 30 September 1978 report by the
9 Phnom Penh Domestic Service in Cambodia on the visit of Japanese
10 Friendship Association delegation to the Southwest region.

11 [11.00.08]

12 English, ERN 00170173, and there are no Khmer or French
13 translations. E3/294 details how the delegation has travelled to
14 Takeo where they interviewed some Khmer Krom who were described
15 as "victims of Vietnamese persecution and suppression", and who,
16 "have taken refuge in Kiri Vong district". The report continues
17 that, "the friendly Japanese visitors were shocked by the tales
18 told by the Khmer Krom compatriots about the massacres and
19 atrocities perpetrated by the Vietnamese with the aim of
20 extermination the Khmer race in a most fascist and savage
21 manner".

22 E3/2435 presented by the Prosecution yesterday -- that is a
23 document from the Angk Ta Saom commune chief dated 26 April 1977,
24 and addressed to the Tram Kak district office requesting
25 instructions in relation to the treatment of Khmer-Vietnamese

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44

1 families - English, ERN 00322141; Khmer, 00271001; and French,
2 00612225.

3 The request details the situation of Khmer-Vietnamese couples who
4 request authorisation to go to Vietnam. It notes that some
5 Cambodian husbands had married "Yuon" wives and some "Yuon" wives
6 had married Cambodian husbands. And the request said that if they
7 were all "Yuon", they would send them to Angkar, but requested to
8 know: "If it was like this, what would Angkar decide then? Please
9 inform us."

10 [11.02.03]

11 The second part is relating to the treatment of Buddhists. And
12 there are two documents - or, rather, one document and one video
13 clip concerning the Buddhists that I would like to show. And I
14 would like to start with the video, which is video E3/3201R. And
15 this video depicts a visit by a delegation of top Vietnamese
16 leaders to the DK in 1975. As the video shows, the delegation is
17 taken to visit and admire the Silver Pagoda at the Royal Palace
18 and the statues of Buddha it contains. The footage also clearly
19 shows that the CPK key leaderships are in attendance, including
20 Nuon Chea and Pol Pot and the other members of the Standing
21 Committee. I would like to note that it is the footage that we're
22 interested in, not the commentary provided. But I do highlight
23 that the commentary emphasises that most Cambodians are
24 Buddhists.

25 Mr. President, I would now like to request the Chamber and the AV

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45

1 Unit to play this video on screen. The relevant time point is
2 from minute 6.30 till 8.55, that's two and half minutes. And AV
3 Unit staff, it is the file called Clip 1.

4 [11.03.59]

5 MR. PRESIDENT:

6 Yes, you may proceed. And the AV Unit, please show the video clip
7 as requested by the Nuon Chea's defence.

8 [11.04.15]

9 (Audio-visual presentation - video)

10 [Interpreter] "The majority of Kampuchean people are Buddhists,
11 and they hold firm belief in the National United Front. Under the
12 leadership of the Communist Party, Kampuchean people have engaged
13 bravely and vigorously in the resistant movement which, since
14 1970, resulted in the defeat of 100,000 American soldiers and
15 their henchmen. Not only did we survive the campaign of intensive
16 carpet aerial bombardment by B-52 bombers of the American
17 imperialist. After a period of more than 100 days of non-stop
18 storming attack, we finally fault the Khmerisation plan initiated
19 by the American imperialist. And tens of thousands of the puppet
20 soldiers had been smashed by our Kampuchean armed forces. We
21 completely liberated our country on 17 April 1975, and brought
22 peace and harmony to our motherland.

23 A friendly visit to Kampuchea by the delegation of Labour Party
24 of Vietnam denotes the greatest significance. The visit coincides
25 with the fundamental situational shift in Vietnam, Kampuchea, and

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46

1 Laos. The struggle by the people in the three nations has
2 resulted in the greatest success. The revolutionary movement in
3 the three-country Indo-China has reached a new stage and brought
4 along never before seen historical symbol of hope. Under the
5 leadership of the Communist Party of Kampuchea led by Comrade
6 Secretary General Saloth Sar during the last three months--"
7 (End of audio-visual presentation)

8 [11.06.50]

9 MR. KOPPE:

10 The next document, Mr. President, I would like to present is
11 E3/2818; that is a book from Ian Harris called "Buddhism Under
12 Pol Pot". I would like to refer to English ERNs 00704011 ending
13 in 033 until 5, 318 till 21, 083 until 4, 892 and 996 until 7;
14 for Khmer and French, Mr. President, the book is only partially
15 translated, and not these specific -- some of these specific
16 passages are, so I would highlight that when I read these
17 passages to you.
18 Ian Harris suggests there are other causes for poor treatment of
19 the Buddhists, such as the US bombing of pagodas and the fact
20 that monks were used as spies during the republic. Harris noted
21 that during the civil war, one third of pagodas were destroyed by
22 American bombing -- that is, English, ERN 00704015 -- until 7;
23 Khmer, 00791318 till 21, which were specifically targeted for
24 strategic purposes, that is, English, ERN 00704083.
25 [11.08.39]

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47

1 And Ian Harris also writes that during the DK, there were
2 locations where people were still allowed to perform Buddhist
3 worship during the DK - English, 00704011 -- or individuals given
4 such permission at English, ERN 00704033 until 5. Harris also
5 suggested -- and I quote: "Despite the very significant losses
6 sustained by the population of which disrobed monastic formed a
7 part, there was no policy for the systematic liquidation of monks
8 in Democratic Kampuchea." And you can find that at English, ERN
9 00704083. Moreover, Harris notes that it was a fact that the
10 Khmer Republic used monks as spies. The spies that were caught
11 were killed because of their being a spy, which is unrelated to
12 the fact that their status as monks as well. You can find that on
13 English, ERN 00703892 and 00703996 until 7. When monks were
14 executed, Harris said these words: "Not primarily because of
15 their commitment to the Buddhist religion, but was related to the
16 fact that they were considered to be enemies associated with
17 higher levels of the previous regime"-end of quote - English, ERN
18 00704084.

