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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

30 April 2015

Trial Day 276

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
 SON Arun
 LIV Sovanna
 KONG Sam Onn
 Arthur VERCKEN

Trial Chamber Greffiers/Legal Officers:
 CHEA Sivhoang
 Maddalena GHEZZI

Lawyers for the Civil Parties:
 Marie GUIRAUD
 CHET Vanly

For the Office of the Co-Prosecutors:
 Dale LYSAK
 SREA Rattanak

For Court Management Section:
 UCH Arun
 SOUR Sotheavy

List of Speakers:

Language used unless specified otherwise in the transcript

Speaker	Language
MS. GUIRAUD	French
MR. KONG SAM ONN	Khmer
MR. KOPPE	English
MR. LYSAK	English
THE PRESIDENT (NIL NONN Presiding)	Khmer
Mr. SON ARUN	Khmer

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 observations and responses by

6 other Parties to the presentation of key documents related to

7 Tram Kak cooperative and Krang Ta Chan security centre.

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

9 and other individuals at today's proceedings.

10 THE GREFFIER:

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

12 are present. Mr. Nuon Chea is present in the holding cell

13 downstairs. He has waived his right to be present in the

14 courtroom. The waiver has been delivered to the greffier. It

15 should also be noted that Liv Sovanna, who is a counsel has been

16 requested by the Nuon Chea defence team, is present in the

17 courtroom as well.

18 [09.03.45]

19 MR. PRESIDENT:

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

21 The Chamber has received a waiver from Nuon Chea dated 30th April

22 2015, which states that due to his health -- that is, headache,

23 back pain, he cannot sit or concentrate for long and in order to

24 effectively participate in future hearings he requests to waive

25 his right to participate in and be present at the 30th April

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1 2015, hearing. He advises that his counsel advised him about the
2 consequences of this waiver, that in no way it can be construed
3 as a waiver of his right to be tried fairly or to challenge
4 evidence presented or admitted to this Court at any time during
5 this trial.

6 [09.04.45]

7 Having seen the medical report on Nuon Chea by the duty doctor
8 for the Accused of the ECCC dated 30th April 2015, who notes that
9 today, Nuon Chea has a chronic back pain and dizziness when he
10 moves and recommends that the Chamber shall grant him his request
11 so that he can follow the proceedings remotely from the holding
12 cell downstairs.

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

17 The AV unit personnel are instructed to link the proceedings to
18 the room downstairs so that he can follow the proceedings. That
19 applies for the whole day.

20 [09.05.49]

21 Pursuant to Internal Rule 22.2(a) of the ECCC Internal Rules, the
22 Chamber will proceed with the formality as -- at the request of
23 the Nuon Chea defence. The Chamber has received a request from
24 Nuon Chea's defence to allow -- for the Chamber to allow Mr. Liv
25 Sovanna to be a Defence Counsel for Nuon Chea during the

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1 proceedings. The request has been attached to the submission to
2 the Chamber and has been placed in the case file. The Chamber is
3 of the view that Mr. Liv Sovanna is qualified to defend the
4 Accused, Nuon Chea before the Chamber and for that reason the
5 Chamber requests Mr. Son Arun to make a formal request to the
6 Chamber for Mr. Liv Sovanna. And Mr. Son Arun you may proceed
7 with the formality.

8 [09.07.05]

9 MR. SON ARUN:

10 Good morning, Mr President, Your Honours. My name is Son Arun,
11 Nuon Chea's defence counsel. I have the honour to present Mr. Liv
12 Sovanna, who has been a legal advisor to Nuon Chea's defence and
13 he is here now with me and I seek recognition from the Chamber.

14 MR. PRESIDENT:

15 Thank you, Mr. Son Arun. And Mr. Liv Sovanna you are now
16 recognised as a Defence Counsel for Nuon Chea in Case 002 for the
17 purpose of the proceedings before this Chamber. You may be
18 seated.

19 The Chamber would like to hand the floor to the Co-Prosecutors
20 and to the Lead Co-Lawyers for Civil Parties to respond to the
21 key document presentations by the Defence teams in relation to
22 Tram Kak cooperative and the Krang Ta Chan security centre. Both
23 the Prosecution and the Lead Co-Lawyers have a combined time for
24 half a day session. You can proceed.

25 [09.08.30]

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1 MR. LYSAK:

2 Thank you, Mr. President, good morning, Your Honours, good
3 morning, Counsel. And to let you know, I expect I will finish my
4 remarks probably before the morning break and I have been told by
5 the Civil Parties' Lawyers they have no comments, so I expect we
6 will finish well within -- early in terms of our allocated half
7 day.

8 As Nuon Chea's counsel noted in his presentation the other day,
9 there were 138 documents that were listed in what was the
10 Co-Prosecutor's, Annex 8, an annex of the surviving
11 contemporaneous records from Tram Kak district and Krang Ta Chan
12 security centre. The English translations of those documents
13 totals presently about 700 pages and as Mr. Koppe also correctly
14 noted, there are many -- there are a number of documents on the
15 case file from that Annex that are in the case file as one entry
16 or one document but are in fact multiple documents that were
17 copied together at some point in time. So the number of actual
18 surviving records from Tram Kak and Krang Ta Chan is probably
19 more -- substantially more than 138, probably somewhere around
20 300 individual records.

21 Because of that ,Your Honours, it is quite revealing that neither
22 Defence team was able to present any documents helpful to their
23 case from amongst those hundreds of surviving records from this
24 model district, this place that was recognised by Nuon Chea,
25 Khieu Samphan and the Central Committee as one of three model

1 districts in all of Democratic Kampuchea.

2 [09.10.52]

3 The Khieu Samphan defence could not find even a single document
4 to present from amongst the surviving records of Tram Kak. And
5 for the reasons I will now explain, the Tram Kak records that
6 were presented by the Nuon Chea defence only serve to further
7 evidence the systematic crimes and atrocities that took place in
8 this model district of the Communist Party of Kampuchea.

9 Your Honours, the first two groups of documents that the Nuon
10 Chea defence presented were as they described them, documents
11 showing that some prisoners had been subjected to re-education by
12 the communes before they were sent to Krang Ta Chan, and second,
13 documents showing that the communes sought instructions or
14 guidance from Angkar, the district, regarding what to do with
15 perceived enemies.

16 [09.11.59]

17 In our submission these documents do not help the Defence. All
18 they serve to prove, Your Honours, is that the security
19 apparatus, through which perceived enemies of the CPK were
20 arrested, sent to re-education offices and subjected to
21 interrogation, torture and execution, was a systematic organised
22 process overseen by the Party leaders through a hierarchical
23 chain of command.

24 All of the examples read by the Nuon Chea defence were people who
25 ultimately ended up at Krang Ta Chan, a place where there was no

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1 re-education, only death for 99% of the prisoners sent there, as
2 we have heard in this Trial. How does it help the Defence that
3 some of these people were repeatedly persecuted and sent for
4 re-education before ending up at Krang Ta Chan?

5 [09.13.20]

6 Second point, Your Honours, on this, almost every example that
7 was presented by Mr. Koppe in these documents, were people whose
8 alleged wrongdoing for which they were being re-educated was
9 stealing food to eat. By stealing we are talking about people who
10 were hungry, who would take a coconut from a tree, who would dig
11 up cassava from the ground. And the documents presented by the
12 Defence show that such people sometimes were subject to
13 re-education by their unit or the commune. Not sure what that
14 re-education would be, trying to train their minds perhaps to
15 forget about how hungry they were? But the documents also show
16 that for those who could not forget how hungry they were and who
17 kept looking for food to survive, their ultimate fate was Krang
18 Ta Chan.

19 [09.14.42]

20 It is as if the Defence argument is, "sorry, Mr. New Person,
21 sorry we could not feed you, but we tried to re-educate you. Now
22 that has failed, you must go to Krang Ta Chan and die for
23 stealing food to eat."

24 Your Honours, the Defence describe these documents as showing a
25 picture of Tram Kak that was not, in their words, "universally

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1 brutal". That is the best they can do, to show that Tram Kak
2 district was not universally brutal.

3 [09.15.29]

4 Let me take just a couple of examples of the documents the
5 Defence presented to you on this issue of re-education and
6 instructions from Angkar. I will give you two examples of
7 documents presented by the Defence. The first one is E3/2424, at
8 Khmer ERN, 00270755 - 56; English ERN, 00322220; and French ERN,
9 00612219; again the document E3/2424.

10 Your Honours, this is a document from Angk Ta Saom commune sent
11 to -- addressed to "Comrade Elder Brother of District 105" --
12 "Comrade Elder Brother Police of District 105", regarding a
13 person named Kong Vaet. And let me read to you the first part of
14 this document and the last part. The first paragraph: "To
15 Respected Brother, it is about the activities of the enemy named
16 Kong Vaet which were mostly stealing, he was such a great
17 stealer, who had been educated so far by the group, unit and by
18 the collective meetings for the past three years, but he was not
19 deterred. After he was individually educated by a hot measure he
20 had only confessed and said that the revolution knew it."

21 And the last paragraph of this report states as follows:

22 "Therefore, I would like to physically send over the above three
23 enemies along with this enclosed report for further interrogation
24 in order to seek for the undercover networks of those enemies
25 hiding in the villages and communes and to take further measures

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1 in order to achieve according to the guidelines of the Party."

2 [09.18.20]

3 This document was submitted, again, to try to show that life in
4 Tram Kak district was not universally brutal. And for that the
5 Defence presents to you a document recording a person who was
6 educated by hot measures in his commune or unit. They present a
7 document which shows that people who stole food were branded as
8 enemies and subjected to interrogation to try to find a network
9 of enemies, and all of this is stated to be in accordance with,
10 "the guidelines of the Party".

11 Your Honours, we know that Mr. Kong Vaet ended up at Krang Ta
12 Chan after this report, because he appears in some of the
13 notebooks from the prison, in two of them in fact. The first is
14 in one of the prisoner lists in Krang Ta Chan notebook E3/4083,
15 E3/4083, at Khmer, 00068026; English, 00323949; and French,
16 0077856; where you will find he is one of the -- his name appears
17 in the list of prisoners. His name also appears in one of the
18 interrogation notebooks E3/4092, E3/4092, at this time I only
19 have the English ERN for you, which is 00834828, 00834828. And I
20 can tell you in those notes the interrogator records that Mr.
21 Kong Vaet stole potatoes five times, coconuts three times and
22 corn twice.

23 [09.20.58]

24 My second example document, that was presented by the Defence
25 during this -- a part of their presentation that I will comment

1 on, is one of the examples of Party officials behaving,
2 "cautiously". Those were the words of Nuon Chea's counsel. And as
3 an example of that he presented document E3/2453, E3/2453, at
4 Khmer ERN, 00270784 - 785; English ERN, 00388586; French ERN,
5 00611775. Let me read this document to you, Your Honours, in its
6 entirety.

7 [09.22.14]

8 It is an 18th October report from Nhaeng Nhang commune, addressed
9 to the district Party that reads as follows: "Number 1. Enemy
10 situations that have appeared in the base area are as follows:
11 Luo Eng-Tri, Suos Ti, Yun Yean and Bang Nan. All four of these
12 persons have carried out activities previously reported to the
13 Party, and we have subsequently monitored them because they have
14 assembled together at Tumnob Chrey Tong (phonetic) as was
15 previously reported. Now, today they had another meeting and they
16 went to contact one another in the vicinity of Samlanh
17 sub-district in 106, because this land is on the border and when
18 they mind cattle they meet one another. There is no grasp of what
19 plans they have -- there is no grasp of, what plans they have are
20 unknown. They get along very well with one another."

21 [09.23.38]

22 "My analysis, my analysis is that they have plans to smash our
23 revolution. For example, they beat the cattle hard when they
24 plough. At the re-education meetings they do not listen much and
25 they do not pay attention to their work. The activities of all

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1 four of these persons are untrustworthy."

2 "About their positions: Luo Eng-Tri was a pilot in aviation;

3 Number 2, Yun Yean was secretary of the war materials warehouse;

4 Number 3, Suos Ti was a military police chief; and four, Bang

5 Nan, was a soldier, a corporal."

6 The report concludes: "May the Party be informed about the four

7 of them and please provide us information on whatever the Party

8 decides."

9 [09.24.48]

10 And that is the end of the report from the commune. What was the

11 decision of the party about these four suspicious people who got

12 along well with another and liked to spend time together? In this

13 same document there is a response. On the very same day Ta San

14 wrote to Comrade Brother Kit: "I have decided that these four

15 persons should be arrested."

16 Your Honours, this is Nuon Chea's idea of behaving cautiously:

17 arresting people just because they look suspicious and might be

18 enemies. That was life in Tram Kak district.

19 [09.25.52]

20 The document I just mentioned to you made reference to the

21 analysis of the commune chief that they may have plans to smash

22 the revolution. So let me now address very briefly one of the

23 other submissions or issues that were presented by Nuon Chea,

24 which was documents that show a different meaning of the word

25 smash. And Your Honours, in every country of the world I would

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1 imagine there are words that can have different meanings in
2 different contexts. In English, saying that I'm going to kill a
3 person means something, means that. But the word 'kill' can be
4 used for other purposes. I could say that someone is killing my
5 dream to become Prime Minister.

6 [09.26.57]

7 The same is true in Khmer, obviously. The word smash, when it is
8 used to smash in reference to smashing a cooperative, smashing
9 the revolution has one meaning, and it has a very different
10 meaning when we are talking about smashing a person, smashing a
11 prisoner. When the Khmer Rouge talk about smashing prisoners and
12 people, they are talking about executing them. The fact that the
13 word has different meanings in other contexts doesn't change
14 that.

15 [09.27.38]

16 Another category of documents that was presented that I will
17 quickly address, the Nuon Chea defence made some presentations on
18 documents that referenced hot methods of interrogation or
19 torture. Let me make two points on this, two comments. First,
20 there is simply no basis for the Defence to assert that the use
21 of torture would have been documented every time it took place.
22 There is no evidence of any such practice, or any such rule.
23 Because of that it's not probative for the Defence to cite the
24 number of times the word 'hot method of interrogation' appears in
25 a notebook and then conclude from that that it was not common. We

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1 have to consider, in addition to the documents, obviously, the
2 testimony of the victims and cadres to fully understand the
3 interrogation practices at Krang Ta Chan.

4 [09.28.59]

5 Second comment, the Defence in its presentation overlooked that
6 references to hot and cold methods of interrogation were not
7 limited to Krang Ta Chan documents or notebooks. It is not only
8 in the notebooks kept by the interrogators that we see these
9 references. In my presentation I referenced for you -- I will not
10 repeat the documents, but I referenced for you a number of
11 documents in which commune and district officials are discussing
12 the use of hot methods or cold methods of interrogation. That is
13 a compelling evidence, Your Honour, that refutes the Defence
14 position here, as it shows that the use of these interrogation
15 methods, the use of torture was commonly known and authorised by
16 the Party leadership in Tram Kak.

17 [09.30.03]

18 Another issue that was raised by Nuon Chea in discussing, or in
19 his document presentation, was the argument that because we don't
20 have colour originals we can't verify Pech Chim's testimony about
21 red ink being used when instructions were given to smash
22 prisoners. Let me point out here that Pech Chim was speaking
23 about the practice of his sector secretary Saom, who was sector
24 secretary until the end of '76 or the start of 1977. And as Your
25 Honours are aware, the surviving documents form Krang Ta Chan,

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1 and from Tram Kak of course, are only a sample or portion of the
2 documents from that district and from that security office, and
3 they are mostly the documents from 1977 and the first part of
4 1978. To my knowledge there are no documents from 1975, there are
5 a few records from 1976, but the bulk of the documents that were
6 found, that were fortunately found and survive, related to the
7 period after sector secretary Saom was sector chief. So, the
8 issue raised by Mr. Koppe, in other words, is an academic one
9 because we don't have records, we don't have any surviving
10 examples from the period that Ta Saom was sector chief in which
11 he was using the practice described by Pech Chim to mark red Xs
12 next to the names of prisoners.

13 [09.32.06]

14 And let us not forget why it is that we don't have a set of all
15 the records from Tram Kak, Krang Ta Chan and other locations of
16 Democratic Kampuchea. It is because the Khmer Rouge, before
17 fleeing into the mountains, systematically tried to burn and
18 destroy all the records, the records that documented the
19 atrocities they committed while they were in power.

20 I turn now to the issue of documents that are alleged forgeries.
21 Your Honours, let me first start by saying that having, in my
22 view, failed to present any substantive documents that are in any
23 way helpful to the Defence, they then turned to doing something
24 that really they were not supposed to do in this hearing. The
25 issues -- this is an issue relating to admissibility. We were

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1 instructed not to deal with that. We had hearings two years ago
2 at which the admissibility of these documents was debated and
3 decided, so these arguments come a little late. Nonetheless, they
4 were made. He is making this allegation, and I will respond.

5 [09.33.47]

6 Mr. Koppe pointed to a document that had two sets of handwriting
7 in it, and wants to jump to the conclusion that therefore this
8 must be a forgery. We have heard testimony, Your Honours, that
9 the district, commune and prison officials sometimes were not
10 highly literate people. Moreover, like any people who have
11 leadership roles, they have assistants who would write documents
12 for them that they would then sign. So, if there are two
13 different sets of handwriting in a document, and there are many
14 documents like this, it only means that two people were involved
15 in preparing that document. That one person, an assistant, wrote
16 it and the district, if it was coming from the prison chief, the
17 district leader, the commune chief, signed it. The fact there are
18 two sets of handwritings in a document in no way, in no way,
19 means it's a forgery.

20 Another argument, or another document that was -- the Defence
21 suggests, is a forgery is one page out of E3/4145, E3/4145. It is
22 the Khmer page, 00068736. Mr. President, I have a slide of that
23 document. With your leave, I'd like to show that on the screen at
24 this time while I comment on it.

25 [09.36.04]

15

1 MR. PRESIDENT:

2 You may proceed.

3 MR. LYSAK:

4 Thank you. If we can show the first slide on the screen, please?

5 In this first slide, this -- here you see the entire page, the
6 entire document. Which is -- has a long name, but the first part
7 of it is "Names of Prisoners at M105". It is a handwritten list.