19 [11.10.13]

20 And finally, Mr. President, in Ian Harris' book, it says that two
21 years of research indicates that (inaudible) and her assistance
22 were rarely executed simply by virtue of their seniority. And you
23 can find that at English, ERN 00704084.

24 I would like to end my presentation with another video, Mr.

25 President, Your Honours. It's a video which relates to former Lon

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48

1 Nol soldiers and officials and their practices during the civil
2 war. It is E3/3116R. And what I would like to show you is an
3 excerpt of Australian journalist John Pilger's documentary,
4 "Cambodia: The Bloodiest Domino". And the relevant excerpt is two
5 minutes from 22.22 to 24.11. And the documentary is explaining
6 that eating the enemy's liver is an ancient tradition of warfare
7 in Cambodia, and the film shows this practice done by Lon Nol
8 soldiers. And if you allow me, Mr. President, then I would like
9 to tell the AV Unit that this is the file called Clip 2.

10 [11.11.50]

11 JUDGE FENZ:

12 Perhaps you could explain the relevance of this video for this
13 part of the trial.

14 MR. KOPPE:

15 I actually have my point here after the video.

16 JUDGE FENZ:

17 But the relevance should be explained before we decide whether
18 you can show it or not for us to be able to rule.

19 MR. KOPPE:

20 That's fine. Well, former Lon Nol soldiers and officials are
21 usually portrayed as helpless victims of a brutal Khmer Rouge.
22 This video suggests otherwise. It shows that some practices often
23 willed out this example -- examples of the Khmer Rouge as
24 uniquely depraved in humanity, and recently highlighted, by the
25 way, by Ambassador David Scheffer in his speech at an American

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49

1 university -- had in fact long been practised by the Lon Nol army
2 and had been documented and screened in the public domain. And
3 this video, in our view, perfectly illustrates the point we have
4 sought to make today and throughout this trial so far, and that
5 we need to set aside the popular narrative of what happened in
6 the DK -- what we think we know, and come to this trial with a
7 critical and open mind. So I think it is relevant -- this video
8 is very relevant especially also in the light of Say Sen's
9 testimony and how it is reported. I think we tried to show this
10 video earlier, and then I remember you said this is something
11 that we should not put before a witness but rather present it
12 during a document hearing. The eating -- the practice of eating
13 livers of dead corpses is apparently something that was done
14 frequently by Lon Nol soldiers and officials and I think it could
15 necessarily put this practice in context in relation to Say Sen's
16 testimony. So I think although it is footage that shows events
17 prior to 1975, I think it's very relevant. And it is on the case
18 file. It's been there for a long time on the case file. I think
19 we should be allowed to show these two minutes to the Chamber.

20 (Judges deliberate)

21 [11.15.51]

22 MR. PRESIDENT:

23 I'd like to hand the floor to Judge Claudia Fenz to respond to
24 the request by the defence counsel for Nuon Chea. Judge Fenz, you
25 have the floor.

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50

1 JUDGE FENZ:

2 The Chamber hopes that the idea is not to support an argument
3 that whatever somebody has done before he is potentially being
4 killed justifies this killing. So, for the very limited purpose
5 to put the practice of eating livers and various forms of
6 cannibalism which have been broadly discussed in this Tribunal
7 and in the press into context, we are allowing to view this video
8 or the part you want to show us.

9 [11.16.49]

10 MR. KOPPE:

11 Thank you, Judge Fenz. It is video Clip 2 for the AV Unit, Mr.
12 President.

13 MR. PRESIDENT:

14 The AV staff, please play the second video clip as identified by
15 Counsel Koppe for Nuon Chea.

16 [11.17.16]

17 (Audio-visual presentation - video)

18 [Interpretation from audio-visual document] "While Sihanouk was
19 rallying the countryside, in the cities Lon Nol was rallying
20 popular support for the expulsion of the Vietnamese from their
21 sanctuaries. In the ensuing confusion, atrocities were committed
22 against the Vietnamese who had lived in Cambodia for generations.
23 While thousands of innocent Vietnamese were killed, ancient
24 traditions of warfare would dictate a more gruesome fate for
25 enemy soldiers.

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51

1 Culturally, there were great gaps between the western perceptions
2 of what was acceptable and Cambodian ideas of what was
3 acceptable. When we had filmed all of Cambodians cutting open
4 bodies and ripping out the liver and eating them, western opinion
5 was pretty shocked by the Lon Nol forces doing that. But this is
6 what Cambodians are doing -- were doing by tradition. It is said
7 that it's getting the spirit, the strength of your enemy. It's a
8 ritual. Quite frequently in the early years of the war, as a mark
9 of friendship, they would ask you to come and join them in eating
10 the liver of the dead. On one occasion, I was having lunch with
11 the governor of one of the provinces, and out on the lawn in
12 front of the governor's residence, there were all these so-called
13 Viet Cong bodies, corpses laid out, all of them slashed open and
14 the liver taken out. And the truck arrived, and they started
15 tossing these dead bodies onto the truck. It was not very
16 appetising."