8 Now, there were two points put forward by Counsel Koppe here. One
9 is, this must be a forgery because it uses M105. As, Your
10 Honours, are well aware, M is short for "munti" in Khmer, which
11 means "office". So this is just someone using a shorthand term
12 for Office 105, a shorthand reference to an office that was
13 commonly called the Education Office 105, Re-Education Office
14 105. There is nothing in the fact that someone wrote "munti 105"
15 that means this document is a forgery.

16 [09.37.37]

17 Another general comment about this assertion: at the same time
18 that Counsel suggests that this handwritten prisoner list is a
19 forgery, he acknowledges that another document within E3/4145,
20 which is a typed version of almost the same list, is a genuine
21 document. And I cannot help but question and wonder, where I come
22 from, something we would call "a crazy conspiracy theory".

23 And let me specifically show you why that is. The second argument
24 that Counsel made as to why this document must be a forgery was
25 that it contains incorrect biographical information for Meas

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1 Sokha's relatives. His mother Hun Kimseng, who I believe in this
2 one is referred to as Hun Nha, her alias Nha, and his sister Meas
3 Sarat, who is referred to here as Meas Rat.

4 [09.38.52]

5 So, if we can go back to the slide again, please? I want to focus
6 you on the part of the document that Mr. Koppe says contains
7 incorrect biographical information about these two, and that
8 therefore this must be a forgery.

9 Can we put the second slide on the screen? So in this slide, Your
10 Honours, I've zoomed -- we've zoomed in on the part of the
11 document that has the biographical information of the prisoners.
12 The mother, Hun Nha, and the sister, Meas Rat, are the third and
13 fourth persons on the list.

14 If we could go back to the document again, please? And when you
15 look at that, Mr Koppe has made this assertion without checking
16 the Khmer original. The problem seems to be in how the document
17 was translated in English. Because when you look at the actual
18 document, the information that is next to the names of these two
19 people is exactly correct. For Hun Nha, there is nothing listed.
20 There is just lines in the original. For Meas Rat, what is listed
21 is Srae Kruo village, Cheang Tong commune.

22 [09.40.32]

23 Now, in interpreting that document, a translator filled in
24 information for Hun Nha that is actually blank in this document.
25 And based on that, Mr. Koppe has jumped to the conclusion that

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1 this is a forgery. I take you through this to show you why this
2 is a crazy conspiracy theory. Because when you check, when you
3 look at it, there is nothing to this.

4 Let me look at one more group of documents in which Counsel has
5 suggested there may be forgeries. This is handwritings, some of
6 the notes written by former district chief Ta San, who came to
7 this Court. And if I could put on the screen now, I have a slide
8 in which I've put together four -- four of the notes written by
9 Ta San, identified as Ta San documents. If you bear with me for a
10 moment. And if you look at the screen, these are four documents,
11 all of which bear the name, San. I can tell you one of these
12 documents is one that Mr. Koppe suggests is a forgery. One or two
13 of them have been admitted by San to be his writing, and another
14 one wasn't shown to him. I challenge you to figure out which one
15 is the forgery. They all look the same.

16 [09.42.52]

17 And if we could go back to this document again on the screen?

18 There's one other thing I want to draw to your attention. One
19 thing, a unique habit that Ta San had, was using an exclamation
20 point in his -- when he was addressing people in the start of his
21 notes. You don't see this very often. You will see it quite
22 frequently in Ta San's handwritten notes.

23 Your Honours, I am at a loss to explain why it is Counsel thinks
24 that there are legitimate, authentic documents written by Ta San
25 in these records, but that someone has gone to the trouble to

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1 forge it. And in fact Ta San said nothing to that kind. If you go
2 back to his testimony, he didn't say they were forgeries. He
3 simply said that some documents, "it doesn't look like my
4 handwriting". As I've already explained, it would be expected
5 that some of the documents issued from him as district chief
6 would have been written out by assistants for him.

7 [09.44.36]

8 Would he remember that handwriting 30 years later? Probably not.
9 To suggest that these are forgeries, there is no basis for that.
10 These documents have been admitted, and we are well past the
11 point in time to be following down these conspiracy theories.
12 The last document that was addressed by Counsel in this group was
13 E3/4083, E3/4083. Your Honours, this is a -- one of the Krang Ta
14 Chan notebooks, and it is a notebook that contains prisoner lists
15 rather than interrogation notes. Honestly, I did not understand
16 any of the arguments as to why this was a forgery. I do note Mr
17 Koppe made the point that there's a reference in there to a
18 prisoner being executed on the 8th of January, 1979. Now, I don't
19 know. I can't sit here today and tell you whether that was an
20 error, or whether Krang Ta Chan, as a remote prison, hadn't
21 gotten word that it was time to flee, and that there were in fact
22 people there on the 8th of January, 1979. I would submit to you
23 it is a far more reasonable conclusion that perhaps, as was the
24 case at S-21, word was late getting to Krang Ta Chan, that it was
25 time to head for the mountains.

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1 You will remember, and this may well be, by the way, why there
2 are some surviving records at Krang Ta Chan. You will remember
3 that the reason there are surviving records at S-21 is because
4 Duch did not get the word early that it was time to go, and he
5 did not have time to destroy the records before he fled. So, to
6 suggest that because there's a reference here to the 8th of
7 January, 1979, that means that someone has gone to the immense
8 trouble to create a forgery, I would suggest is simply
9 unreasonable and baseless. What that reference does mean, is that
10 someone may -- there were still people at this prison on the 8th
11 of January, 1979.

12 [09.47.41]

13 And thank God, that all the records were not destroyed. This
14 issue, this challenge, this belated challenge to the authenticity
15 of these records, Your Honours, we've already argued this. Let me
16 just say the evidence that we've heard over the last few months
17 has, beyond any doubt, confirmed the reliability, the accuracy,
18 the authenticity of these records.

19 We've gone to pains -- to trouble during our examination of
20 witnesses, to try to show to you how the witnesses' testimony are
21 corroborated and supported by these documents. Sometimes it can
22 be a little tedious to take you through these documents, but we
23 did that for -- for an important reason, which is to show that
24 these documents are in fact reliable and authentic, that they --
25 when prisoners have come here, and talked about relatives. Meas

20

1 Sokha. We have found references to those people in these books.
2 When names come up of people who were commune chiefs, these
3 documents correspond to that. We see the people who are in the
4 records the chiefs of communes and the chiefs of districts
5 correspond to exactly the people who are identified by the
6 witnesses.

7 [09.49.23]

8 We also -- from time to time, I like to show what I call
9 interconnections between the documents, that people who are
10 referenced in a report from a commune, we then see that same
11 person's name in a prisoner list or in an interrogation notebook.
12 And I don't enjoy having to put together ERNs in three languages
13 and spend time reading that. I've looked forward to the day when
14 I no longer have to read ERNs in three languages. The reason I go
15 through that tedious process is to demonstrate exactly that these
16 documents are authentic. They are reliable. They are the only, I
17 would remind you, surviving records from any district in
18 Democratic Kampuchea. They show us what life was like there at
19 the base level. And like the documents in Phnom Penh that show
20 what went on S-21, these documents show what life was actually
21 like for normal people, Base People, New People, who found
22 themselves in this district.

23 [09.50.44]

24 A couple of additional subjects raised by the Defence in its
25 presentation, that I will quickly cover. The Defence presented a

21

1 group of documents that they characterized as guidelines from the
2 Party on unacceptable behaviour, and one of the ones I will
3 comment on is E3/216, E3/216. These are the Standing Committee
4 minutes for the 24th of August 1975. When Mr. Koppe presented
5 this document to you, he read an excerpt that talked about -- the
6 excerpt he read, I quote: "We prefer to talk about the
7 overwhelming majority of Base and New People are good."

8 [09.51.48]

9 What he left out was the sentence before that, which states:
10 "Things are OK with the Base People, but be vigilant against
11 no-good elements amongst the New People, taking advantage of
12 things. Because these contemptible would not stay with us even if
13 we were to give them sufficiency, two cans of rice a day."
14 He also didn't mention that, a couple of paragraphs before, the
15 Standing Committee minutes say that every type of horrible
16 element exists among the hundreds of thousands of New People. And
17 he didn't mention that, in the list of measures of the Standing
18 Committee, number 2 reads: "Use a mix of old and modern weapons,
19 especially spikes to place along the border. Make a plan on how
20 many spikes to be used in one month. All kinds of spikes must be
21 used: those at the height of a person's foot, sole, instep and
22 shin up to the stomach."

23 [09.53.04]

24 Now, neither the reference that Counsel made, nor the ones I've
25 made directly relate to Tram Kak district. I'm responding simply

22

1 because this has been presented to you as an example of the Party
2 establishing guidelines on acceptable or unacceptable behaviour.
3 And if you're going to look at this document, I think it is
4 highly revealing about what the Standing Committee considered to
5 be acceptable.

6 [09.53.14]

7 And finally, Your Honours, let me comment on the last part of the
8 presentation. Nuon Chea presented a number of documents to this
9 Chamber, documents or video, on the subject of the treatment of
10 the Khmer Krom and Buddhists -- actually a couple on each
11 subject. And in doing so, I remark that he made use of Khmer
12 Rouge Party propaganda. He used a broadcast by the Khmer Rouge
13 radio, which described one of those highly orchestrated trips
14 taken by foreign visitors, where there was a staged meeting with
15 what was supposedly a group of Khmer Krom refugees. And he showed
16 you a DK propaganda film in which you see Pol Pot, Nuon Chea and
17 others at a pagoda.

18 Let me say simply this, Your Honours, Mr. Koppe asks -- asked you
19 to put aside conventional wisdom, to put aside the popular
20 narrative of what happened in Democratic Kampuchea, and to come
21 with open minds. But then what he tried to feed to us is
22 regurgitated Khmer Rouge propaganda. I would submit, Your
23 Honours, that what Mr. Koppe really asks all of us to put aside
24 is common sense, logic and reason. That is something, of course,
25 that no one can do. Thank you for the opportunity to comment on

1 the Defence documents. That ends my remarks.

2 [09.55.59]

3 MR. PRESIDENT:

4 Thank you. I now give the floor to the Lead Co-Lawyer. You may
5 proceed.

6 MS. GUIRAUD:

7 Thank you, Mr. President. As Mr. Dale Lysak has informed you at
8 the beginning of this hearing, we have no comments on the
9 documents presented by the Nuon Chea Defence.

10 MR. PRESIDENT:

11 So, I give the floor now to the Defence team for Mr. Nuon Chea.

12 MR. KOPPE:

13 Thank you, Mr. President. Good morning, Your Honours. Good
14 morning, Counsel. Mr. President, we will start first with our
15 objections to the Prosecution's document presentation. We have
16 objections to most documents they presented, so it seemed to us
17 that the most logical way to structure our comments was to follow
18 the Prosecution's thematic breakdown and document sequence.

19 [09.57.31]

20 The first theme that the Prosecution explored was the conditions
21 in the Tram Kak cooperatives. The first document they presented
22 which we are objecting to was a secondary source, Ben Kiernan's
23 book, "The Pol Pot Regime", document number E3/1593. And in
24 addition to Ben Kiernan's book, the Prosecution also focused
25 heavily on two other secondary sources, namely Henri Locard's

1 report, called "Tram Kak District in the Grip of the Khmer Rouge"
2 -- that is, document D313/1.2.16. And Meng-Try Ea's book, "The
3 Chain of Terror", document number E3/2120. Therefore, Mr.
4 President, some of my comments at this stage are general comments
5 applying also to those books, although later I will separately
6 address these books as well.

7 [09.58.42]

8 A review of the Prosecution's witness lists for this trial shows
9 that only Henri Locard appears on its primary list of requested
10 experts and witnesses. Ben Kiernan appears only as -- on the
11 reserve list, while Meng-Try Ea does not appear at all. And at
12 this stage, none of the three have been scheduled to testify.
13 During its document presentation, the Prosecution devoted a
14 significant amount of its limited time to detailing the
15 conclusions of each of these three authors. This signals the
16 apparent importance of the authors' documents to the
17 Prosecution's case. Given that importance, our first objection is
18 that these documents cannot be relied upon as evidence in any
19 significant way, unless Kiernan, Locard and Ea appear in Court to
20 explain their methodology, to enable us to test the strength of
21 their conclusions and to learn more about their views,
22 particularly in the case of Kiernan, who we believe to be a
23 biased Marxist scholar, strongly supporting the Vietnamese cause,
24 I might add.
25 Unless they do so, these documents should be regarded as

1 unreliable and with very low probative value. It is well known
2 that Ben Kiernan is unwilling to testify in these proceedings.
3 Therefore, we should be particularly cautious at this point to
4 give much weight to his views, if at all. And as such, I will not
5 go through all of the various passages that the Prosecution
6 highlighted.

7 [10.00.34]

8 However, Mr. President, I will give one example, which
9 highlights the need to further investigate Kiernan's methodology,
10 and that is the passage cited in which Kiernan claims that, and I
11 quote, "Malnutrition took a heavy toll in 1977-78" in the
12 Southwest Zone. That is ERN English, 00678719; Khmer, 00638012;
13 and French, 00639223. Kiernan states that this conclusion is
14 based on what appears to be very, and I quote, "partial
15 statistics" but mostly just anecdotal accounts of people from the
16 area. It seems clear that Kiernan does not give sufficient
17 weight, or any weight, to the impact of the long raging civil war
18 prior to the DK period. However, the civil war's devastation was
19 very well-documented, including in refugee reports and aid agency
20 reports, which Kiernan knew about. In fact, in another part of
21 the book, Kiernan quotes at length from a USAID report on the
22 conditions in Cambodia just before the evacuation of Phnom Penh.
23 [10.01.58]

24 As Kiernan notes, USAID said that, and I quote, "When US rice aid
25 stopped in April '75, Cambodia was on the brink of starvation,

1 and that if ever a country needed to beat its swords into
2 ploughshares in a race to save itself from hunger, it is
3 Cambodia." End of quote. That is English ERN, 00678526; Khmer,
4 00637453 - 4; and French, 00638793.

5 Mr. President, before moving to my next document, I just want to
6 note that the Prosecution also relies on Ben Kiernan's book in
7 order to highlight the treatment of the Khmer Krom, which is --
8 which was the Prosecution document presentation's second thematic
9 focus. Now, as I have already discussed this matter in prior
10 hearings, I will not belabour the point here again, but I would
11 like to reiterate once again that we strenuously object to the
12 Prosecution's attempt to wedge the Khmer Krom's experience in the
13 DK into the scope of Case 002/02, as that of a de facto targeted
14 group, despite the fact that it chose not to request it to be
15 charged as such in the closing order. We look very much forward,
16 Mr. President, to receiving the Chamber's decision on this
17 critical issue as soon as possible.

18 Following on from Ben Kiernan's book, the Prosecution proceeded
19 to present a series of additional documents focusing on the
20 treatment of Khmer Krom and Vietnamese in the Tram Kak district.
21 Wherever those documents refer to the Khmer Krom experience, our
22 general objection applies, so as to avoid being repetitive, I
23 will simply list now the relevant document numbers.

24 [10.04.16]

25 That is E3/2435, 2049, 4082, 2281, 4083, 2438, 2262, 2048, 2428

1 and 4084. I apologize. We actually did give -- I have to slow
2 down? I apologize. Well, we actually did give a copy of our
3 presentation, so -- but I will slow down.

4 Mr. President, we do have a number of specific objections
5 relating to some of the documents that I just listed, so I will
6 go now through those documents.

7 Regarding document E3/2107, which the Prosecution described as a
8 notebook of Krang Ta Chan, we have two objections to make with
9 regards to this document. First, that the Prosecution referred to
10 this document in order to quote the following passage regarding a
11 person named Duch Samhoeun.

12 [10.05.21]

13 Let me quote it again, Mr. President. "In late '75, when Angkar
14 had the "Yuon" go back to their country, he made demands saying
15 he wanted to go to Vietnam too, since his wife is "Yuon", and he
16 heard them say that in Vietnam they still had private

17 occupations, and still used money. But Angkar did not let him
18 go." That is English ERN 00290204; Khmer, 00068048; and French,
19 00655724 - 5. Now, this document appears to be notes from a
20 prisoner's interrogation and confession, and it seems that the
21 Prosecution seeks to rely on this document, not simply to
22 identify the prisoner, but for the document's contents.

23 So our objection is that we fail to see how this is in any way
24 different from the way in which I sought to use a confession from
25 S-21 on Tuesday. There is no difference in our view, and we

1 believe that the Prosecution, and also possibly the Trial
2 Chamber, are simply trying to impose a double standard, so that
3 it can use such confessions in broader respects than other
4 Parties.

5 This, of course, relates to a more general legal question that we
6 have already touched upon on Tuesday, and that is how
7 potentially, "torture-tainted evidence" may be used in this
8 trial. As you may know, we've said it already before, we have
9 appealed that question in respect of the Case 002/01 judgement,
10 and will no doubt be discussing it at length in appeal hearings
11 before the Supreme Court Chamber soon.

12 [10.07.55]

13 So I will say no more about that at this point, other than to
14 reiterate that, as we said in our presentation on Tuesday, the
15 Prosecution characterized our argument in this regard as, and I
16 quote-unquote, from their response -- appeal response, as
17 "morally bankrupt" while, as you can see, attempting to use the
18 same kind of evidence in the same way as long as it fits their
19 case.

20 The second document -- the second objection, Mr. President, I
21 want to make in relation to this same document, E3/2107, is to
22 the Prosecution's characterization of this document as a Krang Ta
23 Chan notebook. As far as we can tell, there's nothing in this
24 document that specifically identifies this to be a document from
25 Krang Ta Chan. What's to stop this document being, for instance,

1 from Angk Ta Saom or any other security centre within the
2 district?

3 [10.09.06]

4 Next, Mr. President, I will turn to the document which the
5 Prosecution referred to as document number D157.7, and which the
6 Chamber has already assigned the E3 number E3/5827. Our objection
7 here is the same as our first objection regarding document
8 E3/2107. Once again, this document appears to be a record of a
9 prisoner's interrogation and confession, and once again, the
10 Prosecution seems to be referring to it solely for its content.
11 In particular, the Prosecution refers to a passage in that
12 confession, which describes how, and let me quote again: "In
13 January 1976, Angkar rounded up the "Yuon" people and sent them
14 back to Vietnam, and how the "Yuon" came to receive those
15 Vietnamese families at Phnum Den, but they accepted only those of
16 pure ethnic "Yuon"." Once again, we fail to see any difference
17 and only the Prosecution's double standard in this respect.