17 (End of audio-visual presentation)

18 [11.19.09]

19 MR. KOPPE:

20 And with this video clip, Mr. President, I conclude my document
21 presentation.

22 MR. PRESIDENT:

23 Thank you. And the time is also convenient for us to have a lunch
24 break. We take a break now and return at 1.30 this afternoon.

25 Security personnel, you are instructed to take Khieu Samphan to

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52

1 the waiting room downstairs and have him returned to the
2 courtroom this afternoon before 1.30.

3 The Court is now in recess.

4 (Court recesses from 1120H to 1331H)

5 MR. PRESIDENT:

6 Please be seated.

7 The Court is now back in session and the Chamber hands the floor
8 to the defence team for Khieu Samphan for their key document
9 presentation in relation to Tram Kak Cooperative and Krang Ta
10 Chan Security Centre.

11 Counsel, you have the floor.

12 [13.32.29]

13 MR. VERCKEN:

14 Thank you, Mr. President. Good afternoon to all of you. I'm going
15 to break up my presentation in several parts. First, I will begin
16 by reading out the 12 moral commandments that the Khmer Rouge had
17 created for themselves way before 1975, and then I will deal with
18 the cooperatives by referring to the documents -- referring to
19 their creation. And I will speak in my third part about documents
20 relative to the estimation of the death toll in Takeo province
21 and in Tram Kak district, and then I will finish -- if I have the
22 time, and I hope I will -- by reading -- by bringing up problems
23 linked to the local cadres.

24 [13.33.44]

25 Now, with regard to the 12 moral commandments which we believe

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53

1 demonstrate how much the people were put forth by the Khmer Rouge
2 -- how they were placed in the centre of all of their thoughts,
3 we are very far here from anarchy -- from destruction and we are
4 now clearly in context where human beings are respected, or at
5 least where there's a quest for this and I would like to refer to
6 the list drawn up by Mr. François Ponchaud in his book,
7 "Cambodia: Year Zero", which is at E2.3 -- 243.1, ERN French,
8 008762135; Khmer, 00862433 and 34; and English, 00862085 to 86.
9 I'm going to quote for us first a little comment that was made by
10 the author, François Ponchaud, who states -- or who writes the
11 following:
12 "This complete adherence is based on the disrespect for Angkar's
13 commandments. The radio mentions the 12 revolutionary
14 commandments and refugees who have fled from the liberated zones
15 in 1973, already knew these commandments. The Khmer Rouge
16 soldiers who were guarding the French embassy the following day
17 -- the day following the fall of Phnom Penh would recite these
18 commandments every day.
19 Commandment 1: The workers and peoples -- people you will serve,
20 honour and the people -- you will serve the people no matter
21 where you are full-heartedly and with your entire mind."
22 [13.35.54]
23 "Commandment 3: You will respect the people without harming its
24 interests, without harming its possessions; and you will not
25 thief -- not even one chilli -- and you will not pronounce any

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54

1 offensive words against the people.

2 Commandment 4: You will ask forgiveness from the people if you
3 have faulted against the people, if you have offended the
4 people's interest and you will retribute to the people what
5 belongs to them.

6 Commandment 5: You will follow the rules of the people whether
7 they're standing or sitting.

8 Commandment 6: You will do nothing indecent towards women.

9 Commandment 7: You will not consume food or drink that is not
10 produced in revolutionary ways."

11 [13.36.57]

12 "Commandment 8: You will never gamble.

13 Commandment 9: You will not touch the people's money and you will
14 not lay your hands on the people's possessions and you will not
15 thief -- not even a can of rice.

16 Commandment 10: Towards the people and the peasants, towards the
17 entire population, you will be humble. However, in the face of
18 the imperialists and the enemies, you will nourish your hatred
19 with strength and vigilance.

20 Commandment 11: You will join the people in their production
21 efforts.

22 Commandment 12: You will fight against all enemies and all
23 obstacles with determination and courage ready for any sacrifice,
24 even if you have to lose your life for the sake of the workers,
25 the peasants, for the Revolution, for the Angkar, without any

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55

1 hesitations and relentlessly." End of quote. [Free translation]
2 [13.38.18]
3 Now I'm going to speak about the questions relative to
4 cooperatives and in continuation of what I have just read out --
5 these 12 moral commandments -- I'm going to focus a little bit on
6 the Khmer Rouge government's idea of the cooperatives and of --
7 and on the objectives -- and throughout the entire duration of
8 the regime because I'm going to mention scope from three
9 "Revolutionary Flag" issues -- one from 1975, one from 1976, and
10 one from 1977. The first is a "Revolutionary Flag" from
11 October/November 1975, indexed E3/748. I'm going to quote first
12 of all the French, ERN 00499693; English, 00495810; Khmer,
13 00063248; and I will quote -- this is a paragraph falling under
14 the heading "A few issues relative to the building of agriculture
15 and the economy". It's in paragraph 5, "medicine in the health of
16 the population".
17 "For the people to be in good health, for the people to be in
18 good shape, it is necessary that medicine is available to them to
19 cure their illnesses. The health institutions have to focus on
20 three issues that are ongoing. The first -- we have to suppress
21 malaria in three years in a radical way as of 1976 to 1978.
22 Second, it is necessary to suppress malaria that exists now
23 thanks to this medication. And three, we have to cure the
24 different illnesses as they appear, such as cholera, chicken pox,
25 et cetera, et cetera."