18 Next, Mr. President, I will give specific objections in relation
19 to documents E3/2049 and E3/4082, which the Prosecution cited in
20 its section on the treatment of Vietnamese and Khmer Krom, and
21 which appear to be a list of Khmer Krom families.

22 [10.10.53]

23 Our objection is one of form. As the Prosecutor explained on
24 Monday, these two documents appear to be two parts of a single
25 sequential list. Why is it, therefore, that the single list was

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1 split into two documents, with two different document numbers?
2 How did that happen? Who was responsible for this? All of these
3 are questions and more, all of these are questions which deserve
4 critical attention before we can safely rely on this document as
5 evidence. Therefore, our objection is here that we do not have
6 the original of this document, nor of 134 other so-called Tram
7 Kak district records. We need to obtain the originals, and we
8 need to consider it carefully. If we cannot obtain the original
9 documents, then only limited probative value should be assigned
10 to it.

11 [10.11.59]

12 And secondly, and that maybe is a proper moment to pause, Mr.
13 President, secondly the Prosecutor highlighted a particular
14 annotation from this document. It was an annotation regarding a
15 Khmer Krom woman's husband, who was apparently a Lon Nol captain,
16 and who the document recorded as having been, and I quote,
17 "already smashed since he was first arrived." ERN English,
18 002900263 (sic); and Khmer, 00079101; and French, 00774256.
19 And this will finalize our remarks before the break. Our
20 objection -- our objection is that it appears that the
21 Prosecution's -- one sentence, one sentence -- ah, I'm going too
22 fast again. I apologize again. English ERN, 00290263; Khmer,
23 00079101; and French, 00774256. And this is our last remark. Our
24 objection is that it appears that the Prosecution sought to
25 highlight this annotation in order to suggest that the husband

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1 was targeted as a Lon Nol soldier. However, in reality we cannot
2 draw any conclusions from this brief annotation as to the reason
3 why the husband was killed. It just is not indicated in that
4 document.

5 MR. PRESIDENT:

6 Thank you, Counsel. The time is convenient for a short break.
7 We'll take a break now and return at 10.30.

8 The Court is now in recess.

9 (Court recesses from 1013H to 1031H)

10 MR. PRESIDENT:

11 Please be seated. The Court is back in session.

12 And the Chamber now hands over the floor to the Defence Counsel
13 for Mr. Nuon Chea to resume your presentation -- your observation
14 and reply. You may proceed.

15 MR. KOPPE:

16 Thank you, Mr. President. I've been urgently requested to slow
17 down, so I will.

18 Next, Mr. President, are documents E3/2281 and E3/2262, both of
19 which are described as lists of Khmer Krom. Now we understand
20 that both of these documents are two of only three so-called Tram
21 Kak district records for which there is in fact an original held
22 -- held at Tuol Sleng Museum. Accordingly, given our concerns
23 about the provenance and chain of custody of the Tram Kak
24 district records as a whole, we request that the Chamber obtain
25 permission for these originals to be added to our case file.

1 [10.33.57]

2 Additionally, we note that these lists are simply lists. They are
3 not prisoner lists or execution lists, but simply lists, one,
4 apparently from Trapeang Thum Cheung and the other from Popel.

5 What therefore, does the Prosecution want to suggest exactly as
6 to their relevance? Without any further concrete evidence as to
7 what happened to the people on this list, the reference to this
8 list alone is inconsequential and with zero probative value.

9 Also, in this section on the treatment of the Vietnamese and
10 Khmer Krom, the Prosecution made their first reference to
11 document E3/2048, a document which they highlight repeatedly at
12 various points in their document presentation.

13 [10.34.13]

14 In this first reference, the Prosecution highlighted a page which
15 it described as a May 1977, list from Popel of 64 Khmer Krom
16 families evacuated from Vietnam. Here, Mr. President, our first
17 objection is, again, about form. This document, E3/2048, is not
18 only a photocopy for which there is no located original, but it
19 appears to be a photocopy of a photocopy. And in addition, the
20 document appears to be a compilation of various correspondence,
21 yet someone has gathered it -- has gathered it together and
22 presented it as a single document. And, again, the questions of
23 who, when, why, and how become critically important. And these
24 concerns, together with the Prosecution's heavy reliance on this
25 document, magnify our concerns about provenance and chain of

1 custody, and make it even more necessary for the Chamber to
2 search for the document's originals.

3 [10.35.38]

4 Moreover, and just as with the previous two lists referred to,
5 without any clear evidence about what happened next to the people
6 featured on the list, the list itself can only be of very limited
7 relevance. Mr. President, the Prosecution round out its section
8 on the treatment of the Vietnamese and the Khmer Krom by
9 referring to Henri Locard's report called, 'Tram Kak District in
10 the Grip of the Khmer Rouge' -- that is, D313/1.2.16. And
11 addition to -- in addition to the general objections I have
12 already mentioned in connection with this report, we also object
13 that Locard's report itself is irrelevant. He is simply doing
14 what we are doing, analysing the so-called Tram Kak district
15 records. Moreover, we challenge whether Henri Locard has
16 expertise that may truly add value to such an analysis.

17 [10.36.53]

18 The Prosecution characterizes Locard as a "historian", "political
19 science" and "leading expert on Cambodia and the Khmer Rouge",
20 and they do that in their witness summary, which is document
21 number E305/6.4, at ERNs, 00986615, in English; 00997433, in
22 French; and the Khmer ERN is not available. However, our
23 understanding is that Locard has degrees specialising in the
24 English language, and is therefore -- and it is therefore unclear
25 what particular expert insight that he can bring -- he could

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1 bring. If it is simply about him spending a long time in Cambodia
2 and being curious about Khmer Rouge issues, then I suppose that
3 any number of ordinary Khmers might also fit the bill.

4 [10.38.01]

5 Prosecution further admits in its witness summary that Locard was
6 previously employed by them, and we have previously said in the
7 light of his employment with the Prosecution, that Craig
8 Etcheson's testimony should be taken with a grain of salt, as, I
9 believe, your Chamber has said as well, and we would therefore
10 say that Henri Locard's testimony or his book or his works, given
11 his employment history and irrelevant qualifications, should be
12 taken with a bag of salt.

13 Mr. President, Your Honours, I move now on to the next topic, the
14 treatment of Lon Nol soldiers and officials. The Prosecution's
15 third thematic focus is on the treatment of Lon Nol soldiers and
16 officials within Tram Kak district and at Krang Ta Chan. Before
17 we go to--

18 MR. PRESIDENT:

19 Hold on. There was no translation a while ago. You may resume
20 your reply, the last points that you made.

21 [10.39.40]

22 MR. KOPPE:

23 Then I will start with talking about the Prosecution's third
24 thematic focus, which is on the treatment of Lon Nol soldiers and
25 officials within Trak Kak district and at Krang Ta Chan. Before

1 we go to our objections on specific documents, we would like to
2 raise the general objection that even if Lon Nol soldiers and
3 officials had been targeted, and we do not concede that, this of
4 course must be considered in a historical and geopolitical
5 context. Targeting itself, if it happened, would not of course be
6 strange in light of the fierce civil war with Lon Nol which
7 immediately preceded the DK. As a matter of fact, any country
8 might have done the same at that point in time.

9 Now going to E3/2120, which is Meng-Try Ea's book called "The
10 Chain of Terror", and which is the first document relied on in
11 this theme by the Prosecution to which we wish to object,
12 supplementing the general objection we have already made
13 regarding the need for Meng-Try Ea -- Meng Try Ea -- to testify
14 about his methodology, we note that he published this study under
15 the auspices of DC-Cam's "Searching for the Truth" publication.

16 [10.41.23]

17 We also note that on the case file is what happens to be an
18 earlier draft of Meng-Try Ea's book, which contains comments and
19 suggestions from Youk Chhang, who is of course the DC-Cam
20 director; comments from a person identified as "Steve", who is
21 presumably Steve Heder; and a third unidentified author. And Mr.
22 President, Your Honours, I would like to draw your attention to
23 one of those comments. In one passage, Meng-Try Ea relates how an
24 interviewee, Khut, described prisoners in sub-district militia
25 centres ploughing fields alongside non-prisoners. And this

1 interviewee, Khut concluded that, "Even the people without the
2 blame worked very hard, so prisoners must have been forced to
3 work even harder." Following immediately on from this -- from
4 this, an annotation from Youk Chhang which reads, "You know I
5 hate this paragraph. It makes the survivors sound too weak.
6 People have to work hard. Here I think we refer to people's
7 rights and freedoms being taken away or maybe just delete this
8 paragraph."

9 [10.42.57]

10 This appears, Mr. President, on an older version of the same
11 document E3/2120, on the case file at English ERN, 00105683; in
12 English, nowhere else. Although Meng-Try Ea retained the passage
13 in the final version, this example of a comment from DC-Cam's
14 director shows that it is -- that it's widely accepted status as
15 a neutral organization may in fact be questionable. It may better
16 be considered as an advocacy group. In addition, and as with
17 Henri Locard, to the extent that Meng-Try Ea's conclusions in the
18 book are drawn simply from an analysis of the Tram Kak district
19 records, then we would object that they are irrelevant unless the
20 Prosecution can satisfy the Chamber of his particular expertise.
21 Of course, to the extent that the book is based on interviews
22 that Meng-Try Ea conducted, then its content may be relevant.
23 However, even in this case, it would be necessary for him to come
24 and testify about his research methodology.

25 [10.44.22]

1 The next document, Mr. President, to which we refer in this
2 section on the so-called targeting of Lon Nol soldiers and
3 officials, is E3/4095, and it's the Krang Ta Chan interrogator's
4 notebook, as it is called. This is a document we also refer to at
5 length in our own document presentation: however, we wish to make
6 the following objections with respect to the Prosecution's use of
7 this document. First, we note that the cover page of this
8 document does indeed bear the title 'Fifth Confession:
9 Contemptible Traitors Pol Pot and Ieng Sary', a title clearly
10 added after the DK period and signalling without any doubt that
11 this document has been tampered with. In addition, we note that
12 the Prosecution's summary of the document's relevance pointed to,
13 among other things, the reason for certain prisoners' arrests.
14 Now hear again, we feel that the double standard returns. Given
15 that this document is apparently the result of a prisoner's
16 interrogation and confession, it would seem again that the
17 Prosecution is seeking to rely on the contents of a confession.
18 The inclusion of this document in the Prosecution's section on
19 the supposed targeting of Lon Nol soldiers and officials prompts
20 us to make a number of additional points in relation to this
21 document.

22 [10.46.09]

23 First, when reviewing the contents of the confessions within this
24 document, it seems that no one in the document is being
25 interrogated simply to determine their rank within the Lon Nol

1 army or administration. Prisoners were interrogated because they
2 were perceived to have done something. This is illustrated by
3 even the very first example in the notebook. This entry relates
4 to a man named Yuon Heng, a non-commissioned soldier who
5 allegedly, and I quote, "had a grudge against a comrade in trade
6 affairs and attempted to axe him to death." End of quote. English
7 ERN, 00747237; Khmer, 00271090; and French, 00721206.

8 [10.47.19]

9 We can compare this with other examples with which the Chamber is
10 already familiar, including people mentioned in the same notebook
11 who were not Lon Nol soldiers and officials. An example that we
12 have discussed at some length in this regard is the family of
13 Meas Sokha. They too were not arrested arbitrarily, but had in
14 fact been accused of plotting to overthrow their commune chief.
15 And I might add that the husband of Rat, was also accused of
16 having raped a New Person. Second, Mr. President, a notebook is
17 clearly a very brief summary, a brief summary of the
18 interrogations. Alone therefore, it should be considered
19 inadequate evidence of the reasons for a person's arrest.

20 [10.48.19]

21 What we need to see, for example, is documents from the sending
22 locations and documents indicating what happened to the people
23 next, such as a possible execution or a release list. Our
24 objection in this respect applies also to other documents which
25 the Prosecution used in this section of its document

1 presentation, namely the documents E3/2107, E3/2048, and E3/2432.
2 Allow me to add a few additional comments in relation to one of
3 those three documents, which is E3/2048. The specific document
4 within the compilation to which the Prosecution referred at this
5 point in its presentation was the April 1977, report from Ta Phem
6 commune, chief Kit to Angkar, ERN English, 00276564; Khmer,
7 00079791; and French, 00611611. As the Prosecution highlighted,
8 this document seems to suggest that Lon Nol soldiers were being
9 identified on that basis of their identity as such at that time.
10 Now of course, our general objection still applies here: that
11 there needs to be additional evidence corroborating the fate of
12 the people identified in documents such as this. However, this
13 document and its date are also significant, we believe. And that
14 is because it seems that from approximately mid-1977 onwards,
15 there appears to be, there appears to be, a shift at least, in
16 the so-called Tram Kak district records, with people being
17 identified on the basis of their -- of their former Lon Nol
18 military or administrative rank.
19 [10.50.34]
20 As far as we can see, these types of documents do not seem to
21 exist before that time. Therefore, it might suggest that there
22 are in fact two distinct periods: before and after mid-1977,
23 which seems to be in line with Pech Chim's testimony last Friday
24 and the Southwest Zone cadre's statement about the meeting
25 shortly after the liberation in Takeo provincial town, during

40

1 which Ta Mok said that, and I quote, "Soldiers with the rank from
2 second lieutenant to colonel were not to be harmed."

3 Mr. President, Your Honours, to be clear, this is not a
4 concession that Lon Nol soldiers and officials were targeted.
5 Obviously, and as we have already said, further investigation
6 into the provenance and chain of custody of the so-called Tram
7 Kak district records needs to be carried out before they can be
8 relied upon as key evidence and any conclusions drawn.

9 [10.51.52]

10 On another topic in relation to the same document, E3/2048, I
11 note that later in its presentation, the Prosecution highlighted
12 one passage in another document within the compilation, and that
13 is a 2 May 1977, report from Phan of Popel commune. English ERN
14 -- English ERN, 00376563 - 4; Khmer, 00079090; and French,
15 00611661. In the relevant passage, point two of the report, Phan
16 reported that, and I quote, "The 106 military families smashed by
17 Angkar, including those who died, totalled 393 persons."

18 [10.52.50]

19 Now on this subject, I would like to refer again to the testimony
20 of witness Pech Chim, during last week's hearings. As you may
21 recall, Pech Chim explained that "smashed" has two meanings. It
22 may refer to eliminating a person in the sense of eliminating
23 their erroneous mind-set, and it may also mean eliminate in the
24 sense of kill. Now we believe that the Chamber's position on the
25 meaning of "smash" as established in Case 001 is overwhelming

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1 focused on the testimony of Duch. However, assuming it could be
2 true that "smash" could have had a variable meaning during the
3 DK, we would argue that Pech Chim's testimony as to the meaning
4 of the word "smash" is much more relevant in this situation than
5 Duch's testimony.

6 [10.53.51]

7 Why? Pech Chim was after all a Tram Kak district secretary during
8 the DK, and the documentation appears to show that instructions
9 as to people's fate were often sought from the district level. In
10 addition, we know that the Trial Chamber considers him, Pech
11 Chim, to be a credible witness. According to our count, it relied
12 -- you relied on Pech Chim's testimony a considerable 16 times in
13 the Case 002/01 judgement.

14 [10.54.24]

15 So, taking Pech Chim's definition of the word "smashed" or
16 "smash" into account then, the fact is that it is possible that
17 the reference to the smashing of the military families in
18 E3/2048, might not in fact mean their execution. Perhaps it might
19 mean the transfer to a re-education centre or another
20 administrative framework, for example, or somewhere else. In any
21 case, it requires further investigation before conclusions can
22 reasonably be drawn.

23 Mr. President, I will now make very brief objections regarding
24 documents in the next five themes on which the Prosecution
25 focused in its document presentation. First, regarding the

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1 treatment and targeting of New People in Tram Kak district, our
2 general objection here is that the Prosecution did not show any
3 documents proving that there was a policy to treat New People any
4 differently from anyone -- from anyone else. Although I'm not
5 allowed to react on what the Prosecution said this morning, we
6 heard him quote from standing committee meetings, and the word,
7 the crucial word, in his quote is of course the word "among". It
8 is being argued that there are bad elements "among" the New
9 People. The New People as such are not bad. That is, of course,
10 also an important point of appeal.

11 [10.56.02]

12 The next theme, Mr. President, is about people who were arrested
13 for opposing or criticizing the revolution, the Party, or Angkar.
14 Regarding the supposed arrest of people who opposed the Party, we
15 note that the Prosecution principally relies on interrogator's
16 notebooks here, in particular E3/4095, E3/2107, and D157.7, which
17 is now E3/5827. Once again, we refer you, therefore, to our
18 objection in relation to the summary form of those notebooks and
19 the fact that it is essential for us to have additional
20 information to corroborate interrogator's notebooks and confirm
21 the fate of the people mentioned within these notebooks.
22 Otherwise, the evidentiary value of the information in the
23 notebook alone -- in the notebooks alone -- is limited.

24 [10.57.12]

25 Next, Mr. President, it's about the people who were arrested in

1 connection with food or working conditions. I leave aside the
2 rhetoric, the closing submission style rhetoric of this morning
3 from the Prosecution. What I do like to say is that regarding
4 people supposedly arrested for stealing food, or complaining
5 about food or working conditions, we note that this is something
6 that has been clearly contradicted, and I might add convincingly,
7 by all cadres who have so far testified.

8 I will also point to other evidence during our document
9 presentation on Tuesday that suggested, on the contrary, that
10 people might be re-educated multiple times, including for much
11 more serious offences than just stealing a coconut. In addition,
12 and again it is necessary to see additional documentation that
13 might complete the picture as the interrogation notebooks forming
14 the basis of this evidence again offer only very summarised
15 information, it is also possible, and probably quite likely that
16 information that a person might offer up in an interrogation
17 might be totally different from the reason for which they were
18 actually arrested.

19 [10.58.43]

20 Then, the next theme, Mr. President, people who were arrested for
21 trying to escape or moving around too freely. In respect of this
22 theme, we contend that the evidence also must of course be seen
23 in context. If we take into account the security situation,
24 especially the severe internal factions and fermenting internal
25 rebellion, which without any doubt existed within Democratic

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1 Kampuchea, it is completely reasonable to see why a person might
2 be detained at first if they were found to be somewhere where
3 they didn't have permission to be.