1 [13.40.45]

2 Now I would like to move on to another page in the same

3 "Revolutionary Flag" issue, French, ERN 00499701; Khmer, 0063258;

4 English, 00495818. Under the - the title that -- we have to -- it

5 is written: "Today, tomorrow and in the days to come, each member

6 of the Party must have in mind clearly and on a constant basis

7 the necessity of fulfilling the population's needs -- the needs

8 -- food needs necessarily, clothing needs and needs for housing,

9 needs for medicine, also needs for education and leisure. This

10 ideology and this duty represent a prestigious form of morality

11 for all communists."

12 [13.42.02]

13 On page -- on the following page, French, ERN 00499702; English,

14 004995819; Khmer, 00063259; under the heading "The resolution of

15 the subsistence means of all people is relevant to all Party's

16 political lines: The promotion of the people's living standard is

17 not a separate duty but it is strictly related with all Party's

18 political lines. In particular, it is one of the most important

19 keys to national defence and reconstruction within the Party's

20 collectivism. Now, political sense, in practice if the people's

21 living standards are promoted, the people's forces in health will

22 gradually be improved. The people will be happy to support the

23 revolutionary power and the Party. It simply means that when the

24 people receive decent food, clothing and lived in harmony with

25 the revolutionary power, and the enemies would not just be able

57

1 to destroy it. It is therefore necessary to manage the people, to
2 think about the politics and on the ideology and on the
3 organisation and to promote all aspects of their living
4 standards."

5 [13.43.49]

6 Now I'm going to skip a paragraph to move on to heading 2:

7 "Economic sense: Political sense cannot be separated from
8 economic sense. If the people have sufficient food and clothing,
9 the labour forces will be increased and the rice productions and
10 the factory activities will also prosper.

11 In our daily practice, we can produce rice, clothing and steal at
12 the same time." This regards the first issue of "Revolutionary
13 Flag" of 1975.

14 MR. PRESIDENT:

15 Defence Counsel, please hold and the International Lead Co-Lawyer
16 for civil parties, you have the floor.

17 [13.44.53]

18 MS. GUIRAUD:

19 Thank you, Mr. President. This is not an objection but if I do
20 not say what I want to say now, I will never be able to say it.
21 It was our intention to present a certain number of documents
22 regarding the policies in the cooperatives. We were informed by
23 your Senior Legal Officer that it was not recommended to present
24 documents on the general policy with regard to cooperatives. At
25 the last minute, we completely reorganised our presentation. This

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58

1 is why we presented a limited number -- a limited amount of
2 documents yesterday. So I'm not raising an objection because I
3 have no objection with regard to the Defence presenting documents
4 concerning politics, but we have to be clear for the record, that
5 we based ourselves on the principle that it was not desirable to
6 present documents on the policies and of course, our presentation
7 would have been very different if we would have taken the same
8 latitude that the Defence is taking today.

9 (Judges deliberate)

10 [13.47.07]

11 MR. PRESIDENT:

12 Judge Lavergne, you have the floor.

13 JUDGE LAVERGNE:

14 Yes, the Chamber would like the Khieu Samphan defence to focus on
15 issues that are directly related to Tram Kak district. Now with
16 regard to the policies, in particular policies that were
17 implemented at the national level, there will be opportunities to
18 speak about this later, in particular when we work on further
19 segments of this trial. This is why we would like these kinds of
20 documents not to be presented now.

21 [13.47.54]

22 MR. VERCKEN:

23 I would like to challenge this. I am simply defending my client.
24 In this case, Mr. Khieu Samphan was not at Krang Ta Chan prison,
25 he was not in Takeo province, so bringing up cooperatives without

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59

1 speaking about policies whose -- following my objective of
2 defending Khieu Samphan, I don't see how I can do otherwise than
3 to present to you documents that concern the idea that the Khmer
4 Rouge government had of how to respect their people and of how
5 they thought it was necessary to meet their needs and then to
6 bring up the questions relative to the creation of these
7 cooperatives and the issues linked to this. And of course, you
8 heard this with the earlier presentation. There are points that
9 are specifically relative to the death toll in this area -- in
10 this region, so I believe that I'm really meeting my objectives
11 -- that is to say, defending Khieu Samphan and I'm not doing
12 anything else. So if you forbid me today, during this hearing,
13 which the Defence is participating, walking backwards, you know
14 that we had a lot of trouble earlier with these hearings that
15 were destined for the press and for the people and we decided
16 today to participate in this hearing because this was -- we were
17 going to provide our reply. This is an adversarial hearing and
18 this is why we decided to participate in the presentation of
19 these documents making an effort to not plead, but if you forbid
20 me now to speak and to quote from "Revolutionary Flag" issues
21 relative to the policy and to the idea that the Khmer Rouge
22 government had in the creation of their cooperatives, I think I
23 should just sit down and just let the day go by because I think
24 at this point I might as well just -- you know, stop.

25 [13.50.25]

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60

1 MR. PRESIDENT:

2 Judge Lavergne, you have the floor.

3 JUDGE LAVERGNE:

4 Counsel Vercken, the Chamber does not intend to challenge your
5 right to defend Mr. Khieu Samphan. The Chamber simply wishes to
6 draw your attention to the fact that this trial contains several
7 segments. That one of the segments will concern indeed the role
8 of the Accused persons as well as the policies that were
9 implemented in what we allege is a form of joint criminal
10 enterprise and this will indeed involve the cooperatives. Well,
11 simply, what we want to tell you is that it was maybe not today
12 -- today is not necessarily the best moment to present documents
13 that refer, it appears, to a segment that will come along later
14 in the trial.

15 MR. VERCKEN:

16 I understand, but cooperatives does not seem to be part of a
17 later phase of the trial.

18 JUDGE LAVERGNE:

19 Counsel Vercken, we're speaking about Tram Kak today and Krang Ta
20 Chan. We're not speaking about cooperatives at the national
21 level.

22 MR. VERCKEN:

23 Well, then good afternoon to all of you and we will stop right
24 now.

25 [13.51.50]

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61

1 MR. PRESIDENT:

2 What about the National Co-Counsel for the defence? Do you have
3 any presentation to make?

4 MR. KONG SAM ONN:

5 No, Mr. President, I don't. However, I'd like to provide my
6 observation regarding the objection and the issue which has been
7 discussed thus far. Although we focus on Tram Kak Cooperative and
8 Krang Ta Chan Security Centre, they are related in general to
9 other cooperatives or security centres throughout the country.
10 For instance, Tram Kak cooperative is in principle related to
11 other cooperatives established throughout the country. Therefore,
12 it is possible just to focus on the principles applicable at the
13 Tram Kak Cooperative and other principles apply to other
14 principle (sic) throughout the country? And even the Prosecution
15 did not differentiate between the principles or the practices at
16 Tram Kak Cooperative and other cooperatives throughout the
17 country. Therefore, if we focus only on the distinction between
18 this particular cooperative and other cooperatives, it will be
19 impossible for us to make the key presentation and if that is the
20 main focus, then the Co-Prosecutors should have done so far --
21 should have done that so far.

22 (Judges deliberate)

23 [13.54.34]

24 MR. VERCKEN:

25 Mr. President, Mr Khieu Samphan would like to say something.

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62

1 MR. PRESIDENT:

2 Please hold on as the Bench is deliberating on the issue.

3 Khieu Samphan, you are now given the floor.

4 MR. KHIEU SAMPHAN:

5 Thank you, Mr. President, and good afternoon Mr. President, Your
6 Honours and everyone. I'd like to confirm that I did not know any
7 particular instances of what happens at Krang Ta Chan or at Tram
8 Kak, and I would like to appeal to the Chamber to allow my
9 counsels to make key document presentation based on the document
10 that I have in my hand and that my counsels have -- that is, on
11 the policies of the DK, and on the contrary I have been accused
12 of part of a joint criminal enterprise although I did not know
13 anything about what happened at Krang Ta Chan or at Tram Kak
14 Cooperative.

15 [13.56.02]

16 MR. PRESIDENT:

17 The International Deputy Co-Prosecutor, you have the floor.

18 MR. LYSAK:

19 A couple of points: First, the suggestion by counsel that we were
20 presenting on general policy relating to cooperatives, I'd like
21 to know what he is referring to. I just looked through my list of
22 documents; they were all specifically related to Tram Kak. As you
23 heard, the civil parties were precluded from doing exactly what
24 the Defence wishes to do now. And second, with regard to Mr.
25 Khieu Samphan's assertions, I'd like to know whether he is

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63

1 waiving his right to remain silent and will subject himself to
2 questioning on whether he knows anything about Tram Kak and
3 whether he knows anything about these policies. And third, I
4 would remind the Defence, they have repeatedly objected to us, to
5 questioning even on subjects within Tram Kak. They object to Angk
6 Roka as irrelevant, they object to discussion of Khmer Krom
7 within Tram Kak as irrelevant, they are constantly seeking to
8 confine the scope of this trial except when they get on their
9 feet. Now they want to talk about cooperatives nationwide.

10 [13.57.27]

11 MR. PRESIDENT:

12 Judge Claudia Fenz, you have the floor.

13 JUDGE FENZ:

14 Let me make an attempt to de-escalate that. First of all to
15 clarify for, certainly the public, but perhaps also for counsel
16 and specifically for Mr. Khieu Samphan: Is it understood that the
17 issue here is not whether you are allowed to present documents,
18 but when they should be done? Is this understood? If so, because
19 then the issue is back where it belongs, and that's organisation.
20 The question is: When do we hear those documents? And when it
21 comes to this, did counsel have the opportunity to read the email
22 we sent to the Co-Lead Lawyers which basically dealt with a
23 related issue? And where the Chamber clarified that we would
24 appreciate if at this point in time, counsel would concentrate on
25 documents related to Krang Ta Chan as opposed to policies, which

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64

1 will be discussed later, with an opportunity to present those
2 documents. My question is: Is this understood or do we still have
3 to clarify further misunderstandings?

4 [13.59.05]

5 MR. VERCKEN:

6 The first thing is that we are continuously told that we do not
7 even know if the second trial is going to reach its conclusion,
8 so this is something that has been said very often. And we were
9 pressured and we divided this major case into several sub-cases
10 because there were risks that the defendants would not survive
11 the trial. And to answer the prosecutor, I would say that Angk
12 Roka and the Khmer Krom are not part of the Indictment, so I
13 don't therefore understand how we can even talk about this in the
14 second case. So I do not -- so I believe here that the
15 Prosecution is stepping out of the scope of the trial more so
16 than the Defence.