4 [10.59.02]

5 Whatever that may be, in any case, once again, the documents that
6 the Prosecution cited do not indicate what happened to the people
7 after their arrest. And then concerning the arrest of children
8 and the elderly, we wish for now to comment on only one of the
9 documents that the Prosecution raised, the document which he
10 referred to as D157.36 and to which this Chamber has now assigned
11 a new E3 number, 8417. This document concerned 23 and 24 March
12 1977, reports from Angk Roka and Angkar, including, as the
13 Prosecution highlighted, the arrest and confession of a
14 10-year-old boy as part of a group which had tried to flee. Our
15 objection is here that the Prosecution quoted selectively from
16 this document because when you look at the document in full,
17 there are key details missing from the Prosecutor's account,
18 which gave -- which give the event a different colour. Because
19 the boy was captured in a group of people who, and I quote, "had
20 two pistols" and, "many 79 type bullets", which doesn't exactly
21 give the same rosy picture of childhood innocence as the
22 Prosecution would like us to believe. For completion -- the ERN
23 numbers that I'm referring to, Mr. President, are English,
24 00363649 - 50; Khmer, 002709089; and French, 00607873.

25 [11.01.24]

1 Now, I turn to the authority's procedures for arrests and
2 executions. In this theme, the Prosecution also briefly presented
3 two documents in respected -- in respect of the theme concerning
4 these procedures for arrests and execution. The first was Henri
5 Locard's report again, and from this document, D313/1.2.16, the
6 Prosecution quoted a passage which indicated that it was -- that
7 there was no documentation of "revenge killings" of the New
8 People and that "killings by DK were centrally planned and that,
9 as in similar regimes, the Nazi or the Stalinist varieties,
10 bureaucrats and executioners had completely surrendered their
11 free will to the Party." Our objection is, actually, that we
12 completely fail to see how this is relevant and probative at all.
13 It is simply an unsubstantiated shopping list of very tired
14 clichés.

15 [11.02.42]

16 MR. KOPPE:

17 As for the second document, the film, "Deacon of Death",
18 E3/2316R, we have a number of concerns as to the documents or the
19 films probative value that we intend to investigate it before
20 coming back to it and commenting in our closing submissions.
21 In particular we can see the setting is not a legal setting but
22 appears to be a form of testimonial therapy and to this end we
23 need to investigate the methodology undertaken in order to be
24 able to rely on the information divulged in this film.
25 And secondly, we also need to verify various details including

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1 the identities of the people featured, the location and whether
2 the English subtitles are in fact accurate and this could take
3 some time given the fact that the documentary is one hour and
4 four minutes long.

5 [11.03.45]

6 Then the use of hot methods in interrogation that was the
7 Prosecution's last -- third last team --theme, sorry, as we have
8 presented contrary evidence on this topic in our own document
9 presentation we will not say now anything further about this
10 matter at this point.

11 The Prosecution's second last theme in its document presentation
12 was the use of Krang Ta Chan documents in further interrogation
13 of others and here the Prosecution presented a single document,
14 E3/2012 which allegedly was an 11th July 1977, report from prison
15 chief An on the confession of a prisoner named Sin Yang.

16 Now, as the Prosecution highlighted, this document contained two
17 hand-written unsigned annotations, the first regarding Sin Yang
18 and reading "to be smashed" and the second regarding two people
19 who Sin Yang identified, which reads, "to be arrested".

20 [11.05.05]

21 As this document only exists as a photocopy however, it is
22 impossible to verify whether these annotations were written in
23 red ink, which witness Pech Chim explained last week was
24 apparently a distinctive feature of such annotations.

25 It is also unclear whose handwriting it is and when it was

1 annotated to the document and finally Mr. President, this
2 document is one of several, in again, an apparent compilation and
3 therefore our same objection and concerns as to the providence
4 and chain of custody apply.

5 Last point in the Prosecution's document presentation is the
6 reporting to the district and from the zone to Phnom Penh. We
7 have a few objections about the three documents that the
8 Prosecution highlighted in this section.

9 [11.06.11]

10 First, let me turn to the first two documents -- that is,
11 documents, E3/2109 and E3/4085, which the Prosecution described
12 as monthly reports from Krang Ta Chan. Our objection is that
13 neither document actually stipulates that they are reporting
14 about Krang Ta Chan. The name Krang Ta Chan or rather
15 Re-education Centre 105 is never mentioned in this document. Also
16 more specifically the first document E3/2109, includes other
17 information on for example, the issuance of rice to Samraong
18 district and of manioc to Totueng Thgnai. These details make it
19 arguably unlikely that the document is a Krang Ta Chan document.
20 It may be a district document but this has not, in our view, been
21 established.

22 [11.07.22]

23 The last document is a very interesting document which featured
24 in the Prosecution's presentation was the document number E3/853,
25 which was a report of Southwest Zone to Angkar, presumably the

1 centre, dated 3rd June 1977. Our objection in this regard, Mr.
2 President, is that the Prosecution appears to have presented the
3 information selectively and omitted key details and these key
4 details include the following.
5 First the report was entitled "Report Number 10" which would
6 imply that there are reports 1 to 9. If there are any, where are
7 they? Secondly, but more important, while the report appears to
8 describe a very serious defence situation within the zone with
9 many enemy activities taking place, the defence section of that
10 report is only about one quarter of its total length and it
11 doesn't seem to reflect paranoia. If anything, it seems to be
12 modest considering the events it describes including a Chan
13 Raingsey force attack, the firing of enemy shells into DK
14 territory, the movement of Vietnamese troops into the country,
15 the digging of trenches and most vividly, and I quote, "the enemy
16 launching their activities by burning children alive", and you
17 can find that on English ERN, 00185243; and Khmer, 0005285; and
18 French, 00290267.

19 [11.09.32]

20 Finally in the document, the Southwest Zone report to the centre,
21 that it would take the following, "measures for the future". "All
22 levels must be put on full alert and all enemy tricks and
23 activities must be kept under 24 hour surveillance but very
24 quietly."

25 [11.09.59]

1 Now these steps which also appear to be the only directive sent
2 from the zone down to its lower levels, are, besides being very
3 proportionate and reasonable, far too generic to enable
4 conclusions to be made about treatment of people in individual
5 cases.

6 Mr. President, Your Honours, that concludes our comments
7 concerning the Prosecution's document presentation on the Tram
8 Kak cooperatives and Krang Ta Chan.

9 Next, regarding the Civil Party Lead Co-Lawyers presentation, at
10 this stage also given the limited time available our objections
11 will only be very brief. But of course I note that we plan to
12 provide detailed comments in our closing submissions and on other
13 occasions as appropriate.

14 [11.10.53]

15 In short, we object to the Lead Co-Lawyer's technique of
16 extensively quoting from applications of civil parties who are
17 not going to appear in this courtroom. This is especially so,
18 where their testimony may go to the acts and conduct of the Accused.
19 Now, as we briefly said on Monday, document hearings are intended
20 to give the Parties, us, an opportunity to highlight for the
21 Chamber and the public, key documentary evidence, documentary
22 evidence on the case file that may not otherwise be explored in
23 Court. We believe therefore, that the intention is for us to
24 focus on documents other than statements of witnesses and civil
25 parties who are in principle capable of testifying here in this

1 courtroom.

2 [11.11.52]

3 It follows that these hearings should generally focus on
4 contemporaneous documents that can establish facts and
5 corroborate or contradict witness testimony and memories. And on
6 Monday the Lead Co-Lawyer said that she would speak on behalf of
7 civil parties who had not yet testified in Court. In fact
8 however, the six civil parties who were featured on Monday will
9 never testify in Court because the Lead Co-Lawyers did not
10 request their appearance and neither did any other Party.

11 In this context, highlighting those civil party applications by
12 reading them into the record word for word amounts to, we
13 believe, allowing those civil parties sort of quasi testify yet
14 preventing our client Nuon Chea, the other Parties and the
15 Chamber from asking follow up questions, testing that evidence.
16 Obviously we believe that such practice cannot have any place in
17 this Court.

18 [11.12.59]

19 Finally, and I will conclude, Mr. President, Your Honours, on a
20 more general note, it is clear that it is necessary for us to
21 have some more clarity from the Chamber on the procedure for
22 document hearings. Our client, Nuon Chea, was -- for instance,
23 was very angry at the Chamber's treatment of the Khieu Samphan
24 team on Tuesday and we were surprised also, giving that the
25 evidence that they were presenting seemed, in our view, to be

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1 perfectly reasonable. So, we do hope to have some more clarity on
2 this before the next document hearing is being held. Thank you
3 very much.

4 MR. PRESIDENT:

5 Thank you and the Chamber would like now to give the floor to the
6 Defence team for Khieu Samphan.

7 [11.14.02]

8 MR. KONG SAM ONN:

9 Thank you, Mr. President. First of all, good morning, Mr.
10 President, Your Honours, and all Parties. I notice that we have
11 about 20 minutes left before our lunch break and if I cannot
12 finish it before the lunch break could grant us just a little bit
13 of more time so that we can conclude our response and the
14 proceedings for the morning session.