17 [14.00.01]

18 And now with regard to what Judge Fenz has just told us, this is
19 the main issue. You used, for example, the word "lenient" this
20 morning when you said with regard to an objection - so, this
21 morning, again, you reminded us of the difficulty of these
22 document hearings. For us, these hearings are completely
23 unacceptable, or were unacceptable in their first version that
24 you set up in the first case and today these hearings are
25 possible because they are adversarial. And here, I'm quoting from

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65

1 documents that are relevant -- I mean "Revolutionary Flag" -- I'm
2 not quoting from documents that are new to anyone. I'm bringing
3 up problems that concern the Khieu Samphan defence, that concern
4 his responsibility, that concern his adherence to certain
5 principles and certain values, and why he followed them. Well,
6 maybe, okay, you don't want me to bring up these points now, well
7 I won't do so. Therefore, my -- and my presentation this morning
8 was linked to this and since this is the situation, I believe
9 that I should stop now and possibly, if God gives a long life to
10 Khieu Samphan, to his defence team - well, me or others, someday
11 will bring up these issues before you.

12 (Judges deliberate)

13 [14.06.00]

14 MR. PRESIDENT:

15 You have the floor Judge Lavergne.

16 JUDGE LAVERGNE:

17 Thank you, Mr. President. The Chamber would like to emphasise the
18 following. The Chamber has to ensure legality for all the
19 Parties, particularly regarding the preparation of all the
20 Parties on this point of key documents. The Chamber notes that as
21 part of such preparations, it has been seized of an application
22 by the Lead Co-Lawyers for the civil parties aimed at clarifying
23 the types of documents they could present. The Chamber responded
24 to Counsel Guiraud and that response was circulated to all
25 Parties, including Counsel Guissé, Counsel Vercken and the legal

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66

1 assistants working in their defence team. So, today, I am
2 surprised by the fact that Khieu Samphan's defence is surprised
3 at the attitude of the Chamber because the line regarding
4 presentation of documents was known well before today. The
5 purpose of the presentation of these documents was known well
6 before today. So if the Khieu Samphan team wishes to present
7 documents specifically regarding Tram Kak and if they wish to do
8 so then we have to put an end to their presentation.

9 [14.07.54]

10 MR. VERCKEN:

11 I would like to point out that as we understand it, the documents
12 we're presenting, we just started presenting them because the
13 civil party made an objection which was not proper because these
14 documents are key documents for Mr. Khieu Samphan, and as far as
15 we're concerned, these documents are key documents as regards the
16 understanding, the assessment of the criminal responsibility of
17 our client, if at all there is any such criminal responsibility.
18 That is the subject that we are concerned with today as we
19 present these key documents. So, if indeed the Chamber is of the
20 view that our presentation is not untimely, then we consider that
21 we cannot make any presentation and intervene to that effect.

22 [14.08.59]

23 JUDGE LAVERGNE:

24 Mr. Vercken, you are again distorting the words of the Chamber.
25 We have never said that those documents were not key documents.

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67

1 It is a matter of preparation and it's a matter of time. If you
2 had received the message the Chamber sent to Counsel Guiraud
3 concerning the preparation of this key documents hearing, if you
4 did read it why did you not react to it? So if you had thought
5 that the assessment was inappropriate --

6 [14.09.32]

7 MR. VERCKEN:

8 I believe what you are saying is not inappropriate (sic). Let me
9 read the text of that message, in English -- forgive me for my
10 accent: "[...] attitude as to how they wish to utilise the time
11 allocated to them for presentations on key documents. At this
12 stage, however, the Trial Chamber would be most assisted by
13 presentations on key documents relating to events in Tram Kak
14 district; presentation of evidence relating to events which
15 occurred elsewhere may generally not be directly relevant or at
16 least not timely."

17 So yes, indeed I read that message, Honourable Judge, but I
18 didn't consider that that message debarred me from referring
19 generally to the documents relating to Mr. Khieu Samphan's
20 criminal responsibility and the fact that he was involved in the
21 participation of a joint criminal enterprise in the region of
22 concern to us today -- that is the cooperatives, and this
23 creation of such cooperatives. We consider that this mail is
24 particularly clear as regards any prohibition of the Defence to
25 use documents regarding policy, especially as far as Mr. Khieu

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68

1 Samphan in particular is concerned. We consider that it is
2 crucial for us to use these documents regarding the purpose of
3 this trial and this particular phase of the trial regarding
4 cooperatives. So we do not agree with the Chamber's analysis
5 regarding the consequences of that mail. So we believe it is
6 improper to prevent the Khieu Samphan team to present key
7 documents it intended to present today in keeping with all the
8 rules imposed on the Parties.

9 [14.12.06]

10 JUDGE FENZ:

11 It would appear that everybody but the Khieu Samphan defence has
12 understood the email the way it was meant. I give it to you the
13 language is polite, it doesn't order. It is a polite language.
14 Nevertheless, it has been understood by everybody, with the
15 exception of the Khieu Samphan defence. And before I ask the last
16 question, in order to avoid any confusion, again this is not of
17 an issue of if you are allowed to present documents, or certain
18 documents, but when. So this is not an issue of rights of your
19 clients being neglected. This is an issue of the Chamber
20 organising the trial in a manner which treats all the Parties
21 equally. Having said all that, the last question is, and now,
22 confronted with the understanding that pretty much everybody had
23 about this email, do you have documents relevant to Krang Ta Chan
24 to present today or not?

25 (Short pause)

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69

1 [14.14.54]

2 JUDGE FENZ:

3 Would Counsel need a break to sort through his documents? How
4 long?

5 MR. VERCKEN:

6 Five minutes, I just need to discuss the documents with my
7 client.

8 MR. PRESIDENT:

9 The Chamber now declares a short break until now - from now until
10 2.30, to leave time for the defence counsel for Mr. Khieu Samphan
11 to discuss with their client.

12 (Court recesses from 1415H to 1430H)

13 MR. PRESIDENT:

14 Please be seated.

15 The Court is now back in session and the Chamber gives the floor
16 to the defence team for Khieu Samphan for the key document
17 presentation in relation to Tram Kak Cooperative and Krang Ta
18 Chan Security Centre.

19 Counsel, you have the floor.

20 [14.31.18]

21 MR. VERCKEN:

22 Thank you, Mr. President. Well, in order to answer your last
23 questions, well, the question that was put to us before the
24 break, Mr. Khieu Samphan and his counsel consider that the three
25 "Revolutionary Flag" issues I was going to quote from briefly,

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70

1 and the few documents that I also planned on presenting to you in
2 -- because I believe that this is the aim of this hearing, also
3 to present these documents to the public and to the press --
4 where these documents are directly related to his position with
5 regard to Tram Kak and the Krang Ta Chan Security Centre.

6 And therefore, Mr. Khieu Samphan believes that if his Defence is
7 not allowed to quote from documents that pertain to his Defence,
8 he does not wish the present -- our presentation to continue.

9 This is our position with regard to the issue at hand.

10 [14.32.49]

11 MR. PRESIDENT:

12 The International Lead Co-Lawyer, you have the floor.

13 MS. GUIRAUD:

14 Yes, thank you, Mr. President. Let me be clear about my position,
15 and my colleague understood we were not objecting. I stood up
16 because I wanted this to be on the record, so that we could use
17 this record later. So my point here is not to object. I simply
18 wanted to draw the Chamber's attention to the fact that we
19 considered that this email prevented us from presenting certain
20 documents and this is the only purpose of the comments I made
21 before the break.

22 (Judges deliberate)

23 [14.35.19]

24 JUDGE FENZ:

25 Counsel, from the channel to be specific: Are you saying that

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71

1 these documents are pertaining to Krang Ta Chan or to the scope
2 as provide -- as foreseen in the email? Yes or no? If yes, ask
3 your questions or present, sorry, present these documents, not
4 ask questions. If no, tell us and it can be done at a later
5 stage. So the first assessment is obviously for you.

6 MR. VERCKEN:

7 This is a document regarding -- this is a document hearing
8 regarding Tram Kak Cooperative and the Krang Ta Chan Security
9 Centre. We are the Khieu Samphan defence team. We are here to
10 defend Khieu Samphan. We are not here for any other reason. We
11 are here only to defend Khieu Samphan, and you're asking us to
12 present documents, key documents, not key documents just for the
13 sake of history, but key documents for Khieu Samphan's defence.

14 [14.36.31]

15 In the context of the cooperatives and Krang Ta Chan and the way
16 we understand Khieu Samphan's stance with regard to the
17 cooperatives and with regard to one of the security centres in
18 Cambodia between '75 and '79, so we're selecting key documents
19 that seem to us to pertain to Khieu Samphan's position back then,
20 or in any case to the level -- to his seniority back then all the
21 way down to the detail. And then of course, this is the issue of
22 all trials in which people who are accused are very far removed
23 from the facts that are committed on the field. There -- facts
24 that were committed at Krang Ta Chan and on the other hand, we
25 have Khieu Samphan who, for most of his time, was in Phnom Penh.

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72

1 So we have to know what you want.

2 If you want us to participate in very generic hearings on key
3 documents, we have refused to do so until now, but today we
4 accepted because we have the possibility of replying, which did
5 not exist beforehand. And now we're being told that the Defence's
6 position and the key documents that the Defence selected does not
7 correspond to the objective of the hearing in terms of the topic
8 that is being dealt with.

9 [14.38.04]

10 Of course we take note of this, but of course I believe that this
11 mail, which was only sent to us in English, which of course does
12 not necessarily make things easy for our team, which is
13 practically 100 per cent French-speaking, maybe it was very clear
14 in the fact that it gives the possibility to everyone to find his
15 own explanation, his own interpretation of this email, but that's
16 another issue.

17 So yes, we considered that the documents that we were about to
18 present fall within the scope of this hearing. But this does not
19 appear to be the Chamber's position because with -- because in
20 response to a non-objection, you said that you did not want me to
21 bring up issues that relate to Khieu Samphan's position. Khieu
22 Samphan therefore ordered me to not continue with this
23 presentation if the Chamber deems that the documents we intend to
24 present for his Defence and to explain his position do not suit
25 the purposes of today's hearing.

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73

1 (Judges deliberate)

2 [14.39.56]

3 JUDGE FENZ:

4 So this is primarily about the role of the Accused, Counsel?

5 Counsel, do you have your attention? If I understood you

6 correctly, we'll try to analyse the relevant part of what you

7 said. His evidence is primarily about the role of the Accused for

8 which we have a specific section. Yes or no?