15 I observed all the key document presentations by both the
16 Prosecutions and the Lead Co-Lawyers for Civil Parties.

17 My colleague told me that there is no translation into French.

18 [11.15.05]

19 Allow me to repeat that, if we can finish it before the lunch
20 break that would be great if not, please just allow me a little
21 bit of more time so that we can conclude everything for the
22 morning session.

23 In relation to document E3/1593, which is an extract from Ben
24 Kiernan, I also heard that Counsel Koppe already responded to the
25 presentation that so far when Ben Kiernan has not been -- has not

1 appeared before the Chamber and we have not heard any intention
2 of summoning him to testify before this Chamber.

3 [11.16.01]

4 For that reason, the probative value of the document by this
5 particular individual is in question and I believe your Chamber
6 already issued an instruction in relation to the proceedings in
7 Case 002/01, in terms of the probative value of the work of Ben
8 Kiernan. Regardless of that, I noticed some irregularities in the
9 work of Mr. Ben Kiernan as there are contrasting facts regarding
10 the different food ration in his work.

11 In the presentation by the Prosecution, in relation to document
12 E3/1593, with Khmer ERN -- that is, 00678585, it shows that
13 witnesses claim that the food ration in Tram Kak district was not
14 a critical issue and this is contradicting to what was presented
15 by the Prosecution, as the only initial part of the related text
16 was mentioned by the Prosecution.

17 [11.18.14]

18 Another document -- that is, E3/760, which is the extracts of the
19 revolutionary magazine, my apology the document is E3/139, which
20 is the 11th edition of the "Revolutionary Flag" magazine of
21 November '76, with the Khmer ERN, 0064965 - 66; and English,
22 00455284; and in French, 00491919; and allow me to provide you an
23 extract of that. "What was the food ration? We actually solved
24 the key issues in 1976 and we continued the practice of the 13
25 ton of the food ration further into 1977. The Party decided that

1 the 13 ton food ration had to be completed or had to be
2 implemented fully and it should not be reduced to the 12 ton food
3 ration."

4 [11.20.18]

5 Also, in the special edition of the "Revolutionary Flag" magazine
6 of December '75 and January '76, which is E3/25, ERN in Khmer is,
7 00063054; and in English, 00491436; and in French 00--

8 MR. PRESIDENT:

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

10 MR. LYSAK:

11 I just want to note for the record that neither of the last two
12 documents that are being discussed are documents we presented.

13 These are documents that were on the list of documents Khieu
14 Samphan's team wished to present. I actually have no objection to
15 him using this opportunity but I just want the record to be very
16 clear, they are not responding to documents we presented, they
17 are reading from the documents that they had planned to read back
18 on Tuesday.

19 [11.21.50]

20 MR. KONG SAM ONN:

21 Mr. President, I would like to respond to that observation.

22 Within the framework of the responsibility of my client -- that
23 is, Mr. Khieu Samphan, which is different from the other accused
24 in this Court, and as Mr. Khieu Samphan expressed his opinions on
25 his stance to support the policies of the CPK during the DK

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1 period, we are therefore of the view that if we do not raise the
2 issues or the concerns of the policies of the CPK in order that
3 Khieu Samphan, my client, has nothing to do with the practice on
4 the ground and also so far the Prosecution fails to provide any
5 linkage between Khieu Samphan to the practice on the ground and
6 for that reason allow me to show the policies of the CPK.

7 [11.23.09]

8 MR. PRESIDENT:

9 Yes, you may proceed with that presentation and of course the
10 Chamber noted your observation Mr. Deputy Co-Prosecutor.

11 MR. KONG SAM ONN:

12 Thank you. And allow me to read an extract of that special
13 edition of "Revolutionary Flag" magazine, December '75, January
14 '76, as follows: "The importance of the communism and the
15 socialist construction is to build a better country and to
16 resolve the living condition of the people quickly." End of
17 quote.

18 Secondly, in regard to the cooperatives, the Prosecution
19 presented documents on the three categories of the population,
20 namely the Base People, the candidate or the reserved and the
21 depositees. We did not see that it was the intention of the CPK
22 policies on the categorisation of the people in terms of work
23 load or food ration.

24 [11.25.13]

25 In document E3/742, shows the different types of work forces as

1 presented by the Prosecution for the purpose of good
2 collaboration in achieving the work outcome. And on the issue of
3 the decision making process to reclaim Kampuchea Krom and the
4 Prosecution made a presentation on that issue by showing the
5 armed conflict that assisted during the DK period, in particular
6 in the Tram Kak area. We are of the view that the presentation
7 made by the Prosecution by reliance on the statement of Ta San,
8 who was one of the district secretaries and who attended the
9 meetings with the commune committee in order to explain to them
10 the purpose of the organisation to reclaim Kampuchea Krom, that
11 presentation is out of the current scope of the proceedings.

12 [11.27.49]

13 In fact the Chamber issued a decision, document E3/15, on 12
14 September 2014, and on this very issue -- that is, on the issue
15 of armed conflict which was in the sub-paragraph f, and for that
16 reason we prefer not to respond to the presentation by the
17 Prosecution in relation to the attack and the reclaiming of
18 Kampuchea Krom territory.

19 For the same reason, in terms of the treatment of the Vietnamese
20 and Khmer Krom, the Prosecution presented several documents. For
21 the current proceedings this topic is not part of the facts to be
22 debated -- that is, we do not debate about any particular
23 targeted group. Therefore, we prefer not to respond to that
24 presentation as well.

25 [11.29.26]

1 And on the issue of the purges of the former Lon Nol officers and
2 officials, the Prosecution presented a document -- that is,
3 E3/2120, which was authored by Ea Meng-Try, we reviewed all the
4 points referred to by the Prosecution, and there were six of
5 them, two of the main points were on a general situation while
6 the other four were on the specific events. However, none of the
7 six points has any relationship with Tram Kak district and there
8 is a very remote possibility that one point was related to a
9 nearby district -- that is, Prey Kabbas district and Bati
10 district where two individuals Chhin and Toy provided such
11 information to Ea Meng-Try, the author. For that reason the
12 presentation made by the Prosecution in their attempts to link
13 the text to Tram Kak district is wrong as it was related to other
14 two districts -- that is Prey Kabbas and Bati.

15 [11.31.57]

16 And finally, Mr. President, another topic that I would like to
17 respond; the Prosecution made a presentation regarding the other
18 offences namely, stealing food, stealing coconut or in terms of
19 gathering ducks to go into the rice fields and on this issue I
20 concur with the presentation or the response made by Counsel
21 Koppe.

22 In the testimony of Ta Chim, who was a former district secretary,
23 and also in the testimonies of other former cadres who states
24 that for such main offences those offenders were not sent to
25 Krang Ta Chan security centre, rather they were educated on the

1 ground or reprimanded on the ground not to repeat the same
2 offence so this is for Your Honours, consideration.

3 [11.33.52]

4 Now I would like to briefly make my response to the presentation
5 by the Lead Co-Lawyers for Civil Parties.

6 The Lead Co-Lawyer presented five victim information forms namely
7 E3/6143, 6457, 4988, 6222 and E3/5069. They also referred to a
8 written record of interview before OCIJ -- that is, E3/5519, and
9 before I am on my feet, Counsel Koppe also responded to those
10 documents.

11 These individuals so far have not appeared before Your Honours'
12 Chamber, and there is no foreseeable plan that they will be
13 called. So, in such a criminal case of that attitude, their
14 statements or information cannot be used as probative value or
15 evidence in this Court or in this proceeding.

16 [11.36.03]

17 Counsel Guiraud also said that she acted as the spokesperson for
18 the civil parties before Your Honours' Chamber, and that is her
19 statement on the 27th April 2015, around 14 hours, 23 minutes and
20 23 seconds.

21 I believe Your Honours will not have a problem at all in
22 considering this issue that the Lawyers for the civil parties are
23 not the spokespersons for their clients in particular in such a
24 criminal case. They can, however, become the spokespersons of the
25 civil parties in term of their claims for reparation.

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1 The civil party Lawyers, themselves, also acknowledged that there
2 are many discrepancies in the testimonies of the civil parties
3 compared to their victims information forms and that is in
4 reference to a transcript, document E1/288.1, at 09 hours, 40
5 minutes and 49 seconds, 59 seconds rather.

6 Based on the all the points that I presented to you, Your
7 Honours, the presentation made by the Lead Co-Lawyers for Civil
8 Parties by solely relying on the victims information forms of
9 their clients who are not summoned to be called to testify before
10 this Court does not lend itself to ascertain the truth for that
11 reason that information is not of a probative value.

12 And that is the end of my response, Mr. President. Thank you.

13 [11.39.22]

14 MR. PRESIDENT:

15 The hearing to hear the responses to the key document
16 presentations by the Parties in relation to Tram Kak cooperatives
17 and Krang Ta Chan security centre has come to a conclusion, which
18 is earlier than what we scheduled.

19 We therefore adjourn the proceedings now and resume on Monday,
20 4th May 2015, commencing from 9.00 o'clock. On Monday, next week,
21 the Chamber will hear the testimony of a witness, 2-TCW-979, by a
22 video conference.

23 Security personnel you are instructed to take Nuon Chea and Khieu
24 Samphan back to the detention facility and have them return to
25 participate in the proceedings on Monday 4th May 2015, before

1 9.00 o'clock.

2 The Court is now adjourned.

3 (Court adjourns at 1140H)

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