9 MR. VERCKEN:

10 The relevant parts of what I said were maybe very limited because

11 what I was trying to make clear to you was that what we want to

12 do is put in perspective in a practical, as well as theoretical

13 sense issues concerning the cooperatives and the Krang Ta Chan

14 Security Centre. I said basically putting things in perspective

15 more than Khieu Samphan's role because here the point was to read

16 out excerpts from "Revolutionary Flag", which everybody agrees

17 represents the doctrine of the Khmer Rouge regime, so it's

18 interesting to know in such documents in -- in "Revolutionary

19 Flag", what was the internal doctrine of the Khmer Rouge power in

20 relation to cooperatives and in relation to the population? And

21 then maybe we could go more into detail, so we have been

22 speaking, however, about this non-objection for the past hour and

23 15 minutes, so time is indeed running short.

24 (Judges deliberate)

25 [14.43.04]

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74

1 MR. PRESIDENT:

2 The Chamber does not have a concrete view as to the understanding
3 of what has been described by the counsel for Khieu Samphan.

4 However, the Chamber will grant you the floor to continue with
5 your key document presentation this afternoon, and you may
6 proceed, Counsel.

7 JUDGE FENZ:

8 To add -- and we will decide on a case to case basis if there is
9 a problem with this document. Despite our best efforts, it was
10 impossible for us to figure out if you think that these documents
11 pertained to today's segment or not. So please, present and we'll
12 proceed on a case to case basis.

13 MR. VERCKEN:

14 I apologize, but under these conditions, I cannot work. I cannot
15 work on a case-by-case basis. I have sent my document list a week
16 ago. No one made any comments about this and nobody told me that
17 I was on the wrong path. So I'm going to present document. It's
18 been one hour already, an hour and 15 minutes that we're focusing
19 on one non-objection. So yes, frankly speaking, I must confess
20 that yes, I -- I apologise, but, you know, the idea of speaking
21 again and being interrupted again because apparently this does
22 not meet the Chamber's needs. I think that's well, it's a bit
23 exasperating and yes, so either you let me speak, but if you are
24 going to -- if this is going to lead to endless debate each time
25 on the validity or not of the documents I'm presenting, I think

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75

1 that this is a bit of a waste of time.

2 [14.45.09]

3 JUDGE LAVERGNE:

4 Counsel Vercken, we give you the floor. Do you want to speak or
5 not? Do you want to present these documents or not? You have now
6 the possibility of doing so. That's what the Chamber is doing. Do
7 you want to do so? Yes or no?

8 MR. VERCKEN:

9 I will try. And the same for -- what about the hour and 15
10 minutes that we wasted?

11 JUDGE LAVERGNE:

12 Counsel Vercken, you had the time to prepare yourself, so maybe
13 you did not prepare yourself so I think that you're going to have
14 to, you know, face the consequences of your lack of preparation
15 and for the lost hour and 15 minutes.

16 MR. PRESIDENT:

17 Counsel Vercken, you have been given the floor by the Chamber,
18 and the Chamber will consider if you have more presentation to
19 make. However, you are still having more time until 4 o'clock and
20 I believe the time may be sufficient for your presentation. You
21 should proceed.

22 MR. VERCKEN:

23 No, Mr. President, that will not be enough time. I am hearing now
24 that I haven't prepared myself, but I sent my document list a
25 week ago to all of the Parties. An hour and 15 minutes is taken

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76

1 away from my presentation, so now, and on top of that I'm being
2 accused of not being well prepared. Now I absolutely disagree
3 with the way the Chamber is behaving to the Defence, and I think
4 it's better maybe just to stop.

5 [14.47.03]

6 MR. PRESIDENT:

7 The Chamber is of the view that the counsel is not performing his
8 duty as a professional counsel, and you have been granted the
9 floor and we also say, if you are -- if you need more time, the
10 Chamber will consider that. However, you refused to make your key
11 document presentation in relation to Krang Ta Chan Security
12 Centre and Tram Kak Cooperative. For that reason, the Chamber
13 decides to adjourn today's proceeding.

14 Mr. Khieu Samphan, it seems that you are now changing your
15 position in relation to your rights to remain silent. Please
16 specify that.

17 [14.48.07]

18 MR. KHIEU SAMPHAN:

19 As I have stated, I'd like to maintain my right to remain silent.
20 However, when I need to provide my clarification to the Chamber
21 and I'd like the Chamber to grant me the floor, and that is the
22 rights that I am seeking from the Chamber. And please don't
23 mention that my counsel does not have the ability to prepare the
24 documents. We have been interrupted on so many occasions.

25 [14.48.43]

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77

1 MR. PRESIDENT:

2 Your counsel has been given the floor and Mr. Khieu Samphan, you
3 are instructed to sit. Please sit down. And you have the right to
4 ask your counsel to make the document presentation and of course
5 the Chamber has the discretion to manage the document, and now
6 the Chamber decides to adjourn the proceedings and we resume on
7 Thursday, 30 April 2015, commencing from 9 o'clock. This
8 information is for the Parties and the general public.

9 Security personnel, you are instructed to take Khieu Samphan and
10 Nuon Chea back to the detention facility, and have them returned
11 to participate in the proceedings on the morning of Thursday, 30
12 April 2015 before 9 o'clock.

13 The Court is now adjourned.

14 (Court adjourns at 1449H)

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